

## **Notice under Article 17(4) of the Gas (Northern Ireland) Order 1996**

The Northern Ireland Authority for Utility Regulation (the **Authority**) pursuant to Article 17(4) of the Gas (Northern Ireland) Order 1996 as amended (the **Order**), hereby gives notice as follows:

### **The Proposed Modifications**

- 1) The Authority proposes to modify the following conditions of the gas conveyance licence (the **licence**), granted under Article 8(1) of the Order to **Phoenix Natural Gas Limited** (the **licensee**):
  - a. Condition 2.3.13, in the manner set out in Schedule 1a to this notice,
  - b. Condition 2.3.23, in the manner set out in Schedule 1b to this notice, and
  - c. Condition 2.3.18, in the manner set out in Schedule 2 to this notice.
  
- 2) In the case of each Schedule, any words, figures or punctuation:
  - a. shown as being underlined are proposed to be added to the condition by way of modification; and
  - b. shown as being struck-through are proposed to be deleted from the condition by way of modification.

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## **Background to the Modifications**

- 3) The three conditions which it is proposed to modify were part of the suite of price control provisions referred to the Competition Commission (the **Commission**) in March 2012 under Article 15 of the Order.
- 4) On 28 November 2012, the Commission presented its report to the Authority setting out its conclusions in accordance with the reference and in relation to the 2012-2013 price control for the licensee.
- 5) In accordance with Article 16(5)(b) of the Order, the Authority published the Commission's report on 19 December 2012<sup>1</sup>.
- 6) The Authority has also published a paper entitled "Licence Modifications required to give effect to the conclusions of the Competition Commission in relation to the Phoenix Natural Gas Limited price control conditions". This sets out a brief summary on the background to the reference and the report of the Commission.
- 7) By virtue of Article 17(1) of the Order, following the Commission's report, the Authority is under a duty to make such modifications to the conditions of the licence as appear to it to be requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- 8) The Authority is proposing to make the modifications set out in this notice because they appear to it to be requisite for that purpose.

## **Effect of Modification**

- 9) The effect of the proposed modifications is as follows –
  - a. The modification to Condition 2.3.13 would provide for the Authority to give effect to the conclusions in the Commission's report as to the Determination Values and Designated Parameters to be used for the purposes of the price control. The

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<sup>1</sup> Phoenix Natural Gas Limited price determination, 28 November 2012:  
[http://www.uregni.gov.uk/publications/competition\\_commission\\_final\\_pngl\\_price\\_determination](http://www.uregni.gov.uk/publications/competition_commission_final_pngl_price_determination) and  
[http://www.uregni.gov.uk/publications/competition\\_commission\\_final\\_pngl\\_price\\_determination\\_appendices\\_and\\_glossa](http://www.uregni.gov.uk/publications/competition_commission_final_pngl_price_determination_appendices_and_glossa)

Authority would do so by giving to the licensee a 'Replacement Determination Notice' that set out those values. Minor changes are proposed to Condition 2.3.13 in consequence of the creation of the Replacement Determination Notice.

- b. The modification to Condition 2.3.23 would add a new definition of 'Replacement Determination Notice' consequent upon the modifications to Condition 2.3.13.
- c. The modification to Condition 2.3.18 would change the value attributable to the term *TRV* ( $TRV_{B,n}$  - Total Regulatory Value) in the price control conditions during 2012 and 2013. The TRV in the licence is currently £312.8m (at 2006 prices), and the proposed modification would change this to £437.1m (at 2010 prices). The modification also proposes to show the composition of the TRV.

## Reasons

- 10) As stated above, the Authority is required to make the modifications to the licence that appear to it to be requisite for the purpose of remedying or preventing the adverse effects specified in the Commission's report.
- 11) The proposed modifications must therefore be understood by reference to the conclusions in the Commission's report.

### Conditions 2.3.13 and 2.3.23

- 12) The Authority proposes the modification to Condition 2.3.13 and consequential modification to Condition 2.3.23 in order to ensure that the licence contains a mechanism by which the Authority will be able to give effect to the conclusions of the Commission by virtue of a new, 'Replacement', Determination Notice.
- 13) Under Condition 2.3.13(d)(i), the licence currently states that when the Authority receives a 'Review Disapplication Notice' from the licensee, the Determination Values and Designated Parameters that are set out in its Determination Notice shall have no effect. The Authority may then refer the price control conditions to the Commission.
- 14) However, in the event that a price control is referred to the Commission the licence contains no provision for amending the Determination Values and Designated Parameters in the light of the Commission's report.

- 15) The proposed modifications to Conditions 2.3.13 and 2.3.23 therefore complete the process following the Commission's report, so that the Authority shall provide a Replacement Determination Notice to the licensee setting out the Determination Values and Designated Parameters that shall apply in accordance with the conclusions of the Commission set out in its report.

Condition 2.3.18

- 16) In its report, the Commission concluded that the value of TRV should be adjusted to reflect the 1999/2000 capex deferrals that were not completed by the end of 2011 (including post-2006 capitalised financing benefits), together with an appropriate management fee of 5 per cent. The Commission also concluded that an adjustment should be made to the TRV as the licensee had been funded twice for its business rates allowance. The Commission's report determined the exact amount of the adjustment to be made.
- 17) The proposed modification to the TRV in Condition 2.3.18 would give effect the conclusions of the Commission. By specifying the composition of the TRV to ensure that its component parts can be clearly identified, the modification would ensure that the licence conditions are fully transparent as to the elements of the TRV considered by the Commission.

**Further Relevant Information**

- 18) The Authority will consider any representations or objections that are made to the proposed modifications and not withdrawn.
- 19) Should the modifications be made in substantially the same form as is proposed in this notice, the Authority would then intend, in accordance with the new Condition 2.3.13(d)(iii), to give to the licensee a Replacement Determination Notice to confirm the Determination Values and Designated Parameters that will apply for 2012 and 2013. These values will be those which were specified by the Commission in its spreadsheet model and in the report.
- 20) A draft copy of the Replacement Determination Notice which the Authority would propose to send to the licensee is attached as Schedule 3 to this Notice.

## **Consultation**

- 21) The Authority has, in accordance with Articles 17(5)(b) of the Order served a copy of this notice on the licensee.
- 22) Representations or objections to the proposed modifications may be made before 5pm on 19 March 2013 to Paul Harland either by way of post at The Utility Regulator, Queens House, 14 Queen Street, Belfast BT1 6ED or e-mail at [paul.harland@uregni.gov.uk](mailto:paul.harland@uregni.gov.uk).

**Dated this day 15 February 2013**



**Brian McHugh**

**For and on behalf of the Authority**

## **Schedule 1a: The Proposed Modification to Condition 2.3.13**

### 2.3.13 Reviews Generally

In respect of each Review:

- (a) the Licensee shall provide to the Authority the Best Available Values required in accordance with Condition 2.3.14 to 2.3.19, together with the Licensee's proposed Designated Parameters for that Review, by the date occurring 15 months prior to the end of each Formula Year  $t = n$ .
- (b) the Authority will determine the Determination Values and the Designated Parameters that apply in those Formula Years  $t$  occurring during the period  $t = n+1$  to  $t = q$  (inclusive) and in doing so:
  - (i) the Authority shall have due consideration for the Best Available Values and proposed Designated Parameters submitted by the Licensee; and
  - (ii) base its determination of the Determined Revenue Per Therm for each Conveyance Category and *Determined Total Conveyance Revenue* on the underlying calculations contained in Conditions 2.3.14 to 2.3.19;
- (c) the Authority shall, following its determination, give notice in writing to the Licensee of the Determination Values and the Designated Parameters that it proposes to apply in those Formula Years  $t=n+1$  to  $t=q$  inclusive (a "Determination Notice");
- (d) where the Licensee considers that the Authority's proposals in a Determination Notice would not be acceptable:
  - (i) the Licensee may within 28 days of the date of the Determination Notice request the Authority by notice (a "Review Disapplication Notice") not to establish the Determination Values and Designated Parameters set out in the Determination Notice and where such notice is given the Determination Values and Designated Parameters established by the preceding Review shall continue to apply;

- (ii) where following the giving of a Review Disapplication Notice the Authority does not by the date falling 56 days after the date of the Review Disapplication Notice make a reference to the Competition Commission under Article 15 of the Order relating in whole or in part to a modification of this Condition 2.3.8, the Determination Notice shall have no effect and the Determination Values and Designated Parameters established at the preceding Review shall continue to apply; and
- (iii) in the event of such a reference to the Competition Commission under (ii) above;

(A) this Condition 2.3 may be modified in accordance with the Order and in the manner specified in the report of the Competition Commission; and

(B) the Authority shall give notice in writing to the Licensee (a “Replacement Determination Notice”) of any Determination Values and the Designated Parameters that have been specified in, or been calculated by the Authority in accordance with the conclusions of, the report of the Competition Commission to apply in those Formula Years  $t=n+1$  to  $t=q$  inclusive;

- (e) without prejudice to paragraphs (d)(i) and (ii) and to Article 14 of the Order, with effect from the first day of the Formula Year  $t=n+1$  the effect of a Determination Notice given under paragraph (c), or of a Replacement Determination Notice given under paragraph (d)(iii), shall be such that:
  - (i) the Determination Values set out in the Determination Notice or (as the case may be) the Replacement Determination Notice shall apply for the purposes of and operation of this Condition 2.3 in relation to Formula Years  $t=n+1$  to  $t=q$ ;
  - (ii) Condition 2.3.22 shall be modified to include the Designated Parameters contained in the Determination Notice or the Replacement Determination Notice

in each case in substitution for and instead of the Determination Values and Designated Parameters established by the preceding Review.

**Schedule 1b: Proposed Modification to Add a Definition of “Replacement Determination Notice” to Condition 2.3.23**

<u>“Replacement</u>	<u>means a notice given in accordance with Condition</u>
<u>Determination Notice”</u>	<u>2.3.13(d)(iii);</u>



## **Schedule 2: The Proposed Modification to Condition 2.3.18**

### 2.3.18 Calculating $TRV_{B,n}$ (Total Regulatory Value)

$TRV_{B,n}$  is the Best Available Total Regulatory Value at the end of Formula Year  $t = n$ . It is the sum of the Best Available Depreciated Asset Value for Formula Year  $t = n$  (or in other words the opening position at the beginning of Formula Year  $t = n+1$ ), plus the Best Available Working Capital for Formula Year  $t = n$  (or in other words the opening position at the beginning of Formula Year  $t = n+1$ ), plus the Best Available Capital Creditors for Formula Year  $t = n$  (or in other words the opening position at the beginning of Formula Year  $t = n+1$ ), plus the Best Available Profile Adjustment as follows:

$$TRV_{B,n} = DAV_{B,n} + Q_{B,n} + CC_{B,n} + PA_{B,n}$$

Where:

$PA_{B,n}$  is the Profile Adjustment (being an adjustment calculated in accordance with Condition 2.3.19), and

$Q_{B,t}$  and  $CC_{B,t}$  are treated as a pass-through and are corrected to actuals at the end of each Review Period as described in condition 2.3.23.

In respect of Formula Year  $t =$ ~~2006~~ 2011 (year end),  $TRV_{F,t} =$ ~~£342.8m~~ £437.1m (2010 prices).

**Schedule 3: Draft Replacement Determination Notice proposed to be sent to Licensee following the proposed modifications to the Licence**

**Replacement Determination Notice Pursuant to Condition 2.3.13(d)(iii)(B) of the Licence for the Conveyance of Gas in Northern Ireland Granted to Phoenix Natural Gas Limited on 5 September 1996 (“the Licence”)**

**Whereas:**

1. Conditions 2.3.8 to 2.3.26 of the licence were referred to the Competition Commission (the **Commission**) in March 2012 under Article 15 of the Gas (Northern Ireland) Order 1996 (the **Order**).
2. On 28 November 2012, the Commission presented its report to the Northern Ireland Authority for Utility Regulation (the **Authority**).
3. On 19 December 2012, in accordance with Article 16(5)(b) of the Order, the Authority published the Commission’s report<sup>2</sup>.
4. The Commission’s report sets out the basis on which the Determination Values should be calculated.
5. Following a consultation in accordance with Article 17 of the Order, the Authority has modified the licence in order to give effect to the conclusions set out in the Commission’s report.
6. Modified Condition 2.3.13(d)(iii)(B) of the licence requires the Authority to give to Phoenix Natural Gas Limited (**PNGL**) a Replacement Determination Notice specifying the Determination Values and Designated Parameters in accordance with the Commission’s report.

The Authority hereby gives notice of the Determination Values and Designated Parameters that have been specified in the report of the Competition Commission and that shall apply during 2012 and 2013.

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<sup>2</sup> ‘Phoenix Natural Gas Limited price determination’, 28 November 2012:  
[http://www.uregni.gov.uk/publications/competition\\_commission\\_final\\_pngl\\_price\\_determination](http://www.uregni.gov.uk/publications/competition_commission_final_pngl_price_determination) and  
[http://www.uregni.gov.uk/publications/competition\\_commission\\_final\\_pngl\\_price\\_determination\\_appendices\\_and\\_glossa](http://www.uregni.gov.uk/publications/competition_commission_final_pngl_price_determination_appendices_and_glossa)

### Designated Parameters

The Designated Parameters are being amended under this notice, as set out in Condition 2.3.22 of the licence. They will apply up to and including formula year 2013. These shall be:

Designated Parameter	Value
$r_t$	0.075
$m$	2012
$n$	2013
$q$	2046
$RPI$	225.3

### Determination Values

The Determination Values are set out in the Commission's spreadsheet model entitled, "UR 15 PNG12 model FINAL-remedies". The basis for the calculations contained within this model are set out in the Commission's report dated 28 November 2012. That document is also attached to this Replacement Determination Notice.

Dated this day [Insert Date]

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**Shane Lynch**

Chief Executive Office

For and on behalf of the Northern Ireland Authority for Utility Regulation