

# Appendix 11

## firmus energy distribution licence (extracts)

### CONDITION 1.1: INTERPRETATION AND CONSTRUCTION

#### 1.1.1 Interpretation Act (Northern Ireland) 1954 and Gas (Northern Ireland) Order 1996

Unless the contrary intention appears:

- (a) words and expressions used in this or any of the following Parts of the licence or in the Schedules hereto shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them;
- (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when the licence comes into force; and
- (c) words and expressions defined in the Gas (Northern Ireland) Order 1996 or the Energy (Northern Ireland) Order 2003 shall have the same meaning when used in this or any of the following Parts of the licence or in the Schedules hereto.

#### 1.1.2 General Rules of Construction

Unless otherwise specified:

- (a) any reference to a numbered Part or Schedule is a reference to the Part or Schedule bearing that number;
- (b) any reference to a numbered Condition is a reference to the Condition bearing that number in the Part in which the reference occurs and within any Condition a reference to “this Condition” shall be to the whole of the Condition under its heading;

- (c) any reference to “the Conditions” means the Conditions to which the licence is subject and references to “any Conditions” and to any cognate expression shall be construed accordingly;
- (d) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Part, Condition or Schedule in which the reference occurs; and
- (e) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

#### 1.1.3 Headings

The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.

#### 1.1.4 Time Related Obligations

Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).

#### 1.1.5 Natural Persons

These Conditions shall have effect as if, in relation to a licence holder who is a natural person, for the words “it”, “its” and “which” there were substituted the words “he”, “his” or “whom” and cognate expressions shall be construed accordingly.

#### 1.1.6 Definitions

Except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

“affiliate”	means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another subsidiary of a company of which such person is a subsidiary;
“amount”	means, in relation to gas, the energy content thereof expressed in therms or kilowatt hours; except with effect from 1st January 2000, it means the said content expressed in kilowatt hours;
“auditors”	means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Act 1985;
“authorisation of persons”	means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;
“Authority”	means the Northern Ireland Authority for Energy Regulation;
“balancing”	means (in relation to the Network and any relevant period for balancing under the Network Code) taking such measures as may be available to the Licensee, in particular, measures: <ul style="list-style-type: none"> <li>(i) for managing the relationship between deliveries of gas to and offtakes of gas from the Network during that period; and</li> <li>(ii) to maintain pressures in the Network at levels;</li> </ul> <p>which will, in the reasonable opinion of the Licensee, ensure the safety and efficiency of the Network in that or any subsequent relevant period;</p>

“company”	means a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 or any other body corporate;
“consumer”	means any person supplied with gas to premises;
“conveyance charges”	means the charges made by the Licensee for the conveyance of gas;
“conveyance services”	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;
“Department”	means the Department of Enterprise, Trade and Investment;
“distribution pipe-line”	means any pipe-line which is not a transmission pipe-line;
“distribution system operator”	means any person authorised to convey gas through distribution pipelines by virtue of holding a licence granted under Article 8(1)(a) of the Order;
“domestic consumer”	means a person who is supplied with gas conveyed to premises at a rate which is reasonably expected not to exceed 73,250 kilowatt hours a year;
“Energy Order”	means the Energy (Northern Ireland) Order 2003;
“exemption holder”	means the holder of an exemption under Article 7 of the Order;
“exercise of powers of entry”	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;
“gas supplier”	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the

	Order to supply gas including the Licensee as so authorised or exempted;
“Grant”	means the commencing section of this licence by which the Authority grants the Licensee the licence;
“information”	includes documents, accounts, estimates, returns, reports or other information;
“licence”	means the Grant, together with those Conditions and Schedules referred to in paragraphs 1 and 2 thereof (as modified from time to time);
“Licensed Area”	means the area in which the Licensee is authorised to convey gas <del>pursuant</del> pursuant to Schedule 1 of this Licence.
“Licensed Business”	means the activities connected with the conveyance of gas pursuant to the licence, including (without limitation) the development, construction, operation and maintenance of the Network, the connection of premises to the Network, and the provision and maintenance of gas meters (but not meter reading);
“Licensee”	means the person referred to as such in the Grant, and/or any person to whom the Licence is subsequently assigned in accordance with the Order, the Energy Order or the Licence;
“Network”	“means all the pipe-lines (as defined by the Gas (Northern Ireland) Order 1996, and shall also include any plant, equipment or apparatus used for, or for any purposes connected with, the conveyance of gas) within the Licensed Area that are owned and/or operated by any licensee, which pipe-lines shall, in the case of conveyance to consumer’s premises and

	for the purposes of this definition, be deemed to terminate immediately prior to the inlet of the first gas meter at such premises:”
“Network Code”	means the document prepared by the Licensee under Condition 2.4.2;
“non standard gas credit meter”	means a gas credit meter owned by the Licensee which is not a standard gas credit meter;
“non standard gas meter”	means either a non standard gas credit or pre-payment meter;
“non standard gas pre-payment meter”	means a gas pre-payment meter owned by the Licensee which is not a standard gas pre-payment meter;
“Order”	means the Gas (Northern Ireland) Order 1996;
“Other Business”	means any business of the Licensee other than the Licensed Business;
“owned”	means in relation to any gas meter title in or control over a meter and includes meters leased to a person;
“person”	means any company, firm, partnership, association, body corporate or individual;
“related undertaking”	means any undertaking in which any person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986;
“separate accounts”	means the accounts which are to be prepared for each Separate Business;
“Separate Business”	means each of the activities of the Licensee connected with:

- (a) the conveyance of gas by means of a transmission pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;
- (b) the conveyance of gas by means of a distribution pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;
- (c) the storage of gas pursuant to a licence granted in accordance with Article 8(1)(b) of the Order; and
- (d) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order;

each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee (save in respect of an affiliate or related undertaking which has a separate licence or exemption), such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business;

“standard gas credit meter” means a gas credit meter of a type so specified and owned by the Licensee;

“standard gas meter” means either a standard gas credit or pre-payment meter;

“standard gas pre-payment” means a gas pre-payment meter of a type so specified and

meter”	owned by the Licensee;
“subsidiary”	has the same meaning as given to it in Article 4 of the Companies (Northern Ireland) Order 1986;
“Supply Licensee”	means the person from time to time authorised to supply gas under a licence originally granted, on the same date as the date of the Grant, to Bord Gais Eireann;
“transmission pipe-line”	means any pipe-line having a design operating pressure exceeding 7 bar gauge;
“transportation arrangements”	means the arrangements which licence holders or exemption holders may have with the Licensee to have gas introduced into, conveyed by means of and taken out of the Network; and
“working day”	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

#### 1.1.7 References to energy

References to amounts of gas in therms shall, with effect from 1st January 2000, be converted to equivalent amounts of gas in kilowatt hours.

#### 1.1.8 Singular/plural

The terms defined under Condition 1.1.6 shall include the singular and the plural, as the context requires.



## **CONDITION 1.9: MODIFICATIONS**

### 1.9.1 Modification of Licence Conditions

The Conditions of the licence are subject to modification in accordance with their terms or with Articles 9, 14, ~~17, 17A, 14A, 14E~~, or 18 of the Order or with any provision for the modification of the same in the Energy Order.

### CONDITION 1.13: PAYMENT OF FEES TO THE AUTHORITY

1.13.1 In respect of each year, beginning on 1 April, during which the Licence is in force, the Licensee shall pay to the Authority a fee of the amount determined in accordance with this Condition (the licence fee).

1.13.2 The Licensee shall pay to the Authority the licence fee for each year (the relevant year) within 30 days of the Authority giving notice to the Licensee of the amount due from the Licensee for the relevant year.

1.13.3 For each relevant year, the licence fee shall be the total of:

(a) an amount that is the Relevant Contribution to the Estimated Costs of the Authority for the relevant year;

(b) an amount that is the Relevant Contribution to the Estimated Costs of the Consumer Council with regard to the exercise of its functions relating to gas consumers for the relevant year;

~~(c) an amount that is the Relevant Contribution to the Estimated Costs of the Competition Commission, in connection with any reference made to it in respect of the Licence or any other licence granted under Article 8(1)(a) of the Order, for the year immediately preceding the relevant year (the previous year); and~~

~~(d)~~ (c) an amount which is the difference (which may be a positive or negative amount), if any, between:

(i) the licence fee that would have been due from the Licensee for the year immediately preceding the relevant year (the previous year) had such fee been calculated in relation to the actual costs of:

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(A) the Authority for the previous year; and

(B) the Consumer Council with regard to the exercise of its functions relating to gas consumers for the previous year; and

~~(C) the Competition Commission, in connection with references of the type referred to in sub-paragraph 1.13.3(c), for the year immediately preceding the previous year; and~~

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- (ii) the licence fee paid by the Licensee for the previous year,

provided that where the Licence is in force for only a part of the relevant year, the amount payable in respect of that year shall be a proportionate part of the licence fee due for the full year.

1.13.4 Where:

- (a) the Estimated Costs of the Authority or of the Consumer Council are revised during the course of the relevant year (Revised Costs);
- (b) the Licensee has paid the licence fee for the relevant year; and
- (c) the Revised Costs would, had they applied to the calculation of the licence fee paid by the Licensee, have resulted in the calculation of a lower licence fee than that paid by the Licensee,

the Authority may, where it is reasonable for it to do so taking into consideration the timing of the Revised Costs and the provisions of paragraph 1.13.3(~~de~~), refund to the Licensee the difference between the amount of the licence fee paid by the Licensee and the amount of the lower licence fee referred to in paragraph 1.13.4(c) above.

1.13.5 Where the Licensee fails to pay the amount of the licence fee as notified to it under paragraph 1.13.2 above within the 30 day period specified, it shall with effect from the end of that 30 day period pay simple interest on the amount at the rate which is from time to time equivalent to the base lending rate of an institution designated by the Authority for this purpose.

1.13.6 In this Condition:

- “Estimated Costs”
- (i) in relation to the costs of the Authority, means the costs estimated by the Authority as likely to be its costs for the relevant year as calculated in accordance with the Principles; and
  - (ii) in relation to the costs of the Consumer Council, means either:
    - (A) the costs notified to the Authority by the Consumer Council as its estimated costs for the relevant year as

approved by the Department; or

(B) in the event that the Authority does not receive such notification by 31 July in the relevant year, the costs estimated by the Authority (having regard to any estimate of such costs in any forward work programme published by the Consumer Council in respect of the relevant year) as likely to be the costs of the Consumer Council for the relevant year;~~and~~

~~(iii) in relation to the costs of the Competition Commission, means the costs estimated by the Authority following consultation with the Competition Commission as likely to be the costs of the Competition Commission for the previous year in connection with references of the type referred to in sub-paragraph 4.13.3(e) above.~~

“Principles”

means the principles determined by the Authority for the purposes of this Condition generally, following consultation with the Licensee and with others likely to be affected by the application of such principles and as notified to the Licensee in writing.

“Relevant Contribution”

means, in respect of the Estimated Costs, the level of contribution to those costs applicable, whether by way of a specified amount or a stated proportion, to the Licensee as determined under or in accordance with the Principles.

**CONDITION 4.1 CHARGING METHODOLOGY FOR THE CONVEYANCE OF GAS**

- 4.1.1 The price control set out in this Part 4 allows the Licensee to recover Expenditure reasonably expected to be incurred and the designated rate of return,  $r_t$ , over the duration of the relevant recovery period.
- 4.1.2 The Licensee shall use all reasonable endeavours to set the Controlled Charges so as to ensure that, in respect of each Formula Year, they satisfy:
- (a) the constraint set out in Condition 4.2 (the “Primary Constraint”); and
  - (b) the constraint set out in Condition 4.3 (the “Supplemental Constraint”).
- 4.1.2 The values attributable to the Primary Constraint and Supplemental Constraint shall from time to time be established following a process of Review in accordance with:
- (a) Condition 4.4 (Periodic Reviews); or
  - (b) Condition 4.7 (Special Reviews).
- 4.1.3 At the beginning of each Review, the Licensee shall submit to the Authority, in accordance with Conditions 4.5 and 4.6, its best estimate of the values that the Licensee believes the Authority should ~~determine~~~~designate~~, at the conclusion of the Review, for the purposes of the Primary Constraint and the Supplemental Constraint.
- 4.1.4 The ~~determined~~~~designated~~ values applying from time to time, for the purposes of the Primary Constraint and the Supplemental Constraint, will be those set out in Condition 4.9.
- 4.1.5 Following each Formula Year, the Licensee shall provide information to the Authority in accordance with Condition 4.8, showing whether or not the Controlled Charges for that Formula Year did satisfy the Primary and Supplemental Constraints.
- 4.1.6 Words, phrases and terms of formulae used in this Part 4 shall, where not defined in Condition 1.1 of this Licence, bear the meanings ascribed to them in Condition 4.10.

#### **CONDITION 4.4 REVIEW PROCESS & DISAPPLICATION NOTICES**

4.4.1 This Condition 4.4 sets out the process by which the core terms of the price control will be established by the Authority from time to time.

##### **The Review**

4.4.2 The Designated Parameters and the Determination Values applying in respect of each Formula Year  $t$  will be established in accordance with the process set out below (a “Review”).

4.4.3 A Review will take place:

- (a) at scheduled intervals by reference to the end of Formula Year  $t=n$  (a “Periodic Review”); and
- (b) from time to time in accordance with Condition 4.7 (a “Special Review”).

##### **Terms Relevant to Reviews**

4.4.4 In respect of each Review (the “current Review”):

- $n$  is a Designated Parameter established (subject to Condition 4.7.2) by virtue of the Review immediately preceding the current Review. It denotes the Formula Year immediately preceding the first Formula Year in which the Determination Values and the Designated Parameters that are being established as part of the current Review will apply. In the case of the first Periodic Review only it shall be determined in accordance with Condition 4.4.5;
- $q$  is a Designated Parameter established as part of the current Review. It denotes the projected longstop Formula Year up to which Best Available Values must be submitted in accordance with Condition 4.5 and 4.6;
- $m$  denotes the Formula Year immediately preceding the first Formula Year in which the Determination Values and the Designated Parameters which were established as part of the Review immediately preceding the current Review applied. Accordingly,  $t = n$  for any Review is the same year as  $t = m$  for the following Review; and

- a* denotes the then most recent Formula Year for which the Licensee has submitted Actual Values in accordance with Condition 4.8.

#### **The First Periodic Review**

4.4.5 Notwithstanding the other provisions of this Condition 4.4, the following provisions shall apply to the first Periodic Review alone:

- (a) for the purposes of the first Periodic Review, the Designated Parameter  $n$  shall be the year ending on 31 December 2005;
- (b) unless and until Condition 4.9 is modified, the Designated Parameters set out in Condition 4.9 (as at the time of Grant) will be deemed to have been established as such at the first Periodic Review;
- (c) the Licensee shall provide to the Authority the Best Available Values for the first Periodic Review (calculated in accordance with Conditions 4.5 and 4.6) based on the Designated Parameters set out in Condition 4.9 (as at the time of Grant) within 6 weeks of the date of the Grant;
- (d) the value of  $DAV_n$  used for the purposes of the first Periodic Review shall reflect that Capital Expenditure and Operating Expenditure incurred in the period up to 1 January 2006 (adjusted for cost of capital at the rate of LIBOR + 1%);
- (e) the Authority will, as part of the first Periodic Review and having considered any Best Available Values submitted by the Licensee, determine the Determination Values to apply in those Formula Years  $t$  occurring during the period  $t = 1$  to  $t = q$  (inclusive) for the first Periodic Review by notice to the Licensee prior to 1 January 2006;
- (f) the Licensee may, in respect of the first Periodic Review, serve a written “disapplication notice” on the Authority at any time prior to 1 March 2006. Such disapplication notice shall have effect from 1 January 2007 (the “disapplication date”). Following service of such a disapplication notice, and unless the Licensee withdraws the disapplication notice, Conditions

4.2 and 4.3 shall, with effect from the disapplication date, cease to have effect, unless by the disapplication date, the Authority has made a reference to the Competition Commission under Article 15 of the Order requiring the Competition Commission to investigate and report on whether the disapplication of Conditions 4.2 and 4.3 may be expected to operate against the public interest.

#### **Periodic Reviews Generally**

- 4.4.6 The Authority will, at each Review, 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) for that Review.
- 4.4.7 The Licensee shall provide to the Authority the Best Available Values (calculated in accordance with Conditions 4.5 and 4.6) in respect of each Periodic Review, together with the Licensee's proposed Designated Parameters for that Review, by the earlier in time of:
- (a) the date occurring 12 months prior to the end of each Formula Year  $t = n$ ; and
  - (b) the date occurring two months after the date on which the Authority has provided to the Licensee its proposed values for the Designated Parameters for that Review.
- 4.4.8 For each Special Review and in accordance with the timetable established by the Authority in accordance with Condition 4.7.6, the Licensee shall (to the extent directed to do so by the Authority in accordance with Condition 4.7.6) provide to the Authority Best Available Values for that Special Review (calculated in accordance with Conditions 4.5 and 4.6) and the Licensee's proposed Designated Parameters for that Special Review.
- 4.4.9 At the same time as it submits Best Available Values to the Authority in accordance with Condition 4.4.5(c), 4.4.7 or 4.4.8 (as applicable), the Licensee shall also provide such further accompanying information, evidence and other data with regard to the values submitted and the assumptions underlying the relevant estimates and forecasts



as will be reasonably sufficient to enable the Authority to be satisfied that the Best Available Values have been provided on a proper and consistent basis. The Licensee shall thereafter provide the Authority with any further such information, evidence or other data requested by the Authority.

~~4.4.10 The Licensee acknowledges that the Authority may wish and/or be obliged to carry out consultations with regard to the Reviews and, in the exercise of its functions under the Order and the Energy Order, publish information relevant to such consultations. Where the Authority makes a “minded to” determination of the Determination Values and the Designated Parameters for a Review, the Licensee shall, within 4 weeks of such “minded to” determination, respond to the Authority indicating whether or not such values would be acceptable if formally established as such.~~

~~4.4.11~~4.4.10 The Authority will, at the conclusion of each Review and having considered any Best Available Values and proposed Designated Parameters submitted by the Licensee, determine the Determination Values and ~~establish~~ the Designated Parameters by ~~notice in writing to the Licensee~~ modifying Condition 4.9 in accordance with Articles 14(8) – (10) of the Order. Such Determination Values and Designated Parameters shall be established having regard to any information provided to the Authority and any representations made to the Authority, including those previously made by the Licensee, and in particular those made by the Licensee in respect of the:

- (a) Licensee’s aim of recovering accumulated under recoveries of revenue (as referred to in Condition 4.2.8) in good time and in any event by no later than the Formula Year 2034/5;
- (b) Licensee’s aim of recovering the costs it has incurred by way of Capital Expenditure during the period up to the end of Formula Year q by the end of that Formula Year, together with a rate of return on those costs; and
- (c) Licensee’s aim of recovering the costs it has incurred by way of Operating Expenditure during the period up to the end of Formula Year q by the end of that Formula Year.

~~4.4.12 Without prejudice to the Authority’s ability to modify Condition 4.9 in accordance with Article 14 of the Order, a notice given by the Authority under Condition 4.4.11~~

~~shall have effect as a modification of Condition 4.9 in which the Designated Parameters contained in the notice shall be substituted for the equivalent values previously established in that Condition.~~

### **Disapplication**

~~4.4.11 Conditions 4.2 and 4.3 (the "Charge Restriction Conditions") shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority may serve a request (a "Disapplication Request") made in accordance with Condition 4.4.13 and:~~

- ~~(a) the Authority agrees in writing to the request; or~~
- ~~(b) the application of the Charge Restriction Conditions (or any part of them) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with Condition 4.4.14.~~

~~4.4.12 Save where the Authority otherwise agrees, no written "disapplication following delivery of a Disapplication Request shall have effect earlier than notice" on the Authority at any time after 1 March 2006. The Licensee shall state in such disapplication notice the date (the "Disapplication Date") from which is the later of:~~

- ~~(a) the disapplication notice is to have effect (the "disapplication date occurring 18 months after delivery of the Disapplication Request; and~~

~~4.4.13 the), provided that the disapplication date occurring shall not be a date prior to the later of:~~

- ~~(a) the date 6 months after the end of the Formula Year denoted by the Designated Parameter n applying at the date the Disapplication Request~~  
~~(b) disapplication notice was delivered.~~

~~4.4.13 A Disapplication Request pursuant to this Condition 4.4.13 shall:~~

- ~~(a) be in writing addressed to the Authority;~~
- ~~(b) specify the Charge Restriction Conditions, or any part of them to which the request relates; and~~

(c) state the date from which the Licensee wishes the Authority to agree that the Charge Restriction Conditions or the specified part of them shall cease to have effect, which shall not be earlier than the Disapplication Date.

4.4.14 A Disapplication Notice pursuant to this Condition 4.4.14:

(a) may be given in the circumstances described in either Condition 4.4.15 or Condition 4.4.16; and

(b) where it is given, shall:

(i) be in writing addressed to the Authority;

(ii) specify the Charge Restriction Conditions, or any part of them (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and

(iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

4.4.15 The circumstances described in this Condition 4.4.15 are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

(a) the Charge Restriction Conditions, or any part of them to which the request relates; or

(b) Conditions 4.4.11 to 4.4.16, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

4.4.16 The circumstances described in this Condition 4.4.16 are that:

(a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in Condition 4.4.15;

- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - (ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

~~(b) the date 18 months after the disapplication notice was served.~~

~~4.4.14 Following service of a disapplication notice under Condition 4.4.13, and unless the Licensee withdraws the disapplication notice, Conditions 4.2 and 4.3 shall, with effect from the relevant disapplication date, cease to have effect, unless by the disapplication date the Authority has made a reference to the Competition Commission under Article 15 of the Order requiring the Competition Commission to investigate and report on whether the disapplication of Conditions 4.2 and 4.3 may be expected to operate against the public interest.~~

~~4.4.15 Where, in accordance with Condition 4.4.5(f) or Condition 4.4.14, Conditions 4.2 and 4.3 cease to have effect, the Licensee shall, in setting its Controlled Charges, no longer be restricted by this Part 4.~~

#### **Closing Regulatory Value**

4.4.16 If  $DAV_{E,t=q} > 0$ , this value shall be returned to the Licensee in those Formula Years following  $t = q$ , in accordance with the principles determined by the Authority at that time, such principles to provide (inter alia) for an allowed rate of return.

## CONDITION 4.7 SPECIAL REVIEWS AND INFORMAL REVIEWS

4.7.1 The Determination Values and Designated Parameters established at a Review will remain unchanged until the Authority issues a further notice to the Licensee in accordance with Condition 4.4.11.

4.7.2 Notwithstanding Condition 4.7.1:

~~4.7.2(a)~~ the Authority may (after consultation with the Licensee) determine a new value for the Designated Parameter  $n$  (thereby triggering a Special Review) following the occurrence of any one or more of the events referred to in Condition 4.7.4; ~~and~~

~~(b) where a new value is so determined, the value of the Designated Parameter  $n$  in Condition 4.9 shall be modified accordingly in accordance with Article 10(5)(b) of the Order.~~

4.7.3 The Licensee may, by written notice to the Authority, require the Authority to determine a new value for the Designated Parameter  $n$  in accordance with Condition 4.7.2 where the Licensee can demonstrate to the Authority's reasonable satisfaction that any one or more of the events referred to in Condition 4.7.4 have occurred.

4.7.4 The events referred to in Conditions 4.7.2 and 4.7.3 are that, at the time the Authority chooses to make a determination (in the case of Condition 4.7.2), or at the time the Licensee serves the relevant written notice (in the case of Condition 4.7.3):

- (a) the Best Available Capital Expenditure for the then current Formula Year (or any future Formula Year up to and including  $n$ ) is likely to be in excess of the applicable Determined Capital Expenditure;
- (b) the Actual Volume in the ten current, the preceding or any future Formula Year up to and including  $n$  has differed or is likely to differ by a factor of 15% (or more) from the Determined Volume, adjusted to take account of weather conditions (including temperature variability) in accordance with such rules as are approved by the Authority from time to time; and

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- (c) the Licensee's obligations under Condition 3.2.1 have not been, or can reasonably be expected not to be, complied with.

4.7.5 Where, and at the time that, the Authority determines a new value for the Designated Parameter *n* in accordance with Condition 4.7.2:

- (a) if the sixth month of the then current Formula Year has not yet ended, the Formula Year determined as *n* by the Authority shall be the then current Formula Year; or
- (b) if the sixth month of the then current Formula Year has already ended, the Formula Year determined as *n* by the Authority shall be the Formula Year immediately following the then current Formula Year.

4.7.6 A Special Review will (like a Periodic Review) establish revised Determination Values and Designated Parameters. However, (unlike a Periodic Review) a Special Review shall be undertaken to establish new values for (and the Licensee shall provide Best Available Values and proposed Designation Parameters for) only those Determination Values and Designated Parameters as the Authority and the Licensee agree (or, in the absence of such agreement, as the Authority directs), and the values of the other Determination Values and Designated Values established at the last Review shall remain unchanged. The Licensee shall provide the required information in accordance with such timetable as the Authority may direct.

#### **Informal Review for Increased Capital Expenditure**

4.7.7 The Licensee shall give to the Authority an annual statement, at a time, in such form and accompanied by such supporting information as the Authority may direct, setting out in respect of all Formula Years for which Determination Values have been established, details of any Best Available Capital Expenditure which is likely to be in excess of the applicable Determined Capital Expenditure. In its statement to the Authority the Licensee shall provide such further accompanying information, evidence and other data with regard to the excess of expenditure as will be sufficient to enable the Authority to be reasonably satisfied that the proposed expenditure will be Capital Expenditure. To the extent that the Authority determines that such expenditure will be Capital Expenditure, such Capital Expenditure shall be included as Determined

Capital Expenditure at the next Review (adjusted for the applicable rate of return over the period since it was incurred).

**Informal Review for Increase in Non-Controllable Operating Expenditure**

- 4.7.8 Where the Licensee can demonstrate to the Authority's reasonable satisfaction that the event referred to in Condition 4.7.9 has occurred, and to the extent that the Authority determines that the additional expenditure referred to in Condition 4.7.9 is Operating Expenditure, such Operating Expenditure shall be included as Determined Operating Expenditure at the next Review (adjusted for the applicable rate of return over the period since it was incurred).
- 4.7.9 The event referred to in Condition 4.7.8 is that the Best Available Operating Expenditure in the Formula Year in which the Licensee is seeking the determination referred to in Condition 4.7.8, or in any future Formula Year up to and including n, is greater than the Determined Operating Expenditure for the Formula Year in question by a factor of 15% (or more), and that such increase is attributable to Unanticipated Operating Expenditure in respect of that Formula Year.

**Condition 4.9 Current Designated Parameters and Determination Values**

The Designated Parameters to apply to the first Formula Year (m+1) and in each subsequent Formula Year up to and including Formula Year *n* shall be:

<b>Designated Parameter</b>	<b>Value</b>
$r_t$	0.075
n	<u>2008</u> <u>2016</u>
$f_t$	0.5
$q$	2035
$RPI$	<u>242.7</u>
$w$	<u>05</u>
$g$	0
$h$	<u>01</u>
$d$	<u>01</u>
$l$	<u>033</u>
$\delta_t$	0
$x_{0,t}$	0
$x_{U,t}$	0
$\alpha_t$	<u>0.44</u>

The Determination Values to apply in the first Formula Year (m+1) and in each subsequent Formula Year up to and including Formula Year *n* shall be:



<u>Description</u> <u>(for Conveyance</u> <u>Categories <i>i</i> and Formula</u> <u>Years <i>t</i>)</u>	<u>Determination</u> <u>Values</u>	<u>All Values in £(000's) and Indexed to RPI</u> <u>2012</u>		
		<u>t=2014</u>	<u>t=2015</u>	<u>t=2016</u>
<u>Volume (therms)</u>	<u><math>V_{E,i,t}</math></u>	<u>58,570,387</u>	<u>60,909,453</u>	<u>62,955,215</u>
<u>Capital Expenditure</u>	<u><math>C_{E,t}</math></u>	<u>11,581</u>	<u>9,777</u>	<u>8,851</u>
<u>Operating Expenditure</u>	<u><math>O_{E,t}</math></u>	<u>5,371</u>	<u>5,566</u>	<u>5,819</u>
<u>Annual Depreciation</u>	<u><math>D_{E,t}</math></u>	<u>3,121</u>	<u>3,400</u>	<u>3,692</u>
<u>Cash Flow (calculated in</u> <u>accordance with</u> <u>Condition 4.6.6)</u>	<u><math>F_{E,t}</math></u>	<u>569</u>	<u>3,121</u>	<u>4,639</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (VI)</math></u>	<u>26.46</u>	<u>26.46</u>	<u>26.46</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (V)</math></u>	<u>26.46</u>	<u>26.46</u>	<u>26.46</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (IV)</math></u>	<u>26.46</u>	<u>26.46</u>	<u>26.46</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (III)</math></u>	<u>28.24</u>	<u>28.24</u>	<u>28.24</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (II)</math></u>	<u>31.50</u>	<u>31.50</u>	<u>31.50</u>
<u>Revenue Per Unit</u>	<u><math>P_{E,i,t} (I)</math></u>	<u>44.84</u>	<u>44.84</u>	<u>44.84</u>
<u>Depreciated Asset Value</u> <u>(calculated in accordance</u> <u>with Condition 4.6.7)</u>	<u><math>DAV_{E,t}</math></u>	<u>91,688</u>	<u>98,065</u>	<u>103,223</u>
<u>Total Regulatory Value</u> <u>(calculated in accordance</u> <u>with Condition 4.6.8)</u>	<u><math>TRV_{E,m}</math></u>			<u>140,827</u>

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#### CONDITION 4.10 DEFINITIONS AND INTERPRETATION

4.10.1 In this Part 4, unless the context otherwise requires, the following terms and expressions shall have the meanings attributed to them below:

“Actual” used as an adjective in relation to another defined word

	or phrase, means the Actual Value to be attributed to it;
“Actual Value”	means, in relation to any quantifiable term and in respect of any Formula Year $t$ , a value that is established as the accurate value to be attributed to that term at the end of that year by reference to verifiable data in the possession of the Licensee. The key Actual Values are set out in Condition 4.10.3. An Actual Value is denoted in the terms of formulae in this Part 4 by the use of an $F$ subscript;
“Allowed Revenue”	means, in respect of Conveyance Category $i$ in Formula Year $t$ , the Determined Revenue Per Unit multiplied by the Actual Volume in respect of that Conveyance Category in that year;
“Annual Depreciation”	means the annual depreciation of those assets, the purchase of which was initially recognised as Capital Expenditure, allocated on a systematic basis over the useful lives of such assets, using policies and asset life assumptions approved by the Authority;
“Best Available”	used as an adjective in relation to another defined word or phrase, means the Best Available Value to be attributed to it;
“Best Available Value”	means, in relation to any quantifiable term and at the time that quantifiable term is being assessed, a value which, in respect of past Formula Years and to the extent possible, is based on Actual Values, and otherwise is a forecast best estimate. A Best Available Value is denoted in the terms of formulae in this Part 4 by the use of a $B$ subscript;
“Capital Expenditure”	means Expenditure that relates to property, plant or equipment that would be recognised as an asset under

International Accounting Standard 16 'Property, Plant and Equipment' (excluding any attributable interest costs), or any alternative accounting treatment specified by the Authority in any regulatory accounting guidelines issued from time to time;

- “Controllable Operating Expenditure” means, in respect of any Formula Year, the monetary amounts attributable to those categories of Operating Expenditure that are deemed by the Authority to be within the reasonable control or influence of the Licensee and that are designated by the Authority as being Controllable Operating Expenditure in respect of that Formula Year at the last Review before that Formula Year;
- “Controlled Charges” means all the charges levied by the Licensee in the course of the Licensed Business;
- “Controlled Revenue” means the total revenue (measured on an accruals basis) derived by the Licensee from the Licensed Business, after deduction of value added tax (if any) and any other taxes based directly on such revenue, other than revenue derived under Conditions 2.5.2(a)(i) or 2.5.3(a)(i);
- “Conveyance Category” means one of the following six classes of consumer:
- (i) firm gas demand of less than 2,500 therms per annum which is connected to the Network;
  - (ii) firm gas demand of 2,500 - 25,000 (inclusive) therms per annum which is connected to the Network;
  - (iii) firm gas demand of over 25,000 (up to a maximum of 75,000) therms per annum which is connected to the Network;

- (iv) firm gas demand of over 75,000 therms per annum which is connected to the Network and which is used (in whole or part) in a combined heat and power generating station;
- (v) firm gas demand of over 75,000 therms per annum which is connected to the Network and which is not used in a combined heat and power generating station;
- (vi) gas demand which can be interrupted under the terms of the supply contract and which is connected to the Network;

“Conveyance Revenue” means, in respect of each Conveyance Category *i* and any Formula Year *t*, the Controlled Revenue for that Formula Year and that Conveyance Category;

“Designated Parameters” means those parameters set out in Condition 4.10.4; ~~and, in respect of the applicable values from time~~ Primary Constraint, the Supplemental Constraint and Determination Values, those parameters that have been established (subject to time for which are set out in any restrictions imposed under Condition 4.9 (and denoted in the terms of formulae in this Part 4.4) as such by the ~~Authority in accordance with Condition 4.4 (highlighted by use of an the E subscript);~~ and, in respect of Best Available Values, the Licensee’s proposed values for those parameters (highlighted by use of the B subscript). The Designated Parameters set at one Review will (subject to Condition 4.7.2) apply unless and until revised at the next Review. Unless a Designated Parameter has a t subscript, the value set at a Review must be the same for each Formula Year in the period  $t=n+1$  to  $t=q$ ;

“Determined”	used as an adjective in relation to another defined word or phrase, means the Determination Value to be attributed to it;
“Determination Values Value”	<del>means those terms set out under</del> <del>mean, in respect of each</del> <del>Formula Year t, a value that heading in has been</del> <del>determined by the Authority to apply in respect of that</del> <del>year in accordance with</del> Condition 4.10.3, the applicable values from time to time for which <del>4. The key</del> <del>Determination Values</del> are set out in Condition 4.9 in respect of each Formula Year t <del>+0.3</del> . A Determination Value is denoted in the terms of formulae in this Part 4 by the use of an <i>E</i> subscript;
“Expenditure”	means the expenditure that the Authority deems necessary or appropriate for the carrying out by the Licensee of the Licensed Business in an economically efficient and safe manner, having regard in particular to the forecast statements provided to the Authority and to any procurement procedures and expenditure control procedures agreed between the Licensee and the Authority, but excluding: <ul style="list-style-type: none"> <li>(i) expenditure relating to tax, financing and other returns to investors;</li> <li>(ii) expenditure incurred in the construction of any Excluded Pipe-line,</li> <li>(iii) expenditure that is recoverable under Conditions 2.5.2(a)(i) or 2.5.3(a)(i); and</li> <li>(iv) an amount equal to the sum of: (A) the value of any grants received by the Licensee that are attributable to the Licensed Business; and (B) the arm’s-length value of any disposals made by the Licensee of</li> </ul>

assets previously used in carrying out the Licensed Business;

- “Excluded Pipe-line” means, in respect of any pipe-line forming a part of the Network that runs directly from the Transmission System to one or more Supply Locations, that part of such pipe-line which commences at the point of connection with the Transmission System and ends at the first Five km Point to be reached by that pipe-line,
- and, for these purposes,
- “Five km Point” means, in respect of a Supply Location, any point lying on a radius of 5 kilometres drawn around the Load Centre for that Supply Location,
- “Load Centre” means, in respect of a Supply Location, the location determined as such by the Authority (following consultation with the Licensee),
- “Supply Location” means each Town (as defined in Condition 3.1), and any other premises or group of premises that is designated as such by the Authority on notice to the Licensee from time to time, and
- “Transmission System” means the system of transmission pipe-lines owned and/or operated by the person licensed from time to time under the conveyance licence granted to Bord Gais Eireann on 12 February 2002;
- “Formula Year” means a period of twelve calendar months commencing on 1 January and ending on 31 December, and for the purposes of this Licence the first such period shall be deemed to commence on 1 January 2006;
- “Non-Controllable Operating Expenditure” means any Operating Expenditure other than Controllable Operating Expenditure;

“Operating Expenditure”	means all Expenditure other than Capital Expenditure;
“Retail Prices Index” or “RPI”	means the Index of that name published by the Office of National Statistics each month in respect of all items, or: <ul style="list-style-type: none"> <li>(i) if that Index for the specified month in any year shall not have been published on or before the last day of the sixth month after the specified month, such alternative index for such month as the Authority may after consultation with the Licensee determine as appropriate in the circumstances; or</li> <li>(ii) if there is a material change in the basis of the Index, such alternative index as the Authority may after consultation with the Licensee determine as appropriate in the circumstances;</li> </ul>
“Revenue Per Unit”	means, in respect of each Conveyance Category <i>I</i> and any Formula Year <i>t</i> , the Conveyance Revenue for that Conveyance Category and that Formula Year divided by the Volume for that Conveyance Category and that Formula Year;
“Review”	has the meaning attributed to it in Condition 4.4.2. A Review can be either a Periodic Review (as defined in that Condition) or a Special Review (as defined in that Condition);
“Unanticipated Operating Expenditure”	means, in respect of any Formula Year, and at the time it is assessed in that Formula Year: <ul style="list-style-type: none"> <li>(i) the amount (if any) by which the value of the Best Available Non-Controllable Operating Expenditure for that Formula Year is greater than the Determined Non-Controllable Operating</li> </ul>

Expenditure for that Formula Year; and/or

- (ii) to the extent such costs are outside the reasonable control of the Licensee, the value attributable to any categories of Operating Expenditure included within the Best Available Non-Controllable Operating Expenditure for that Formula Year, for which categories no allowance was made in the Determined Operating Expenditure for that Formula Year; and

“Volume”

means, in respect of each Conveyance Category  $i$  and any Formula Year  $t$ , the aggregate quantity of gas, in therms or kWhs (as directed by the Authority), taken off the Network as a result of arrangements with gas suppliers in that Formula Year and for that Conveyance Category.

4.10.2 In this Part 4, “revenue”, “expenditure” and “accruals” are the amounts that are confirmed by the Licensee’s auditors as such and have (to the extent that such financial statements have been produced) been included under appropriate headings in the financial statements of the Licensee’s Separate Business of conveying gas for each period in question.

4.10.3 Best Available Values, Determination Values and Actual Values

<b>Description</b> (for Conveyance Categories $i$ and Formula Years $t$ )	<b>Best Available Values</b>	<b>Determination Values</b>	<b>Actual Values</b>
Volume	$V_{B,i,t}$	$V_{E,i,t}$	$V_{F,i,t}$
Capital Expenditure	$C_{B,t}$	$C_{E,t}$	
Operating Expenditure	$O_{B,t}$	$O_{E,t}$	
Annual Depreciation	$D_{B,t}$	$D_{E,t}$	



Cash Flow (calculated in accordance with Condition 4.6.6)	$F_{B,t}$	$F_{E,t}$	
Revenue Per Unit	$P_{B,i,t}$	$P_{E,i,t}$	$P_{F,i,t}$
Depreciated Asset Value (calculated in accordance with Condition 4.6.7)	$DAV_{B,t}$	$DAV_{E,t}$	
Total Regulatory Value (calculated in accordance with Condition 4.6.8)*	$TRV_{B,n}$	$TRV_{E,m}$	

\* at end of Formula Year n (for the Review in which Best Available Values are being submitted) or at the end of Formula Year m (on and following determination of Determination Values for that Review).

#### 4.10.4 Designated Parameters

Description	Designated Parameters	Limitation to the application of re-designated values
Rate of return	$r_t$	Shall be 0.075 until the end of Formula Year 2016, after which time it may be any number between 0 and 1
Trigger for Reviews (as defined in Condition 4.4.2)	n	A Formula Year
Averaging factor to reflect in year accruals (as defined in Condition 4.6.5)	$f_t$	A number between 0 and 1
The forecasting horizon for review calculations (as defined in Condition 4.4.2)	$q$	Shall be the Formula Year 2035 until 2028, after which time it may be the Formula Year 2035 or any Formula Year after 2035
The indexation base *	$RPI$	None
Incentive period (as defined in Condition 4.6.10)	$w$	A number of Formula Years
A switch for the Operating Rolling Incentive	$g$	Either 0 or 1
A switch for the Capital Rolling Incentive	$h$	Either 0 or 1
A switch for the depreciation component	$d$	Either 0 or 1
Deemed asset life	$l$	None

A weighting factor to be used in the Primary Constraint	$\delta_t$	Between 0 and 1
A rate of return adjustment which may be used to encourage or discourage accumulated over-recoveries (as defined in Condition 4.2.6)	$X_{0,t}$	None
A rate of return adjustment which may be used to encourage or discourage accumulated under-recoveries (as defined in Condition 4.2.6)	$X_{U,t}$	Shall be zero until Formula Year 2034, when it shall be $(r_{t=2033} + 1)$
A weighting factor used in the Supplemental Constraint	$\alpha_t$	Greater than or equal to 0

\* which will, in respect of the Determination Values determined at the Review in question, reflect the prices in which those Determination Values are expressed. It can therefore be used, in conjunction with  $RPII_{y_t}$ , to adjust the Determined Revenue Per Unit value to allow for changes in the Retail Prices Index in the period since the value of the Determined Revenue Per Unit was determined.

#### 4.10.5 Key to other formula parameters:

- a**                    subscript to denote a Formula Year as defined in Condition 4.4.4;
- B**                    subscript to denote Best Available Values;
- $C_{i,t}$**                 Capital Expenditure in Formula Year  $t$  allocated between Conveyance Categories  $i$ ;
- $CRI$**                  Capital Rolling Incentive (calculated in accordance with Condition 4.6.11);
- $DI$**                  a depreciation component of the Capital Rolling Incentive (as defined in Condition 4.6.11);
- E**                    subscript to denote Determination Values;
- F**                    subscript to denote Actual Values;
- i**                     subscript to denote a Conveyance Category;

$m$	subscript to denote a Formula Year as defined in Condition 4.4.2;
$O_{i,t}$	Operating Expenditure in Formula Year $t$ allocated between Conveyance Categories $i$ ;
$ORI$	Operating Rolling Incentive (calculated in accordance with Condition 4.6.10);
$PA$	Profile Adjustment (calculated in accordance with Condition 4.6.9);
$\bar{r}$	a compounding factor (dependent on values of $r$ and $x$ ) as defined in Condition 4.2.6;
$RPI_E, RPI_B$	Retail Prices Index base reference points (as defined in Conditions 4.2.4 and 4.5.3);
$RPI_{iy_t}, RPI_{ye_t}$	in year average and year-end Retail Prices Index values;
$t$	subscript to denote any Formula Year;
$y$	subscript to denote any Formula Year (used for summations when it is necessary to differentiate from $t$ );
$Z_{F,i,t}$	the Actual Value for accumulated under or over-recoveries for Formula Year $t$ and Conveyance Category $i$ (calculated in accordance with Condition 4.2.10); and
$\Gamma_{F,t}$	a weighting factor calculated in accordance with Conditions 4.2.14 and 4.2.15.