



Notice under Article 14(2) of the Gas  
(Northern Ireland) Order 1996  
Proposed Modification of Gas  
Conveyance Licence

West Transmission Limited  
Amendment of the Cut-Off Date

Consultation Paper  
16 August 2021



## About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



### Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



### Our vision

To ensure value and sustainability in energy and water.



### Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



## Abstract

This paper gives notice of modifications the Utility Regulator proposes to make to the West Transmission Limited high-pressure gas conveyance licence to amend the processes for the determination of Actual Capital Expenditure. These modifications will, amongst other things, provide flexibility on the timing of this determination to ensure that final costs are well established at the time the final determination of actual expenditure is made.

## Audience

This document is likely to be of interest to the licence holder affected, consumers and consumer groups, other regulated companies in the energy industry and government.

## Consumer impact

The proposed modifications will allow the Utility Regulator to make a final determination of actual costs for Gas to the West when actual costs are well established. This should minimise the quantum of costs which might be confirmed after the determination and paid for as “*Capital Expenditure constituting Eligible Pass-Through Costs*” which reduces tariff stability.



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## Notice under Article 14(2) of the Gas (Northern Ireland) Order 1996

In pursuance of its powers under Article 14(1) of the Gas (Northern Ireland) Order 1996 (as amended) (the “Order”) the Northern Ireland Authority for Utility Regulation (hereafter referred to as the Utility Regulator) hereby gives notice under Article 14(2) as follows:

1. The Utility Regulator proposes to modify the gas conveyance licence held by West Transmission Limited (WTL)<sup>1</sup>.
2. The proposed modifications will:
  - a. Amend the Cut-Off Date in respect of the final determination of Actual Capital Expenditure and allow the Utility Regulator to further amend the Cut-Off Date to an earlier date following consultation with the licensee.
3. The reasons for and effects of these modifications are explained in section 2 of this document.
4. The proposed modifications are set out in Annex 1 of this document.
5. The purpose of this notice is to bring the proposed modifications to the attention of persons likely to be affected by them, and to invite representations or objections in connection thereto. In line with Article 14(3) of the Order, any representations or objections with respect to the proposed modifications may be made on or before 12.00 noon on 14 September 2021 to:

Philip Weir  
Utility Regulator  
Queens House  
14 Queens Street  
Belfast BT1 6ED

Email: ***Gas\_networks\_responses@uregni.gov.uk*** with cc to ***philip.weir@uregni.gov.uk***

6. The Utility Regulator has, pursuant to Article 14(4) of the Order, served a copy of this notice on the licensee and sent a copy to the Department for the Economy. The Utility Regulator has also sent a copy of this notice to the Consumer Council for Northern Ireland.

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<sup>1</sup> This is the licence granted to Northern Ireland Energy Holdings Limited on 11 February 2015 and last modified on 19 August 2019.



Dated this 16 August 2021.

A handwritten signature in black ink, appearing to read 'J. French'.

**John French**

**Chief Executive**

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



# 1. Introduction

## Purpose of this document

- 1.1 Our principal objective in carrying out the duties associated with our gas functions is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland, to do so in a way which is consistent with our fulfilment of the objectives set out in the European Gas Directive<sup>2</sup>, and by having regard to a number of matters, as set out more fully in the Energy (Northern Ireland) Order 2003.
- 1.2 In line with these duties this document sets out proposals to modify the gas conveyance licence held by West Transmission Limited (WTL)<sup>3</sup>.
- 1.3 The proposed licence modifications will:
- a) Allow the Utility Regulator to amend the Cut-Off Date in respect of the final determination of Actual Capital Expenditure.
- 1.4 The proposed modifications will allow the Utility Regulator to make a final determination of Actual Capital Expenditure for Gas to the West when actual costs are well established. This should minimise the quantum of costs which might be confirmed after the determination of Actual Capital Expenditure and paid for as “Capital Expenditure constituting Eligible Pass-Through Costs” which reduces tariff stability.

## Overview of the proposed licence modifications

- 1.5 An overview of the relevant subject areas and the affected licence conditions is set out in Table 1.1.

Subject	Amended licence conditions
Cut-Off Date	6.1.2

**Table 1.1: Overview of proposed licence modifications**

<sup>2</sup> Directive 2009/73/EC of the European Parliament and the Council of 13 July concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

<sup>3</sup> This is the licence granted to Northern Ireland Energy Holdings Limited on 11 February 2015 and last modified on 19 August 2019.



## Responding to this consultation

- 1.6 Responses to this consultation paper should be submitted by 12.00 noon on 14 September 2021. Responses should be sent to:

Philip Weir  
Utility Regulator  
Queens House  
14 Queens Street  
Belfast BT1 6ED

Email: ***Gas\_networks\_responses@uregni.gov.uk*** with cc to  
***philip.weir@uregni.gov.uk***

- 1.7 The Utility Regulator's preference would be for responses to be submitted by e-mail.
- 1.8 Individual respondents may ask for their responses (in whole or in part) not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, the Utility Regulator will also ask respondents to supply a redacted version of the response that can be published.
- 1.9 As a public body and non-ministerial government department, the Utility Regulator is required to comply with the Freedom of Information Act (FOIA). The effect of FOIA may be that certain recorded information contained in consultation responses is required to be put into the public domain. Hence it is now possible that all responses made to consultations will be discoverable under FOIA, even if respondents ask us to treat responses as confidential. It is therefore important that respondents take account of this. In particular, if asking the Utility Regulator to treat responses as confidential, respondents should specify why they consider the information should be treated as such.
- 1.10 This paper will be made available in large print, Braille, audio cassette and a variety of relevant minority languages if required.

## Document structure

- 1.11 This consultation paper is structured in a number of chapters as follows:
- *Chapter 1 Introduction* provides an overview of the purpose and structure of this consultation document, provides an overview over the proposed licence modifications and details on how to respond to the licence consultation.
  - *Chapter 2 Cut-Off Date* details the proposed licence modifications





which will amend the Cut-Off Date related to the determination of Actual Capital Expenditure as well as the associated reasons and effects.

- Chapter 3 Next Steps outlines the proposed timelines for the remainder of the licence modification process.

1.12 The present document is complemented by an annex setting out the licence modifications as tracked changes to the current licence conditions. Within the annex proposed deletions are indicated by red text that has been struck through, proposed additions are indicated by red text highlighted in yellow.



## 2. Cut-Off Date

### Proposed licence modifications

2.1 We propose to modify the definition of the Cut-Off Date *in Condition 6.1.2 Definitions* by:

- a) deleting the current definition; and,
- b) replacing it with a new definition as follows –

*Cut-Off Date means the earlier of:*

- (a) *the date which falls on the 1st December 2023; or*
- (b) *a date which is set in a direction issued by the Authority following consultation with the Licensee.*

### Reasons and effects

- 2.2 The Cut-Off Date was introduced into the Licence as part of the modifications made to facilitate pre-construction financing which became effective on the 19 July 2018 following a decision dated 9 May 2018.
- 2.3 The Cut-Off Date was defined as *the date which falls 30 Months after the First Operational Commencement Date*. The First Operational Commencement Date was specified in a direction issued by the Authority following consultation with the licence holder, as the 4 July 2019, being the date on or from which the Network is deemed to be operational. The Cut-Off Date is therefore the 4 January 2022.
- 2.4 The purpose of the Cut-Off Date was to commit the Authority to making a final determination of Actual Controllable and Uncontrollable Capital Expenditure by no later than the Cut-Off Date. This provided certainty to the Licensee on the timing of the Authority's decisions on Actual Capital Expenditure which would facilitate the release of funds raised in pre-construction financing to its main delivery partner.
- 2.5 In the Notice and consultation document which preceded our decision on the 2018 licence amendments we recognised that *in any major construction project there is always the possibility that significant issues relating to capital works may not be resolved on schedule. Should this prove to be the case we may need to consider at an appropriate point in time, modification of the licence to re-define the Cut-Off Date. This would ensure that material capital expenditure items were not shifted from Actual Capital Expenditure to Eligible Pass-Through Costs simply to comply with an artificial Cut-Off Date.*



- 2.6 At the time of the 2018 licence modifications it was envisaged that 30 months from the First Operational Commencement Date would be sufficient time to complete all works and have reasonable certainty on the final costs of construction works and associated costs. This has not proved to be the case with some reinstatement works still underway and final contractual costs to be determined.
- 2.7 The reason for proposing the amendment to the Cut-Off Date is to allow time for the works to be completed and final contractual costs to be determined. This would ensure that material capital expenditure items were not shifted from Actual Capital Expenditure to Eligible Pass-Through Costs simply to comply with a Cut-Off Date which no longer allows Actual Capital Expenditure to be determined by the Authority with reasonable certainty.
- 2.8 The effect of the proposed licence amendment is to:
- a) Extend the Cut-Off Date to the 1 December 2023 but with the opportunity for the Authority to move the Cut-Off Date forward if it decides that there is sufficient certainty of out-turn costs to allow a reasonable determination of Actual Capital Expenditure to be made.
  - b) Avoid the need for the Authority to make a determination of Actual Capital Expenditure when out-turn costs remain uncertain.
  - c) Delay the release of residual funds raised in pre-construction financing for Gas to the West and not required for construction of Gas to the West for other purposes which are beneficial for consumers.



## 3. Next Steps

### Conclusions and next steps

- 3.1 This paper represents the Utility Regulator's proposals on modifications to WTL gas conveyance licence in respect of the Cut-Off.
- 3.2 The next steps and associated timelines for the licence modification process are summarised in Table 3.1.

Next steps	Proposed date
Notice of Proposal to Modify Published	16 August 2021
Statutory Consultation closes	14 September 2021
Notice of Determination Published	22 October 2021
Licence Modifications Effective Date	17 December 2021

**Table 3.1: Next steps**

- 3.3 This timetable allows the effective date of the licence modifications to be at least 56 days after the publication of the licence modification decision, in line with the requirements of Article 14(10) of the Gas (Northern Ireland) Order 1996<sup>4</sup>. This period provides an opportunity for the licence holder concerned, any other licence holder materially affected by the decision, a qualifying body or association representing one of those licence holders, and/or the Consumer Council for Northern Ireland to appeal the decision on the licence modifications to the Competition and Markets Authority (CMA).
- 3.4 An application to the CMA for permission to appeal must be made within 20 working days from the publication of the Notice of Determination to modify the licence.

<sup>4</sup> <http://www.legislation.gov.uk/nisi/1996/275/contents>.