

## **EP UK Investments Response to Consultation on Revising Enforcement Policy Approach and Procedure**

EP UK Investments Ltd. (EPUKI) welcomes the opportunity to respond to this consultation. Following a review of the consultation paper and supporting documentation, we are requesting that the Utility Regulator of Northern Ireland (UREGNI) provides further information on the effect of the proposed amendments before any changes are applied to the enforcement policy. This is necessary to ensure a fair and transparent consultation process, in the interest of best regulatory practice and in accordance with the established 'Gunning' principles<sup>1</sup> applicable to public consultations in the UK.

### **Background and Context**

EPUKI has committed to the delivery of a significant volume of New Capacity in Northern Ireland. This capacity will contribute to Northern Ireland's Security of Supply and increase competition within the electricity markets, leading to lower prices for consumers. Regulatory certainty is crucial for new investment and ensures that risk exposure for developers is manageable. Regulatory certainty is underpinned by rational and transparent decision making.

There are a number of areas within this consultation which EPUKI would like to be addressed through the provision of further information. This will enable interested parties to make a fully informed response to the proposed changes, consistent with best practice regulatory procedure.

### **Request for Further Information**

EPUKI is requesting that URGNI provide further information on the following elements of the proposed policy change:

- **Rational for Proposed Change**

The consultation paper indicates that current enforcement policy was drafted in June 2018, and as such did not apply in respect of matters or decisions in relation to the Single Energy Market (SEM), which was undergoing design and implementation. However, the current enforcement policy is cognisant of, and makes reference to the SEM (within paragraph 1.7 which is proposed for deletion).

As such, it is clear that at the time this policy was drafted, URGNI acknowledged interaction with the SEM and made a conscious decision to omit SEM matters from the policy. This gives rise to queries which should be addressed in the interest of context for the proposed changes. Specifically, what (if any) changes between 2018 and present have warranted the deletion of paragraph 1.7? Additionally, at the time of drafting the current enforcement policy, how was it envisioned that enforcement on SEM matters would be handled, and how have such matters been handled between 2018 and present?

The provision of this additional context will help participants and interested parties to better understand the reasoning and rationale for the changes, as well as the expected impact on operational procedure, which would support the decision-making process.

- **Current Enforcement Practice**

From reading the consultation paper and related documentation it is unclear how enforcement matters are currently implemented in relation to SEM matters. Currently, under the Energy (Northern Ireland) Order 2003 ('the Order'), the SEM Committee (SEMC) may carry out enforcement action on behalf of UREGNI where that matter affects the SEM. This covers breach of licence conditions, including

---

<sup>1</sup> R v Brent London Borough Council, ex parte Gunning, (1985) 84 LGR 168

compliance with relevant Codes. Given the existing ability for the SEMC to carry out enforcement duties, it is unclear why the proposed changes are required. Additionally, it is not clear how enforcement actions related to SEM matters are currently treated, given that these changes have been proposed. We request that both of these points are addressed in a further consultation which we consider is necessary to allow for intelligent consideration and response prior to any decision on enforcement policy.

- **Legislative Conflict**

The proposed changes introduce conflict between the Order and UREGNI's enforcement policy. As stated above, the SEMC currently have the authority to apply enforcement action on behalf of the UR, where the matter affects the SEM. If the proposed changes are applied to UREGNI's enforcement policy, then it appears that UREGNI will carry out this function where the matter affects the SEM. It is thus unclear, under the proposed changes how the functions of the SEMC and UREGNI will interact.

EPUKI is seeking clarity on this interaction, specifically under the proposed changes will enforcement actions related to SEM matters be applied by both UREGNI and the SEMC? Additionally, will the proposed changes to the enforcement policy meant that UREGNI have the authority to overrule the SEMC in relation to SEM matters?

### **Conclusion**

In order to ensure a fair, robust, and transparent consultation process we request that UREGNI addresses the queries outlined above in further consultation before any changes to the enforcement policy are applied. This will allow participants and interested parties to understand the effect of the proposed changes and the impact of same, and provide an informed response for your proper consideration, before a decision is made; therefore, ensuring a legitimate consultation is undertaken on the proposed changes to the enforcement policy.