

Utility Regulator
Queen's House
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Belfast
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By email to: karen.sheils@uregni.gov.uk and liz.wilkin@uregni.gov.uk

18/11/2024

RE: Consultation Response on Licence Modification for 'Provision of Information'

Dear Karen and Liz,

Flogas NI, Flogas Enterprise Solutions, and Budget Energy Ltd welcome the opportunity to respond to the Utility Regulator's (UR) consultation on the proposed modification to the 'Provision of Information to the Authority' licence condition for electricity and gas supply licenses.

Flogas and Budget Energy are committed to advancing transparency and consumer empowerment within the energy sector. Budget Energy, based in Derry, Northern Ireland, serves over 100,000 electricity customers, while Flogas NI and Flogas Enterprise Solutions contribute significantly to energy provision across the region. Our entities are part of the DCC plc Group, with a portfolio of renewable energy generation, including solar, wind, and anaerobic digestion.

Our collective views on this proposed modification are as follows:

Rationale for proposed changes – regulatory transparency

The rationale for the proposed changes appears to be to address a gap in terms of the URs powers under Article 7 of the Energy (Northern Ireland) Order 2003. In the consultation the UR is making a link between the need for suppliers to provide information to the UR on request and the entitlement of the UR to publish information under Article 7. The rationale is not clearly explained and the current gaps or issues that the UR is facing are not clearly stipulated. This means the resulting consultation is unclear and, in our view, does not meet the necessary transparency that is required in the regulators own processes. As a result, it is difficult for suppliers to fully assess the potential implications of the proposals.

The proposed changes remove an exclusion related to Article 7 and extend the obligation on suppliers to provide any information requested at any time, when requested and in the format requested by the UR. It is Budget Energy/Flogas view that the association that the UR is making between publication of information and potentially extensive information provision is not provided for within Article 7. We request further clarity as to the URs interpretation of Article 7.

Exclusion from Article 7

The current licence condition explicitly excludes the provision of information under Article 7, which appears to serve as a safety measure against the broad use of information-gathering powers for publication purposes. However, it is not clear in the Consultation as to why this exclusion is no longer required. To properly evaluate this possibly significant change, it would be helpful to understand the original intent behind this exclusion and the regulatory purpose of lifting it now. Clarifying this would ensure full regulatory transparency and would assist in assessing whether the expansion of Article 7 is appropriate and consistent with URs legal and regulatory obligations. It is our view that the exclusion within the current licence conditions exists as Article 7 does not set out any functions with regard to the requesting of information from licence holders. The Article

sets out clear functions in relation to the publication of advice and information to promote the interests of consumers. It does not cover the Authority seeking arbitrary information.

Wording Changes

We've noted changes in the proposed wording that appear unrelated to the intended extension of Article 7. These may increase potential regulatory and operational risks for suppliers, particularly as certain phrasing could inadvertently broaden obligations. For example, proposed Paragraph 10.4 wording in the electricity licence and proposed Paragraph Condition 1.3.4 in the gas licence. We recommend that the UR limit changes strictly to those necessary for alignment with Article 7, preventing potential risks arising from rephrased or expanded clauses. The proposed modifications will no doubt increase the regulatory burden on suppliers, requiring them to adapt to new conditions and potentially increasing administrative and compliance costs.

Safeguards and Publishing Sensitive Information

The proposals potentially significantly widen the scope of Condition 10 in the Electricity Licence and Condition 1.3 in the Gas licence and we have a concern about the potential volume of information that suppliers will be required to submit to the UR. As current exclusions are being removed, there is a significant risk for the publication of any and all supplier information provided to the UR. The removal of restrictions on publishing information obtained from suppliers could lead to unintended consequence of the disclosure of commercially sensitive information. While we understand that the aim of the modification is to enhance transparency and promote consumer interests, there is a risk that the publication of sensitive information could harm suppliers' commercial interests and market competition. We are concerned about the potential publication of commercial information, including the non-disclosure of personal data and / or sensitive commercial information, from a competition law point of view and thus the potential misuse of this information by competitors, but also from an insider trading point of view.

Notification Timelines and Right to Respond

Part 3 of Article 7 stipulates that the Authority must consult with any body about which the information relates prior to publication. Budget Energy/ Flogas requests that the UR consults on the clear processes it will have to have in place around the requesting of information from suppliers and also consults on how it will engage with suppliers in relation to the potential publication of any information provided to it by suppliers. To avoid the potential for reputational or operational risks, it would be beneficial to introduce structured timelines around notification and response before publication. This would allow suppliers reasonable time to challenge any proposed publication, verify the data, respond as required, and correct any possible inaccuracies. A clearly defined right to reply ensures fairness and accuracy in the information presented publicly. A lack of structured timelines around notification and response before publication could lead to operational risks.

Definition of "Information"

We believe the definition of "information" should be explicitly confined to data directly related to the licensed entity's operations and exclude information owned by third parties, such as Northern Ireland Networks (NIEN) or Secure Meters data. Suppliers cannot stand over this data and the UR should consider the necessity of extending any changes to the networks licence. We request that the UR clarifies the definition of "information" to only cover data directly related to the licensee's operations under the electricity or gas licence. Additionally,

we request confirmation within that definition that suppliers will not be required to disclose information that they do not own or control. The broad definition of "information" could require suppliers to disclose data they do not own or control, such as third-party data. This could place an undue burden on suppliers, particularly smaller ones, and hinder their ability to compete effectively.

Accuracy of Third-Party Data

Some information relevant to UR, such as secure meter data, may be held by third parties. Since we cannot guarantee the accuracy of such data, we suggest that the UR establishes a framework for engaging directly with these third parties where needed. This would help ensure the data meets accuracy standards and allows suppliers to focus on data they can verify and trace its origins.

Conclusions

Budget Energy/Flogas have raised a number of concerns in relation to the proposed changes. We strongly believe that this consultation does not meet the URs obligation as a regulator to ensure full transparency with regard to regulatory processes and, should the UR decide that it is important to progress with the changes, we request a second consultation that clearly addresses the concerns raised. To address these challenges and promote competition in the energy market, the following considerations could be made:

- **Regulatory transparency:** More information on the issues that the UR needs to address must be provided so that suppliers can properly evaluate the impacts of any potential changes. The proposed deletion of the existing Article 7 exclusion in the licences has not been explained and a legal basis must be provided to explain why the exclusion is no longer applicable under the Energy Order.
- **Clear Definitions and Safeguards:** Establish clear definitions and safeguards to protect commercially sensitive information and ensure that only relevant data is published.
- **Structured Processes:** Implement structured processes for notification and response to allow suppliers adequate time to verify data and respond appropriately.
- **Engagement with Stakeholders:** Engage with stakeholders, including suppliers, to gather feedback and ensure that the proposed modifications are fair and balanced.

These considerations could help create a more balanced and competitive environment for all suppliers, ensuring that the proposed modifications do not inadvertently hinder competition in the energy market.

In conclusion, we believe some aspects of the URs proposals require further clarity. We look forward to ongoing review to develop a balanced approach that enhances protections while addressing the practical challenges faced by licence holders.

Yours sincerely,

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