

6 January 2025

Karen Shiels and Liz Wilkin
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

Dear Karen and Liz,

firmus energy Networks (FEN) welcomes the opportunity to respond to the Utility Regulator's (UR) Consultation on Proposed Modifications to the Gas Distribution Licences. FEN acknowledges the importance of providing transparency and relevant information to the UR to ensure effective promotion of consumer interests. However, several concerns have been identified regarding the proposed changes to the Provision of Information conditions. This response outlines key concerns, as well as aspects of the modifications that are accepted as positive.

FEN have concerns about the possible publication of commercially sensitive data without licensee's approval. Although the protections under Article 7(2) of the Energy (Northern Ireland) Order 2003 provide some safeguards, removing existing publication restrictions could compromise licensees' commercial interests. To address this, we propose that when the UR requests information, it should clearly indicate if the request is intended for publication, along with a justification of how the information will serve consumer interests. Article 7(3) of the Energy Order requires that the UR consult with the relevant individual or organisation before publishing any information relating to that organisation. However, a more transparent approach would be to clarify publication intentions as part of the initial information request. This would ensure that licensees fully understand the UR's intentions and can assess the potential impact on their businesses.

The proposed modifications in Condition 1.3.1 require the licensee to provide information "when and in the form requested" following a request from the UR. While we understand the need for flexibility and timeliness in responding to the UR's requests, we are concerned about the practical implications of such an open-ended requirement. The absence of specific response timelines could lead to operational challenges for licensees, especially when balancing competing priorities with limited resources. Requests for large volumes of information or highly detailed data can be resource-intensive, requiring significant time to gather, process, and validate. We urge the UR to consider the operational capacity of the licensee when setting response deadlines. Without the flexibility to manage complex or substantial requests, there is a risk of straining resources, potentially affecting the licensee's ability to meet other regulatory or operational obligations.

To ensure that both parties have reasonable expectations and can plan accordingly, we suggest including a clear and mutually agreed-upon timeframe within which the licensee must respond to information requests. This would provide both certainty and structure, reducing potential friction in the process.

We note that Section 2.3 of the recent Consultation on proposed Utility Regulator (Support for Decarbonisation Preparation) Bill¹ acknowledges situations when the Utility Regulator may not have the resource to meet a demand from the Department. We believe licensees should be

¹ <https://www.economy-ni.gov.uk/consultations/utility-regulator-support-decarbonisation-preparation-bill>

afforded the same consideration. The Consultation paper states the Bill *“has been drafted in this way to allow for different circumstances ... secondly, a duty which is qualified, i.e. rather than using ‘must’, to allow for times when the Utility Regulator may be unable to meet from the Department, for example when it considers that it has insufficient resource to practically meet a demand.”* Implementing a similar degree of flexibility for licensees will help ensure accuracy of data and reduce pressure on licensees to meet challenging deadlines.

The proposed modification to Condition 1.3.2 refers to a requirement for the licensee to provide reasoned comments on the accuracy and text of any information the UR intends to publish under Article 7 of the Energy Order. While we welcome the intention to allow licensees to comment, we believe that further clarity is needed. We recommend that this process includes a specific timeframe for providing these comments, to ensure that there is adequate time for the licensee to review and respond. Additionally, the UR should provide sufficient detail on the context in which the information was obtained, allowing the licensee to effectively assess the accuracy and implications of publication.

The proposed modification to current Condition 1.3.5, which retains limits on a licensee’s obligation to provide information where it could not be compelled to produce or give that information in evidence in civil proceedings in the High Court, is welcomed. FEN supports this clarification as providing an element of protection for commercially sensitive or confidential information.

FEN acknowledges the importance of the UR’s proactive role in promoting the interests of consumers and supports the UR’s commitment to increasing transparency and accountability. We support the proposed changes that aim to ensure consistency in the drafting of licence conditions across all energy licences. Consistency in regulatory requirements is crucial for reducing administrative burden and improving clarity for all stakeholders.

In conclusion, FEN recognises the importance of the proposed licence modifications and supports the objective of improving transparency and information provision in the gas distribution sector. We would ask that the Utility Regulator considers the concerns and recommendations outlined in this response as part of its final decision on the proposed modifications to ensure a balance is reached between transparency, consumer interests and the quality and timeliness of data provision and publication.

We look forward to continued engagement with the Utility Regulator on this matter and trust you find these comments useful. If there are any aspects to this response you would like to discuss further, please do not hesitate to contact me.

Kind Regards,

[Redacted signature]

[Redacted contact information]