

Utility Regulator

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By Email Only**10/06/2025**

email to: karen.sheils@uregni.gov.uk and liz.wilkin@uregni.gov.uk

RE: Combined consultation on licence modification for 'Provision of Information'

Budget Energy Ltd Response to Combined Consultation on Licence Modification for 'Provision of Information'

Dear Karen and Liz,

Budget Energy Ltd, Flogas Enterprise Solutions (FES) and Flogas Northern Ireland (FLNI) welcome the opportunity to respond to the Utility Regulator's (UR) combined consultation on proposed amendments to the 'Provision of Information to the Authority' licence condition.

Budget Energy, FES and FLNI are licensed electricity and gas suppliers operating in the Northern Ireland energy market. We are committed to advancing transparency and keeping consumers well informed in Northern Ireland. 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. For this consultation, the companies will be referred to as 'we', 'us', 'our', or any combination, representing the wider position of the Flogas Energy.

We acknowledge and welcome that the Utility Regulator (UR) has taken on board some of the feedback from our previous submission (dated 18 November 2024), however, we remain unconvinced that the proposed modifications are fully justified or necessary. In our view, the consultation continues to lack clarity on several key issues that were previously raised. The reassurances offered to Budget Energy and other licensees appear to be limited in scope and, in our assessment, lack sufficient safeguards for us to fully support this licence modification at this time.

Consolidated position of Budget Energy, Flogas Enterprise Solutions and Flogas Northern Ireland

We believe that the existing framework (including Article 7 of the Energy Order) already enables effective information sharing in the public interest and we therefore have significant reservations regarding the proposed removal of the exclusion linked to Article 7 of the Energy (Northern Ireland) Order 2003. The rationale for this change, as set out by the UR between paragraphs 2.8 and 2.17, lacks sufficient examples or enough detail to understand the rationale and wider impacts this change could have. Indeed, these reasons are somewhat repetitive, restating the same position in slightly different wording, and do not fully explain the specific regulatory or operational gap that this modification seeks to address. Other than to allow the UR to publish information that it alone believes is in the consumer interest and align discrepancies in some licences, which we feel is simply too broad a reason.

For example, while it is asserted that the current POI licence condition limits the UR's ability to publish consumer-relevant information under Article 7, neither the original 2024 consultation nor the revised May 2025 version provides concrete examples where the existing condition has directly prevented the UR from fulfilling its responsibilities. We do not consider that the UR has adequately demonstrated the need for this modification, and as such, we cannot support the proposal as currently drafted. In addition, we note that no impact assessment has been provided alongside this consultation. Given the potential operational and resource implications for licensees, we believe it is essential that this and future consultations are accompanied by a clear and proportionate impact assessment. This would help stakeholders to better understand the scale of proposed changes and allow for more informed engagement.

Furthermore, while the consultation document states that Article 7 already provides adequate safeguards around sensitive information, (which is welcomed) it also highlights that there is a need to remove the current licence constraint; as such these two positions are inconsistent and we feel that weakens the justification for the proposed modification. We also note that the proposed effect of the licence modification is described in only two points, section 2.18, enabling the UR to compel information for publication; and 2.19, ensuring consistency across licences, which for us lacks clarity or detail. We acknowledge the commentary in sections two and four, yet we remain of the opinion that there is insufficient detail on how such powers or requests would be applied in practice.

Specifically, the consultation does not address potential limitations to data requests and publications, dispute mechanisms, or how the balance between transparency and confidentiality will be maintained initially or on an ongoing basis. As such, we believe the proposed changes carry significant risks, including but not limited to:

- Undermining legal clarity by removing a specific and intentional safeguard of Article 7.
- Increasing the workload and costs on us and other licensees, which impacts smaller suppliers disproportionately.
- Allowing UR broad discretion to publish information without a clear benchmark or safeguard for justification, especially where the information could harm ours or another company's commercial interests.
- Introducing an unclear expansion of the UR's publication powers, which may lead to uncertainty for licensees and stakeholders, something we are keen to avoid.

As stated, Budget Energy remains unconvinced that the proposed licence modification is necessary or proportionate. We would welcome further engagement with the UR on alternative ways to enhance transparency without undermining existing protections or increasing regulatory burdens.

Previous Consultation Points

In our original response, we highlighted areas where the UR's proposals lacked clarity or justification; broadly these included:

- Concerns around rationale and timing of proposed changes,
- Wording changes in the proposed licence conditions that risk broadening supplier obligations without due cause.
- The potential for increased compliance burdens and operational risks, particularly for smaller suppliers.
- The removal of publication restrictions and concerns over the release of commercially sensitive information. In addition, we also suggested a formalised process for notifications, response timelines, and a clear right to reply before publication.
- A suggestion that the definition of "Information" should be limited to data directly related to the licensee's operations, not third-party or network-owned data. We do not consider that these areas have been effectively addressed by the UR in the follow up consultation. While the November 2024 consultation acknowledges suppliers' concerns and rightly groups us with other licensees that hold similar views, it does not substantially address all these concerns, which is more generally alarming

given that no impact assessment has been published. We urge the UR to detail this impact assessment in its decision.

Areas of Concern 'Combined consultation on licence modification'

- **Legal Basis:** We remain unconvinced by the legal justification presented. Article 7 of the Energy (Northern Ireland) Order 2003 already gives the Utility Regulator powers to publish information in the public interest, provided that doing so promotes the interests of consumers and does not (in its opinion) "seriously and prejudicially affect" a particular company's interests. It also requires that the Regulator consult the affected licensee before publishing company-specific information. These existing provisions already establish a legal framework for both publication and consultation, offering a valuable safeguard for sensitive information. To date, neither consultation has identified specific examples where the current Article 7 powers have failed or where the licence wording has directly obstructed the UR's ability to act. Without such evidence, the rationale for removing the Article 7 exclusion from supply licences remains unclear and, in our view, unjustified.
- **Regulatory Burden:** The proposed amendments to Condition 10 (electricity) and Condition 1.3 (gas) significantly broaden the scope of reportable information. The UR has not provided a detailed impact assessment on how this expansion will affect supplier resources, especially for smaller or resource constrained participants.
- **Commercial Risks** While the UR acknowledges concerns around sensitive data, it does not provide a clear definition of what would be considered to "seriously and prejudicially affect" a company's interests. Without pre-defined criteria or a formal or documented method to challenge the UR's opinion, suppliers and licensees remain exposed to potential reputational and commercial risks, but also significant uncertainty. We share some of the concerns raised by other respondents regarding commercially sensitive data. For example, Mutual Energy warned that ultimate discretion over publication would lie with the UR and could override a licensee's own judgment of its commercial interest, and ESB GT highlighted the risk of Freedom of Information (FOI) requests, inadvertently giving competitors access to sensitive business information. These scenarios show how a push for transparency could lead to unintended consequences in the market. We urge the UR to include much stronger assurances in any future proposals or decisions regarding the protection of confidential information, and to clarify the process by which licensees can identify issues and concerns. This should include defined timelines for review and appeal, as well as a commitment to have those concerns meaningfully considered for any objections raised.
- **Lack of Examples, case study or impact assessments:** The UR has not provided specific cases where current information constraints have hindered consumer protection or market transparency. The reference to the Retail Energy Market Monitoring (REMM) report, or mention of "other reports," is not sufficient. Suppliers are given no clear guidance on the type of requests, the level of detail required, or the timelines involved. This creates uncertainty and raises the risk of extremely costly unforeseen or unwarranted system development or additional requirements that may emerge after the licence modification is implemented.
- **Consultation Procedures:** Section 2.11 in the combined consultation refers to "Consultation prior to publication," but there is no commitment to a formalised or structured process for us to challenge or respond. Phrases like "views will be considered" do not replace defined rights of reply, dispute, or appeal, particularly where suppliers believe information proposed for publication is not in their best interests.

Further Analysis on Risk of Publication

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Paragraphs 4.15 and 4.16 aim to reassure suppliers that sensitive information will not be published, which we welcome. However, the interpretation of “seriously and prejudicially affect” is not clearly defined in the combined consultation and remains open to interpretation. We would go further and state that any disclosure resulting in reputational, operational, or commercial harm should be avoided, regardless of whether it meets a “serious” threshold.

In addition to this, an error or incorrect publication could have lasting implications, especially in a small and competitive market such as Northern Ireland. Without clearer safeguards and definitions, this risk remains extraordinarily high. Furthermore, due to the dominant market position of the incumbent supplier, such disclosure may disproportionately affect smaller or independent suppliers more severely.

Additional Considerations

We urge the UR to consider the following factors when determining the appropriateness and proportionality of the proposed licence changes:

- **Future Obligations:** The energy sector is already undergoing significant regulatory and operational challenges, including the smart metering rollout, Guarantee Standards of Service changes (GSSS), SONI and EirGrid data reforms and new Code of Practice and supply licence requirements are already increasing obligations, most of which may require significantly increased reporting. The new licence changes risk becoming an open-ended mandate unless the scope is clearly defined and appropriately limited.
- **Power NI Dominance:** We are concerned that the proposals do not fully reflect the structure of the NI energy market. Power NI holds a dominant position, while independent suppliers operate at a smaller scale with fewer resources. Publishing data, including performance data, without appropriate context could misrepresent smaller suppliers, whose metrics may vary due to size and customer type and not necessarily performance. The burden of reporting is likely to fall unevenly, what is manageable for a large incumbent may be disproportionate for others.

We urge the UR to ensure transparency measures do not distort competition. Any published data should be clearly framed in the right context, and where appropriate, anonymised or aggregated.

The UR's own work programme commits to promoting competition, there is a risk that this change undermines that aim, if not done sensitively or correctly.

- **Administrative and Cost Burden:** Expanding data requests and potential publication requirements is likely to place a greater burden on smaller suppliers. To date, no impact assessments have been carried out. As with all recent consultations affecting our operations, we would strongly urge that any proposed changes be accompanied by a clear comprehensive and proportionate impact assessment that reflects the position of all affected parties.
- **Regulatory Uncertainty:** We are concerned that the proposed modification could lead to an increase in data requests and, as noted above, the potential publication of information that suppliers consider commercially sensitive. This creates a risk of heightened regulatory uncertainty. Given the small size and still-regulated nature of the Northern Ireland energy market, any perceived increase in uncertainty may deter future investment and ultimately have a negative impact on market competition in the near and longer term.
- **Third-Party Access and Data Handling:** We would also welcome further clarity on whether any data submitted under the proposed licence condition may be shared with external consultants or third-party advisors engaged by the UR or even requested by external parties on behalf of the UR. While we

recognise that such parties can support regulatory functions and are likely to have entered into non-disclosure agreements (NDAs) for a specific body of work, we are concerned about the absence of much wider safeguards regarding the scope of access, use, and retention of commercially sensitive information. Specifically, there is a risk that access to detailed supplier data could inadvertently provide an advantage to those same third parties in future advisory work. It is our expectation that any data shared through these processes remains strictly for internal UR use and is not disclosed to or used by external consultants unless it is aggregated or subject to appropriate NDAs, purpose limitations, and a clear record of who will or has accessed the information. This should include requirements around the destruction of data after the contract with the UR ceases. We feel this assurance is essential to protect commercial confidentiality, avoid unintended market impacts, and maintain supplier confidence in the regulatory framework.

- **Differences in Customer Base:** There are different customer segments (e.g. keypad vs. bill pay), with implications for metrics such as call handling or debt management. Comparative reporting may misrepresent performance and confuse consumers. If the UR proceeds with this change, we strongly recommend that reported data be clearly segmented between Keypad and Credit (Bill Pay) customers. This would provide assurance that performance indicators reflect the actual context. Failure to reflect these differences in comparative reporting could lead to misinterpretation by consumers and stakeholders and undermine confidence in individual suppliers. We would welcome further engagement on this point.
- **Confidential and Commercially Sensitive Information**
We request confirmation that any commercially sensitive information shared with the UR, such as data relating to pricing, strategy, or operations will be exempt from publication. A clear process should be in place to identify sensitive information, allow licensees to flag concerns in advance of publication, and where necessary, challenge and appeal the disclosure of such data. Without appropriate safeguards, there is a risk of unfair or harmful publication, eroding trust in the regulatory framework.

Conclusion

Budget Energy welcomes and supports the UR's overarching aim of improving transparency in the energy market. However, based on the evidence provided to date, we remain concerned that the proposed removal of the Article 7 exclusion has not been clearly justified or supported with sufficient evidence. While we appreciate that the UR has acknowledged some of our previous concerns, further clarity is needed on how these will be addressed in practical terms.

We strongly recommend that the UR pause this modification and instead considers a more focused follow-up consultation. This should aim to

- Clarify key terms and tighten licence drafting to avoid ambiguity
- Absolute protection of commercially sensitive data through defined safeguards and processes
- Coordinate new data requests with existing reporting obligations to prevent duplication
- Ensure transparency does not compromise fair market competition

Flogas Energy is committed to engaging constructively with the Utility Regulator to support transparency and better outcomes for consumers, provided this is balanced with appropriate regulatory oversight and ensures a level playing field for all suppliers and licensees.

Yours Sincerely,



On behalf of

Budget Energy, Flogas Enterprise Solutions and Flogas Northern Ireland

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