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Compliance and Enforcement – Consultation Response
Utility Regulator
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Kinecx Energy Response to the Consultation on Publication of Utility Regulator Compliance and Enforcement Annual Report

Kinecx Energy welcomes the opportunity to respond to the Utility Regulator's consultation on the proposed Compliance and Enforcement Annual Report. We support the objective of promoting transparency, accountability and effective compliance monitoring within Northern Ireland's regulated energy sector.

We recognise the value of providing consumers and stakeholders with greater insight into the Utility Regulator's compliance and enforcement activities and support the development of a reporting framework that is robust, consistent and proportionate.

In implementing the framework, it will be important to ensure that the information published is meaningful, appropriately contextualised, supports consumer understanding and confidence, and reflects the particular characteristics of the Northern Ireland regulatory environment.

Question 1
Do you agree with our proposed compliance data providing detail of both our routine and annual compliance monitoring?

Kinecx Energy broadly agrees with the inclusion of information relating to both routine compliance monitoring and the annual Statement of Licence Compliance (SoLC) process. Taken together, these activities provide stakeholders with a more complete understanding of the Utility Regulator's compliance oversight activities and demonstrate how compliance is monitored throughout the year rather than solely through a periodic assurance exercise. However, Kinecx Energy considers that the value of the information published will depend heavily on the context provided alongside any numerical data. Reporting the number of "potential compliance issues" alone may not provide a meaningful indication of compliance performance, particularly where issues vary significantly in scale, complexity, materiality and consumer impact. A minor administrative reporting issue and a significant systemic compliance concern could both be recorded as a single potential compliance issue despite having very different implications.

Kinecx Energy therefore considers that the report should focus on providing meaningful

information that enables consumers and stakeholders to understand the significance of compliance issues and their outcomes. This should include appropriate narrative and context. The report should also recognise positive compliance behaviours, including proactive engagement and self-reporting by licensees. Maintaining a regulatory environment that encourages openness and early disclosure is important in supporting effective compliance management and, ultimately, delivering positive outcomes for consumers.

Question 2
To what extent would it be necessary or desirable to have the published data anonymised / pseudonymised?

Kinecx Energy considers that anonymisation or pseudonymisation is both necessary and desirable for information relating to routine compliance monitoring, SoLC findings and potential compliance issues where no formal enforcement determination has been made. The consultation correctly distinguishes between "potential compliance issues" and confirmed licence breaches. Publishing identifiable information relating to matters that have not been formally determined could create disproportionate reputational impacts and may lead stakeholders to incorrectly conclude that a licence breach has occurred.

Kinecx Energy therefore supports anonymised or pseudonymised reporting of routine compliance monitoring findings and SoLC findings together with publication of aggregated trends, common themes and publication of lessons learned across licence categories. Conversely, where information has already been published in accordance with the Utility Regulator's Enforcement Policy Approach and Procedure, including formal investigations, enforcement decisions, final orders, financial penalties and other enforcement outcomes, publication of the relevant licensee's identity may be appropriate and consistent with established regulatory practice.

It is important to note that the Northern Ireland energy market is relatively small, with some licence categories containing only a limited number of participants. Care should therefore be taken to ensure that a combination of licence type, timing, issue description and other contextual information does not inadvertently enable identification of individual licensees despite formal anonymisation.

Question 3
To what extent do you agree with our proposal to include relevant detail by licence type to ensure the data remains of value to the reader?

Kinecx Energy agrees in principle that reporting by licence type can improve the usefulness and relevance of the information presented. Reporting solely at an aggregate market level may mask important differences in regulatory obligations, operational environments and compliance risks across licence categories. Information presented by licence type may assist stakeholders in understanding sector-specific compliance trends, common issues affecting particular licence categories, emerging compliance risks and areas where further

guidance, engagement or regulatory focus may be beneficial.

However, we believe that this approach should be applied carefully. In a relatively small market such as Northern Ireland, some licence categories contain only a limited number of participants. The publication of detailed information by licence type may therefore increase the risk of indirect identification, even where anonymisation or pseudonymisation has been applied.

Kinecx Energy therefore considers that reporting by licence type should only be provided where anonymity can be preserved and the Utility Regulator should assess re-identification risks on a case-by-case basis. Where necessary, information should be aggregated further to protect anonymity. Where appropriate, explanatory narrative should accompany statistical information to ensure accurate interpretation and avoid readers drawing inappropriate conclusions from compliance data.

Overall, we support reporting by licence type provided appropriate safeguards are implemented to prevent accidental identification and to ensure that the resulting information remains fair and meaningful to consumers and stakeholders.

Question 4
Should information about cases closed at the Initial Enquiry Stage through an agreed alternative resolution also be published in our Compliance and Enforcement Annual Report?

Kinecx Energy recognises the value of transparency and understands the rationale for including alternative resolution cases within the Compliance and Enforcement Annual Report as part of a comprehensive overview of regulatory activity. However, this information should only be included where appropriate context is provided and where the distinction between alternative resolution and formal enforcement is clearly explained.

Alternative resolution does not constitute a formal determination that a licence breach has occurred. It is intended to provide a balanced means of addressing concerns, remedying any consumer detriment and preventing recurrence without requiring the matter to proceed through the full enforcement process. For this reason, any reference to alternative resolution cases should make clear that no formal finding of breach has been made, why alternative resolution was considered the most appropriate outcome, what actions were taken to address the issue and how any consumer detriment was remedied.

From a consumer perspective, the focus should be on transparency regarding resolution of the issue and consumer outcomes achieved, rather than creating an impression that regulatory wrongdoing has been established where no formal determination has been made.

Question 5
Do you have any additional comments on the proposed annual report in relation to how the publication of the proposed information is in the interests of consumers?

Kinecx Energy supports the Utility Regulator's objectives of increasing transparency, strengthening compliance culture and promoting consumer protection. The annual report will deliver the greatest consumer value where it focuses on confirmed compliance and enforcement outcomes, lessons learned, sector-wide improvements, examples of good practice and actions taken to prevent recurrence of issues.

The publication of statistics relating to potential compliance issues that have not been formally determined may offer limited consumer benefit without appropriate context. Consumers are more likely to benefit from understanding the significance of issues, the actions taken to address them and the resulting outcomes than from high-level numerical reporting alone.

Greater transparency regarding the Utility Regulator's enforcement prioritisation principles would also be beneficial. These principles play an important role in determining whether potential compliance issues proceed to formal enforcement action or are addressed through alternative regulatory mechanisms. A brief explanation within the annual report would provide valuable context and help readers understand that not all potential compliance issues warrant enforcement action, and that a range of factors, including proportionality, consumer benefit and the availability of alternative remedies, are considered before enforcement action is pursued.

Careful consideration should also be given to whether the publication of routine compliance findings always delivers meaningful consumer value. In circumstances where no consumer harm has occurred, an issue is minor in nature, corrective action has been taken promptly, and no enforcement action has been considered necessary, the benefit of publishing such information may be limited. Whilst compliance with all licence obligations remains important, not all compliance issues carry the same level of regulatory, operational or consumer significance. The reporting framework should therefore ensure that information is presented in a proportionate manner and that sufficient context is provided to enable consumers and other stakeholders to understand the materiality and relevance of the issues being reported.

Different stakeholder groups are likely to derive value from different types of information. Consumers may have different interests and focus than licensees, industry participants, government departments and other stakeholders. The annual report should therefore be structured in a way that balances these differing needs and ensures that the information provided remains relevant, accessible and useful to its intended audiences.

Kinecx Energy recognises the value of benchmarking the proposed framework against other regulators. However, reporting approaches adopted in other jurisdictions, such as Great Britain and the Republic of Ireland, or in different regulatory sectors, should not automatically be assumed to be appropriate for Northern Ireland. Consideration should be

given to the unique characteristics of the Northern Ireland energy market, including the relatively small number of licensees and the increased risk of indirect identification when publishing data.

The annual report should clearly distinguish between potential compliance issues, alternative resolution cases, formal investigations and confirmed enforcement outcomes. In particular, the existence of an open investigation should not be interpreted as evidence that a breach has occurred or that a particular outcome is inevitable. Appropriate explanatory text should accompany any reference to ongoing investigations to ensure that consumers and stakeholders understand their status and do not draw premature conclusions regarding compliance performance.

Similarly, audit reporting should provide sufficient context and clearly distinguish between observations, recommendations, areas for process improvement and actual compliance concerns. The report should also recognise examples of effective compliance arrangements and positive outcomes where identified, rather than focusing solely on findings and recommendations. This would assist readers in reaching a balanced understanding of audit outcomes and their significance.

The effectiveness of the reporting framework should also be kept under review**.** Kinecx Energy would welcome the Utility Regulator establishing clear measures of success and committing to a review following the first reporting cycle. Such a review should assess whether the report has achieved its stated objectives, including improving consumer understanding, enhancing market transparency, strengthening accountability and supporting positive compliance outcomes. The review should also seek feedback from consumers, licensees and other stakeholders to ensure that the report continues to evolve in a manner that remains relevant, proportionate and effective.

More generally, the success of the framework should be judged by the outcomes it delivers rather than the format it adopts**.** It would be useful to understand the extent to which annual compliance reporting in comparator jurisdictions has improved compliance performance, increased consumer understanding, strengthened regulatory accountability or reduced the incidence of non-compliance. Benchmarking should therefore focus not only on report structure and presentation, but also on evidence of effectiveness and consumer benefit.

Kinecx Energy welcomes the Utility Regulator's position that commercially sensitive information will not be published. This is an important safeguard and one that should be applied consistently, transparently and in a manner that recognises the potential commercial implications of publication. Further clarity would be welcome regarding how commercially sensitive information will be defined and identified, and who will be responsible for making that determination. Given that licensees are best placed to understand the commercial sensitivities associated with information relating to their business, they should be consulted in advance of publication and provided with a reasonable opportunity to review and comment on material that may identify, or relate to, their activities**.** This would help ensure that potential commercial sensitivities are fully understood and appropriately considered before publication decisions are made. A clear

process should also be established through which concerns regarding the publication of commercially sensitive information can be raised, assessed and, where necessary, independently reviewed prior to publication.

Finally, we note that the information proposed for Annexes 1 and 2 is already publicly available on the Utility Regulator's website. It is unclear what additional value is achieved by reproducing historical information within the annual report rather than directing readers to the existing published material.

The stated purpose of the report is to provide an overview of compliance and enforcement activity undertaken during the reporting year. However, Annex 1 would include details of all public investigations dating back to 2016, while Annex 2 would include fines and voluntary payments from 2016 onwards. Care should be taken to ensure that historic information does not detract from, or confuse, understanding of current compliance performance and regulatory activity. There is also a risk that the inclusion of cumulative historical enforcement data may give undue prominence to matters that have long since been resolved, arose under different regulatory or market conditions, or no longer reflect current compliance standards.

Whilst historical context can be valuable, the primary focus of the report should remain on activities and outcomes within the reporting period, supported where appropriate by lessons learned and key developments over time. If historical information is to be included, the rationale for its inclusion and the value it is intended to provide to consumers and other stakeholders should be clearly explained.

Question 6
Do you agree that where this document has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for consumers?

Based on the information currently available, Kinecx Energy agrees that the proposals are unlikely to have an adverse impact on any of the groups identified.

Kinecx Energy supports the Utility Regulator's commitment to ensuring that information is accessible and understandable, including the use of clear reporting formats and Plain Numbers principles. Accessible reporting can contribute positively to equality of opportunity by enabling a wider range of consumers and stakeholders to understand regulatory activities and outcomes.

The report's effectiveness in promoting equality of opportunity will depend upon the clarity of the information presented and the extent to which consumers are able to understand its significance. Information should therefore be presented in a clear, proportionate and accessible format, with sufficient context to support understanding by all consumer groups.

Kinecx Energy thanks the Utility Regulator for the opportunity to respond to this consultation. We would be pleased to discuss any aspect of this response and to continue engaging with the Utility Regulator on the development and implementation of the proposed Compliance and Enforcement Annual Report.

Yours sincerely,



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