

Third Energy Package Consultation on Further Technical Modifications to Gas and Electricity Licences

March 2013

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Chapter 1. Introduction

The Third Energy Package

- 1.1 On 15 April 2011 the Department of Enterprise Trade and Investment (the “Department”) enacted The Gas and Electricity (Internal Markets) Regulations 2011, (the “Regulations”). Among other things, the Regulations give the Utility Regulator (the “UR” or the “Authority”) the *vires* to give effect to the provisions of the Third Energy Package in existing electricity and gas licences.
- 1.2 The Third Energy Package comprise the following:
 - (a) Directive 2009/72/EC concerning common rules for the internal market in electricity. This replaces and repeals Directive 2003/54/EC.
(Hereafter referred to as the Electricity Directive),
 - (b) Directive 2009/73/EC concerning common rules for the internal market in natural gas. This replaces and repeals Directive 2003/55/EC.
(Hereafter referred to as the Gas Directive),

(and together referred to as the Directives).
 - (c) Regulation (EC) 713/2009 establishing an Agency for the Cooperation of Energy Regulators. This is a brand new Regulation in its entirety and has no predecessor to compare it against.
 - (d) Regulation (EC) 714/2009 on conditions for access to the network for cross border exchanges in electricity. This repeals the Regulation of the same title and subject matter, Regulation 1228/2003.
 - (e) Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks. This repeals the Regulation of the same title and subject matter, Regulation 1775/2005.

- 1.3 The key elements of the Third Energy Package, as set out primarily in the Directives, include enhanced consumer protection measures; more stringent requirements for unbundling network operations from other activities; ensuring fairer competition within the EU; increased powers and independence for national regulators; greater cooperation between Member States; and the creation of a new European energy agency.
- 1.4 In September 2012 the UR issued a decision paper on the third energy package retail and consumer related licence modifications¹.
- 1.5 In January 2013 the Department issued a “Consultation on Further Legislative Measures to Transpose the EU Third Energy Package²” which further developed matters relating to the implementation of the package.
- 1.6 The further work undertaken by DETI with regard to the implementation of the Third Energy Package has highlighted that further measures are required, by way of modifying the conditions of existing gas and electricity licences, for the purpose of compliance with and implementation.
- 1.7 The UR now seeks views and comments on the matters set out in this paper.

Scope and extent of this consultation

- 1.8 This consultation deals with further measures that are necessary to implement the requirements of the Directives and which need to be notified to the European Commission (the Commission) at the earliest opportunity.
- 1.9 This consultation does not set out those modifications which will be necessary to implement the unbundling requirements for network operators as set out in the Directives, including in particular any modifications which may arise from or are needed to facilitate the certification of Transmission System Operators (TSOs) in gas or in electricity.

¹ http://www.uregni.gov.uk/publications/ime3_final_decisions_september_2012/

² http://www.detini.gov.uk/consultation_on_further_legislative_measures_to_transpose_the_eu_third_energy_package

- 1.10 This is because certification of TSO is subject to the agreement of the Commission. Certification relates to the procedures by which the Member States must ensure, and in some circumstances the Commission must verify, that arrangements are in place which clearly guarantee the effective independence of the TSO. Arrangements to clearly guarantee independence potentially impact on the company structure of TSOs therefore the licence conditions necessary for certification of both gas and electricity TSOs will be consulted upon at a later date.
- 1.11 Due to the urgent and mainly technical nature of the modifications in this paper the UR considers that a four week consultation is appropriate. To facilitate this we have already discussed the modifications and the time period with the Department, who agree with this approach. In addition we will facilitate meetings and an active engagement process with stakeholders throughout the consultation period. The UR considers that a four week consultation for these modifications is in line with our rules and procedures on technical modifications and also in line with the 28 Day statutory notification period required for licence modifications.
- 1.12** This consultation has been structured by licence category. All existing licence holders engaged in the supply, distribution or transmission of electricity or gas and any person considering applying for authorisation to engage in any of these activities should carefully consider the proposals in this consultation that apply to their category of licence. In addition any other organisation or person with an interest in energy related matters should consider the proposals in this consultation.

Section 75 of the Northern Ireland Act 1998

- 1.13 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:
- (a) persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) men and women generally;
 - (c) persons with disability and persons without; and
 - (d) persons with dependants and persons without.
- 1.14 The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.
- 1.15 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.
- 1.16 In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Question 1. Respondents are asked to provide any information or evidence they have which relates to the equality impact of the proposals in this paper.

How to Respond

- 1.17 The UR welcomes industry and other stakeholder views and comments on all the proposals set out in this consultation paper.
- 1.18 The consultation period will close at 12.00 noon on 19 April 2013. Responses to this consultation should be forwarded to reach the UR on or before 12.00 on 19 April 2013 to:

Briege Tyrie
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: briege.tyrie@uregni.gov.uk

- 1.19 Due to the urgent nature of this consultation it will **not** be possible to grant extensions to this consultation period. Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 1.20 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

- 1.21 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.
- 1.22 This document is available in accessible formats. Please contact Briege Tyrie on 02890316326 or briege.tyrie@uregni.gov.uk to request this.

Chapter 2. All Gas and Electricity

Licences Accounts Condition

Unbundling of Accounts (Articles 30 &31 of Gas Directive and of the Electricity Directive)

Policy Background

- 2.1 In combination Articles 30 and 31 of the Electricity Directive and Articles 30 and 31 of the Gas Directive set out the requirements with regard to the unbundling of accounts.
- 2.2 More particularly the provisions require gas/electricity undertakings to prepare and publish accounts in accordance with the appropriate national legislation (as applicable to limited liability companies) and to keep separate accounts for each of their transmission and distribution activities (if any) as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. The relevant provisions also provide that member states or regulatory authorities should have a right of access to such accounts.
- 2.3 These requirements have been transposed in to Northern Ireland legislation via Article 11A(2) (b) of the Electricity Order and Article 10A(2)(c) of the Gas Order.
- 2.4 All existing licences contain licence conditions with regard to the preparation of accounts (referred to in this consultation as the “accounts condition”). However, they do not at present confer a right of access as required under the domestic implementing provisions. It is therefore appropriate to modify the relevant licence condition to rectify this omission and for full compliance with the Directives.

Proposed Modifications

- 2.5 The UR considers that in order to ensure full compliance with the Directives and to comply with the requirements of domestic legislation, a new paragraph should be included in the ‘accounts condition’ of all existing gas and electricity licences.
- 2.6 The proposed new paragraph reads as follows;

Without prejudice to any other provision of this Condition, the Licensee shall, on request, give the Authority and/or the Department (as the case may be) access to the Licensee’s accounting records, policies and statements referred to in this Condition.

Reasons and Effects

- 2.7 The UR considers that the above provision will ensure full transposition of Articles 30 and 31 and will ensure that we can verify that accounting records, policies and statements are kept in a manner which avoids discrimination, cross subsidies and distortion of competition.

Costs and Benefits

- 2.8 The UR considers that there will be limited costs associated with this modification and that it will not be necessary to allow any additional costs for price controlled companies who will have no additional burden. Benefits include increased transparency and confidence in relation to the avoidance of cross subsidies, distortion of competition or discrimination, full and transparent transposition of the Directives.

Question 2. Respondents are asked to comment on the proposed drafting of the new provision in the accounts condition.

Chapter 3. Electricity Distribution

Licences

Introduction

- 3.1 Until April 2011 the activity of electricity distribution was not a distinct licensable activity in Northern Ireland. The Electricity (Northern Ireland) Order 1992 (The Electricity Order) had previously provided for the activities of generation, transmission, supply and SEM Market Operator to be licensable activities.
- 3.2 However, NIE's electricity distribution activities in Northern Ireland have been regulated since 1992 - initially primarily through the public electricity supply licence held by it until November 2007 and more latterly through its transmission licence. That transmission licence is now separated into a successor transmission licence and a successor distribution licence.
- 3.3 DETI's 2010 "Consultation on Implementation of the EU Third Energy Package"³ noted the need to define electricity distribution as a separate licensable activity. Electricity distribution is essentially the act of conveying electricity using low voltage electricity lines, that is lines not exceeding 110 kilovolts⁴.
- 3.4 Articles 8 and 10AA of the Electricity Order now provide for the activity of electricity distribution to be one that requires authorisation. Except for NIE, any person carrying out distribution activities at present will only need to be authorised from 30 April 2013. But NIE needs to be and is already authorised by licence.

³http://www.detini.gov.uk/branded_decision_paper_on_implementation_of_eu_third_internal_energy_package.pdf

⁴ "distribute" in relation to electricity, means distribute by means of a distribution system, that is to say a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to premises or to any other distribution system. Low voltage means any line not exceeding 110 kilovolts.

- 3.5 Therefore this chapter will concentrate on proposed modifications to the NIE electricity distribution licence that the UR considers are required under the Electricity Directive.
- 3.6 However any organisation which is considering applying for an electricity distribution licence should note the proposals in this chapter as in the future they will be included in all electricity distribution licences.

Tasks of Electricity Distribution Operators (Article 25 of the Electricity Directive)

Policy Background

- 3.7 Article 25 requires that the distribution system operator shall be responsible for ensuring:
- (a) the long-term ability of the distribution system to meet demand while maintaining a secure, reliable and efficient system with due regard for the environment and energy efficiency;
 - (b) that it does not discriminate between users or classes of users;
 - (c) that it provides system users with the information they need for efficient access to the system including use of the system;
 - (d) that when dispatching generation installations it gives priority to renewable, waste or CHP energy sources;
 - (e) that if it procures energy for the purpose of covering energy losses or reserve capacity it does so in a transparent, non-discriminatory and market based manner;
 - (f) where it is responsible for balancing that it does so in accordance with transparent, non-discriminatory rules; and

- (g) when planning the development of the distribution network it considers energy efficiency, demand side management and distributed generation that might supplant the need to upgrade or replace electricity capacity.
- 3.8 Article 11A of the Electricity Order contains the provisions which transpose these requirements of the Electricity Directive into Northern Ireland legislation.
- 3.9 The UR considers that the existing NIE Distribution Licence contains provisions which meet the majority of the requirements noted above.
- 3.10 However , the following areas require modification to ensure that transposition can be transparently demonstrated.:
 - (a) priority dispatch;
 - (b) the purchase of electricity for the purpose of covering distribution losses and reserve capacity;
 - (c) taking energy efficiency, demand management and distributed generation into account when planning the development of the distribution network;
 - (d) balancing the system in accordance with transparent, non discriminatory rules.
- 3.11 The UR recognises that NIE does not currently carry out some of the activities noted above. However, in order to ensure that the we can demonstrate measures that are in place that reflect the relevant requirements of the Directive, it is necessary to ensure that the requirements of the Directive will be met should the position change and NIE does carry out or become responsible for carrying out the activities relating to the particular aspects noted in paragraph 3.10 above.

Proposed Modifications

3.12 Therefore in order to ensure that the requirements of Article 25 of the Electricity Directive and Article 11A of the Electricity Order are met, the UR proposes a number of modifications to the existing NIE licence. It should be noted that identical provisions, or provisions with the same effect, will also be included in any new distribution licences granted in Northern Ireland.

3.13 The proposed modifications are as follows -

(a) In Condition 1 (Definition and Interpretation), a new definition as follows

—

<i>“Priority Dispatch Rules”</i>	<i>means the rules and criteria, established and published by the Authority, for the priority dispatch of generation sets which generate electricity using renewable energy sources or waste or by producing combined heat and power, as amended from time to time by the Authority;</i>
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(b) In Condition 13 (Prohibited Activities), a new provision (paragraph 4) as follows —

<i>4</i>	<i>Without prejudice to paragraph 2, where the Licensee proposes, or is required, to start purchasing or acquiring electricity for the purposes of covering distribution losses or reserve capacity (relevant purpose) it shall:</i>
<i>(a)</i>	<i>before starting to purchase or acquire electricity for any relevant purpose:</i>

- (i) *prepare a document setting out the rules it will follow, which rules must be transparent and must not show, permit or facilitate any undue discrimination between any persons, when purchasing or acquiring the electricity for any relevant purpose; and*
 - (ii) *submit the document referred to (i) above to the Authority for approval;*
- (b) *not purchase or acquire electricity for any relevant purpose other than in accordance with the rules set out in the document approved by the Authority; and*
- (c) *send a copy of the approved document to any person requesting a copy as soon as reasonably practicable following the request.*

- (c) In Condition 19 (Distribution System Security and Planning Standards and Operation of the Distribution System), a new provision (paragraph 2) as follows –

2 *Where, in planning the development of the Distribution System, the Licensee considers it might be necessary to upgrade or replace the present and/or future capacity of the Distribution System, it shall before deciding to proceed with any such upgrade or replacement consider whether, in the circumstances of the case, energy efficiency, demand-side management or distributed generation measures may (whether in whole or in part) be more appropriate than the proposed upgrade or replacement of the present or future capacity.*

- (d) In Condition 19 (Distribution System Security and Planning Standards and Operation of the Distribution System), a new provision (paragraphs 4 and 5) as follows

4. The Licensee shall, where it is responsible for the balancing of the Distribution System, ensure that it carries out any such activity on the basis of, and in accordance with, rules it adopts for such purpose which rules:

- (a) are objective and transparent;*
- (b) do not unduly discriminate between any persons; and*
- (c) are approved by the Authority,*

(the System Balancing Rules).

5. Where paragraph 4 applies, the Licensee shall:

- (a) ensure that the System Balancing Rules are published on and readily accessible from the Licensee's web-site; and*
- (b) send a copy of the System Balancing Rules to any person requesting as soon as reasonably practicable following the request.*

- (e) A new condition (Condition 20) as follows –

Condition 20 Priority Dispatch

- 1. The Licensee shall comply with the Priority Dispatch Rules.*
- 2. For the purposes of paragraph 1 the Licensee's obligation to*

comply with the Priority Dispatch Rules is an obligation to comply with the provisions of the Priority Dispatch Rules so far as they are applicable to the Licensee.

3. The Authority may from time to time (following consultation with the Licensee and such (if any) other licences holders as the Authority shall consider appropriate) issue directions relieving the Licensee of its obligations under paragraph 2 in respect of such parts of the Priority Dispatch Rules and to such extent and subject to such conditions as may be specified in those directions.

- (f) In Condition 27 (Distribution Code), a new provision (as paragraph 6(e)) requiring that the Distribution Code must also include –

insofar as necessary, and taking into account the requirements of Condition 20 (Priority Dispatch), conditions and procedures under or in accordance with which the Licensee shall dispatch electricity generating installations connected to the Distribution System.

- (g) In Condition 32 (Basis of Charges for Use of and Connection to the Distribution System), a new provision (paragraph 2) as follows –

The Licensee shall, where it is responsible for the balancing of the Distribution System and provides and levies charges for the provision of balancing services, prepare a statement approved by the Authority setting out the basis upon which charges will be made for such balancing services and/or for energy imbalances.

- (h) Also in Condition 32, a consequential amendment will be made to the existing provision relating to charging statements such that it also refers to any statement relating to charges for balancing services.

Reason for and effect of proposals

3.14 The reason for these proposed modifications is to ensure that we can transparently demonstrate that the provisions of the Electricity Directive are met. The effects of the modifications will be:

- (a) That energy purchased by the licensee to cover energy losses and reserve capacity will be purchased in accordance with rules prepared by the licensee and approved by the UR which rules provide for such purchases to be made in a transparent and non discriminatory manner:
- (b) That where the licensee is responsible for balancing the distribution system the activity is carried out on an objective and non discriminatory basis:
- (c) That the licensee when planning the development of its system will be required to consider whether energy efficiency or demand side management measures might be more appropriate and therefore mitigate the need to upgrade or replace electricity capacity.
- (d) That where the licensee is responsible for or is engaged in the in the dispatch of electricity generation stations it shall comply with such priority dispatch rules as may be put in place by the UR.

3.15 It should be noted that the provisions noted above will only apply where the licensee is engaged in or responsible for the activity to which the provision refers.

Costs and benefits

3.16 The UR considers that the proposed modification have limited or no cost as the obligations only arise where the licensee undertakes the activity, and in

many instances NIE does not currently undertake the activity. As regards the planning and development of the system the UR considers that the requirement to consider energy efficiency and demand side management has the potential to save cost.

- 3.17 For further information on potential benefits see the SEM decision paper on “Demand Side Vision for 2020” available at –

http://www.allislandproject.org/en/overview_1.aspx?article=185b17f5-e666-4943-8237-f2bdbd3df33f&mode=author

- 3.18 Benefits include improved transparency and a clear transposition of the Electricity Directive.

Question 3. Respondents are asked to submit any further comments they have in relation to the requirements of Article 25 of the Electricity Directive and the transposition of Article 25 into Northern Ireland licence conditions.

19 March 2013

Chapter 4. Gas Conveyance Licences - Distribution

Introduction

- 4.1 On 13 September 2012, the gas conveyance licences for the two gas distribution companies in Northern Ireland, namely Phoenix Natural Gas Limited and firmus energy (Distribution) Limited, were modified in order to implement certain relevant requirements of the Gas Directive.
- 4.2 Further detail on the modifications made and the reasons for them can be found at http://www.uregni.gov.uk/publications/ime3_final_decisions_september_2012 and http://www.uregni.gov.uk/publications/ime3_licence_modifications.
- 4.3 The licences are therefore generally compliant with the requirements of the Gas Directive. We have however identified some additional licence modifications which we consider are in order to allow Northern Ireland to transparently demonstrate transposition.

Tasks of Gas Distribution System Operators (Article 25 of the Gas Directive)

Policy Background

- 4.4 Article 25(5) of the Gas Directive requires that where a Distribution System Operator is responsible for balancing the distribution system, the rules it adopts for balancing shall be objective, transparent and non-discriminatory and shall include rules for the charging of system users for energy imbalance. This has been transposed in to Northern Ireland legislation via Article 10A(3)(a) of the Gas Order.

- 4.5 The UR recognises that under existing market structures and responsibilities neither of the Gas Distribution System Operators are currently responsible for balancing their respective distribution systems. But in order to demonstrate full transposition of the Directive it is necessary to include a licence condition which ensures the requirements of the Directive will be met in the future if there was a situation where the Gas Distribution System Operators do begin to carry out the activity of balancing their distribution systems.
- 4.6 The condition requiring the licensee to have a Network Code in both the PNGL and firmus licences currently contains some provisions in relation to balancing the distribution systems. But there are some inconsistencies between the PNGL and firmus licences in this regard.
- 4.7 The licence condition in firmus' licence currently provides within paragraph 1 of the condition, that one of the relevant objectives of the Network Code is for the rules relating to the balancing the network to be objective, transparent and non-discriminatory whereas the PNGL licence does not contain such a provision.
- 4.8 In order to resolve the inconsistencies between the PNGL and firmus licences and to ensure that the requirements of Article 25(5) of the Gas Directive and Article 10A(3)(a) of the Gas Order are met we are proposing the following modifications.

Proposed Modifications

- 4.9 For PNGL's licence the modifications proposed are to Condition 2.5 (Network Code) and are -

- (a) Paragraph 1 of Condition 2.5 will be modified so that it reads:

2.5.1 The relevant objective

- 1 The Licensee shall establish transportation arrangements, being arrangements other than those to which Conditions 2.3*

and 2.4 relate, for the conveyance of gas through distribution pipelines which are calculated to facilitate the achievement of the "relevant objective", that is to say:

- (a) the secure, safe, reliable, efficient and economic development and operation and maintenance of the Network with due regard to the environment;*
- (b) where the Licensee is responsible for the balancing of the Network, the balancing of the Network pursuant to rules for that purpose which are objective, transparent and non-discriminatory (including the rules for the charging of system users for energy imbalances); and*
- (c) subject thereto:*
 - (i) compliance with the Licensee's other obligations under this Licence Document; and*
 - (ii) subject to Condition 2.5.1(c)(i), the promotion of effective competition between Users."*

- (b) Paragraphs 2(b) of the Condition 2.5 will be modified so that it reads:

"(b) where, pursuant to Condition 2.14.1 the Licensee is designated as a distribution system operator, ensure that the Distribution Network Code contains provisions that establish:

- (i) (where the applicant is willing to accept the same), in such manner as the Authority considers appropriate having regard to (in so far as is appropriate) the obligations that would otherwise have applied to the Licensee under Condition the methodology by which the charges to be levied on gas suppliers for the balancing*

of the Network are to be determined; and

- (ii) the technical safety criteria applicable to the operation of the Network;”*

4.10 For firmus' licence the modification proposed are to Condition 2.4 (Network Code) and are -

- (a) Paragraph 1 of Condition 2.4 will be modified so that it reads:

2.4.1 *The relevant objective*

The Licensee shall establish transportation arrangements, being arrangements other than those to which Conditions 2.2 and 2.3 relate, for the conveyance of gas through distribution pipelines which are calculated to facilitate the achievement of the "relevant objective", that is to say:

- (a) the secure, safe, reliable, efficient and economic development and operation and maintenance of the Network with due regard to the environment;*
- (b) where the Licensee is responsible for the balancing of the Network, the balancing of the Network pursuant to rules for that purpose which are objective, transparent and non-discriminatory (including the rules for the charging of system users for energy imbalances); and*
- (c) subject thereto:*
 - (i) compliance with the Licensee's other obligations under this Licence Document; and*
 - (ii) subject to Condition 2.4.1(c)(i), the promotion of effective competition between Users.”*

- (b) Paragraphs 2(b) of the Condition 2.4 will be deleted, and paragraphs 2(c), 2(d), 2(e) and 2(f) in the current condition will be renumbered accordingly.

Reasons and Effects

- 4.11 The UR considers that the proposed modifications will create consistency between the licences for the two Distribution System Operators and will ensure full transparency in the manner of transposition of Article 25(5) of the Gas Directive.

Costs and Benefits

- 4.12 We do not envisage any additional costs being incurred by the Distribution System Operator from the introduction of the proposed modifications. The benefits of the modifications will be consistency in the licence requirement for PNGL and firmus and where applicable balancing rules will be transparent and non-discriminatory.

Question 4. Respondents are asked to comment on UR's current proposals in relation to Gas Distribution licences.

Chapter 5. Gas Conveyance Licences - Transmission (excluding unbundling)

Introduction

- 5.1 This section of the consultation paper outlines the modifications proposed for the gas conveyance licences held by those owning/operating gas transmission systems. The licences concerned are those of Premier Transmission Ltd. (PTL), Belfast Gas Transmission Ltd. (BGTL) and Bord Gais Eireann (UK) (BGE(UK) – referred to in this chapter as TSO licences.
- 5.2 Where modifications are being proposed to all three TSO licences or to an individual licence only this is explicitly stated in order to allow respondents to identify the modifications being proposed to each gas conveyance licence.
- 5.3 As noted in chapter 1, the modifications outlined here do not include the modifications necessary to give effect to the unbundling requirements of the Directive. Nor do they include any further modifications that might be required in order to implement particular individual aspects of the Directive. Further consultations will be issued in respect of such matters.

Connections for LNG and Storage Facilities (Article 23(1) and 35(1) of the Gas Directive)

Policy background

- 5.4 Condition 2.3 of all the current TSO licences include provisions relating to the connection of premises and pipeline systems to the network. However, the scope of the current licence condition does not currently cover storage facilities and LNG facilities as required by Article 23(1) of the Directive. Consequently we are proposing additional drafting in condition 2.3 of all the current TSO licences to rectify this omission and clarify the current drafting.

- 5.5 Article 35(1) requires that where an undertaking refuses access to the system then duly substantiated reasons should be given for any refusal. We are therefore proposing an amendment to the PTL and BGTL licences for this purpose. The wording proposed uses text already contained in condition 2.3 of the BGE(UK) licence.

Proposed modifications

- 5.6 In all the current TSO licences we propose to include an extra bullet in paragraph 2.3.1 and consequently to amend the drafting immediately following the additional bullet as follows:

(d) connecting to the network any Storage Facility and any LNG Facility, and in any such case the Licence shall when giving such a statement include in that statement the Licensee's other terms for the connection and an explanation of those terms together with the Licensee's technical design and operational requirements which shall apply to the making of any connection, including in particular a connection referred to in paragraphs (c) and (d) above.

- 5.7 The inclusion of requirements relating to storage and LNG in this condition requires that these terms be defined. Therefore we have proposed two new definitions should be added to all the current TSO licences, that of 'storage facility' and 'LNG facility'. The proposed definitions reflect the definitions of storage and LNG activities used in the Directive and are as follows -

<i>Storage Facility</i>	<p><i>means a facility used for the storage of gas and includes any part of a LNG Facility used for storage but does not include:</i></p> <p><i>(a) any part of the facility that is used</i></p>
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	<p><i>for production of gas, and</i></p> <p><i>(b) any facility which is reserved exclusively by or for the Licensee in carrying out functions authorised by the Licence.</i></p>
<i>LNG Facility</i>	<p><i>means a facility or terminal used for the liquefaction of gas or the importation, offloading and re-gasification of LNG and includes ancillary services and temporary storage for the re-gasification process and delivery to the gas transmission system but does not include any part of the facility used for the storage of gas.</i></p>

- 5.8 In respect of the PTL and BGTL licences only an additional modification is proposed (an additional line at end of condition 2.3) to ensure that where the licensee refuses a request for a connection that he provides reasons for doing so. The drafting proposed is the same as that currently continued in the BGE(UK) licence at 2.3.14(b) and is as follows -

Reasons for Refusal

Where the licensee refuses a request for connection to the network he shall provide duly substantiated reasons for doing so.

Reasons and effects

- 5.9 The modifications will ensure full transposition of Article 23(1) with respect to connections to gas storage and LNG facilities.

Costs and benefits

- 5.10 The modification would require the licensee to update its connection policies and submit the revisions to the Authority for approval. Any costs associated with this should be minimal as there are currently no gas storage or LNG facilities in Northern Ireland. The resulting changes will ensure that the Directive requirements are fully implemented.

Technical rules (Article 8 of the Directive)

Policy background

- 5.11 The current licences of all the gas TSOs include a provision at 2.3.1 which requires the licensee's connection policy to include the technical design and operational requirements which will apply to the making of a connection to its network. This implements Article 8 of the Directive regarding technical rules.
- 5.12 However Article 8 also requires that the technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. For completeness therefore we are proposing a new sub-paragraph of condition 2.4A of all the TSO licences to ensure Article 8 is fully implemented and this would also cover any new storage or LNG facility.
- 5.13 The current drafting of this condition states that the licensee may require another licensee to enter into an agreement relating to the interaction or interoperability of its network whereas the proposed drafting would require such agreements to be entered into in order to ensure that the requirements of Article 8 are met, including in respect of storage and LNG.
- 5.14 In addition we propose to make an addition to Condition 2.4 of BGE(UK)'s licence – which condition relates to the Network Code. The proposed addition is to ensure that the network code required to be established under the condition contains provisions that establish the technical safety criteria applicable to the operation of the network. This is required by Article 8 and

this obligation is already included in the licences of both PTL and BGTL at 2.4.2(b).

Proposed modification

- 5.15 We are therefore proposing to amend Condition 2.4A in all TSO licences so that paragraphs 1 and 2 of the condition read as follows (note 8 (1) (XX) will refer to the LNG licence provisions) -

2.4A.1 Agreements for interoperability of systems

Where, under Article 10H of the Order or this Licence, the Licensee is designated as a transmission system operator or a distribution system operator (as the case may be), it shall enter into an agreement with any person holding a licence granted under Article 8(1)(a), 8(1)(b) or 8(1)(xx) of the Order to enter into an agreement relating to the interaction or interoperability of its Network with that person's gas transmission system, gas distribution system, gas storage facility or LNG facility (as the case may be) such that will ensure the conveyance of gas in a manner compatible with the secure and efficient operation of both systems or facilities.

2.4A.2 Minimum Requirements – Technical Rules

Each agreement entered into by the Licensee in accordance with Condition 2.4A.1 shall set out (either directly or by reference to a separate document) the Licensee's technical design and operational requirements as applicable to the connection, interaction and interoperability between the relevant systems and/or facilities, which requirements shall be objective and shall not show any undue discrimination between persons or classes of person.

- 5.16 The updated legislative provision will be finalised once the implementing regulations for LNG are made by the Department.
- 5.17 We are also proposing to modify condition 2.4.2(b) of BGE(UK)'s licence to add sub-paragraph (iv) which reads as follows :

(iv) the technical safety criteria applicable to the operation of the Network

Reason and effects

- 5.18 The updated drafting is proposed ensure full transposition of Article 8 and also to ensure consistency with the modifications made by DETI to the Gas Order.

Costs and benefits

- 5.19 The modifications will not impose any additional costs on the licensees unless and until a storage or LNG facility is built and licensed in Northern Ireland.

Cross Border Capacity (Article 7 of the Gas Directive)

Policy background

- 5.20 In our July 2011 paper entitled 'Consultation on the implementation of the EU Third Internal Energy Package,' we proposed a new condition in gas transmission licences relating to Cross Border Capacity in order to transpose Article 13(2) of the Directive. This imposes a requirement on TSOs to build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.
- 5.21 We received two responses from the Gas TSOs on the specific proposals as pertinent to their respective licences. One respondent agreed that the proposed licence condition was appropriate to reflect the requirement under Article 13(2), the other suggested that consideration was needed in respect of

its interaction with other requirements of the Directive, namely Articles 7, 22, 40, 41, and 42.

5.22 Article 7 is the subject of a separate proposed licence condition (Regional Cooperation) – which is discussed below. Likewise Article 22 will require a separate licence modification on any licensee which is certified as meeting the requirements of Chapter 4 of the Directive. Any licence modification which may be required further to Article 22 will be consulted on as part of the licence conditions proposed for unbundling. Articles 40, 41 and 42 place duties on the regulatory authorities and are not therefore directly linked to the proposed licence condition.

5.23 Having considered the responses the UR proposes to proceed with making the modification at the same time as the other modifications proposed in this paper.

Proposed modification

5.24 We have therefore concluded that the new condition should be implemented without change in all the TSO licences. The drafting is reproduced below -

Condition XX - Cross Border Capacity

Interconnected Networks

1. This Condition applies where any part of the Licensee's Network is connected to a transmission pipe-line that is not wholly or mainly located in the United Kingdom (the Other Network).

Integration and Capacity Demand

2. Where this Condition applies, the Licensee shall, in developing, operating and maintaining the Licensee's Network, ensure that it has sufficient capacity to:

- (a) optimise integration between the Licensee's Network and the Other Network; and*
- (b) accommodate all economically reasonable and technically feasible demands for cross-border capacity,*

taking into account (in each case) security of gas supply.

Reasons and effects

- 5.25 The condition is considered to be necessary and appropriate to transpose Article 13(2) and so ensure that sufficient cross-border capacity is available on interconnected systems.

Costs and benefits

- 5.26 The new licence condition will ensure that sufficient cross border capacity is available. New capacity which requires physical infrastructure to be built will have a cost and the TSO will need to assess whether requests for new capacity are economically reasonable.

Regional Cooperation (Article 7 of the Gas Directive)

Policy background

- 5.27 Article 7 of the Directive also requires cooperation between Member States, Regulatory Authorities and TSOs for the purposes of regional cooperation.
- 5.28 In particular Article 7(4) imposes a direct obligation on TSOs, who are part of vertically integrated undertakings and who participate in a joint undertaking for the purposes of regional cooperation, to implement a compliance programme approved by ACER.
- 5.29 Consequently we are proposing a new condition on cross-border cooperation to implement this requirement. This would be included in all TSO licences but would only apply where the licensee has an affiliate who is carrying on the activities of production, conveyance, storage or supply and where the licensee has in conjunction with a TSO in another Member State established a joint undertaking for the purposes of regional cooperation.

Proposed modification

- 5.30 The new condition which we propose to include in all the gas TSO licences is set out below:

Condition 2.8A: Regional Co-operation

Application

This Condition shall apply where:

- (a) any affiliate or related undertaking of the Licensee is carrying on the activities of an Associated Business; and*
- (b) the Licensee has, in conjunction with any Other Transmission System Operator, established an undertaking (the Joint Undertaking) for the purposes of engaging in Regional*

Cooperation.

Compliance Programme

Where this Condition applies the Licensee shall:

- (a) use its reasonable endeavours to ensure that the Joint Undertaking prepares and submits to the Agency for its approval a compliance programme; and*
- (b) appoint a senior officer to act as compliance officer for the purpose of monitoring the Joint Undertaking's compliance with the compliance programme.*

Non-Discrimination

The compliance programme shall set out the measures the Joint Undertaking intends to take to ensure that it does not, in carrying on it activities :

- (a) unduly discriminate as between any persons or class or classes of persons; or*
- (b) restrict, prevent or distort competition in the conveyance, storage, or supply of gas.*

Definitions

In this Condition:

<i>“Agency”</i>	<i>means the Agency for the Cooperation of Energy Regulators as established under Regulation (EC) 713/2009 of the European Parliament and of the Council.</i>
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<i>“Associated Business”</i>	<i>means any business of any affiliate</i>
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	<i>or related undertaking of the Licensee which is carrying out activities consisting of the production, conveyance, storage or supply of gas in any member state of the European Union;</i>
<i>“Other Transmission System Operator”</i>	<i>means any person responsible for operating, maintaining and/or developing a gas transmission system in another member state of the European Union; and</i>
<i>“Regional Cooperation”</i>	<i>means the cooperation of transmission system operators at a regional level, in respect of such geographical areas as are defined in accordance with Article 12(3) of Regulation (EC) No. 713/2009 or as otherwise agreed between relevant transmission system operators, in respect of cross-border issues for the purpose of creating a competitive internal market, fostering consistency and facilitating integration.</i>

Reasons and effects

- 5.31 The proposed licence modification is necessary to implement Article 7(4) and will ensure full transposition of that part of the Directive.

Costs and benefits

- 5.32 The proposed modification will not entail any costs until such time as a joint undertaking is established for the purposes of regional cooperation. In these circumstances the TSO due to its vertically integrated status will already have a compliance officer and compliance programme therefore any costs associated with the new condition should be minimal.

Effective Functioning of the Market (Article 16 of the Gas Directive)

Policy background

- 5.33 In our July 2011 paper entitled 'Consultation on the implementation of the EU Third Internal Energy Package,' we also proposed a new condition to implement certain aspects of Article 3(1) of the Gas Directive.
- 5.34 The proposed condition included an obligation on the licensee to make public information it held which would facilitate effective competition in Northern Ireland and the effective functioning of the Northern Irish gas industry. This was proposed to implement Article 16(3) which requires that information necessary for effective competition and the efficient functioning of the market to be made public. However, this obligation is without prejudice to protecting commercially sensitive information.
- 5.35 We received two responses from the Gas TSOs on the new proposed condition. In respect of the general intent of the condition as then proposed one respondent argued that the Directive did not impose an obligation to promote competition on the TSOs but instead provides that they should not prevent, distort or restrict it. This respondent also argued that the requirement to publish information proposed should be subject to the obligation to protect commercially sensitive information.

- 5.36 The second response indicated that the respondent had no issue with the proposed licence condition but would welcome clarity regarding the publishing of information and specifically whether by meeting the EU Third Internal Energy Package transparency requirements (both the Directive and the Regulation) this would be sufficient to meet the proposed licence condition.
- 5.37 Having considered the responses on the scope of the proposed condition we have decided to limit the condition to the publication of information requirement and to a duty not to restrict, distort or prevent competition. We believe that the drafting below achieves this and is in line with the responses received and with the Directive.
- 5.38 We agree that the requirement to publish information is subject to the obligation to protect commercially sensitive information but believe that this requirement is already contained elsewhere in the licences and so does not need to be re-stated here.
- 5.39 Regarding how the publication requirement may be satisfied, the third package publication requirements will assist in meeting the duty to publish information. However, it is not possible to be prescriptive as to exactly what information will satisfy the condition as each licensee may hold different information and will need to evaluate the information it holds in order to assess what needs to be published.

Proposed modification

- 5.40 The drafting which will be retained in all the TSO licences is:

Condition XX - Competition and Effective Functioning of the Market

Publication of Information

1. The Licensee shall, in so far as it is consistent with its compliance with, and the efficient discharge of, its obligations under the Licence, publish such information as is held, available or known to it that will

facilitate:

- (a) *effective competition between persons engaged in Northern Ireland in, or in commercial activities connected with, the conveyance, storage, and supply of gas; and*
- (b) *the effective functioning of the gas industry in Northern Ireland.*

Duty not to restrict, distort or prevent competition

2. In carrying on the Licensed Business and in complying with its obligations under the Order, the Energy Order, the Gas Regulation and the Licence, the Licensee shall not restrict, distort or prevent competition in the conveyance, storage, and supply of gas.

Additional Definitions

3. In this Condition:

<i>Gas Regulation</i>	<i>means Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks.</i>
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Reasons and effects

- 5.41 The condition is required in order to fully transpose Article 3(1) and 16(3) and will contribute to effective competition and effective functioning of the gas market in Northern Ireland.

Costs and benefits

- 5.42 Publication of the information should impose little extra costs as the TSOs generally publish their information on their existing websites. Publication will aid transparency and therefore should facilitate more effective competition.

Tasks of TSOs (Article 13 of the Directive)

Policy background

- 5.43 The current PTL and BGTL licences contain a condition obliging the licensee to act as a reasonable and prudent operator in performing its obligations under the licence. We consider that this obligation is an important element of how the TSOs fulfil the tasks assigned to them under Article 13 of the Directive.
- 5.44 The condition is not currently included in the BGE(UK) licence although in practice they act as a reasonable and prudent operator in any event. We would propose to rectify this inconsistency in the BGE(UK) licence. This will ensure that the way in which the tasks of the TSOs under the Directive are fulfilled, is consistent across the licences.

Proposed modification

- 5.45 The proposed modification to the BGE(UK) licence only is set out below and replicates the existing drafting in Condition 3.3.1 of the PTL and BGTL licences.

	<p><i>Condition XX – Reasonable and Prudent Operator</i></p> <p><i>The Licensee shall perform its functions, acting as a Reasonable and Prudent Operator, with respect to the Economic Network in such manner as it considers is best designed to secure the objectives of:-</i></p> <p><i>(i) maintaining the capacity and functionality of the</i></p>
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	<p><i>Economic Network; and</i></p> <p><i>(ii) optimising the efficiency, reliability, availability and operational life of the Economic Network.</i></p> <p><i>"Reasonable and Prudent Operator" or "RPO" means a person acting in good faith with the intention of performing its obligations under the Licence and who in so doing and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions.</i></p>
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Reasons and effects

- 5.46 The condition will provide for full transposition of Article 13 relating to the tasks of the TSO in the BGE(UK) licence.

Costs and benefits

- 5.47 There will be no costs in implementing this condition as BGE(UK) is already performing its obligations as a reasonable and prudent operator and we would expect it to continue to do so.

Question 5. Respondents are asked to comment on the UR's current proposals in relation to Gas Transmission licences.