

**Third Energy Package**  
**Decision Paper following**  
**consultation on Further**  
**Technical Modifications to**  
**Gas and Electricity**  
**Licences**

30 April 2013

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## CHAPTER 1 INTRODUCTION

### Background

- 1.1 On 23 March 2011, the Department of Enterprise Trade and Investment (the “Department”) made The Gas and Electricity (Internal Markets) Regulations 2011 (the “**Regulations**”).
- 1.2 The Regulations have been made under Section 2(2) of the European Communities Act 1972 and implement the majority of the requirements of the two European Directives on market liberalisation in the energy sector. They form part of the Third Energy Package, namely Directive 2009/72/EC concerning common rules for the internal market in electricity (the **Electricity Directive**) and Directive 2009/73/EC concerning common rules for the internal market in natural gas (the **Gas Directive**) ( together the **Directives**).
- 1.3 Among other things, the Regulations give the Utility Regulator (the “UR”) the *vires* to give effect to certain requirements of the Directives. The UR gives effect to the Regulations through licence modifications and new licence conditions, as necessary.
- 1.4 On 19 March 2013 the UR published a technical consultation paper which set out the proposed modifications and sought comments from respondents. Following the publication of the consultation document, the UR engaged with industry stakeholders during the consultation period. Following the closure of the consultation on 19 April, the UR received 10 responses.
- 1.5 Having taken on board representations made during this time, the UR finalised its decisions and sought the consent of the Department of Enterprise, Trade and Investment for the licence modifications. This consent was received on 29 April 2013.
- 1.6 The Directives set out certain high level provisions together with more specific requirements. Each Member State, including the relevant Regulatory Authority, is therefore responsible for interpreting the requirements of the relevant Directive, and implementing them according to the unique

circumstances of their markets and taking into account any specific problems that are currently evident.

- 1.7 In determining this final set of licence modifications to implement the Regulations, we have given due consideration to the responses received to the consultation. Where appropriate, we have made changes to our original proposals to ensure appropriate implementation at best value for customers.

## **Directive issue coverage in this Decision Paper**

- 1.8 As noted in the consultation papers, these modifications do not deal with the requirements for unbundling and certification. Any further modifications necessary to fully implement the requirements of the Directives in relation to other specific matters such as unbundling and certification will be the subject of subsequent consultation.

## **Equality considerations**

- 1.9 Section 75 of the Northern Ireland Act places a duty on public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between different categories.
- 1.10 We aim to promote equality of opportunity between nine categories of persons, namely between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependents and persons without.
- 1.11 As part of the consultation exercise we asked whether any of the respondents could provide information or evidence which relates to the equality impact of the proposals. None of the respondents raised any issues in relation to equality. Based on equality screening the UR considers that the proposals in this paper do not create differential impacts between groups

within each Section 75 category. Therefore the UR considers that these proposals do not need to be subject to Equality Impact assessment and the policy revisions can proceed.

- 1.12 This document is available in accessible formats. Please contact Breige Tyrie on 02890311575 or [Breige.Tyrie@uregni.gov.uk] to request this.

### **Next steps**

- 1.13 The modifications set out in this decision paper will be made to each relevant licence and notified in writing to the individual licence holder. They will come into effect on 30 April 2013.

## **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, it was considered that they did not confer a right of access as required under the domestic implementing provisions. A modification was accordingly proposed as set out in chapter 2 of our March consultation.

## Summary of Responses

2.5 Those respondents who objected to the wording in this proposal did so for the following reasons:

- Some respondents felt that the proposal was an unnecessary duplication of existing licence conditions.
- Some respondents felt that the use of the word “access” was ambiguous and needed to be clarified.
- Some respondents sought assurances that the new licence condition would not require the Utility Regulator to be given “log on rights” to the licence holder’s accounts systems.
- Two respondents felt that the ambiguity regarding the word “access” could be dealt with by adjusting the drafting of the proposed new paragraph to specifically limit the proposed “access” to circumstances where such access is provided following a request which is made for the purpose of ensuring compliance with Article 31 of the Directive.

## Utility Regulator Response

2.6 Having considered the responses and the existing provisions of licences which provide for information to be provided to the Authority (whether on request or on a regular basis), the UR has decided not to proceed with the modification as originally proposed.

2.7 However, given the requirements set out in Article 11A(2)(b) of the Electricity Order and Article 10A(2)(c) of the Gas Order it is necessary and appropriate for the licences to be modified such that there is an obligation on licensees to provide accounts information to the Department.

2.8 We will therefore be modifying the accounts condition in all licence to include such a requirement.

## Licence Modification Final Decision

- 2.9 Accordingly the following new paragraph will be included in the accounts condition of all existing energy licences (that include an accounts condition)

–

***The licensee shall, where requested to do so by the Department, provide to the Department a copy of its accounting records for the period specified in the request.***

## Costs and Benefits

- 2.10 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 enabling the Department where it considers it necessary and appropriate to take decisions on the transparency of accounts information in relation to the avoidance of cross subsidies, distortion of competition or discrimination and full and transparent transposition of the Directives.

# Chapter 3. Electricity Distribution Licences

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

### **Policy Background**

- 3.1 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.

- 3.2 Article 11A of the Electricity Order contains the provisions which transpose these requirements of the Electricity Directive into Northern Ireland legislation.
- 3.3 The UR considers that the existing NIE Distribution Licence contains provisions which meet the majority of the requirements noted above.
- 3.4 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.
- 3.5 The UR recognises that NIE does not currently carry out some of the activities noted above. However, in order to ensure that 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.

### **Summary of Responses**

- 3.6 NIE noted in their response that the UR has worked with them over a number of months to develop the proposals. NIE also noted that they do not currently undertake a number of the activities (such as priority dispatch). They felt that it should be unnecessary to include licence conditions covering activities not currently undertaken by the licensee. However NIE understood that the UR's position. Eirgrid noted the need to ensure that licence arrangements are mindful of industry agreements already in place.

## Utility Regulator Response

- 3.7 The UR considers that transposition of the Directive requires that the Directive provisions must be reflected in the licence conditions, unless there is a prohibition on the licensee carrying out the activity. The UR has used drafting that makes it clear that the proposed conditions only apply where the licensee undertakes the activity in question. Where the licensee does not undertake the activity the existing drafting makes it clear that the requirements within the condition do not apply. The UR is mindful of industry agreements and will continue to work to ensure that all procedures are carried out in compliance with the relevant Directives. The UR does not propose to change the original proposals except to correct a small typo.

## Licence Modifications Final Decisions

- 3.8 The modifications are as follows -

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

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<b><i>“Priority Dispatch Rules”</i></b>	<b><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></b>
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- (b) In Condition 13 (Prohibited Activities), a new provision (paragraph 4) as follows –

<b><i>4 Without prejudice to paragraph 2, where the</i></b>
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***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:***

- (a) before starting to purchase or acquire electricity for any relevant purpose:***
  - (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 licence 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.

### **Costs and benefits**

- 3.9 While some of the respondents stated that all licence compliance comes at a cost and others noted the need to ensure that consumer bills were kept as low as possible, none of the respondents submitted specific figures in respect of the cost of these proposals. The UR considers that the proposals 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.
- 3.10 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](http://www.allislandproject.org/en/overview_1.aspx?article=185b17f5-e666-4943-8237-f2bdbd3df33f&mode=author)
- 3.11 Benefits include improved transparency and a clear transposition of the Electricity Directive.

# 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](http://www.uregni.gov.uk/publications/ime3_final_decisions_september_2012) and [http://www.uregni.gov.uk/publications/ime3\\_licence\\_modifications](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 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 proposed in a number of modifications in chapter 4 of our March consultation. Having considered the consultation responses our final decisions are set out in paragraphs 4.12-4.14 below.

## **Summary of Responses**

- 4.9 **Phoenix Natural Gas Ltd (PNGL)** – balancing is currently carried out by transmission. PNGL would expect that any changes to the balancing regime would be fully consulted upon in advance. For clarity the Network Code does facilitate energy balancing to meet the current condition. PNGL feel that the current drafting is unclear and lacks transparency.

## **Utility Regulator Response**

- 4.10 At this time the UR has no intention to amend the current balancing regime. We agree with PNGL that any change to a balancing regime at distribution level would have to be consulted on, and as part of any such consultation consideration would have to be given to the technical and network equipment implications.
- 4.11 The new drafting of the licence condition is sufficient to ensure that where balancing is done at distribution level the rules have to be objective, transparent and non-discriminatory. The original drafting of the proposed modifications to paragraph 2.4.2(b) of PNGL's licence was not correct (as it was based on an incomplete and inaccurate version of a consolidated copy of the licence). The drafting has therefore been amended. Similarly new paragraph 2.5.2(b) in firmus' licence will require modification to rectify the current incorrect drafting.

### **Licence Modifications Final Decisions**

- 4.12 For PNGL's licence the modifications to Condition 2.5 (Network Code) are -
- (a) Paragraph 1 of Condition 2.5 will be modified so that it reads:

#### ***2.5.1 The relevant objective***

***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) the measures that the Licensee will put in place for the balancing of the Network;**

**(ii) the methodology used by the Licensee to procure the gas required for balancing the Network;**

**(iii) the methodology by which the charges to be levied on gas suppliers for the balancing of the Network are to be determined; and**

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

4.13 For firmus' licence the modification is to Condition 2.4 (Network Code) and is:

- (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."***

## **Costs and Benefits**

- 4.14 While respondents raised the point that all licence compliance comes at a cost no specific figures or individual costs were given by any of the respondents in respect of the above modifications. The UR considers that the additional resource required to comply with these modifications is minimal and should be managed within existing regulatory agreements. Therefore there will be no impact on consumer bills. The UR also noted the response from CCNI that the impact on consumer bills should be kept to a minimum. The benefits of

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the modifications will be consistency in the licence requirement for PNGL and firmus and where applicable balancing rules will be transparent and non-discriminatory.

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

## **Introduction**

- 5.1 This section of the decision paper outlines the modifications which will be made to 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 The modifications outlined here do not include the modifications necessary to give effect to specific aspects of the Directive such as the unbundling requirements. 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**

- 5.3 Condition 2.3 of the 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 proposed additional drafting in condition 2.3 of all the current TSO licences to rectify this omission and clarify the current drafting.
- 5.4 Article 35(1) requires that where an undertaking refuses access to the system then duly substantiated reasons should be given for any refusal. Therefore we proposed 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.

### **Summary responses**

5.5 No responses were received on this proposed modification.

### **Utility Regulator Response**

5.6 As no responses were received our decision is to make the modification without change.

### **Licence Modifications Final Decision**

5.7 In all the current TSO licences our decision is 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.***

5.8 The inclusion of requirements relating to storage and LNG in this condition requires that these terms be defined. Therefore two new definitions will be added to all the current TSO licences, that of 'storage facility' and 'LNG facility' as follows -

<b><i>Storage Facility</i></b>	<b><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></b>  <b><i>(a) any part of the facility that is</i></b>
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	<p><i>used for production of gas, and</i></p> <p><b>(b) any facility which is reserved exclusively by or for the Licensee in carrying out functions authorised by the Licence.</b></p>
<p><b>LNG Facility</b></p>	<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>

- 5.9 In respect of the PTL and BGTL licences only an additional line will be inserted at the end of condition 2.3 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.***

**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. 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 proposed 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 proposed to make an addition to Condition 2.4 of BGE(UK)'s licence – which condition relates to the Network Code. This would 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).

### **Summary responses**

- 5.15 We received comments on this proposed modification from BGE(UK) and CCNI.
- 5.16 BGE(UK) commented specifically on paragraphs 5.15, 5.17 and 5.19 of the consultation paper.

5.17 In relation to 5.15 of the consultation paper, BGE(UK) believe Article 8 does not expressly require agreements, in any event BGE (UK) questions whether the provision is workable. They also made a number of specific comments summarised below:

- They questioned whether other licensees referenced will be required to enter into agreements by their licences. If not BGE(UK) would be required to enter into an agreement with a person who is not under a like requirement. BGE(UK) also questioned whether compliance could be achieved where there is no compulsion on the counter party to agree. They suggested that at most it would be reasonable to require licensees to enter to enter into an agreement.
- BGE(UK) pointed out that the condition does not say what will happen if the licensee does not enter into an agreement
- The objectives of the agreement should be clearer. BGE(UK) were also of the view that the proposed modification could imply that the licensee would be solely responsible for the 'secure and efficient operation of both systems and facilities,' and that this could have cost implications.
- BGE(UK) also stated that the interaction of this provision with the network code and agreements under the network code also require consideration.
- BGE(UK) asked what the position is regarding facility operators who are exempt.
- BGE(UK) also asked whether the reference to 10H in the drafting should be a reference to 8H.

5.18 BGE(UK) raised no objection to the modification to condition 2.4.2(b) of their licence which was proposed in paragraph 5.17.

5.19 In relation to paragraph 5.19, BGE(UK) believe there could potentially be costs associated with modifying the Connection Policy to take account of the new conditions and would like clarity on whether such costs would be recoverable.

5.20 BGE(UK) also asked for clarity on how BGE(UK) will be treated which may arise from requirements relating to interaction or operability in the event of a storage or LNG facility is built and licensed in NI.

- 5.21 The CCNI sought an indication of what costs might be in the event of an LNG or storage facility and wished to be fully engaged and informed at the time.

### **Utility Regulator Response**

- 5.22 We have carefully considered BGE(UK)'s comments in relation to agreements for interoperability of systems and whether it is workable in light of the obligations on other licensees. Consequently, and in light of BGE(UK)'s comments, we propose to amend the condition to provide that licensees shall use all reasonable endeavours to enter into an agreement. If it transpires that having used all reasonable endeavours the relevant licensees could not agree and enter into an appropriate agreement then the Utility Regulator may consider it necessary to provide for the requirements of the Directive to be implemented through further licence modifications.
- 5.23 In relation to the objective of the Agreement it is clear from the modification that this is for the purpose of ensuring the interaction or interoperability of the network in such a way as to ensure the conveyance of gas in a manner compatible with the secure and efficient operation of both systems. In making the agreement we would expect the licensee to consider the interaction of this agreement with the network code and agreements under the network code..
- 5.24 In relation to facility operators who are exempt. The legal framework in GB is different from that in NI where storage is a licensable activity. Consequently anyone licensed for the storage of gas will have the obligation set out above.
- 5.25 BGE(UK) are correct that the reference to 10H should be a reference to 8H and we have made this change together with some minor drafting changes for clarity.
- 5.26 BGE(UK) made no objection to the modification proposed in 5.17. Accordingly we intend to make the modification without change.
- 5.27 In relation to costs that may be associated with modifying the Connection Policy to take account of the new conditions, we believe that if there are any

costs, these will be minimal. Therefore it will not be necessary to allow any additional costs over the existing price control allowance.

- 5.28 It is unclear what costs BGE(UK) believes it may incur arising from interaction or operability in the event of a storage or LNG facility is built and licensed in NI. Should costs be incurred we would need to discuss the treatment of these with BGE(UK) on the basis of the operating expenditure provisions of the licence.
- 5.29 In relation to CCNI's comments on this section, section 5.19 of our paper indicates that we do not believe that there will be any costs associated with the licence modification on technical rules.
- 5.30 Having considered all the responses received, our decision is to make the modification without change.

### **Licence Modification Final Decision**

- 5.31 Condition 2.4A will be amended in all the TSO licences as follows –

#### *2.4A.1 Agreements for interoperability of systems*

*Where the licensee is under and in accordance with Article 8H of the Order designated as a transmission system operator or is designated as a distribution system operator (as the case may be), it shall use all reasonable endeavours to enter into an agreement with:*

- (a) any other person holding a licence granted under Article 8(1)(a);*
- (b) any person holding a licence granted under Article 8(1)(b) of the Order; and*
- (c) any person holding a licence granted under Article 8(1)(d) of the Order,*

*which agreement:*

*(a) relates to the interaction or interoperability of the Licensee's Network with that person's gas transmission system, gas distribution system, gas storage facility or LNG facility (as the case may be); and*

*(b) ensures that the conveyance of gas between the Licensee's Network and that other system or facility is undertaken in a manner which is compatible with the secure and efficient operation of the Licensee's Network and that other system or facility.*

#### *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 Licensee's Network and the other system or facility, which requirements shall be objective and shall not show any undue discrimination between persons or classes of person.*

5.32 An additional line will be added to condition 2.4.2(b) of BGE(UK)'s as follows :

*the technical safety criteria applicable to the operation of the Network*

## **Costs and benefits**

- 5.33 The modifications will impose only minimal 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**

- 5.34 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.
- 5.35 Having considered the responses received to the July 2011 consultation, the Utility Regulator proposed to proceed with making the modification.

### **Summary responses**

- 5.36 We received one response to the proposed modification from BGE(UK) which are summarised in the bullets below:
- Stated that the obligation to 'optimise integration' is difficult to understand and the steps required to optimise integration need to be described.

- Art. 13(2) does not refer to optimisation and therefore the requirements of 2(a) exceed the requirements of Art. 13(2). BGE(UK) therefore asked the UR to set out the basis on which it has the vires to make this change
- The amendment could lead to inconsistencies with the various processes under the Gas Regulation.
- BGE(UK) argued that the proposed modification should include all transmission capacity that affects and accommodates cross border flows and must therefore include the SNIP as BGE(UK) argue it is relevant to cross border flows between GB and NI and then on to continental Europe and/or ROI as the case may be. Otherwise BGE(UK) argued the objective of the Directive could be frustrated. BGE(UK) specifically sought clarity on whether the proposed modification also refers to the SNIP and other transmission capacity in northern Ireland. They noted that the Regulation in so far as it relates to maximising capacity, in BGE(UK)'s view, is not restricted to connections between Member states.
- In relation to the proposed drafting in 2(b) BGE(UK) stated that a range of matters in relation to this drafting needed to be clarified but cited only one example for clarification. This was that the interaction between investment decisions/network development and capacity allocation is not presently clear and that the proposed licence condition does not address engagement on cross border investments with licensees in other jurisdictions.

## **Utility Regulator Response**

5.37 In light of BGE(UK)'s comments we have carefully considered whether the term 'optimise' remains appropriate. The requirement of the Directive is that each TSO builds sufficient cross border capacity to integrate European transmission infrastructure. We chose the term 'optimise' as the means to reflect this requirement given that it is not possible to define in advance what level of cross-border capacity would be sufficient into the future. We also wish to convey the idea that the provision of sufficient capacity may not require the

building of additional infrastructure to provide firm capacity in all cases. It is therefore for the TSO to ensure the provision of sufficient capacity to meet its obligations and the description of 'steps' is not necessary.

- 5.38 We have also considered alternative words to 'optimise' but have concluded that none are demonstrably easier to understand or convey the intent of the Directive any better than optimise. We therefore propose to retain the word 'optimise' as we believe that it conveys the appropriate meaning.
- 5.39 Given the explanation above we do not agree that the requirements of 2(a) exceed the requirements of Art. 13(2). In any case Article 10A(1) of the Gas Order provides that a conveyance licence shall include such conditions as appear necessary and expedient having regard to the requirements and prohibitions of the Directive.
- 5.40 BGE(UK) has not said why the modification could lead to inconsistencies with the various processes under the Gas Regulation and the Utility Regulator does not consider that this will be the case.
- 5.41 In relation to BGE(UK)'s view that the proposed modification should include all transmission capacity that affects and accommodates cross border flows and must therefore include the SNIP. The Directive article refers explicitly to 'cross border capacity.' In the NI context therefore this means the border with the Republic of Ireland.
- 5.42 Regarding the drafting in 2(b), the wording closely reflects that of the Directive and is consistent with other obligations in the licence which relate to network development and capacity allocation and which are clear. The building of cross border capacity will require engagement with licensees in other jurisdictions but the purpose of the licence condition is to describe what outcome is expected of the entity licensed in NI rather than to address issues related to the engagement between TSOs in different jurisdictions.
- 5.43 Having considered all the responses received, our decision is to make the modification without change.

## Licence Modification Final Decision

- 5.44 The final modification is reproduced below and will be added as a new condition to all the gas TSO licences -

*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.*

## Costs and benefits

- 5.45 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**

- 5.46 Article 7 of the Directive also requires cooperation between Member States, Regulatory Authorities and TSOs for the purposes of regional cooperation. 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.
- 5.47 Consequently we proposed a new condition on cross-border cooperation to implement this requirement to be included in all TSO licences. However, it 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.

### **Summary responses**

- 5.48 No detailed responses were received on the drafting of this proposed modification.
- 5.49 The CCNI made a wider point about costs set out above and which also applies to this modification.

### **Utility Regulator Response**

- 5.50 In relation to costs associated with the establishment of a joint undertaking, as stated in the paper we believe these to be minimal. Any costs incurred would likely be associated with any agreement to set up a joint undertaking. Decisions on costs are taken in the course of price control reviews which involve consultation with stakeholders, including the CCNI.
- 5.51 Having considered the responses, our decision is to make the modification without change.

## Licence Modification Final Decision

5.52 The final modification which will be included in all the gas TSO licences is set out below:

### **Condition 2.8A: Regional Co-operation**

#### Application

1. *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

2. *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

3. *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

4. *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>
<i>“Associated Business”</i>	<i>means any business of any affiliate 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</i>

*the purpose of creating a competitive internal market, fostering consistency and facilitating integration.*

## **Costs and benefits**

- 5.53 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**

- 5.54 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.
- 5.55 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.
- 5.56 Having considered the responses to the July 2011 consultation we re-scoped the condition to limit it to the publication of information requirement and to a duty not to restrict, distort or prevent competition.

## **Summary responses**

5.57 No specific comments were received on the amended modification. Utility Regulator Response

5.58 Our decision is to make the modification without change.

## **Final modification**

5.59 The final modification which will be made to all the gas TSO licences is set out below.

### **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.*

#### Definitions

3. *In this Condition:*

<i>Gas Regulation</i>	<i>means Regulation (EC) No</i>
	<i>715/2009 of the European</i>

		<i>Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks.</i>
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## **Costs and benefits**

- 5.60 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**

- 5.61 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.
- 5.62 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. Therefore, we proposed to rectify this inconsistency in the BGE(UK) licence so as to ensure that the way in which the tasks of the TSOs under the Directive are fulfilled, is consistent across the licences.

### **Summary responses**

- 5.63 No specific responses were received on the underlying policy for the proposed modification. BGE(UK) was the only respondent to comment and had no objection to the proposal as it continues to act as a reasonable and prudent operator (RPO). BGE(UK) did note that the definition of an RPO in the network code is slightly different and suggested that the definitions of RPO in the licence and code should be consistent.

## Utility Regulator Response

- 5.64 We note that the definition of an RPO in the network code is slightly different but the code and licence are different legal instruments. If BGE(UK) consider that they need to be fully aligned they could seek an amendment to the network code via the usual code modification process.

## Licence Modification Final Decision

- 5.65 The final modification is set out below.

<p><b><u>Condition XX – Reasonable and Prudent Operator</u></b></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> <ul style="list-style-type: none"><li><i>(i) maintaining the capacity and functionality of the Economic Network; and</i></li><li><i>(ii) optimising the efficiency, reliability, availability and operational life of the Economic Network.</i></li></ul> <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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## **Costs and benefits**

- 5.66 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.

30 April 2013