

**DECISION PAPER ON  
THE EXTENSION TO THE  
FIRMUS ENERGY LICENSED AREA**

**06 November 2012**

## 1. Purpose of this Paper

- 1.1 This paper sets out the responses received in relation to the consultation on the proposed extension to the firmus energy licence area and details the Utility Regulator's decision on this extension.

## 2. Background

- 2.1 In July 2012, firmus energy (Distribution) Ltd (**firmus**) applied to the Utility Regulator (**UR**) for an extension to their current distribution licence to add Bushmills and Ballylough Electoral Wards in the Moyle District to the ten towns Licensed Area.
- 2.2 The reason for the proposed extension is to allow for the construction of the pipeline infrastructure necessary to facilitate the conveyance of gas to the Old Bushmills Distillery and also to domestic consumers, Northern Ireland Housing Executive consumers and commercial properties in the vicinity.
- 2.3 On 19<sup>th</sup> July 2012, the UR issued a statutory consultation by way of a Notice under Article 8(4) of the Gas (Northern Ireland) Order 1996 proposing to extend the firmus licence area to include the Electoral Wards of Bushmills and Ballylough<sup>1</sup>. This Notice asked for representations or objections to the proposed extension to be made by 17<sup>th</sup> August 2012.
- 2.4 We received 2 responses in relation to the proposed extension. firmus responded consenting to the proposed licence modification. However Phoenix Natural Gas Limited (**PNGL**) responded by asking for clarification on some points and stating that they objected to the proposed extension to the firmus licence area. The responses have been published alongside this decision paper.
- 2.5 For the avoidance of doubt, the purpose of the consultation referred to in paragraph 2.3 was to consult on the proposed extension of the firmus licence area to include the Bushmills and Ballylough Electoral Wards. The UR issued a press release at the same time which highlighted that firmus had requested additional allowances for further investment in Ballymena and Coleraine. Many of the points raised in the responses to the consultation were in relation to the additional investment. Although these points are not related to the consultation itself; in the interest of transparency we have addressed these questions in this paper.

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<sup>1</sup> [http://www.uregni.gov.uk/publications/regulator\\_consults\\_on\\_extension\\_to\\_the\\_firmus\\_gas\\_licence\\_area](http://www.uregni.gov.uk/publications/regulator_consults_on_extension_to_the_firmus_gas_licence_area)

- 2.6 firmus has submitted Additional Development Plans to the UR requesting that the Electoral Wards of Bushmills, Ballylough, Dunluce, Ringsend and Slemish be added as Additional Development Areas. The Dunluce, Ringsend and Slemish Electoral Wards currently fall within the firmus Remaining Licensed Area.
- 2.7 The Additional Development Plan for the Bushmills, Ballylough and Dunluce Electoral Wards was submitted to allow for the construction of the pipeline infrastructure necessary to facilitate the conveyance of gas to the Old Bushmills Distillery and to properties in the vicinity as explained in paragraph 2.2.
- 2.8 The Additional Development Plans for the Ringsend Electoral Ward and Slemish Electoral Ward were submitted to allow firmus to construct pipeline infrastructure which would facilitate the conveyance of gas to Northstone and Lagan Quarries, and Craigdoo Quarry respectively.
- 2.9 The firmus licence allowed firmus an exclusive right to expand its Licensed Area into certain areas, referred to as Remaining Licensed Areas and set out in Schedule 1 of the firmus licence. This exclusivity has now ended so that any party, including firmus, can apply to convey gas in these areas. Therefore while Dunluce, Ringsend and Slemish Electoral Wards are already included in the Remaining Licensed Area, any party could have applied to convey gas in these areas. By firmus applying for these areas to become Additional Development Areas these areas would become part of the firmus Licensed Area and the Exclusive Area, as defined in the firmus licence, so that firmus would have exclusivity to convey gas.

### **3. Responses Received to the Consultation and UR's Response**

- 3.1 In their response PNGL compares their licence with that of firmus, highlighting that the PNGL licence ensures that the vast majority of industry, businesses, homeowners, public sector housing and new housing developments are provided with the opportunity to make the switch to natural gas; while the firmus licence concentrates on providing natural gas primarily to businesses, public sector housing and new housing developments in the ten towns.
- 3.2 PNGL argue that the natural gas industry in Northern Ireland can be successful if licensees are clearly targeted with making natural gas available to the maximum number of people economically viable.
- 3.3 PNGL asked for clarification on the Electoral Wards in the firmus licence. The UR confirms the following:

- 3.3.1 The left-hand column of Schedule 1 of the firmus licence contains the Electoral Wards of the “Ten Towns”;
- 3.3.2 These Electoral Wards in the left-hand column, and the Electoral Wards which have previously been designated as Additional Development Areas (i.e. Strand, Atlantic, Portstewart, Parkgate, Doagh, Ballyclare North, Ballyclare South, Ballyrobert, Derryleckagh, Burren, Kilbroney, Clonallen and Seaview) are currently subject to exclusivity;
- 3.3.3 The right-hand column of Schedule 1 of the firmus licence (excluding the 13 Electoral Wards listed in paragraph 3.3.2 above which have been designated as Additional Development Areas) details Electoral Wards which fall within the Remaining Licensed Area but, as they have not been designated as Additional Development Areas, they are no longer subject to exclusivity.
- 3.3.4 However as set out in section 2.9 above, if they are approved as Additional Development Areas in the firmus licence, firmus will have exclusive rights to convey gas in these areas.
- 3.4 PNGL questioned what process the UR will follow, and what business model would be applied, should either PNGL or firmus wish to convey gas to one of the Electoral Wards referred to in paragraph 3.3.3 above. Under Article 14 of the Energy (NI) Order 2003, the UR’s principal objective is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland and therefore we consider all applications for new extensions in line with this statutory objective. The UR welcomes all proposals to rollout the network beyond existing licence areas and have, on previous occasions granted licence extensions which we considered to be consistent with our principal objective. With regard to the process, the UR will follow the procedure as set out in statute; namely in Article 8 of the Gas (NI) Order 1996, and in accordance with the provisions in the licence. The UR confirms that the business model applied will depend on the licence to which the extension will apply. The UR will take account of any applicant and its existing licence and a decision will be made depending on whether the model in the specific circumstances is efficient and economic to ensure that the UR remains in line with its statutory objectives.
- 3.5 PNGL questioned whether firmus energy’s classification (in “Drawing No. Bushmills 4”, published as part of the Notice) of the Electoral Ward of Dunluce as falling within its exclusive area is correct. The UR confirms that the Electoral Ward of Dunluce lies within the right-hand column of Schedule 1 of the firmus licence and therefore it is

currently within the firmus Remaining Licensed Area but, as Dunluce has not previously been designated as an Additional Development Area, it is no longer subject to exclusivity. Therefore PNGL are correct in pointing out that the Electoral Ward of Dunluce should not have been shown as being in the firmus exclusive area on the map published as part of the Notice. We would note however that, as detailed in paragraphs 2.6 and 2.7, firmus has submitted an Additional Development Plan which includes the Electoral Ward of Dunluce. If the UR approves this Additional Development Plan, the Electoral Ward of Dunluce will become an Additional Development Area for firmus; and firmus will therefore have conveyance exclusivity within this Electoral Ward.

- 3.6 PNGL asked that if the Electoral Ward of Dunluce is no longer subject to exclusivity, what process have UR followed given that firmus is proposing to construct the pipeline infrastructure necessary to bring gas to the Old Bushmills Distillery through the Electoral Ward of Dunluce. UR confirms that it is following the statutory procedure as outlined in Article 8 of the Gas (NI) Order 1996, and in accordance with the firmus licence. As explained in paragraph 3.5, firmus has submitted an Additional Development Plan for the Electoral Ward of Dunluce which, if approved would mean that this Electoral Ward will become an Additional Development Area for firmus.
- 3.7 In their response, PNGL noted that the Electoral Wards of Bushmills and Ballylough do not currently fall within either column of the licence and are therefore not within either the PNGL or the firmus Licensed Areas. PNGL asked for confirmation that firmus is not seeking exclusivity for the Electoral Wards of Bushmills and Ballylough as part of the proposed licence extension. The UR can confirm that this is correct. However firmus has submitted Additional Development Plans for Bushmills, Ballylough, Dunluce, Slemish and Ringsend Electoral Wards. The firmus licence dictates that an Additional Development Plan is a plan in respect of an Additional Development Area, defining the Additional Development Area by reference to the boundaries of the Electoral Wards. Therefore, if the UR grants approval to firmus of these Additional Development Plans, requested in accordance with the firmus licence, the entire Electoral Ward will be granted with exclusivity. The UR will however reserve the right to remove exclusivity from parts of the Electoral Ward if required to allow another Network Operator to develop pipeline infrastructure to particular premises. The UR's approval of Additional Development Plans would be granted to firmus on this basis.

- 3.8 PNGL questioned whether the £1.5m investment to make gas available to the Old Bushmills Distillery, around 400 existing residential properties and a further 45 properties in Northern Ireland Housing Executive (NIHE) estates in the Bushmills area, and a number of small and medium-sized commercial entities would follow the firmus business model or the PNGL business model. The UR confirms that the extension is to the firmus licence and so the business model will follow the firmus licence.
- 3.9 PNGL then asked that if the UR decided the investment should follow the PNGL business model, would this signal UR's acceptance that the PNGL business model is more aligned with Northern Ireland energy policy, and also that the PNGL business model would be applied to all future licence extensions where entire Electoral Wards are granted. PNGL also asked whether this would mean that the PNGL business model will be rolled out across the firmus Licensed Area. As explained previously, the business model applied to any extension will depend on the licence to which the extension will apply, and the UR will take account of the applicant and its existing licence when making a decision on whether the model in the specific circumstances will be efficient and economic
- 3.10 PNGL's response also asked that if the investment is to follow the firmus business model and only those adjacent to the Old Bushmills Distillery pipeline will benefit; why did UR made the decision to propose awarding firmus the entire Electoral Wards rather than to extend the firmus Licensed Area to include the route of the pipeline as per the PNGL licence extensions to the McQuillan and Temple Quarries and the Cranmore Pet Crematorium. The UR confirms that this approach is consistent with the firmus licence, as explained in paragraph 3.7 of this paper.
- 3.11 PNGL questioned whether the UR would place an obligation on firmus to make gas available to the existing 400 residential properties. PNGL noted that if there was no obligation, then the claim of an additional £1.5m investment by firmus is misleading as this can only be realised if the outputs upon which the investment is based are achieved. The UR confirms that firmus will be required to add its target connections in these new areas to its cumulative development targets, against which it is required to report to us in an Annual Development Plan.
- 3.12 PNGL asked if the investment will bring the benefits of natural gas to consumers within the Electoral Wards of Dunluce, Bushmills and Ballylough. They also asked the UR to confirm when the benefits of the £1.5m investment will be fully realised, and asked if firmus would be incentivised to deliver this investment as quickly as

possible. The UR confirms that this investment will bring the benefits of natural gas to consumers. The UR considers that firmus is incentivised to deliver this investment quickly as the UR will allow approved allowances in the year when gas flow commences, therefore the benefits of the investment should be realised quickly.

- 3.13 PNGL asked UR to confirm that the £1.5m investment is economic and to confirm what rate(s) of return had been determined for the investment and over what period; as well as what distribution charges were assumed for the investment. The UR can confirm that analysis has been undertaken and that the investment is economic. The rate of return will be as per the firmus licence. The UR has considered a separate rate of return but given the immaturity of gas developments in the firmus area (at only seven years old), and the volume risk the company bears, we have decided not to offer a separate, lower rate of return. However PNGL raises a good point and this is something we will actively consider in all future licence extensions. The distribution charges are as per the charges currently resulting from the firmus licence.
- 3.14 PNGL states in their response that it could be interpreted as misleading for the UR to suggest that an additional £6.5m (on top of the £1.5m) is being invested by firmus. PNGL argue that the £2.2m to extend the gas distribution network to connect to new industrial customers in Ballymena and Coleraine, and the £4.4m to facilitate new connections to NIHE properties is part of the original firmus business plan and does not signify any additional investment by firmus above that required to meet its licence requirements. The UR confirms that all the investment requested by firmus is additional for 2012 to what was allowed, and it will deliver real benefits of natural gas to consumers.

#### **4. UR Decision on Extension to Licensed Area**

- 4.1 The UR has reviewed firmus energy's submission for an extension to their current distribution licence to add Bushmills and Ballylough Electoral Wards in the Moyle District to the ten towns Development Area.
- 4.2 The UR has also carefully considered the responses which were received to the consultation as detailed in section 3 of this paper.
- 4.3 The UR has decided to grant approval of the extension to the firmus Licensed Area to include the Electoral Wards of Bushmills and Ballylough. We are satisfied that the proposed extension of the network to Bushmills and Ballylough Electoral Wards is economic and will bring benefits to customers in the additional areas.

- 4.4 A Notice under Article 8(6) of the Gas (Northern Ireland) Order 1996 as amended has been published on the UR website giving notice that the Electoral Wards of Bushmills and Ballylough will be included within the firmus Licensed Area with effect from the date on the Notice. The amendments to the firmus Licence in respect to the extension are appended to the Notice.

## **5. Additional Development Plans**

- 5.1 As explained in paragraph 2.5 of this paper, the UR's decision on the approval of the Additional Development Plans submitted by firmus does not form part of the consultation, however to ensure transparency we have set out our minded to position below.
- 5.2 The UR has reviewed the Additional Development Plans submitted by firmus requesting that the Bushmills, Ballylough, Dunluce, Slemish and Ringsend Electoral Wards become Additional Development Areas.
- 5.2 The UR can confirm that we are minded to grant approval of these Additional Development Plans as we consider the proposed connections to be economic. If approval is granted, the following Electoral Wards will become Additional Development Areas where firmus will hold exclusivity.
- Bushmills Electoral Ward in Moyle District
  - Ballylough Electoral Ward in Moyle District
  - Dunluce Electoral Ward in Coleraine District
  - Ringsend Electoral Ward in Coleraine District
  - Slemish Electoral Ward in Ballymena District
- 5.3 However this exclusivity will be subject to adjustment in the future if we believe it would be consistent with our statutory duties to make amendments to allow other distribution companies to convey gas in the above Electoral Wards. For example this may be appropriate in another geographical area of the Ward where firmus do not convey gas. For the avoidance of doubt, exclusivity is also subject to the limitations set out in condition 2.1 (a) of Schedule 3 of the firmus licence.