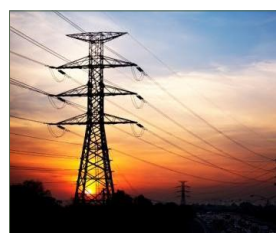


GNI (UK) licence modifications to implement the full ownership unbundled model

Decision Paper

12 February 2016



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This paper sets out the final decision on licence modifications required to implement GNI (UK) certification under the full ownership unbundled model. This follows a consultation paper published on 09 December 2015.

The changes will be made to the GNI (UK) licence and notified in writing to the licence holder. The modifications reflect the changes proposed in the consultation document.

Audience

GNI (UK), Mutual Energy, other regulated companies and key stakeholders.

Consumer Impact

The licence changes are necessary to implement the Third Gas Directive. There is unlikely to be much impact on consumers as a result of these changes. Compliance with the legislation does however avoid undue discrimination. This ensures that the market is operating in a fair and efficient manner.

Decision on licence changes for GNI (UK)

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Acronyms and Definitions

Term	Description
ACER	Agency for the Co-operation of Energy Regulators.
BGE	Bord Gáis Eireann.
BGE (UK)	Transmission company now know as GNI (UK).
BGTL	Belfast Gas Transmission Limited.
CER	Commission for Energy Regulation – regulatory authority in the Republic of Ireland.
EC	European Commission.
Ervia	A statutory company formerly known as Bord Gáis Eireann.
FOU	Full Ownership Unbundling.
GNI	Gas Networks Ireland.
GNI (UK)	Gas transmission company formerly known as BGE (UK).
IOM	Isle of Mann.
ISO	Independent System Operator.
ITO	Independent Transmission Operator.
MCENR	Minister for Communications Energy and Natural Resources.
MSM	Majority Shareholding Minister.
NI	Northern Ireland
NIAUR	Northern Ireland Authority for Utility Regulation – also know as the Utility Regulator (UR).
NIEH	Northern Ireland Energy Holdings
NWP	North West Pipeline.
PTL	Premier Transmission Limited.
RoI	Republic of Ireland.
RPoS	Relevant Producer or Suppliers.
SNP	South-North Pipeline.
TSO	Transmission System Operator.
UR	Utility Regulator.
WwTW	Wastewater Treatment Works.

1.0 Introduction

1.1. Purpose of this document

- 1.1.1 This paper sets out the UR final decision on modifications to the GNI (UK) licence necessary to give effect to the unbundling provisions of *Directive 2009/73/EC* (the Gas Directive).
- 1.1.2 GNI (UK) has applied for certification as a FOU entity. In 2013 we considered the licence conditions necessary to implement the FOU model as part of the certification process for PTL and BGTL. The majority of licence changes mirror those previously made to the PTL and BGTL licences.
- 1.1.3 This paper explains the UR decisions and effect of these changes. We are also taking this opportunity to make some other minor changes to the GNI (UK) licence. These are simple updates or corrections.
- 1.1.4 No responses to the consultation were received.

1.2. Certification process

- 1.2.1 A preliminary decision was made by the UR in December 2015.¹ The conclusion was that GNI (UK) passed the tests as set out in the *Gas (NI) Order 1996*. This was followed by a consultation on the proposed FOU licence modifications.²
- 1.2.2 The European Commission (EC) issued their opinion on the preliminary decision to the UR on 04 February 2016. This will be published on their website in due course. Their general conclusions were as follows:
 - a) Ervia's ownership of Irish Water and their subsequent WwTW electricity generation should not act as a barrier to certification.
 - b) Ownership of Greener Ideas is allowable as they are not a relevant producer. However, should they ever become an active generator; this would be grounds for reopening certification.
 - c) Contracting of services is compliant as long as GNI (UK) remains ultimately responsible for the tasks in question.
 - d) The EC agrees with the licence condition requiring the company to notify the UR of any changes which might affect certification.
- 1.2.3 A query was raised around public ownership and the independence of the Majority Shareholding Minister (MSM). The UR intends to address this issue prior to making a final decision.

¹ http://www.uregni.gov.uk/news/preliminary_decision_on_gniuk_certification

² http://www.uregni.gov.uk/news/gni_uk_licence_modifications

- 1.2.4 However, this issue does not affect or require any further changes to the GNI (UK) licence. The UR is therefore progressing with the FOU licence modifications as proposed in the consultation.

2.0 FOU Required Conditions

2.1. Introduction

- 2.1.1 This section of the paper outlines the licence changes to implement the FOU model. The changes are generic to gas transmission licences in Northern Ireland.
- 2.1.2 Each modification is accompanied by the following details:
- a) Change and effect;
 - b) Responses and decision
 - c) Final text

2.2. Condition 1.5 - Information

Change and effect

- 2.2.1 The changes to condition 1.5 will ensure that all protected information that a licensee holds is subject to the requirements of the condition. Previously, only information which the licensee 'receives' was so subject.
- 2.2.2 A new section has been added (1.5.1(e)) to help define what can be construed as an unfair advantage. This section provides exclusions for information obtained independently from the TSO by a separate business.
- 2.2.3 We have also revised the definition of 'protected information' for clarity.

Responses and decision

- 2.2.4 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

Condition 1.5: Restriction on Use and Disclosure of Certain Information

1.5.1 Use of protected information

Where the Licensee or any affiliate or related undertaking of the Licensee ~~receives-holds~~ protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:

- (a) that the Licensee shall not obtain any unfair commercial advantage from its possession of protected information with respect to any Separate Business;
- (b) that protected information is not used by any other person for the purpose of obtaining for that person:

- (i) any unfair commercial advantage from its possession of protected information;
 - (ii) any Licence;
 - (iii) any exemption;
 - (iv) control of any body corporate which, directly or indirectly, has the benefit of any such Licence or exemption; and
- (c) that protected information is not disclosed except with the prior consent in writing of the relevant person whose affairs the protected information relates to;

provided that the obligation on the Licensee:

- (d) ~~(d)~~ to procure the above in relation to an affiliate or related undertaking which has control of the Licensee (control being defined by Section ~~446~~ 450 (as read in conjunction with section 451) of the ~~Income and Corporation Taxes Act 1988~~ 2010), shall be to do so by using reasonable endeavours and obtaining an appropriate contractual undertaking from that affiliate or related undertaking in respect of such protected information; ~~and~~;
- (e) not to obtain any unfair commercial advantage from its possession of protected information under Condition 1.5.1 (a) shall be construed to exclude any protected information that is (i) received by any Separate Business undertaking activities not connected with the conveyance of gas, and (ii) received by that Separate Business independently of any Separate Business undertaking activities connected with the conveyance of gas.

1.5.4 Additional definition

In this Condition the following term shall have the meaning ascribed to it below:

"protected information" means any commercially confidential information which:

(a) relates to the affairs of a person; ~~and~~

(b) has been furnished to, or otherwise acquired by, the Licensee or by who is not any affiliate or related undertaking of the Licensee holding a Licence or exemption to convey, store or supply gas or any affiliate or related undertaking of that person which has been furnished to or otherwise acquired by the Licensee under or pursuant to or in the course of any dealings with that person or any affiliate or related undertaking of his.

other than information which is in, or comes into, the public domain other than as a result of breach by the Licensee of this Condition or of any Conditions of the Licence.

2.3. Condition 2.4 – Network Code

Change and effect

- 2.3.1 The Gas Directive allows member states to designate companies as TSOs if they pass the certification tests. This is done under Article 8H of the Order. We are making a minor change to include a reference to this article.

Responses and decision

- 2.3.2 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

2.4.2 The Network Code

The Licensee shall:

- (a) prepare and provide to the Authority for its approval a "Network Code", that is to say a document setting out the arrangements established under Condition 2.4.1 and the terms on which it will enter into such arrangements with Users for the conveyance of gas no later than three months prior to the first operational commencement date on which it will enter into such arrangements with Users for the conveyance of gas;
- (b) where pursuant to ~~Condition 2.14.1~~ Article 8H of the Order the Licensee is designated as a transmission system operator, ensure that the Network Code contains provisions that establish:

2.4. Condition 2.6 – Conduct of Transport Business

Change and effect

- 2.4.1 The changes extend the provision to ensure the licensee will not disclose information to the benefit of affiliates. This also reflects the wording used in the other NI TSO licences.

Responses and decision

- 2.4.2 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

Condition 2.6: Conduct of Transportation Business

2.6.2 Disclosure of information

The Licensee shall:

(a) use its best endeavours to secure that any information relating to or derived from its Licensed Business is not disclosed for the benefit, or used for the purposes, of:

(i) any trading business, affiliate or (so far as the Licensee can require it) related undertaking of the Licensee;

(ii) any company of which the Licensee is an affiliate or related undertaking; and

(b) subject to paragraph (a) above, not show any undue discrimination against, or undue preference towards, any person or class of person, in disclosing any information relating to its Licensed Business which may be commercially advantageous to any other person.

~~(a) use its best endeavours to secure that any (c)where, pursuant to Condition 2.14.2 the Licensee is designated as a distribution system operator, ensure that the Network Code contains provisions that establish:~~

~~(i) the measures that the Licensee will put in place for the balancing of the Network company of which the Licensee is an affiliate or related undertaking; and~~

~~(b) subject to paragraph (a) above, not show any undue discrimination against, or undue preference towards, any person or class of person, in disclosing any information relating to its Licensed Business which may be commercially advantageous to any other person.~~

2.5. Condition 2.12 – Independence

Change and effect

2.5.1 In its previous form, the licence provided for the separation of business from an affiliate supply company. Under the FOU model, the TSO cannot carry out such activities itself nor have an affiliate involved in energy supply.

2.5.2 We are making a number of changes including:

- a) Delete first paragraph which refers to, “carrying on the activities of a Gas Supply Business”.
- b) Ensure the TSO continues to meet the ownership requirements of Article 8G of the Gas Order.

- c) Introduce new restrictions on the movement of staff from the licensee to any related energy business.
- d) Obtain an undertaking from the licensee's holding company. This would require the holding company to ensure that it (or its' subsidiaries) will refrain from any action that would cause the licensee to be in breach of this condition.

2.5.3 The changes will help ensure that the FOU requirements continue to be met.

Responses and decision

2.5.4 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

2.12.1 Independence

The Licensee shall:

- (a) unless it has already done so prior to this Condition coming into force, establish; and
- (b) at all times thereafter maintain,

the full legal, managerial and operational independence of the Authorised Business from any Energy Business.

2.12.2 Means of achieving such independence

In order to facilitate its compliance with Condition 2.12.1, the Licensee shall ensure that:

- (a) the Authorised Business is provided with such premises, systems, equipment, facilities, property, personnel, data and management resources as are necessary for its efficient and effective legal, managerial and operational independence;
- (b) it meets the ownership unbundling requirement referred to in Article 8G of the Order by virtue of satisfying, at all times, each of the five tests set out in Articles 8G(2), 8G(4), 8G(6), 8G(12) and 8G(13) of the Order;
- (c) subject to any financial supervisory rights of a Holding Company of the Licensee as provided for in the Licensee's financial plan, commercial and operational decisions relating to the operation, maintenance and development of the Licensee's Network are taken only by those persons who are employed by, and are engaged in the operation and management of, the Authorised Business;
- (d) any Energy Business may not use or have access to:
 - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Authorised Business;

- (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Authorised Business also have access;
 - (iii) commercially sensitive or confidential information relating to, or derived from, the Authorised Business;
 - (iv) equipment, facilities or property employed for the management or operation of the Authorised Business; or
 - (v) the services of any persons who are (whether or not as their principal occupation) engaged in the management or operation of the Authorised Business;
- (e) where, in order to comply with this Condition any Energy Business ceases to be an affiliate or related undertaking of the Licensee, the employment of any employee of the Licensee is not transferred to that Energy Business by virtue of the arrangements under which the Energy Business ceases to be an affiliate or related undertaking of the Licensee; and
- (f) in so far as it is legally possible for it to do so, it prevents any person who has ceased to be employed by, or engaged in the activities of, the Authorised Business from being employed by, or engaged in the activities of, any Related Energy Business until the expiry of an appropriate time from the date on which they ceased to be engaged or employed by the Authorised Business.

2.12.3 Undertaking

The Licensee shall procure from the person that is the Ultimate Holding Company of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, that the Ultimate Holding Company will refrain from any action, and will procure that every subsidiary of the Ultimate Holding Company (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of this Condition. Such undertaking shall be obtained within 7 days after the date when this paragraph first becomes effective, or after the person in question becomes an Ultimate Holding Company (as the case may be) and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an Ultimate Holding Company of the Licensee.

2.12.4 Additional Definitions

In this Condition:

“Authorised Business”

means the Licensed Business, taken together with (if applicable) where the Licensee has so notified the Department and the Authority, any business of the Licensee (or of any affiliate or related undertaking

	<u>of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(a) of the Order or with section 5(1)(a) of the Gas Act;</u>
<u>“Energy Business”</u>	<u>means any business (other than the Authorised Business) that is involved in the generation or supply of electricity or in the production, purchase or supply of gas;</u>
<u>“Gas Act”</u>	<u>means the Gas Act 1986, as amended from time to time;</u>
<u>“Holding Company”</u>	<u>has the meaning given to it in section 1159 of the Companies Act 2006;</u>
<u>“Related Energy Business”</u>	<u>means any Energy Business which was an affiliate or related undertaking of the Licensee at any given time in the six months prior to the date the person ceased to be engaged or employed by the Authorised Business; and</u>
<u>“Ultimate Holding Company”</u>	<u>means any person which is a Holding Company of the Licensee, and which is not itself a subsidiary of another company.</u>

2.12.1 Application

~~— This Condition shall apply where the Licensee (or any affiliate or related undertaking of the Licensee) is at any time carrying on the activities of a Gas Supply Business.~~

2.12.2 Managerial and operational independence

~~— Where this Condition applies the Licensee shall:~~

~~(a) — unless it has already done so prior to this Condition coming into force, establish; and~~

~~(b) — at all times thereafter maintain,~~

~~the full managerial and operational independence of the Authorised Business from any Associated Business.~~

2.12.3 Means of achieving such independence

~~In order to facilitate its compliance with Condition 2.12.2, the Licensee shall use all reasonable endeavours to ensure that:~~

- ~~(a) — the Authorised Business is provided with such premises, systems, equipment, facilities, property, personnel, data and management resources as are necessary for its efficient and effective managerial and operational independence;~~
- ~~(b) — it does not hold or acquire shares in any Gas Supply Business that does not form part of the Authorised Business or in any Holding Company of any such Gas Supply Business;~~
- ~~(c) — subject to any financial supervisory rights of a Holding Company of the Licensee as provided for in the Licensee's financial plan, commercial and operational decisions relating to the operation, maintenance and development of the Licensee's Network are taken only by those persons who are employed by, and are engaged in the operation and management of, the Authorised Business;~~
- ~~(d) — any Associated Business may not use or have access to:

 - ~~(i) — premises or parts of premises occupied by persons engaged in the management or operation of the Authorised Business;~~
 - ~~(ii) — systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Authorised Business also have access;~~
 - ~~(iii) — commercially sensitive or confidential information relating to, or derived from, the Authorised Business;~~
 - ~~(iv) — equipment, facilities or property employed for the management or operation of the Authorised Business; or~~
 - ~~(v) — the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Authorised Business; and~~~~
- ~~(e) — it can and does, insofar as is legally possible:

 - ~~(i) — ensure that any director of the Licensee is not at the same time also a director of a company which carries on a Gas Supply Business that does not form part of the Authorised Business; and~~
 - ~~(ii) — prevent any person who has ceased to be engaged in the management or operation of the Authorised Business from being employed by, or engaged in the activities of, any Associated Business until the expiry of an appropriate time from the date on which he ceased to be engaged by the Authorised Business.~~~~

2.12.4 Additional Definitions

~~In this Condition:-~~

~~“Act” means the Gas Act 1986, as amended from time to time;~~

~~“Associated Business” means any business, other than the Authorised Business, of the Licensee (or of any affiliate or related undertaking of the Licensee) which is carrying out any activity that requires authorisation in accordance with either Article 6(1) of the Order or section 5(1) of the Act or which is involved in the production or purchase of gas;~~

~~“Authorised Business” means the Licensed Business, taken together with (if applicable) either:-~~

~~(a) where the Licensee has so notified the Department and the Authority, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(a) of the Order or with section 5(1)(a) of the Act, except that the Licensee may not give such notification where the Department or the Authority (as the case may be) has given an approval under paragraph (b) below; or~~

~~(b) where the Department or the Authority (as the case may be) has given it approval, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(c) of the Order or with section 5(1)(b) of the Act;~~

~~“Gas Supply Business” means any business carrying out activities that require authorisation in accordance with Article 6(1)(c) of the Order or section 5(1)(b) of the Act; and~~

~~“Holding Company” has the meaning given to it in Article 4 of The Companies (Northern Ireland) Order 1986.~~

2.6. Condition 2.13 – Business Separation Compliance Plan

Change and effect

- 2.6.1 Existing condition 2.13 reflects the unbundling requirements of the previous Gas Directive. The compliance plan was designed to detail how the licensee could ensure separation from the supply business.
- 2.6.2 Under the new certification, the licensee cannot exercise control over a supply firm. Rather the licensee must, at all times, meet the tests for FOU unbundling. This condition will be removed from the licence under these proposals.

Responses and decision

- 2.6.3 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

Condition 2.13: Business Separation Compliance Plan

Condition not used

2.13.1 Application

~~This Condition shall apply where Condition 2.12 applies to the Licensee.~~

2.13.2 Submittal of plan

~~The Licensee shall, no later than 28 days after Condition 2.12 first applies to the Licensee, prepare and submit to the Authority (for its approval) a compliance plan (the "Compliance Plan") setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with Condition 2.12.~~

2.13.3 Complying with Compliance Plan

~~The Licensee shall use its best endeavours to comply with the Compliance Plan as approved by the Authority and revised from time to time in accordance with this Condition 2.13.~~

2.13.4 Authority's role

~~The Authority may:-~~

~~(a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; or~~

~~(b) following any review of the Compliance Plan that the Authority may conduct from time to time, serve notice on the Licensee:~~

~~(c) informing the Licensee that, in the Authority's opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with Condition 2.12; and~~

~~(d) requiring the Licensee to make such revisions to the Compliance Plan as, in the Authority's opinion, are necessary or expedient in order for the Compliance Plan to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with Condition 2.12.~~

2.13.5 Revision of Compliance Plan

~~Where the Licensee receives a notification in accordance with Condition 2.13.4, it shall, within 30 days, revise the Compliance Plan, in such manner and to such extent that will reflect the Authority's requirements and ensure that it is sufficient for the purposes of ensuring the Licensee's compliance with Condition 2.12.~~

2.13.6 Review of Compliance Plan

~~The Licensee shall, on at least an annual basis during the period in which Condition 2.12 is in force, review its Compliance Plan so as to ensure:~~

~~(a) its continued compliance with its obligations under Condition 2.12; and~~

~~(b) that the information set out therein shall continue to be accurate in all material respects.~~

2.13.7 Authority approval

~~Where the Licensee revises its Compliance Plan, either in accordance with Condition 2.13.5 or following a review conducted by it in accordance with Condition 2.13.6, it shall submit the revised Compliance Plan to the Authority for its approval.~~

2.13.8 Facilitating compliance with the Compliance Plan

~~The Licensee shall ensure that persons engaged in the management and operation of the Licensed Business:~~

- ~~(a) are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan;~~
- ~~(b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and~~
- ~~(c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.~~

2.13.9 Compliance Manager

~~The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Licensed Business as a compliance manager (the "Compliance Manager") for the purpose of facilitating compliance with its obligations under Condition 2.12 and with its Compliance Plan.~~

2.13.10 Assisting the Compliance Manager

~~The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.~~

2.13.11 Duties of the Compliance Manager

~~The duties and tasks assigned to the Compliance Manager shall include:~~

- ~~(a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with Condition 2.12 and with the Compliance Plan;~~
- ~~(b) monitoring the effectiveness of, and the Licensee's compliance with, the Compliance Plan;~~
- ~~(c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of Condition 2.12 or in relation to the Compliance Plan;~~
- ~~(d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where~~

~~necessary revising the Compliance Plan to reflect such recommendation and advice; and~~

~~(e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress implementation of the Compliance Plan.~~

2.13.12 Report of Compliance Manager

~~The Licensee shall, at such frequency as is determined in writing by the Authority but no less than twice every twelve months submit a report to the Authority:~~

~~(a) detailing the activities of the Compliance Manager during the period covered by the report;~~

~~(b) providing a progress update on the Licensee's implementation of the Compliance Plan;~~

~~(c) setting out the details of any investigations conducted by the Compliance Manager, including:~~

~~(i) the number, type and source of the complaint or representation on which such investigations were based;~~

~~(ii) the outcome of such investigations; and~~

~~(iii) any remedial action taken by the Licensee following such investigations.~~

2.7. Condition 2.14 – TSO Designation

Change and effect

2.7.1 This condition is entirely replaced. The new condition reflects the requirements of the FOU model. The revised wording includes a number of changes such as:

- a) Licensee will act as the TSO, as per Article 13 of the Directive.
- b) New terms around sub-contracting and the protection of confidential information by third parties.
- c) Duty on licensee to try to ensure certification grounds continue to apply.
- d) Obligation on licensee to inform the UR in writing of any changes in "control" of the licensed company.
- e) TSO to inform the UR in writing of any change in circumstance which might affect certification
- f) Clarification of the meaning of "control".

Responses and decision

- 2.7.2 No response was received. Our decision is to change the condition in line with the consultation document.

Final text

Condition 2.14 Transmission System Operator Designation

2.14.1. Transmission system owner and operator

The Licensee shall at all times, while it is the owner of the Network also act as the operator of the Network and shall be responsible for ensuring compliance with all the statutory and regulatory obligations which apply to the conveyance of gas through, and the operation, maintenance and development of, the Network.

2.14.2. Sub-Contracting - General

Subject to paragraph 2.14.3, the requirement in paragraph 2.14.1 shall not prevent the Licensee from making contractual arrangements under which a third party carries out any of the activities of conveying gas through any part of the Network or has contractual responsibility for operating, maintaining, and developing any part of the Network in accordance with the instructions of the Licensee.

2.14.3. Sub-Contracting – Terms and Conditions

Where the Licensee makes contractual arrangements under which a third party carries out any of the activities of conveying gas through any part of the Network or has contractual responsibility for operating, maintaining and developing any part of the Network in accordance with the instructions of the Licensee, the Licensee shall ensure that the contractual arrangements contain such terms and conditions which ensure:

- (a) that any information relating to the Licensee or the Licensed Business which is provided by the Licensee to, or otherwise obtained by, the third party is:
 - (i) kept confidential and secure such that it is not disclosed to any other person; and
 - (ii) not used by that third party for any purpose other than for the purpose of fulfilling the contractual arrangements; and
- (b) that the third party does not:
 - (i) prevent (whether by act or omission) the Licensee from complying with the Directive or its certification as a transmission system operator; or
 - (ii) cause (whether by act or omission) the Licensee to contravene the Directive or its certification as a transmission system operator.

2.14.4 Certification

The Licensee shall, where it is, in accordance with Article 3 of the Gas Regulation, certified by the Authority as a transmission system operator:

- (a) use all reasonable endeavours to ensure that the certification ground on which the Licensee is certified continues to apply;
- (b) as soon as practicable after it becomes aware of it, give notice (in writing) to the Authority of:
 - (i) any proposed or actual change in control of the Licensee;
 - (ii) any event, change in circumstance, or transaction undertaken (or proposed to be undertaken) by the Licensee or any affiliate or related undertaking of the Licensee, which:
 - (A) affects, or is likely to affect, the Licensee being certified as a transmission system operator on the certification ground on which it is certified; or
 - (B) requires, or is likely to require, a reassessment by the Authority of whether the certification ground on which it is certified continues to apply in respect of the Licensee.

2.14.5. Meaning of Control

For the purposes of Condition 2.14.4 there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee at the date that the Authority last certified, in accordance with Article 3 of the Gas Regulation, the Licensee as a transmission system operator; and sub-sections (2), (3) and (4) of Section 450 of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the greater part" wherever they occur in said sub-section (3) there shall be substituted the words "one-third or more".

2.14.6 Definitions

In this Condition "certification ground" has the meaning given to it in Article 8L of the Order.

~~2.14.1 Transmission system operator~~

~~The Licensee is (for the purposes of Article 7 of Directive 2003/55/EC) hereby designated as transmission system operator for the Network.~~

~~2.14.2 Distribution system operator~~

Not used

~~2.14.3 Definition~~

In this Condition 2.14:

~~“Directive-
2003/55/EC”~~

~~means Directive 2003/55/EC of the
European Parliament and of the Council
concerning common rules for the internal
market in natural gas.~~

3.0 Other Licence Changes

3.1. Other Changes

Change and effect

3.1.1 The UR has taken the opportunity to update other elements of the licence by way of a 'tidy-up'. These changes are simple legislative updates, revised names or correction of errors.

3.1.2 Changes include the following:

- a) Name of regulator – changed from NI Authority for Energy Regulation to NI Authority for Utility Regulation.
- b) Change of UR address – from 42 Fountain Street to 14 Queen Street.
- c) Change of TSO name in RoI – from Bord Gais Eireann to Gas Networks Ireland.
- d) Correction of disposal amount in Condition 1.12 – changed from £250,000 to £25,000.
- e) Updated legislative references:
 - Companies (Northern Ireland) Order 1986 changed to the Companies Act 2006.
 - Income and Corporation Taxes Act 1988 changed to the Corporation Tax Act 2010.

3.1.3 The alterations for GNI (UK) are shown below.

Responses and decision

3.1.4 No response was received. Our decision is to update the licence to make these minor corrections.

Final text

Condition 1.1: Interpretation and Construction

1.1.6 Definitions

"auditors"

means the Licensee's auditors for the time being holding office in accordance with the requirements of Chapter 2 of Part 16 of the Companies (Northern Ireland) Order 1986 Act 2006;

"authorisation of persons"	means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;
"Authority"	means the Northern Ireland Authority for Energy-Utility Regulation;
"company"	means a company within the meaning of Article-Section 1(1)3 of the Companies (Northern Ireland)-Order-1986-Act 2006 or any other body corporate;
"related undertaking"	means any undertaking in which any person has a participating interest <u>within the meaning of section 421A of the Financial Services and Markets Act 2000</u> as defined by Article 268 of the Companies (Northern Ireland) Order 1986;
"South North pipe-line"	means that section of the Licensee's transmission pipe-line running between the connection point on the North West pipe-line and the connection point on the Bord Gáis-Éireann <u>Gas Networks Ireland</u> transmission pipe-line system in the Republic of Ireland and inclusive of all gas plant;
"subsidiary"	has the same meaning as given to it in Article 4-1159 of the Companies (Northern Ireland) Order-1986Act 2006;

Condition 1.2: Separate Accounts for Separate Business

1.2.2 Separate Business Accounting

This Condition applies for the purposes of ensuring that the Licensee (in conjunction with any affiliate or related undertaking of the Licensee) maintains internal accounting and reporting arrangements which enable:

- (a) separate financial statements to be prepared for each Separate Business and showing the financial affairs of each such Separate Business; and
- (b) facilitate the avoidance of discrimination, cross-subsidisation or distortion of competition between the Licensed Business and any other business of the Licensee.

In this regard the Licensee shall not be required to prepare such financial statements as if they were annual accounts (in relation to each Separate Business) prepared under section 394, 398 or 399 of the Companies Act 2006~~Article 236 of the Companies (Northern Ireland) Order 1986~~, but shall be required to prepare such accounts in accordance with this Condition.

1.2.8 Form of financial statements

Financial statements prepared for the purposes of this Condition shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

- (a) conform to UK generally accepted accounting principles and practices;
- (b) state the accounting policies adopted; and
- (c) be so prepared to a level of detail as may reasonably be required by the Authority and so that they may be reconciled with the published accounts of the Licensee under the Companies ~~(Northern Ireland) Order 1986~~Act 2006.

Condition 1.12: Disposal of Relevant Assets

1.12.3 Notice not required for minor disposals

The Licensee shall not be required to give the Authority any notice of its intention to dispose of or relinquish operational control of any relevant asset having a value of less than £25,000 in [December 2001] prices (such sum to be adjusted annually by reference to the retail price index), provided that:

- (a) the disposal of or relinquishing of operational control of such relevant asset would not materially affect the Licensee's ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities required by the Licence; and
- (b) the disposal or relinquishing of any such relevant assets does not exceed an aggregate value of £250,000 in [December 2001] prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

Condition 1.14: Notices**1.14.1 Notices**

All notices to be given under any Condition shall be in writing and shall be deemed to have been properly given if delivered in person or sent by registered mail or transmitted by facsimile to the relevant party at the address set out below or at such other address as that party may from time to time specify in writing to the others:

Licensee: BGE (UK) Ltd.

Gasworks Road

Cork

Republic of Ireland

Facsimile Telephone Number +353 21 453 4387

Authority: Northern Ireland Authority for ~~Energy~~Utility
Regulation,

~~Brookmount Buildings~~Queens House,

~~42 Fountain~~14 Queen Street,

Belfast, BT1 ~~5EE~~6ED

Facsimile Telephone Number (02890) 311740

Department: Department of Enterprise, Trade and Investment

Energy Division,

Netherleigh House,

Massey Avenue,

Belfast, BT4 2JP

Facsimile Telephone Number (02890) 529549]

SCHEDULE 2**Right of Authority to Revoke Licence****6. Additional definition**

For the purposes of paragraph 1(f) of this Schedule 2, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this Licence was granted; and section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010 and sub-sections (2) and (4) to (6) of Section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the greater part" wherever they occur in the said ~~sub~~-section (450~~2~~) there shall be substituted the words "one-third or more".

4.0 Conclusion

4.1. Next Steps

- 4.1.1 This paper represents the UR's final decision on licence changes for GNI (UK) certification. The revisions will take effect 56 days³ from the date of this publication.
- 4.1.2 The modifications will become effective on the 08 April 2016. A final decision on certification will be taken prior to the modifications coming into effect.

³ This figure is dependent upon no challenges to the modifications being made.