

**Decision published pursuant to Article
14(8) of the Gas (Northern Ireland)
Order 1996**

**Modifications Gas Conveyance Licence
of GNI (UK), Premier Transmission
Limited, Belfast Gas Transmission
Limited and Northern Ireland Energy
Holdings**

5th June 2017



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 Utility Regulator's decision to make modifications to the gas conveyance licences held by Premier Transmission Ltd, Belfast Gas Transmission Ltd, West Transmission Ltd and GNI (UK) Ltd. These modifications will, amongst other things, align the price control periods for all four licence holders, introduce the standard licence condition on Regulatory Instructions and Guidance (RIGs) already included in other conveyance licences and update the dis-application procedures in the GNI (UK) licence.

Audience

This decision is likely to be of interest to the licensee affected, other regulated companies in the energy industry, government and other statutory bodies and consumer groups with an interest in the energy industry.

Consumer Impact

These modifications will permit the Authority to gather cost and output data in a systematic way which will facilitate more effective decision making that will be of benefit to consumers in the short, medium and long term.

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DECISION PUBLISHED PURSUANT TO ARTICLE 14(8) OF THE GAS (NORTHERN IRELAND) ORDER 1996

In pursuance of its powers under Article 14(1) of the Gas (Northern Ireland) Order 1996 (as amended) (the "Gas Order") the Northern Ireland Authority for Utility Regulation (hereafter referred to as the Utility Regulator) hereby publishes in accordance with Article 14(8) its decision to proceed with the making of modifications to the various conditions of the gas conveyance licence granted to BGE (UK) Ltd on 12 February 2002, Premier Transmission Ltd on 1 January 1996, Belfast Gas Transmission Ltd on 25 January 2008 and Northern Ireland Energy Holdings on 11 February 2014 (the "Licences").

In accordance with Article 14(8) of the Gas Order:

1. Section 1 of this Decision Paper states the effect of the modifications.
2. Section 2 of this Decision Paper states how the Utility Regulator has taken account of any representations made to the notice published by it pursuant to Article 14(2) of the Gas Order, on 12 April 2017.
3. Section 2 of this Decision Paper also states the reasons for any differences between the modifications previously consulted on and the final text of the modifications set out in the Annexes to the Decision Paper.

The modifications shown in Annexes 1-4 to this Decision Paper shall have effect from 01 August 2017.

Dated this 5th June 2017.



Jenny Pyper
Chief Executive
For and on behalf of the Northern Ireland Authority for Utility Regulation

1. Introduction

- 1.1. The Utility Regulator's principal objective in carrying out the duties associated with its gas functions is to promote the development and maintenance of an efficient, economic and coordinated gas industry in Northern Ireland, and to do so consistently with the fulfillment of its objectives set out in the European Gas Directive¹, and by having regard to a number of matters, as set out more fully in the Energy (Northern Ireland) Order 2003.
- 1.2. In line with these duties this document sets out our decision to modify various conditions of the gas conveyance licence granted to BGE (UK) Ltd on 12 February 2002 (henceforth referred to as GNI (UK)), Premier Transmission Ltd on 1 January 1996 (henceforth referred to as PTL), Belfast Gas Transmission Ltd on 25 January 2008 (henceforth referred to as BGTL) and Northern Ireland Energy Holdings on 11 February 2014 (henceforth referred to as West Transmission Ltd) (the "Licences").
- 1.3. For the reasons set out in Section 2 of this Decision Paper we consider that the modifications set out in the notice published by the Utility Regulator pursuant to Article 14(2) of the Gas Order, on [12 April 2017](#) should be made with the additional drafting amendments as highlighted in Annexes 1-4. These additional drafting amendments do not impact on the effect of the modifications as set out below, and have been made to clarify, where necessary, the intention of the modifications previously consulted on.
- 1.4. The effect of the various modifications is as follows:
 - Introduce into the four licences the Regulatory Instructions and

¹ Directive 2009/73/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

Guidance condition that has already been introduced into the gas conveyance licenses held by the three gas distribution network owners;

- Align the Review Date of all four licence holders which will be every fifth year commencing on 1 October 2017;
- Introduce a requirement to forecast Uncontrollable Operating Expenditure into the licences held by Premier Transmission Limited, Belfast Gas Transmission Limited and West Transmission Limited;
- Align the timelines for the submission of cost data to the Authority across the four licences;
- Remove the inclusion of revenue from Virtual Reverse Flow and Oversubscription and Buy Back from the calculation of the Annual Required Revenue for Belfast Gas Transmission Limited and West Transmission Limited;
- Amend the definition of the First Operational Commencement Date in the West Transmission Limited licence;
- Create a separate condition within the GNI (UK) Licence for updated dis-application procedures which will permit GNI (UK) to challenge price control allowances at the Competition and Markets Authority; and
- Clarify the circumstances in which GNI (UK) can seek from the Authority a special operating expenditure forecast review.

1.5. These licence modifications have been developed alongside the GT17 price control process. The price control period for all four licence holders will commence on 1 October 2017 and end on 30th September 2022. None of the modifications made under this notice are required to implement the price control determination. Indeed, at the time of publication we have yet to reach a conclusion on the outcome of the price control review. Rather the objective is to align the process of conducting a price control review and ongoing cost reporting across the four licences. We will only give notice of

our Final Determination of allowances for the next price control period once these licence modifications become effective.

- 1.6. The various conditions modified in each licence are set out in the Table 1 below.

Table 1: Licence Modification Overview

	GNII (UK)	PTL	BGTL	WTL
Regulatory Instructions & Guidance	1.21*	1.21*	1.21*	1.21*
	2.2.4	3.1.6 (b)	3.1.6 (b)	4.7.2
		3.1.6 (c)	3.1.6 (c)	4.7.3
Alignment of Review Dates	2.2.4	3.1.6 (b)	3.1.6 (b)	4.1.2
		3.1.6 (f)*	3.1.6 (f)*	4.7.2
Forecast Uncontrollable Operating Expenditure		3.1.6 (b)	3.1.6 (b)	4.7.4
		3.1.6 (c)	3.1.6 (c)	4.7.2
		3.1.6 (e)*	3.1.6 (e)*	4.7.3
Timelines	2.2.4	3.1.6 (b)	3.1.6 (b)	4.7.2
VRF and OS Services Revenue			3.1.3	4.1.2
			3.1.4	4.4.2
			3.1.5	4.4.3
			3.1.6 (a)	4.7.7
First Operational Commencement Date				1.1.6
Dis-application of Licence Conditions	2.2.5			
	2.2.19			
	2.2.22*			
	2.2.Annex			
	A Part 5			
Special Operating Expenditure Forecast Review	2.2.4 (i)			

*New Condition

- 1.7. A notice under Article 14(2) of the Gas Order proposing the modifications and seeking comments from interested parties was published by the Utility Regulator on 12 April 2017. The consultation closed on 10 May 2017 and generated two responses from GNI (UK) and Mutual Energy.

1.8. In section 2 we consider each of the points made by respondents. The final text of the modified licence condition is also attached to this document in Annexes 1-4.

2. Consideration of Responses Received

- 2.1. As noted in section 1 we received two responses, from [GNI \(UK\)](#) and [Mutual Energy](#), to the statutory consultation notice published on 12 April 2017. We set out below the substantive issues raised by these respondents.
- 2.2. During the statutory consultation process we engaged with each licence holder on a bi-lateral basis. This engagement has resulted in minor additional drafting amendments to the modifications set out in the consultation document published on 12 April 2017. Those drafting amendments that have been made as a result of the consultation process have been specifically highlighted in Annexes 1-4. Where appropriate the reason for these drafting amendments is set out below.

GNI (UK) Condition 2.2.22 – Scope of Decisions Subject to Dis-application Procedures

- 2.3. The purpose of the new licence Condition 2.2.22 is to extend the licence holder's ability to challenge the decisions of the Authority. At present this ability is limited to decisions relating to the calculation of the Capital Revenue Requirement, Condition 2.2.5. Following the modification the setting of controllable operating expenditure allowances and the value of the components that make up the Rate of Return, cost of debt, cost of equity and gearing ratio, will fall within the scope of the dis-application process. This will allow the licence holder to challenge the central parameters of any price control determination by means of a referral to the Competition & markets Authority (CMA).

- 2.4. With regard to controllable operating expenditure the proposed modification permits the licence holder to dis-apply decisions relating to the setting of allowances at the time of the price control review i.e. those decisions made under Condition 2.2.4 (g) and (h). GNI (UK) stated that in their view this provision should be extended to decisions that may be required during the price control period i.e. decisions relating to a special operating expenditure forecast review or unforeseen operating expenditure, Conditions 2.2.4 (i) and (j) respectively.
- 2.5. In addition GNI (UK) indicated that they thought a number of other matters should be subject to dis-application, including Actual Uncontrollable Expenditure (Condition 2.2.4(k)), the rate of inflation (Annex A (paragraph 3)) and the corporation tax rate (Annex A (paragraph 2(d))).
- 2.6. With regard to Rate of Return GNI (UK) argued that the ability to dis-apply should be extended not only to the decisions regarding the value of individual components of the Rate of Return value, but also to the Rate of Return value itself. In particular they were of the view that it was not appropriate to remove Rate of Return from the list set out in Condition 2.2.5 (b).

Our Response

- 2.7. The introduction of the dis-application condition into the GNI (UK) licence will align the licence holder's opportunity to appeal price control decisions with those of other conveyance licence holders. While these licence holders may appeal a price control determination to the Competition & Markets Authority (CMA), they are not able to appeal decisions effecting

allowances taken during the price control period to the CMA. GNI (UK) has failed to provide any justification as to why they should have rights additional to those of other licence holders. In the absence of any such justification we do not see any valid reason to modify our original proposals.

- 2.8. Should GNI (UK) be permitted to appeal decisions taken during the price control period to the CMA then the level of cost risk an investor in GNI (UK) is exposed to relative to other licence holders would be altered. In which case the Rate of Return required might also change. We do not believe that at this stage in the price control process it would be appropriate to change one of the fundamental basis on which the Rate of Return received by GNI (UK) will be determined.
- 2.9. For these reasons we do not intend to modify the licence such that GNI (UK) could dis-apply decisions relating to either the special operating expenditure forecast review or unforeseen operating expenditure, Condition 2.2.4 (i) and (j) respectively.
- 2.10. In the case of the other items which GNI (UK) sought to have covered by dis-application we make one simple observation. The value of items such as Uncontrollable Operating Expenditure, inflation and corporation tax are matters of objective fact rather than subjective judgment. Extending the scope of the CMA's competence to such matters as these might therefore seem to represent a disproportionate extension of its competency.
- 2.11. With regard to the point raised about the overall Rate of Return as opposed to the value of the component parts used to calculate it we simply note that the formula by which these components are combined to derive the Rate of Return is set out in Annex A (paragraph 5). In effect the ability to challenge

the value of individual components, Condition 2.2.22 (a) (ii) is equivalent to the ability to challenge the Rate of Return. As a consequence removing Rate of Return from the list in 2.2.5 (b) does not impact on the rights of GNI (UK) to challenge our decisions with regard to this value.

GNI (UK) Condition 2.2.22 – Dis-application Process

- 2.12. GNI (UK) pointed out that while Condition 2.2.4 and 2.2.5 provide that 28 days notice of a decision will be given, during which time the licence holder may make representations this is not the case with regard to decisions relating to Annex A Part 5. GNI (UK) stated that the same requirement for a 28 day notice period should apply to all decisions.
- 2.13. With regard to Condition 2.2.22 (d) GNI (UK) stated that they do not believe it to be necessary or appropriate to make provision in the licence for how the CMA will substitute its decision for that of the Utility Regulator. GNI (UK) also stated that any revision following a CMA decision should be given effect through the statutory licence modification process.
- 2.14. GNI (UK) also raised specific issues with regard to the drafting of condition 2.2.22.
- 2.15. As currently drafted there is nothing to ensure that the subject of the licence modification following a dis-application is identical to the subject of the Formula Amendment that has been dis-applied.
- 2.16. The proposed drafting of 2.2.22 (d) refers only to Formula Amendments, which will have been dis-applied, rather than the subsequent licence

modifications. GNI (UK) consider that it should rather refer to the subject of the licence modifications otherwise the licence does not actually provide recourse to the CMA.

Our Response

- 2.17. With regard to the issue of a 28 day notice period for Annex A Part 5 we see merit in having the licence drafted in a way that is internally consistent. We have therefore added some additional drafting at part (d) for consistency purposes.
- 2.18. With regard to the process of how any CMA decision will be given effect, these provisions are not changed from the current dis-application provisions. The purpose of these modifications is simply to extend the current dis-application provisions to Controllable Operating Expenditure and Rate of Return. There is no need to remove these existing provisions as they work as intended. They are also consistent with those set out in other licences. For these reasons, we are not minded to change the proposed modification.
- 2.19. With regard to the issues raised by GNI (UK) about the drafting of Condition 2.2.22, we have reviewed the proposed drafting and are content that the current provisions work as intended. However we have amended our proposed drafting in the case of Condition 2.2.22 (d) (i) (C) such that the original Formula Amendments, and consequential recalculations should apply in the period from the Review Date (as opposed to the date of the dis-application notice as was the case with the drafting set out in the consultation) until the date of the licence modification becomes effective.

GNI (UK) – Allowed Revenue Post Revenue Recovery Period Dis-application

- 2.20. The new dis-application condition in the GNI (UK) licence relates only to decisions made during the Revenue Recovery Period. That is the 25 year period following the First Operational Commencement Date during which the capital invested in a particular pipeline is recovered. The first Revenue Recovery Period, that relating to the North West pipeline, will end on 30 September 2029, while the final Revenue Recovery Period ends on 30 September 2036. Post this period allowances will be set by the Utility Regulator in accordance with Condition 2.2.8 (c) (ii) which is not subject to dis-application.
- 2.21. GNI (UK) proposes that the dis-application mechanism should apply to decisions made after the Revenue Recovery Period under Condition 2.2.8 (c) (ii).

Our Response

- 2.22. We have no objection to this proposal in principle as it would mirror the arrangements set out in the other three licences which are the subject of this decision. However, we consider that the proposal relates to issues outside the scope of the current process and so would require a separate statutory consultation before any licence modification would be made.
- 2.23. The issue of setting allowances after the Revenue Recovery Period is a significant matter requiring due consideration. We therefore intend to address the issue more fully at the next price control review.

GNI (UK) – Condition 2.2.19 Definitions and 2.2.4 Allowed Operating Expenditure

- 2.24. GNI (UK) questioned the need for our proposed definitions, Condition 2.2.19, of Allowed Controllable Operating Expenditure and Actual Controllable Operating Expenditure on the grounds that these were already within the scope of defined terms in the licence.
- 2.25. GNI (UK) questioned the drafting in Condition 2.2.4 (g) and (h). ‘commencing on the next Review Date’ and ‘until the next Review Date’ on the grounds that it was unnecessary and potentially erroneous as only one gas year either begins or ends at any particular Review Date.

Our Response

- 2.26. We have reviewed the relevant definitions that are currently included in the licence and have concluded that in the modification of Condition 2.2.19, to include new definitions of Allowed Controllable Operating Expenditure and Actual Controllable Operating Expenditure is not required.
- 2.27. We have reviewed the drafting of Condition 2.2.4 (g) and (h) and are content that removing the drafting highlighted by GNI (UK) will bring greater clarity to the licence.

Mutual Energy – Clarifications Sought

- 2.28. In their response Mutual Energy raised a number of issues regarding the drafting set out in the consultation of 12 April 2017.

- 2.29. Firstly, with regard to the West Transmission licence, in paragraph 7.3 of the consultation we stated that, prior to the First Operational Commencement Date the Rate of Return the licence holder receives on their investment is limited to a rate equal to LIBOR + 0.5%. However Condition 4.5.9 Early Section Completion of the West Transmission Licence states that for sections of the pipeline network so designated the Rate of Return will equal that set out in Condition 4.5.3.
- 2.30. Secondly, Mutual Energy stated that they are concerned that the addition of a definition of Uncontrollable Operating Expenditure, and in particular the requirement that the Authority will define a list of such uncontrollable costs, may result in some costs incurred by the licence holder being defined as neither Controllable nor Uncontrollable and thus not being included as Eligible Pass Through Costs. This outcome would put the financial model on which the business is based at risk.
- 2.31. Finally, Mutual Energy stated that they are concerned that the revised timetable for submitting business plans, now 15 rather than 3 months before the start of the price control period, will reduce the accuracy of their cost forecasts.
- 2.32. Mutual Energy pointed out some minor typological errors in the proposed modifications.

Our Response

- 2.33. Regarding the West Transmission licence we confirm that the Rate of Return allowed on Early Section Completion pipeline will be as set out in

Condition 4.5.3, that is 1.98%.

- 2.34. The definition of Eligible Pass-Through Costs is entirely separate from and independent of the definition of Controllable and Uncontrollable Operating Expenditure. There is no linkage between the two concepts in the licence.
- 2.35. The definition of Controllable and Uncontrollable Operating Expenditure exists purely for the purpose of calculating the Approved Surplus. The list referred to in the definition will be set out in the cost reporting templates which will be used to collect cost and other output data under the new Regulatory Instructions and Guidance condition.
- 2.36. Eligible Pass-Through Costs, however, is a concept related to the determination of the Actual Revenue Requirement. In the West Transmission licence such costs are defined in Condition 4.1.3. In the case of Premier Transmission and Belfast Gas Transmission the definition is set out in a separate document, the Authority Direction. The definition in the West Transmission licence reflects that set out in the Authority Directions.
- 2.37. We do not therefore agree that the new definition of Uncontrollable Operating Expenditure has any impact or bearing on the concept of Eligible Pass-Through.
- 2.38. With regard to the revised timetable for submitting business plans we note that our objective is to treat all licence holders in a similar way during the price control process. The revised timetable is necessary to allow for a sufficient period of consultation before a Final Determination is made. This extra consultation will mitigate against any potential loss of accuracy when developing a business plan.

2.39. We have corrected the typological errors highlighted to us as required.

GNI (UK) – Utility Regulator Drafting Amendments

2.40. In addition to the matters discussed above we have made a number of additional changes to the drafting of the proposed modifications to the GNI (UK) licence published in our consultation paper. We consider that the revised drafting brings clarity and precision to the policy intent reflected in the licence. These additional amendments are listed below in the order they appear in Annex 1.

- Condition 2.2.5 (e) – this makes clear that the 28 day period referred to relates to notices made by the Authority under Condition 2.2.5.
- Condition 2.2.22 (a) (ii) – this makes clear that the decisions which can be dis-applied are those relating to the value of the individual components that when combined result in a Rate of Return value, rather than to the Rate of Return value itself.
- Condition 2.2.22 (b) (i) – makes clear that a ‘recalculation’ is also included within the scope of a Formula Amendment.
- Condition 2.2.22 (b) (ii) – makes clear that each Formula Amendment within a single notice given by the Authority is treated as being separate for the purpose of the dis-application.
- Condition 2.2.22 (c) (iv) (C) – makes consistent with drafting style elsewhere in the licence.
- Condition 2.2.22 (d) (i) (D) – removal of term ‘Formula’ as this may have led to confusion in the context of the term Formula Amendment.

3. Conclusion

- 3.1. The Utility Regulator has considered the representations received fully and remains content that the proposed modifications, as set out in Annexes 1-4 should be made for the reasons outlined in this Decision Paper.
- 3.2. We have also concluded that the licence modifications will better facilitate the achievement of our statutory objectives.
- 3.3. We are therefore proceeding to make the modifications set out in Annexes 1-4.

Next Steps

- 3.4. This paper represents the Utility Regulator's final decision on changes to the various licence conditions as set out in Table 1 above.
- 3.5. The modifications have effect from 01 August 2017.

4. Explanation of the Licence Modifications

4.1. The licence modifications which will have effect from 01 August 2017 are shown (in mark-up form) in Annexes 1-4.

4.2. The modifications will:

- Introduce into the four licences the Regulatory Instructions and Guidance condition that has already been introduced into the gas conveyance licenses held by the three gas distribution network owners;
- Align the Review Date of all four licence holders which will be every fifth year commencing on 1 October 2017;
- Introduce a requirement to forecast Uncontrollable Operating Expenditure into the licences held by Premier Transmission Limited, Belfast Gas Transmission Limited and West Transmission Limited;
- Align the timelines for the submission of cost data to the Authority across the four licences;
- Remove the inclusion of revenue from Virtual Reverse Flow and Oversubscription and Buy Back from the calculation of the Annual Required Revenue for Belfast Gas Transmission Limited and West Transmission Limited;
- Amend the definition of the First Operational Commencement Date in the West Transmission Limited licence;
- Create a separate condition within the GNI (UK) Licence for updated dis-application procedures which will permit GNI (UK) to challenge price control allowances at the Competition and Markets Authority; and
- Clarify the circumstances in which GNI (UK) can seek from the Authority a special operating expenditure forecast review.

4.3. A full explanation of the purpose and effect of these modifications is set out

in chapters 2-9 of our consultation paper published on 12 April 2017. The drafting changes made as a result of this consultation will ensure that these purposes are better facilitated.

5. Annexes Attached

Annex 1: [GNI \(UK\)](#) Proposed Licence Modification

Annex 2: [Premier Transmission Limited](#) Proposed Licence Modification

Annex 3: [Belfast Gas Transmission Limited](#) Proposed Licence Modification.

Annex 4: [Northern Ireland Energy Holdings Limited](#) Proposed Licence Modification