

# **THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**

## **DECISION UNDER ARTICLE 14(8) OF THE GAS (NORTHERN IRELAND) ORDER 1996**

### **MODIFICATION OF THE GAS SUPPLY LICENCE HELD BY FIRMUS ENERGY (SUPPLY) LTD**

In accordance with Article 14(2) of the Gas (Northern Ireland) Order 1996 (the “Order”) the Northern Ireland Authority for Utility Regulation (the “Authority”) published a notice of its intention to modify a condition of the licence.

In accordance with Article 14(5) of the Order, the Authority has considered representations duly made to it.

The Authority has decided to proceed with the making of modifications of the condition of the licence in exercise of its powers under Article 14(1) of the Order.

In accordance with Article 14(8) of the Order, the Authority gives notice as follows:

1. The Authority will modify the gas supply licence (the “Licence”) held by Firmus Energy (Supply) Ltd’s Gas Supply (Northern Ireland) Limited (the “Licensee”).
2. The modifications are to Condition 2.4: Charges for Gas and Other Terms for the Supply of Gas. The modifications are set out in Schedule 1 to this decision. The changes have been made to the definition of Regulated Premises.
3. The Authority considers that the modifications to the Licence are an appropriate course of action.
4. On 24<sup>th</sup> October 2017, the Authority published a notice<sup>1</sup> stating that it intended to modify the Licence to reflect the decisions set out in the document entitled “Review of Firmus Energy (Supply) Ltd Price Control Scope”. The notice set out the effect of the proposed modifications and the reasons why the Authority proposed to make those modifications. The purpose of this notice was to bring the proposed modifications to the attention of persons likely to be affected by them and to invite representations or objections in connection thereto. A representation was made by three stakeholders, all of whom agreed with the UR’s proposal of reducing the scope of the firmus’ price control to exclude EUC 2 customers. One respondent suggested that firmus should not be allowed to take on previous firmus customers until after 1 April 2019. However, we believe this action would not be in keeping the UR’s treatment of incumbent suppliers in other sectors where price de-regulation has occurred.
5. The modifications, as detailed in the attached schedule 1, will now take effect

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<sup>1</sup> <https://www.uregni.gov.uk/news-centre/review-firmus-energy-supply-ltd-price-control-scope>

from 1 April 2018.

6. The Authority has, pursuant to Article 14(8) of the Order, published this notice on its website and sent a copy of this notice to the Licensee. In addition, pursuant to Article 14(8) of the Order, the Authority has provided a copy of this notice to the Department for the Economy and the Consumer Council.
7. A copy of the modification can be obtained in hard copy from:

Colin Magee  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
Tel: 028 9031 1575  
Email: [Colin.magee@uregni.gov.uk](mailto:Colin.magee@uregni.gov.uk)

Dated this 27 November 2017



Jenny Pyper

Chief Executive

For and on behalf of the Northern Ireland Authority for Utility Regulation

## SCHEDULE 1

### Condition 2.4: Charges for Gas and Other Terms for the Supply of Gas

#### **Part A – Control over Charges for Gas**

##### 2.4.1 Control over charges

The Licensee shall take all reasonable steps to secure that in any Relevant Year the average price per unit of gas supplied by it to Regulated Premises shall not exceed the maximum price calculated in accordance with Condition 2.4.2.

##### 2.4.2 Calculation of the maximum average price

The maximum average price per unit of gas supplied by the Licensee to Regulated Premises shall be calculated in accordance with the following formula:

$$P_{st} = G_t + U_t + S_t + M_t + E_t - K_{st}$$

where

$P_{st}$  means the maximum average price per unit of gas supplied by the Licensee to Regulated Premises in respect of Relevant Year t;

$G_t$  means the costs incurred in the purchase of gas in pence per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year t, derived by:

(a) aggregating:

(i) the total amount approved by the Authority as payable by the Licensee to any person in respect of the quantity of gas purchased by the Licensee in Relevant Year t for the purposes of supplying gas to Regulated Premises (the 'wholesale purchase costs');

(ii) the total amount payable by the Licensee to any person

arranging for the transportation, through the national gas transmission system in Great Britain, of the gas supplied by the Licensee to Regulated Premises in Relevant Year, such amount calculated by reference to the charges set and published by the GB Operator; and

(iii) the total amount allowed in respect of the Licensee's cost of credit for Relevant Year t which shall be calculated by multiplying the allowed amount in pence per unit of gas supplied for Relevant Year t (set out in Table A below and expressed in October 2015 prices which are to be indexed by RPI for the Relevant Year t) by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t; and

(b) dividing the total aggregated amount calculated under paragraph (a) by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t;

**TABLE A**

Allowed cost of credit	Relevant Year t Equals		
	Year commencing 1 January 2017	Year commencing 1 January 2018	Year commencing 1 January 2019 and each subsequent Relevant Year
Pence per unit of gas	0.0181	0.0181	0.0177

$U_t$  means the allowed transmission and distribution costs, in pence per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year t, derived by:

- (a) aggregating the total amount of charges payable by the Licensee (measured on an accruals basis), in Relevant Year t, to any person for the transportation, through any transmission and/or distribution system of any Network Operator, of the gas supplied to premises by the Licensee in Relevant Year t, calculated by reference to the charges set and published by each relevant Network Operator;
- (b) determining, in accordance with a methodology approved by the Authority, the amount of the charges calculated in accordance with (a) which is attributable to the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t; and
- (c) dividing the amount determined pursuant to paragraph (b) by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t;

**S<sub>t</sub>** means the allowed operating charge in pence per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year t derived by dividing the amount set out for the Relevant Year t in Table B below by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t;

**TABLE B**

Allowed Operating Charge	Relevant Year t Equals		
	Year commencing 1 January 2017	Year commencing 1 January 2018	Year commencing 1 January 2019 and each subsequent Relevant Year
Amount	£1,608,000	£2,114,000	£2,247,000

$M_t$  means the applicable margin to be applied to each unit of gas supplied by the Licensee to Regulated Premises in Relevant Year  $t$  and calculated in accordance with the following formula:

$$M_t = ((G_t + U_t + S_t + E_t + K_{st})/0.98) - (G_t + U_t + S_t + E_t + K_{st})$$

$E_t$  means the additional amount allowed in pence per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year  $t$  in respect of the costs of the Licensee relating to the matters referred to in Condition 2.4.3 below and derived by:

- (a) aggregating the amount(s) determined by the Authority, in respect of a claim made to it by the Licensee, as the amount(s) to be allowed for Relevant Year  $t$  in respect of costs incurred by the Licensee in respect of such matters; and
- (b) dividing the resulting amount by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year  $t$ ; and

$K_{st}$  means a correction factor (which may be a positive or negative value) in pence per unit of gas supplied by the Licensee to Regulated Premises where:

- (a)  $K_{st}$  for Relevant Year  $t$  starting on 1 January 2017 shall be that determined by the Authority having regard to the 2015 Determination; and
- (b)  $K_{st}$  for each Relevant Year  $t$  starting on or after 1 January 2018 shall be derived using the following formula:

$$K_{st} = \frac{(R_{st-1} - (P_{t-1} \times Q_{st-1}))}{Q_{st}}$$

where:

$R_{st-1}$  means the Regulated Supply Revenue in Relevant Year  $t-1$ ;

$P_{t-1}$  means the maximum average price per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year t-1, save that in calculating  $P_{t-1}$ :

$S_{t-1}$  means the allowed operating charge in pence per unit of gas supplied by the Licensee to Regulated Premises in Relevant Year t-1 derived by dividing the Final Amount by the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t-1,

where:

"Final Amount" means the amount determined by the Authority, and notified to the Licensee, having taken into account any adjustment (to the amount otherwise set out in Table B for that Relevant Year t - 1) resulting from:

- (a) the reconciliation process undertaken by the Authority for ascertaining the difference (if any) between (i) the Licensee's estimated costs (as reflected in the amount set out in Table B), and (ii) the Licensee's actual costs, in respect of those costs (and only those costs) which are, as stated in paragraph 11.1 of the Final Determination, to be subject to such a reconciliation process; and
- (b) any revised apportionment, as determined by the Authority in accordance with the principles set out in paragraph 7.5.1 of the Final Determination, of the Licensee's total costs between (i) the business of the Licensee relating to the supply of gas to Regulated Premises, and (ii) the business of the Licensee relating to the

supply of gas to all other premises (excluding Regulated Premises);

$Q_{st-1}$  means the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t-1; and

$Q_{st}$  means the quantity of gas supplied by the Licensee to Regulated Premises in Relevant Year t.

#### 2.4.3 Matters in respect of which additional amounts may be allowed for $E_t$

The Licensee may make a claim to the Authority in respect of, and the Authority may determine whether to allow (in whole or in part), the following costs (in each case to the extent that they are not recovered under any other part of the licence or under any other Energy Licence):

- (a) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t to comply with any mandatory roll out of smart meters in Northern Ireland;
- (b) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t to comply with any new or modified Conditions of the licence which are made in consequence of the Authority's review of the effectiveness of competition in the Northern Ireland energy market (announced in the Forward Work Plan);
- (c) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t to comply with any new or modified Conditions of the licence which are made in consequence of the Authority's project described in the document entitled 'Consumer Protection Strategy 2016/17 – 2020/21 Final Decisions', as published by the Authority in February 2016;
- (d) any reasonable and efficient costs incurred (or to be incurred) to comply with any new or modified Conditions of the licence which the Authority has publically stated at the time of modifying the licence are for the purpose of simplifying the licence (whether or not also for other



purposes);

- (e) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t to comply with the requirements of the Directive (or to comply with any requirements which implement the Directive);
- (f) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t to comply with the requirements of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (or to comply with any requirements which implement that directive);
- (g) any reasonable and efficient costs incurred (or to be incurred) by the Licensee in Relevant Year t in making changes to its billing and information technology systems that are necessary to comply with changes made to Northern Ireland gas transportation arrangements in consequence of the implementation of the Authority's project for 'securing gas transportation arrangements for Northern Ireland post 2021' (as referred to in the Forward Work Plan);
- (h) any reasonable and efficient costs incurred by the Licensee in Relevant Year t as a direct result of having previously complied with any Last Resort Supply Direction; and
- (i) any reasonable and efficient costs incurred by the Licensee in Relevant Year t as a result of a UR review of the governance arrangements relating to gas metering.

#### 2.4.4 Statement of charges for the supply of gas

The Authority may direct:

- (a) the Licensee to provide it with a statement of the charges being made or proposed to be made by the Licensee for the supply of gas to consumers at Regulated Premises; and

- (b) in relation to charges which are proposed to be made, the Licensee to observe a minimum period before these charges may be introduced from its receipt of the statement.

#### 2.4.5 Publication of statement of charges for the supply of gas

The Licensee shall comply with any direction given by the Authority to publish in such manner as determined by the Authority the statement prepared by the Licensee under Condition 2.4.4 so as to give adequate publicity to the matters contained in that statement.

### **Part B – Disapplication of this Condition**

#### 2.4.6 Duration of this Condition

This Condition 2.4 shall apply so long as this Licence continues in force, but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a **Disapplication Request**) made in accordance with Condition 2.4.8 and:

- (a) the Authority agrees in writing to the request; or
- (b) the application of this Condition (or any part of it) is terminated by a notice (a **Disapplication Notice**) given by the Licensee in accordance with Condition 2.4.9 and not withdrawn.

#### 2.4.7 Disapplication Date

Except where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to Condition 2.4.8 shall have effect earlier than the date (the **Disapplication Date**) which is the later of:

- (a) the date occurring 18 months after delivery of the Disapplication Request; and
- (ii) 31 December 2019.

#### 2.4.8 Disapplication Request

A Disapplication Request pursuant to this Condition 2.4.8 shall:

- (a) be in writing addressed to the Authority;
- (b) specify this Condition or any part of it to which the request relates; and
- (c) state the date from which the Licensee wishes the Authority to agree that this Condition or the specified part of it shall cease to have effect.

#### 2.4.9 Disapplication Notice

A Disapplication Notice pursuant to this Condition 2.4.9:

- (a) may be given in the circumstances described in either Condition 2.4.10 or Condition 2.4.11; and
- (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date;
- (b) where it is given, shall:
  - (i) be in writing addressed to the Authority;
  - (ii) specify this Condition, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
  - (iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

#### 2.4.10 Circumstances of Disapplication (1)

The circumstances described in this Condition 2.4.10 are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- (a) this Condition 2.4, or any part of it to which the request relates; or
- (b) this Part B of this Condition 2.4, so as to remove the right of the Licensee

to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

#### 2.4.11 Circumstances of Disapplication (2)

The circumstances described in this Condition 2.4.11 are that:

- (a) by the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in Condition 2.4.10;
- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - (ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

#### 2.4.12 Scope of Disapplication

A Disapplication Request or Disapplication Notice served under this Part B of this Condition 2.4 may be served in respect of a specified geographic area.

### **Part C – Definitions**

#### 2.4.13 Definitions and Interpretation

For the purposes of this Condition, 'unit' means a kilowatt hour.

In this Condition:

<b>2015 Determination</b>	means the document entitled 'Final Determination on Price Control for firmus energy (Supply) Ltd - 1 April 2015 – 31 December 2016', as published by the Authority in December 2014.
<b>CMA</b>	means the Competition and Markets Authority.
<b>Energy Licence</b>	means a licence held by the Licensee and granted or treated as granted under Article 8 of the Order or Article 10 of the Electricity (Northern Ireland) Order 1992.
<b>Final Determination</b>	means the document entitled 'Price Control for SSE Airtricity Gas Supply (NI) Ltd and firmus energy (Supply) Ltd Final Determination 29th November 2016', as published by the Authority on the 29 <sup>th</sup> of November 2016.
<b>Forward Work Plan</b>	means the document entitled 'Forward Work Programme 2014-15 – Our business plan for year 1 of our Corporate Strategy 2014-19', as published by the Authority in March 2014.
<b>GB Operator</b>	means National Grid Gas plc in its capacity as the person authorised, by a licence granted or treated as granted under section 7 of the Gas Act 1986, or any successor company.
<b>Regulated Premises</b>	means premises supplied by the Licensee in the Ten Towns Area at which the normal annual consumption of gas is reasonably expected not to exceed 73,200 kilowatt hours but shall, at the request of the consumer at the premises, exclude any such premises where: <ul style="list-style-type: none"> <li>(a) the Licensee supplies gas to other</li> </ul>

premises owned or occupied by that consumer in the Ten Towns Area; and

(b) the normal annual consumption of gas, aggregated for all premises which are:

(i) owned or occupied by the consumer in the Ten Towns Area; and

(ii) supplied by the Licensee,

is reasonably expected to exceed 73,200 kilowatt hours.

<b>Regulated Revenue</b>	<b>Supply</b>	means the total revenue (measured on an accruals basis) derived from the Licensee's gas supply charges for the supply of gas to Regulated Premises, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived.
<b>Relevant Year</b>		means any financial year commencing on or after 1 January 2017.
<b>Relevant Year t</b>		means that Relevant Year for the purposes of which any calculation falls to be made; and 'Relevant Year t – 1' means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly.
<b>RPI</b>		means the Retail Price Index (1987 = 100) published or determined with respect to January in Relevant Year t.
<b>Ten Towns Area</b>		has the meaning given to it in Schedule 1 of the licence.