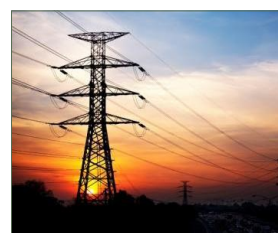


Decision paper on measures for the purposes of the EU Third Internal Energy Package



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

The purpose of this paper is to set out the Utility Regulator's (UR's) decisions following our consultation of 20 September 2013 entitled "Consultation on measures for the purposes of the EU Third Internal Energy Package". The paper provides information on responses received and the UR's reasons for decisions. It also provides information on the costs and benefits of the licence modifications which the UR has decided are requisite for the purposes of the EU third internal energy package of Directives (IME3).

Audience

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

Consumer impact

In some instances licence modifications for the purposes of the IME3 package of Directives may result in additional costs. However we do not expect these to be significant. The corresponding benefit of the licence modifications is compliance with the Directives in a clear, transparent and consistent manner.

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Executive Summary

This decision paper follows on from the UR's consultation paper of 20 September 2013 entitled "Consultation on measures for the purposes of the EU Third Internal Energy Package. It deals with modifications that the UR considers to be requisite or expedient for the purposes of the Third Internal Energy Package. In particular it deals with conditions necessary for the certification of Transmission System Operators (TSOs).

Chapter 2 sets out two licence modifications:

- 1) A change to all electricity licences such that the condition relating to licence fees is clarified and brought in to line with the drafting in gas licences.
- 2) A change to all licences such that the condition on the provision of information to the UR is clarified.

Chapter 3 sets out changes to electricity transmission licences that the UR considers to be necessary or expedient for the purposes of the Directives in particular changes necessary to comply with the following:

- 1) The European Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – SONI/NIE
- 2) The European Commission Opinion of 8.7.13 pursuant to Article 3(1) of Regulation (EC) NO 714/2009 and Article 10(6) of Directive 2009/72/EC - Certification of Moyle Interconnector Limited.

Chapter 4 contains changes which clarify the current position in relation to customer contracts and rights of cancellation.

Chapter 5 is in relation to gas distribution, it outlines proposed modifications to the Phoenix Natural Gas Ltd licence and the firmus energy (Distribution) Limited licence. The modifications are necessary to address;

- 1) the preparation, revision and compliance with Codes of Practice,
- 2) the terms and conditions for domestic customers and a minor correction to one licence.

Chapter 6 relates to gas transmission, it outlines the modifications required to gas conveyance licences of the Transmission System Operators (TSOs). The licences concerned are those of Premier Transmission Ltd (PTL), Belfast Gas Transmission Ltd (BGTL), and BGE (UK).

Chapter 1: Introduction

Background

- 1.1 On 23 March 2011, the Department of Enterprise, Trade, and Investment (the “Department”) made the Gas and Electricity (Internal Markets) Regulations 2011 (the “**Regulations**”).
- 1.2 The Regulations have been made under Section 2(2) of the European Communities Act 1972 and implement the majority of the requirements of the two European Directives on market liberalization in the energy sector. They implement part of the Third Energy Package, namely Directive 2009/72/EC concerning common rules for the internal market in electricity (the **Electricity Directive**) and Directive 2009/73/EC concerning common rules for the internal market in natural gas (the **Gas Directive**) (together the **Directives**).
- 1.3 Among other things, the Regulations give the Utility Regulator (the “UR”) the *vires* to give effect to certain requirements of the Directives. The UR is empowered to give effect to the Regulations and the Directives through licence modifications, including new licence conditions, as necessary.
- 1.4 On 20 September 2013 the UR published a consultation paper entitled “Consultation on measures for the purposes of the EU Third Internal Energy Package” which set out a range of proposed modifications and sought comments from respondents. Following the publication of the consultation document, the UR engaged with industry stakeholders during

the consultation period. The consultation closed on 15 November 2013 and the UR received 9 responses.

- 1.5 Having considered representations made during this time, the UR finalised its decisions and sought the consent of the Department to make the licence modifications. This consent was received on 20 March 2014.
- 1.6 The Directives set out certain high level provisions together with more specific requirements. Each Member State, including the relevant Regulatory Authority, is therefore responsible for interpreting the requirements of the relevant Directive, and implementing them according to the particular circumstances of their markets and taking into account any specific problems that are currently evident.
- 1.7 In determining this set of licence modifications under our powers in the Gas And Electricity (Internal Markets) Regulations (Northern Ireland) 2011 to implement the Directives and the Regulations, we have given due consideration to the responses received to the consultation. Where appropriate, we have made changes to our original proposals to ensure appropriate implementation at best value for customers.

Directive issue coverage in this Decision Paper

- 1.8 The consultation dealt with modifications which the UR considered requisite or expedient for the purposes of the Third Energy Package. In particular the consultation dealt with modifications relating to:
 - 3) The European Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72.EC – SONI/NIE

- 4) The European Commission Opinion of 8.7.13 pursuant to Article 3(1) of Regulation (EC) NO 714/2009 and Article 10(6) of Directive 2009/72/EC - Certification of Moyle Interconnector Limited.
- 5) Other modifications to gas and electricity licences considered necessary or expedient for the purposes of the Directives. Among other things these modifications will clarify existing provisions, improve consistency, refine certain drafting and update references.

Equality considerations

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

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

Next steps

1.13 The modifications set out in this decision paper will be made to each relevant licence. They will come into effect on 28 March 2014. Where appropriate numbering etc will be changed to fit in with the drafting of the individual licence concerned.

Chapter 2: Changes to be included in several categories of licence

Licence fees – Electricity Licences

Article 35 of the Electricity Directive and Article 39 of the Gas Directive – National Regulatory Authority

Policy Background

- 2.1 Article 35 (Electricity Directive) and Article 39 (Gas Directive) set out certain requirements with regard to the designation and independence of national regulatory authorities. Article 3A of the Energy Order provides that the Authority is designated as the national regulatory authority for Northern Ireland in accordance with Article 35(3) of the Electricity Directive and Article 39(3) of the Gas Directive.
- 2.2 Among other things, the Directives provide that a national regulatory authority should have adequate financial resources to undertake its functions. The Authority's functions are those that are conferred upon it by legislation. The Authority cannot do anything which it does not have a power to do – such power being set out in legislation.
- 2.3 The costs incurred by the Authority in undertaking its functions are borne by licence holders. All licences (gas and electricity) contain a condition requiring the licensee to pay, on an annual basis, sums of money (licence fees) which, among other things, include the costs of the Authority.
- 2.4 UR's September consultation paper proposed a change to the licence fee

condition in all electricity licences to make them more consistent with gas licences and so that the condition is not limited only to costs incurred in exercising functions set out in the specified legislation.

Summary Responses

2.5 None of the respondents raised any concerns or objections in relation to the proposal.

UR Position

2.6 The UR considers that it is appropriate to proceed with the modification as proposed.

Final Decision on Licence Modifications

2.7 The licence fee condition in every electricity licence will be modified accordingly. We set out below the modifications which will be made to paragraph 3(a) of Condition 11 of Power NI's supply licence. A modification to this effect will be made to all other electricity licences.

Paragraph 3)

"In respect of each year.... The licensee shall pay to the Authority a fee which is the aggregate of the following amounts

(a) an amount which is a proportion, as determined by the Authority, of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the

*Licensee, as likely to be its costs during the year in question in the exercise of its functions relating to electricity conferred on, or assigned or transferred to, it by or under any legislation (**electricity functions**);*

(b).....

(c)....

In the case of Power NI's licence, no further modifications to the licence fee condition are required as a consequence of the proposed modifications to paragraph 3(a). However, additional consequential changes may be required to the licence fee condition in any individual licence to ensure that the licence fee condition is internally consistent. The written notification to the individual licence holder will show all of the modifications required.

Costs and benefits

2.8 The Authority does not expect to increase licence fees as a result of the change. Therefore there should be no additional cost burden on licence holders. Benefits include clarity as to how the Authority shall finance its activities.

Provision of Information to the Authority – All Licences

Policy Background

2.9 All gas and electricity licences include a condition relating to provision of information to the Authority. At present paragraph 1 of the condition refers

to functions given or transferred to the Authority by or under the legislation that is specified.

2.10 However, the Authority has functions afforded to it under enactments which are not presently referred to in this condition, including for example statutory rules such as the Internal Markets Regulations and EU law such as EC Regulations and Directives.

2.11 It is therefore inappropriate for the condition to be limited only to the functions of the Authority in the listed legislation. Given the functions afforded to the UR under IME3 it is appropriate for the condition to be amended.

Summary Responses

2.12 Four of the respondents felt that the drafting proposed in the initial consultation was too wide. In particular the use of the words “performing any of its functions” was felt to introduce a level of uncertainty about the type of information the UR might request and the ability of the licence holder to provide the information. While these respondents accepted the need for change they felt a more targeted form of wording should be used. Phoenix Natural Gas and NIE both suggested alternative wording, in order to clarify the scope of the intention.

UR Position

2.13 The UR accepts the need to ensure that the requirement in relation to provision of information is not considered too wide and is transparent. Therefore we have amended the scope of the requirement . UR considers that this is appropriate wording and reflects the intention without being considered too wide. The revised scope will apply equally for electricity and gas licences in order to ensure consistency.

Final decision on licence modifications

2.14 The precise drafting will be informed by the existing drafting but to illustrate the proposed change we have shown below the changes that will be made to paragraph 1 of Condition 10 of Power NI's electricity supply licence. :

Subject to paragraphs 2 and 3 below, the Licensee shall furnish to the Authority, in such a manner and at such times as the Authority may require, such information and shall procure and furnish to it such reports, as the Authority may consider necessary in the light of the Conditions or as it may require for the purpose of performing any of its functions relating to electricity as conferred on, or assigned or transferred to, it by or under any legislation.

To illustrate the proposed modifications to gas licences we have shown below the changes that will be made to paragraph 1.3.1 of Condition 1.3 of Airtricity Gas Supply Limited's gas supply licence :

Subject to Conditions 1.3.2 and 1.3.3 below, the Licensee shall, furnish to the Authority, in such a manner and at such times as the Authority may reasonably require, such information or as may be necessary for the purpose of performing any of its functions relating to gas as conferred on, or assigned or transferred to, it by or under any legislation.

Costs and Benefits

2.15 The proposed modifications are essentially to ensure that the UR can request information for the purposes of any of its relevant functions including those conferred by the IME3 provisions. The UR will seek only

that information which is necessary for the purpose of performing its functions under legislation, collected in such a manner as to minimise the potential burden of information provision. The UR considers that at this time there are no additional costs associated with the modifications to licence condition. Benefits include clarity and transparency in relation to the Directive. No respondents provided any further information in relation to potential costs in relation to this modification.

Chapter 3: Electricity Transmission Licences

3A NIE Transmission and SONI

Policy Background

- 3.1 Currently the arrangements are that SONI and NIE share the functions which now come under the heading of transmission system operation. SONI is responsible for the day to day operation of the electricity transmission system which NIE owns; NIE has an important role regarding connections, planning and carrying out the actual work. NIE does not, however, operate the system or have interaction with system users; it is responsible for financing and carrying out the necessary developments to the system.
- 3.2 The ultimate controller of NIE is ESB, which has interests in generation and supply within the ESB group. NIE has applied for certification under Article 9(9) of the Directive. This applies where the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence than the independent transmission operator model. The UR, via its SEM Committee, gave its preliminary decision for qualified approval of the NIE Application in December 2012. On 15 February 2013 the UR notified the proposed arrangements to the Commission which has the responsibility of verifying that the proposed arrangements guarantee more effective independence than the ITO arrangements. On 12 April 2013 the Commission published its decision which stated that:

“The arrangements in place in relation to the vertical integration and operation of the transmission systems belonging to NIE existing on 3 September 2009, as set out in the Utility Regulator’s preliminary decision, meet the requirements of Article 9(9) of Directive 2009/72/EC and could clearly guarantee more effective independence of the transmission system operators than the provisions of Chapter V of Directive 2009/72/EC. SONI shall be certified as the transmission system operator for Northern Ireland”

3.3 In order for the UR to comply with the Commission’s decision (i.e. that SONI to be certified) and the domestic legislation (which provides that where the UR makes its final decision that SONI should be certified on the basis that the requirements of Article 9(9) of the Directive are met, then NIE is also deemed to be certified), certain modifications are required to the NIE and SONI licences to ensure that the qualification measures set out in the preliminary decision for qualified approval are taken. These include the following:

- The transfer of investment planning responsibilities from NIE to SONI;
- All of the ring-fencing and regulatory arrangements that presently apply to NIE to apply equally to NIE Powerteam Ltd;
- Prohibiting the provision of corporate services to NIE by ESB;
- For all directors and senior executives of NIE to have their contract of employment with NIE;
- Extending the existing requirement which provides for the NIE holding company not to exercise its corporate governance role in such a way as to prevent or distort competition on the island of Ireland such that it applies in respect of the internal market; and
- Ensuring consistency of treatment between transmission system operators.

Summary Responses & UR Position

3.4 The UR carried out extensive pre-consultation engagement with licence holders in respect of the proposed modifications, and update meetings have been hosted with NIE and SONI where possible. As a result of the pre-consultation, most respondents were content with the majority of the proposed modifications. However there were some areas of disagreement between licence holders as to the appropriate form of wording in some instances. NIE and SONI provided the most substantial responses to the consultation.

NIE response

3.5 NIE made a number of comments in response to certain licence modifications which the UR proposed to its licences. NIE's response has been the subject of further discussion and correspondence between NIE and the UR. Where the UR considered it appropriate to do so, NIE's comments have resulted in some changes to the proposed modifications.

3.6 The UR's views on comments received by NIE are outlined in Annex 1 and NIE's distribution and transmission licences, amended as per decisions made following public consultation, are shown in Annexes 3 and 4 respectively¹.

¹ Note that the NIE Transmission and Distribution licences have been updated to include amendments arising as a result of consultation, and the NIE Transmission licence now includes a condition relating to Priority Dispatch which was consulted on during November 2013. This can be viewed at the following link
http://www.uregni.gov.uk/news/view/priority_dispatch_licence_modifcations_made/

SONI response

- 3.7 SONI are of the view that some licence modifications as proposed by the UR either do not meet the legislative test of being 'requisite or expedient' for the purposes of giving effect to IME3, are contrary to the EC's decision of 12 April 2014, or are entirely contrary to the interests of consumers. SONI's main concerns involve Conditions 11 and 16 of the SONI licence, and Conditions 19 and 30 of the NIE Distribution licence. Each of SONI's main concerns is dealt with in turn below and Annex 2 provides the UR's response to further textual amendments suggested by SONI to the NIE and SONI licences.
- 3.8 SONI's response was supported by legal opinion regarding Condition 11 (which concerns a restriction on use of certain information) of the SONI licence. The UR proposed that additional wording be included at paragraph 1(b) and 1(c) to restrict the entities with whom SONI or the SONI TSO business could share protected information with. SONI argue that the changes proposed by the UR to Condition 11 are not requisite or expedient for the purposes of giving effect to the decision relating to TSO certification. SONI is concerned that the amendments proposed by the UR mean that SONI is prohibited from disclosing protected information to its parent company, EirGrid.
- 3.9 In proposing amendments to Condition 11, the UR referred to Article 16 of the Directive; this provides that each TSO/ TO is to keep commercially sensitive information confidential. The UR has reviewed its position and has decided to remove the proposed additional wording to condition 11, paragraph (1)(b). The original suggested wording did not pertain to a legal change, but was proposed for the purposes of clarifying the obligation. The UR acknowledges that the proposed modification to paragraph 1(b) would not have changed the scope of

the existing obligation on SONI and is therefore content for it not to be made. However, the UR is minded to retain the proposed additional wording to condition 11(1)(c). This is because Article 16 of the EU Directive requires each TSO/TO to ensure that commercially sensitive information is not disclosed to other parts of the undertaking. SONI TSO is separate to the Eirgrid TSO and the additional wording applied by the UR to condition 11(1)(c) ensures that protected information cannot be disclosed by SONI TSO to any other business, affiliate or related undertaking of SONI. However in order to ensure that SONI and NIE can cooperate with other TSOs for the benefit of Northern Ireland customers, the UR have added a clarification to the exemptions in condition 11(4). New exemption 11(4) (e) clarifies that information may be shared with any other TSO which has been certified as such by any other National Regulatory Authority in accordance with the Directive where the disclosure is made for the purposes of furthering the interests of Northern Ireland customers and where the other certified TSO has agreed in writing that it will not disclose the information to any other person. The nature and scope of the exceptions in condition 11(4) enable SONI to disclose that information which it is necessary to disclose to the Eirgrid TSO business for the purposes of the SEM, for cross-border integration and for the co-ordinated development of the transmissions systems in each of NI and RoI. In order to ensure consistency A similar clarification has been added to the NIE licence.

- 3.10 SONI also raised concerns about proposed amendments to Condition 16 of the SONI licence (relating to the the Grid Code). The UR proposed that references in condition 16 (6) to ‘total system’ should instead be amended to ‘transmission system’. The total system is effectively a reference to NIE’s distribution system and its transmission system taken together. SONI is concerned that the changes proposed by the Utility Regulator to Condition 16

of the Licence would, if implemented as proposed, diminish the purpose of the Grid Code, which is set out in paragraph 1 of the Condition as being to *cover all material technical aspects relating to the connection to and the operation and use of the total system*. SONI's view is that changing the scope of the Grid Code is neither requisite or expedient to the implementation of IME3 and is directly contrary to the Utility Regulator's general duty of protecting the interests of consumers.

- 3.11 The UR has reviewed the proposed modifications and considers that it is appropriate in certain respects for the Grid Code to be concerned with or relate only to the transmission system but that in other respects it might need to continue to be applicable in respect of the total system. It therefore proposes to amend the drafting of condition 16 to ensure that reference to 'total system' or 'transmission system' align with the individual contents of the Grid Code, as shown in Annex 5.
- 3.12 The UR's response to further suggested textual amendments to the licences is in Annex 2.

SSE Renewables

- 3.13 SSE Renewables commented that the UR's consultation does not capture all changes as regards connections and the TIA. In response, the UR considers that the proposed modifications reflect the European Commission's decision/opinion. Further work will be carried out on contestability of connections going forward.

ESB

- 3.14 ESB provided comment on a number of proposed modifications to NIE's licence.

- 3.15 ESB commented on Condition 3A, 7 and 8 of NIE's licence. The UR's views on these conditions are detailed in Annex 1.
- 3.16 ESB also noted that because it was not a relevant holding company as defined in Condition 12 of the NIE licence, paragraph 4 of that condition did not require NIE to obtain an undertaking from ESB. ESB is right in stating that existing paragraph 4 of Condition 12 of NIE's licences does not require NIE to obtain an undertaking from ESB (its parent company). The NIE licences will therefore be amended such that paragraph 4 applies in respect of any holding company (as that term is defined in condition 1 of the licences).
- 3.17 ESB also contend that the separation requirements of Condition 12 should not require separation (i) between NIE and ESB, or (ii) between NIE and ESB Networks. With regard to NIE and ESB, the UR is clear that the separation requirements need to be applied given that ESB itself undertakes both generation and supply activities. ESB has suggested that the separation requirements need not apply as between ESB and NIE "except and only to the extent that it is acting through its licensed generation or supply business." It is not at all clear what this would mean in practice and how it could be determined whether, when or how ESB would or would not be acting through its generation or supply businesses given that there is a single legal entity undertaking the businesses.
- 3.18 ESB states that it has concerns about its ability to exercise its corporate governance role if it is deemed to be an Associated Business but it is clear from the various provisions in Condition 12 (paragraphs 3(c), 4 and 7 in particular) that ESB is not prevented from exercising its corporate governance role (the UR is proposing also to refer to holding company rather than relevant holding company in this paragraph 3(c)). Furthermore, with regard to any

practical issues that may arise with regards to ESB requiring (in its corporate governance role) access to NIE premises or systems, the Condition provides for exceptions to these restrictions where the UR consents or where it is provided for in the compliance plan (as approved by the UR).

- 3.19 With regard to separation between NIE and ESB Networks, this is the position already existing. The UR is not proposing to make amendments which bring about that position. At present it sees no reason to provide for the relaxation of the existing separation requirements between NIE and ESB Networks, but in any event any such change is not required for the purposes of implementing or complying with the Directive.

In light of the above it remains the UR's view that the Condition 12 separation requirements are required with regard to separation of NIE from ESB and ESB Networks.

- 3.20 ESB commented on the proposed changes to condition 12 (3) (e) (ii) of the NIE license which proposed the deletion of the words "that is engaged in the generation or supply of electricity" stating that the broadening out was not necessary to comply with the Commission's decision. Having reviewed the proposal the UR has decided not to proceed with the deletion.
- 3.21 ESB commented on Condition 24 (of the NIE license TSO Certification) stating that Condition 24 (b) (ii) does not appear appropriate as the identity of a purchaser of NIE is a matter beyond the control of NIE. The proposed condition 24(b) (ii) provides for NIE to use its reasonable endeavours to ensure that where there is a change of control either the certification ground on which it is certified continues to apply or it meets the requirements of another certification ground. The term 'reasonable endeavours' means that it is not an

absolute obligation on NIE but rather NIE is required to try and achieve it (i.e. ensure that it meets one of the certification grounds). Precisely what NIE may need to do in order to show that it has used 'reasonable endeavours' cannot be determined up front. The term 'reasonable endeavours' is necessarily context sensitive. The UR considers that this licence condition is appropriate given Article 10B(1) of the Electricity Order requires NIE as a person who participates in the transmission of electricity to ensure that it is certified at all times when it acts under the authority of its licence.

Licence Modifications

- 3.22 Due to the significant amount of modifications proposed to the regulated electricity licences, licence modifications are found in the following annexes:
- a. Annex 3 – NIE Transmission licence
 - b. Annex 4 – NIE Distribution licence
 - c. Annex 5 – SONI Transmission System Operator licence

Cost and Benefits

- 3.23 The UR's consultation paper recognised that costs would be incurred as a result of TSO certification implementation, however it was not likely that additional costs would arise in the current NIE price control (RP4). SONI's next price control is due to be implemented on 1 October 2015. Any future cost implications for SONI will be assessed by the Utility Regulator as part of the 2015 SONI price control review process. In the interim there is a procedure whereby SONI may request additional costs. Where such costs are associated with licence modifications, such a request may be submitted to the Utility Regulator for assessment.

- 3.24 During the IME3 consultation period, NIE and SONI were asked to provide information regarding the costs incurred to date, the nature of the costs incurred, an explanation of how the costs were efficiently incurred, and an estimate of future costs resulting from the change in arrangements between the two companies. Information has been provided but engagement with the licence holders is ongoing. NIE and SONI have informed the UR that a transfer of staff from NIE to SONI will take place before April 2014 via TUPE arrangements. It is likely that between 15 and 20 'planning' staff will be involved in the transfer. The companies have developed a collaborative risk management document to cover the transfer process and it is envisaged that an increase in SONI's resource costs will be counter-balanced by a reduction in NIE staff costs and associated overheads. It is expected that any costs incurred to facilitate the actual transfer will be marginal.
- 3.25 The Competition Commission continues to review the NIE RP5 price control determination, and have indicated in their Provisional Determination² that the UR should consult on the movement of costs/ revenues between the two entities. The UR intends to consult on costs incurred and future costs expected (as a package) but is not in a position to do so until the Competition Commission issues its Final Determination. .
- 3.26 Benefits of the licence modifications include compliance with the Commission's decision and full and transparent independence for the TSO.

² http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/northern-ireland-electricity-price-determination/131112_main_report.pdf (page 10-71)

3B Moyle Interconnector Ltd (MIL)

Policy Background

- 3.27 MIL is part of the Mutual Energy group of companies. It owns the Moyle Interconnector which links the electricity grids of Northern Ireland and Scotland. MIL applied for certification on the grounds of full ownership unbundling (FOU), i.e. that the transmission system belongs to an undertaking that is independent from any supply and generation interests.
- 3.28 The SEM Committee's preliminary decision was for qualified approval of the MIL application. As MIL is responsible for the interconnector between Scotland and Northern Ireland the decision was notified to the Commission by the UR at the same time as Ofgem notified of its preliminary decision with regard to the MIL's operations in GB.
- 3.29 The Commission's opinion of July 13 agreed with UR and Ofgem's notified decisions on qualified approval, including the proposal to improve certain non-discrimination obligations in the MIL licence. MIL retains responsibility for financing the interconnector, planning the expansion of the interconnector, ensuring the reliability of the interconnector and for maintenance (with the timing of maintenance decided by SONI – as it undertakes operation activities under contractual arrangements regulated under MIL's licence).
- 3.30 The Commission's opinion also invites UR to verify that MIL has sufficient resources to oversee the actions of SONI (and Eirgrid) in operating the interconnector as part of the wider system on the island of Ireland in addition to having the resources available to manage financing, maintenance and development of interconnection between NI and GB.

Summary Responses and UR Position

- 3.31 Mutual Energy proposed editorial changes to a few of the proposed modifications to the Moyle Interconnector Limited licence, namely Part II A Condition 1, Part II B Condition 3, and Part II B Condition 9A.
- 3.32 The changes proposed by Mutual Energy included an amendment to the definition of ‘ultimate controller’ so that rather than the ultimate controller being any person who can exercise ‘influence’ over policy, it should instead be any person who can exercise ‘a dominant influence’ over policy. The UR has decided not to modify the definition as proposed by Mutual Energy since the proposal does not change the intent or meaning of the definition.
- 3.33 Mutual Energy also proposed that paragraph 4 of Condition 3 of the Moyle Interconnector Ltd licence be amended regarding the delivery of statutory accounts. The editorial change as proposed by Mutual Energy has largely been accepted by the UR (refer to relevant condition in Annex 6).
- 3.34 The final change proposed refers to Condition 9A of the licence which relates to availability of resources and undertaking from ultimate controller. Rather than read that MEL should use its ‘best endeavours’ to deliver reports, MEL suggested that ‘reasonable endeavours’ should instead be used. The UR has agreed to this change.

Licence Modifications

- 3.35 Due to the significant amount of modifications proposed to the regulated electricity licences, licence modifications are found in the following annex:
- a. Annex 6 – Moyle Interconnector licence.

Cost and Benefits

3.36 As indicated previously, there may be some costs associated with the provision of audit opinion for the Moyle Interconnector but these will be limited.

Chapter 4: Supply licences – Electricity and Gas

Consumer contracts – Rights of cancellation

Policy Background

- 4.1 One of the purposes of IME3 is to deliver a high level of protection to customers. One of the customer protection measures found in all electricity and gas supply licences (Condition 27 and Condition 2.18 respectively) is the requirement that the terms and conditions of supply contracts with domestic customers must, among other things, provide a ten day period within which the customer can withdraw from or cancel the contract (referred to as the “cooling off” period).
- 4.2 This means that after entering into a contract with a supplier, a customer can change their mind and cancel that contract within the ten day period. In practical terms it effectively also means that suppliers cannot start to supply electricity/gas under the contract until the cooling off period has expired (as otherwise there would be a need to unwind arrangements and there are inherent difficulties with such an approach).
- 4.3 In response to supplier concerns the UR has considered whether the domestic customer should, if it wished to do so, be able (but only explicitly and verifiably) to opt out of his/her right to the cooling off period. Any such opt out would enable the supplier to start supply sooner and thereby enable the domestic customer to take advantage of the reason for switching sooner. The UR has reviewed its policy decision with respect to statutory consumer law which allows customers the option to waive the cooling off

period in certain circumstances. It continues to be of the view that all domestic supply contracts need to provide a ten day cooling off period which cannot be opted out of.

- 4.4 The UR's September consultation proposed a modification to Condition 27 of all electricity supply licences and Condition 2.18 of all gas supply licences which would clarify the position that suppliers cannot allow customers to waive the ten day cooling off period.

Summary Responses

- 4.5 One respondent raised a concern that the modification to the licence condition does not reflect the different circumstances in the marketplace and may leave suppliers unable to be compliant in all circumstances. There could be circumstances where customers would be unwilling to have a cooling off period as they may need supply instantly; for example where there is a change of tenancy, or where a property has been de-energised and the customer seeks to have their premises re-energised as soon as possible.

UR Position

- 4.6 The UR's policy position remains unchanged, and it continues to be of the view that all domestic supply contracts need to provide a ten day cooling off period which cannot be opted out of. Nonetheless, the UR has considered the responses to our consultation, and is aware that there are scenarios where customers may wish to opt out of the cooling off period to enable supply straight away. We do not want to rule out any such scenarios that may have a consequential detrimental impact on a specific group of customers.
- 4.7 As a result the UR has decided to include some flexibility in the licence condition. Suppliers will be required to submit a case to the UR to enable

consideration of specific exceptions to the licence condition, where it is in the best interests of a particular customer group to opt out of the cooling off period; for example, to enable supply straight away. In order to achieve this flexible approach, additional paragraphs have been included to require suppliers to apply in writing to the UR, detailing cases or circumstances that the licence condition on a cooling off period should not apply. As a result of the consideration of exceptions, the UR may issue a direction stating that the requirement to ensure customers are given a cooling off period before a contract is entered into, does not apply in such circumstances as are specified in the direction. Unless there are good reasons to the contrary such a direction will be issued to all suppliers,

- 4.8 Note that the application must be made to the Authority in writing and must include a description of the case or circumstances to be considered. If this is acceptable to the UR, a direction will (generally) be issued to all licensees. The UR may at any time and following consultation with affected licensees , amend or revoke such a direction.

Final Decision on Licence Modifications

- 4.9 For clarification the UR proposes to amend Condition 27 and Condition 2.18 of electricity and gas licences (respectively) to include new paragraphs 8, 9 and 10 (with subsequent paragraphs renumbered accordingly) as follows (substituting gas for electricity and consumer for customer as appropriate in the gas supply licence version) –

- 8 Subject to paragraph 9, the Licensee shall not start to supply electricity under a Contract entered into with a Domestic Customer until the cancellation period referred to in paragraph 7(e) has expired.
- 9 The requirement in paragraph 8 does not apply where:
 - (a) the Licensee or any other Electricity Supplier has applied in writing to the Authority for paragraph 8 not to apply in respect of such circumstances or cases as described in the application; and
 - (b) the Authority has issued a direction to the Licensee that the requirement in paragraph 8 shall not apply in respect of such circumstances or cases as are specified in direction and from such date as may be specified in the direction.
- 10 The Authority may, at any time and following consultation with the Licensee, by a further direction amend or revoke a direction (or part thereof) given to the Licensee under paragraph 9(b).

Costs and benefits

- 4.10 There are no costs associated with this modification. Benefits include clarity on supplier obligations.

Non-disconnection of Vulnerable Customers

Policy Background

- 4.11 Paragraph 4 of Condition 31 of the electricity supply licence and 2.11 of the gas supply licence addresses the issue of non-disconnection of vulnerable customers during the winter months.
- 4.12 Current drafting of this paragraph inadvertently implies that the code of practice need only deal with such circumstances where the vulnerable customer makes a request for such non-disconnection. Clearly this is not the case and the UR has proposed a modification to correct this error.

Summary Responses

- 4.13 None of the respondents raised any concerns or objections in relation to the proposed modification.

UR Position

- 4.14 The UR considers that it is appropriate to proceed with the modification as proposed.

Final decision on licence modifications

- 4.15 Paragraph 4 of Condition 31 of all electricity supply licences and Condition 2.11 of all gas supply licences will be modified as follows (substituting gas for electricity and consumer for customer as appropriate for the gas supply licence):

4. The Code of Practice shall include arrangements by which the Licensee will:

- (a) on request and free of charge:
 - (i) provide services which will enable a Domestic Customer who is blind or partially sighted to receive, by means that are readily accessible to such Customers, information about (or set out in) any bill or statement relating to the supply of electricity or any other services provided to the Customer by the Licensee;
 - (ii) make available facilities which will assist any Domestic Customer who is blind or partially sighted or deaf or hearing impaired and in possession of appropriate equipment, to enquire or complain about any bill or statement relating to the supply of electricity to him or any service provided by the Licensee;
- (b) not cut off, in any month from October to March, the supply of electricity to the Domestic Premises in respect of which the Domestic Customer has not paid Charges for the Supply of Electricity if the Domestic Customer at the Domestic Premises:
 - (i) is of pensionable age, disabled or chronically sick; and
 - (ii) lives alone or only with other persons who are of pensionable age, disabled,

chronically sick or under the age of 18;

- (c) take all reasonable steps to avoid, in any month from October to March, cutting off the supply of electricity to a Domestic Premises in respect of which the Domestic Customer has not paid the Charges for the Supply of Electricity to the Domestic Premises where the occupants of the Domestic Premises include a person who is of pensionable age, disabled or chronically sick and to whom paragraph 4(b) does not apply; and
- (d) take all reasonable steps to ascertain, before it exercises any right it may have to cut off the supply of electricity to Domestic Premises, whether the Domestic Premises is one that falls within the scope of paragraph (b) or (c) above.

Costs and benefits

4.16 There are no costs associated with this modification. Benefits include clarity on supplier obligations.

References to Market Registration Service (Electricity supply licences only)

Policy Background

- 4.17 Conditions 27 and 43 of the electricity supply licences (with the exception of Power NI's licence which has a different numbering system) currently make reference to and define what is meant by Market Registration Service. It is currently defined as the service described in NIE Limited's transmission licence.
- 4.18 However, the definition of Market Registration Service is now in NIE Limited's 'separate' distribution licence, so it is necessary to amend the definition in order to reflect this change.
- 4.19 The UR's consultation proposed a modification to the current definition such that it refers to the service described in the licence held by the owner/operator of the distribution system to which the premises are connected.

Summary Responses

- 4.20 None of the respondents raised any concerns or objections in relation to the proposed modification.

UR Position

- 4.21 The UR considers that it is appropriate to proceed with the modification as proposed.

Final decision on licence modifications

4.22 The new definition of the Market Registration Service will be inserted in Condition 27 of all electricity supply licences (with the exception of Power NI's licence which has a different numbering scheme) as follows:

Market Registration Service means the service described in the electricity distribution licence held by the person that is the owner and/or operator of the Distribution System to which the premises are connected and through which the Customer is supplied with electricity;

Costs and benefits

4.23 There are no costs associated with this modification. Benefits include increased clarity and correct updated references.

Supply marketing activities

Policy Background

4.24 In reviewing the existing licences it has come to the attention of the UR that the numbering in paragraph 3 of the condition relating to marketing activity (Condition 40 in electricity supply licences and Condition 2.21 in gas supply licences) is incorrect.

4.25 In the September consultation the UR proposed to correct this numbering in the appropriate licence conditions of all electricity and gas supply licences.

Summary Responses

4.26 None of the respondents raised any concerns or objections in relation to the proposed modification.

UR Position

4.27 The UR considers that it is appropriate to proceed with the modification as proposed.

Final decision on licence modifications

4.28 The paragraph currently numbered as 3(c)(iii) will be renumbered as paragraph 3(d).

Costs and benefits

4.29 There are no costs associated with this modification. Benefits include increased clarity and correct updated references.

Chapter 5 Gas Distribution

Introduction

- 5.1 This section of the consultation paper outlines modifications proposed in relation to the gas conveyance licences held respectively by the two gas distribution companies in Northern Ireland, namely Phoenix Natural Gas Limited and firmus energy (Distribution) Limited.
- 5.2 The modifications are for the purpose of the Directive and will ensure clarity and consistency.
- 5.3 The modifications as set out below are necessary to address
- the preparation, revision and compliance with Codes of Practice,
 - the terms and conditions for domestic consumers and
 - a minor correction to one licence.

Codes of Practice for Gas Distribution Companies

Policy Background

- 5.4 New licence conditions were inserted in the gas conveyance licences in September 2012. These conditions relate to codes of practice in the following areas
- 2.7A Distribution Marketing Code
 - 2.8A Complaints Handling Procedure
 - 2.9A Consumer Information Code

- 5.5 At the same time, a number of new or amended licence conditions were introduced for gas supply companies relating to Codes of Practice (conditions 2.8 - 2.12 of gas supply licences).
- 5.6 In addition in the supply licences a separate new condition was added Preparation, Revision Of and Compliance with Codes of Practice (condition 2.13). All conditions relating to codes of practice are subject to this condition.
- 5.7 This condition sets out the requirement for consulting, reviewing, modifying and publishing the codes of conduct. It is mirrored in the gas supply licences (Condition 2.13), electricity supply licences (Condition 35) and electricity distribution licences (Condition 41). Therefore it is important for clarity and consistency in the management of codes of practice, as required under IME3, that this condition is added to the distribution licences. The inclusion of this condition also provides for high levels of consumer protection as required under the Directive.
- 5.8 The current codes of practice conditions (conditions 2.7A, 2.8A and 2.9A) in the gas distribution licences include the same requirements as provided for in condition 2.13 of the gas supply licences, however we have identified some inconsistencies between gas supply and gas distribution licences.
- 5.9 The Utility Regulator proposed to amend conditions 2.7A, 2.8A and 2.9A to remove references to the preparation, modification and reviewing of the code and to insert condition 2.9B (below) in order to provide consistency in the management of codes of practice between supply and distribution companies.

Responses

- 5.10 The Utility Regulator received one response relating to this section of the paper from Phoenix Natural Gas Ltd (PNGL).
- 5.11 PNGL have stated that they do not consider the addition of this condition necessary as their licence is already compliant with IME3 requirements. They further state that if UR is seeking consistency it should align code of practice arrangements between supply and conveyance licences.
- 5.12 The proposed amendments are designed to increase consistency in the preparation, revision of and compliance with codes of practice and are not intended to align the individual codes rather than the management of these codes. It would not be appropriate to align the codes of practice between supply and conveyance licences as these codes need to reflect the relationship with consumers and the impact of competition among other factors.
- 5.13 Further the Utility Regulator considers that this condition is required in order to implement high levels of consumer protection which is a provision of the Directive.
- 5.14 Specifically PNGL queried the addition of paragraphs 2.9B.5(b) and 2.9B.6 which state that the Utility Regulator may amend the licence where it considers it necessary or expedient. However under this condition the Utility Regulator may only amend the conditions relating to the codes of practice. This condition is not an absolute right to amend the licence. In addition the condition states that amendments will be made following consultation with the Licensee and the Consumer Council.
- 5.15 Furthermore the Utility Regulator considers it appropriate to include this condition in the event that the scope of any particular code of practice

needs to be amended in order to provide for the high levels of consumer protection required by the Directive.

- 5.16 PNGL state that though they accept that CCNI involvement in the development of each code is important, they do not understand why CCNI need to be consulted with about the operation of each code.
- 5.17 The Utility Regulator considers that the development of a code relates to more than just its original drafting and that CCNI have an important role to play in ensuring codes operate in a manner that provides for high levels of consumer protection. It is right that if CCNI is to be consulted on the content of the codes that it should also have a say in the operation of these codes.
- 5.18 PNGL consider that the inclusion of paragraph 2.9B.10, relating to the provision of statistical data to the Utility Regulator, is unnecessary. This condition allows the Utility Regulator to ensure there is consistency in the gathering of and providing of data relating to these codes of practice to allow a meaningful comparison between conveyance companies.
- 5.19 PNGL state that paragraph 2.9B.4 is a duplication of paragraph 2.9B. 2. .9B.4 relates to the review of the code. 2.9B.2 relates to the original submission. Therefore we consider that both paragraphs are necessary.
- 5.20 PNGL further state that paragraph 2.9B.8(a)(ii) is unnecessary and subjective. This paragraph states that PNGL must draw the attention of consumers to the code. The Utility Regulator maintains that this paragraph is necessary in promoting consumer protection. Customers will not know to search online for the code or to request a copy if they are not aware of the existence of such a code.

5.21 In relation to Paragraph 2.9B.8(d) PNGL state this is inappropriate and is a requirement on the Utility Regulator not PNGL.. This section is included here for consistency with gas supply licences. The Utility Regulator is directed by the Energy Order to publish this information so that it is brought to the attention of consumers. It is relevant that PNGL publish this information for consumers who are seeking to connect to gas so that they understand all the issues applicable to them. The Utility Regulator considers that this requirement will provide for high levels of consumer protection as required by the Directive.

Licence Modifications Final Decisions

5.22 The following paragraphs will be deleted from the conveyance licences

- paragraphs 5 to 12 from condition 2.7A (Distribution Marketing Code),
- paragraphs 4 to 11 from condition 2.8A (Complaints Handling Procedure) and
- paragraphs 6 to 13 from 2.9A (Consumer Information Code)

5.23 A new paragraph will be added at the end of condition 2.7A, 2.8A and 2.9A which will read:

“This Condition is subject to Condition 2.9B: Preparation, Revision Of and Compliance with Codes of Practice.”

5.24 A new licence condition will be included into the PNGL and firmus licences as condition 2.9B, entitled “Preparation, Revision Of and Compliance with Codes of Practice”. The new condition will read as follows:

“Condition 2.9B: Preparation, Revision Of and Compliance with Codes of Practice

2.9B.1 This Condition applies to any Code of Practice (**Code**) which the Licensee is, pursuant to Conditions 2.7A, 2.8A and 2.9A of this Licence, required to prepare, submit to and have approved by the Authority.

2.9B.2 The Licensee shall, before submitting any Code to the Authority for its approval, consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be operated.

2.9B.3 The Licensee shall:

- (a) whenever requested to do so by the Authority; and
- (b) where the request relates to the Distribution Marketing Code, in conjunction with all other distribution system operators,

review the relevant Code to which the request relates and the manner in which it has been operated, with a view to determining whether any modification should be made to that Code or to the manner of its operation.

2.9B.4 In carrying out any review under paragraph 2.9B.3 the Licensee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner

in which it is likely to be or has been operated.

2.9B.5 The Authority, following consultation with the Licensee, the General Consumer Council, any other person who in the opinion of the Authority is likely to be interested or affected, may

(a) direct the Licensee to make such modifications to any Code as the Authority considers are necessary or expedient to meet the relevant objectives of that Code;

(b) from time to time make such modifications to Conditions 2.7A, 2.8A and 2.9A, as the Authority considers are necessary or expedient.

2.9B.6 Where the Authority modifies a Condition in accordance with paragraph 2.9B.5(b):

(a) it shall:

(i) send a copy of the modification to the Licensee and the Department;

(ii) publish a copy of the modification in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modification; and

(b) the Licensee shall revise the Code to which the modification relates in such manner and to such extent as is required to ensure that the Code reflects and complies with the modified Condition.

2.9B.7 Where the Licensee revises a Code:

- (a) in accordance with paragraph 2.9B.6(b) above;
- (b) following a review undertaken in accordance with paragraphs 2.9B.3 and 2.9B.4; or
- (c) following a direction from the Authority under paragraph 2.9B.5(a),

it shall submit the revised Code to, and have it approved by, the Authority.

2.9B.8 The Licensee shall as:

- (a) soon as practicable following the Authority's approval of a Code (including following a revision):
 - (i) send a copy of the Code to the Authority and the General Consumer Council; and
 - (ii) draw the attention of its consumers to the Code and of how they may inspect or obtain a copy of it;
- (b) publish on and make readily accessible from its website a copy of the Code;
- (c) give or send free of charge a copy of the Code (as from time to time revised) to any person who requests it; and
- (d) make available to members of the public, in such form and in such manner as the Authority considers appropriate, information published by the Authority pursuant to Article 7 of the Energy Order.

- 2.9B.9 Subject to paragraph 2.9B.11, the Licensee shall comply with each Code to which this Condition applies and which has been approved by the Authority.
- 2.9B.10 The Licensee shall provide the Authority with all assistance reasonably necessary to enable the Authority to monitor the implementation and operation of any Code and this assistance shall include providing statistical data at such times and in such a format as the Authority reasonably requires and permitting the Authority access to relevant documentation held by the Licensee.
- 2.9B.11 The Authority may (following consultation with the Licensee, and in the case of the Distribution Marketing Code, other distribution system operators) issue directions relieving the Licensee of any of its obligations under Conditions 2.7A, 2.8A and 2.9A and this Condition to such extent as may be specified in those directions and subject to such terms and conditions as the Authority thinks fit.”

Reasons and Effects

- 5.25 The UR considers that these modifications will create consistency between the licences for the gas distribution system operators and the licences for the gas suppliers, electricity suppliers and electricity distribution companies. The modifications will also provide for high levels of consumer protection as required by the Directive.

Costs and Benefits

5.26 The licensees will not incur any additional costs as a result of the implementation of these modifications. The licensees may require resources to review and amend codes of practice in the future, however under the current licence this is already a requirement and we consider that these costs would not be material. The benefit of the modifications will be increased consistency between the licences for gas supply and distribution companies and with electricity supply and distribution companies in relation to the required codes of practice.

Terms and Conditions for Domestic Consumers

Policy Background

5.27 On 13 September 2012, new licence conditions were implemented for the gas conveyance licence held by PNGL and by firmus to introduce relevant consumer protection measures that were required to comply with the requirements of the Gas Directive.

5.28 However we have identified that an additional licence condition is required for the purposes of the consumer protection measures set out in the Gas Directive.

5.29 Article 10A(4)(b) of the Gas Order requires that conditions must be included in the distribution conveyance licences to provide that where the Distribution licence holder enters into a contract with a domestic customer:

- (i) the terms and conditions of such contract must comply with items (a) and (d) of paragraph 1 of Annex 1 to the directive; and

(ii) and the licence holder must comply with the requirements of items (b), (c), (d) and (g) of paragraph 1 of Annex 1 to the directive.

5.30 Generally speaking the only direct relationship that a gas distribution company has with a domestic customer relates to the provision (and maintenance) of a connection between the customer's premises and the gas distributor's network – which is governed by a connection agreement i.e. a contract.

5.31 Accordingly that contract (the connection agreement) has to comply with the relevant requirements of the Directive and in accordance with the Gas Order, the gas distribution licence must include a condition in respect of those requirements.

5.32 We are therefore proposing to add a new condition into both the PNGL and firmus licences which will contain requirements in relation to the terms and conditions of any gas contract that the licensee enters or offers into with a domestic consumer.

Responses

5.33 We had one response to this section of the paper from PNGL.

5.34 PNGL state that they understand that annex 1 of the Directive relates to suppliers' measures. However, there is nothing within Annex 1 or within Article 3(3), which refers to Annex 1, that is limited to supplier measures. In any event Article 10A(4)(b) (as set out above) states that where a holder of a licence under Article 8(1)(a) which relates to a licence for the conveyance of gas, enters into a contract with a domestic customer then the provisions within Annex 1 apply.

5.35 PNGL state that the condition should relate solely to the terms and conditions for connection as all other conditions are covered by licence. The Gas Order states that this provision will apply whenever the licensee enters into any contract with a domestic customer. However we note that in the majority of cases when the licensee enters a contract with a domestic customer it is in relation to a connection to the gas network.

5.36 PNGL state that Paragraph 2.2A.3 is confusing and in most instances not relevant to distribution system operators. This condition relates to

- Renewal
- Termination
- Changes to terms and conditions

5.37 The inclusion of these conditions is a requirement of the Gas Order and the condition for renewal, termination and variance are set out in Annex 1 of the Directive. The renewal conditions will only apply if there are renewable conditions within the contract. In relation to termination the companies need to provide customers with details of their rights to terminate and the consequences of terminating the contract.

5.38 PNGL state that it is not practicable nor appropriate for them to write to customers to inform them of changes to their contract. Annex A(1)(b) states that the company must ensure that customers are given adequate notice of any intention to modify and informed about their right of withdrawal when the notice is given. Therefore this condition will remain.

5.39 In relation to paragraph 2.2A.3(g) PNGL state that this refers only to suppliers obligations. Guaranteed standards of service also apply to the

Distribution company, therefore it is appropriate to include this paragraph as Distribution companies will also be expected to pay compensation arrangements.

Licence Modifications Final Decisions

5.40 The following new condition 2.2A, entitled “Terms and Conditions of Gas Contracts with Domestic Consumers”, will be included in distribution conveyance licences.

Condition 2.2A: Terms and Conditions of Gas Contracts with Domestic Consumers

2.2A.1 The Licensee shall ensure that any contract it enters or offers to enter into with a domestic consumer for the provision of any gas service (a **Gas Contract**) contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the consumer to understand the terms and conditions under which the services are, or are to be, provided.

2.2A.2 Before entering into, or concluding, a Gas Contract with any domestic consumer, the Licensee shall give the domestic consumer:

- (a) a written copy of the full terms and conditions of the Gas Contract, including without limitation all the information referred to in paragraph 2.2A.3; and

- (b) details of how the domestic consumer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice, including in particular with regard to their rights in relation to the supply of gas services provided by the Licensee.

2.2A.3 The Licensee shall ensure that every Gas Contract (as between the Licensee and each domestic consumer) shall, as a minimum, include the following:

- (a) the identity and address of the Licensee and any other appropriate contact details;
- (b) the services to be provided, the service quality levels offered by the Licensee and, where the Gas Contract relates to the provision of a connection between the domestic consumer's premises and the Licensee's Network, the time within which the connection will be made;
- (c) the duration of the Gas Contract, the terms and conditions for renewal (where the Gas Contract provides for its renewal) and for termination of the Contract (which terms and conditions shall be compliant with the requirements of this Condition), and the existence of any right of cancellation or termination by the domestic customer of the Gas Contract;
- (d) (if offered by the Licensee) the types of maintenance service offered under the Gas

Contract;

- (e) a right for the domestic consumer to terminate the Gas Contract where:
 - (i) the Licensee proposes a variation to that Gas Contract; and
 - (ii) the proposed variation:
 - (A) relates to terms and conditions as to price; or
 - (B) would vary, effect, or impact the rights and obligations of the domestic customer, and
 - (iii) the domestic consumer does not wish to accept the proposed variation;
- (f) the charges and/or other payments to be paid by the domestic consumer in a manner that enables the domestic consumer to identify all such charges and payments due under the Gas Contract and the dates or times at which such charges or payments are to be paid;
- (g) the compensation and the refund arrangements (if any) which will apply if contracted service quality levels, including in relation to inaccurate and delayed billing, are not met; and
- (h) details of how the domestic consumer may initiate the Licensee's complaint handling procedure (as

established in accordance with the Condition relating to Complaints Handling Procedure) .

2.2A.4 The Licensee shall ensure that any Gas Contract it enters or offers to enter into provides the domestic consumer with a choice of payment methods.

2.2A.5 Any difference in or between any of the Licensee's Gas Contracts arising from the choice of payment method shall be determined by the Licensee on a basis which reflects the costs to the Licensee of providing that different payment method.

2.2A.6 Where:

- (a) the Licensee proposes to vary any of the terms and conditions of a Gas Contract it has with a domestic consumer; and
- (b) the proposed variation:
 - (i) relates to terms and conditions as to price; or
 - (ii) would vary, effect, or impact the rights and obligations of the domestic customer under the Gas Contract,

it shall at least 21 days in advance of the date that the proposed variation is due to take effect:

- (c) send to the domestic customer a notice of the proposed variation, together with the consumer's right (as included in the Gas Contract in

accordance with paragraph 2.2A.3(e)) to terminate the Gas Contract before the proposed variation is due to take effect; and

- (d) ensure that the notice sets out the proposed variation and any supporting information in clear, transparent and easy to read and understand language.

Reasons and Effects

5.41 The UR considers that the proposed modification to include a new licence condition in relation to the terms and conditions of contracts with gas consumers will provide further clarity and ensure consumers are granted the levels of consumer protection required under the Directive.

Costs and Benefits

5.42 We envisage that the Distribution licence holders will incur some costs in complying with this new licence condition as they will be required to carry out reviews and possible amendments to their existing terms and conditions. However we consider that these costs will not be material and we consider that the terms and conditions of the licence holders may already be compliant in many of the aspects required by the new licence condition.

5.43 The benefits of the new licence condition will be additional protection for domestic consumers and it will also ensure clarity and transparency for consumers in relation to Directive implementation.

Codes of Practice for Gas Distribution Companies

Policy Background

5.44 In the Decision Paper of 30 April 2013 paragraph 2(b) of Condition 2.5 of the PNGL licence was amended to cater for balancing, in the event the Distribution System Operator were to undertake this task. The firmus licence already catered for this eventuality.

5.45 It was noticed however that the equivalent condition in the firmus licence – Condition 2.4 – had an error, making the paragraph unclear and incomplete. As this section had not been consulted on for firmus it could not be fixed in the Decision paper of 30 April. We now propose to correct this in the firmus licence.

Responses

5.46 There were no responses to this section of the paper.

Licence Modifications Final Decisions

5.47 Paragraphs 2(c) of the Condition 2.4 of the firmus licence will now be modified so that it reads:

“(c) where, pursuant to Condition 2.14.2 the Licensee is designated as a distribution system operator, ensure that the Distribution Network Code contains provisions that establish:

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

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

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

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

Chapter 6: Gas Transmission

Network forecasts

Policy background

- 6.1. This section of the decision paper outlines the modification required to gas conveyance licences of the transmission system operators (TSOs). This modification is required to implement the remaining requirements of the Directive. The licences concerned are those of Premier Transmission Ltd. (PTL), Belfast Gas Transmission Ltd. (BGTL), and BGE (UK).
- 6.2. The other modifications required for implementation of the 3rd Energy Package were consulted on earlier in the year – the non-unbundling modifications were consulted on in March 2013 and the modifications to give effect to the unbundling provisions were consulted on in May 2013.
- 6.3. The Directive requires that security of supply issues are monitored on an annual basis and this is currently implemented via the joint gas capacity statement process which the TSOs and the Utility Regulator engage in each year.
- 6.4. The requirement to monitor security of supply is to some extent reflected in the BGE(UK) licence in condition 2.10 Network Forecasts but this condition is not replicated in either the PTL or BGTL licences.
- 6.5. We therefore proposed to include a new condition entitled 'Network Forecasts' in all the TSO licences. This is based on the existing Condition 2.10 in the BGE(UK) licence but with an additional requirement on the TSOs to produce coordinated statements and also for forecast information to be provided by the tenth working day in June in each calendar year.

Summary of Responses

- 6.6. We received comments on this proposed modification from BGE(UK) and Mutual Energy Limited (MEL).
- 6.7. BGE(UK) is in agreement with the proposed modification.
- 6.8. MEL stated that the requirement to coordinate statements goes beyond the requirements of the Directive and as such should not be included as a licence obligation. Whilst MEL expressed support for a co-ordinated approach, they believe that at times Designated Pipeline Operators (DPOs) may consider it more appropriate and beneficial to prepare a statement focusing on the specific intricacies of their respective networks and therefore should not be considered in breach of their licence if this is the preferred option.

UR Position

- 6.9. Article 5 of Directive 2009/73/EC requires Regulatory Authorities to monitor security of supply, which monitoring shall in particular cover the balance of supply and demand on the national market. The UR believes that it is therefore appropriate, in order to monitor the 'national position', for licensees to coordinate with each other when preparing their statement and to, where possible, prepare them on a consistent basis. In any case the licensees have worked together for many years to produce the joint gas capacity statement. This is particularly important in Northern Ireland where the Authority needs to be assured that the three TSOs are taking into account the same types of issues and matters when preparing their statements. Furthermore the modification does not preclude an individual TSO from including in its statement any specific intricacies of its own network.
- 6.10. For these reasons we have concluded that the requirement for coordination

of statements does not go beyond the requirements of the Directive and accordingly does not need to be revised.

- 6.11. In making the final licence condition we intend to update 2.xx.1 '1 June 2013' to '1 June 2014' as the original date has now passed. Also, further minor amendment will be made to paragraph 2.xx.2 which will now read 'in accordance with paragraphs 1 and 3'. The proposed modification applied only to the initial statements (paragraph 1) and not also to the annual revisions (paragraph 3) which it should also apply to for completeness.

Licence Modifications – Final Decisions

- 6.12. In respect of the PTL, BGTL and BGE(UK) licences the new (or revised in the case of BGE(UK)) condition in the licences will read as follows:

2.xx.1 Network Forecasts

*The licensee shall comply with a direction given by the Authority to prepare a statement in such form as may be specified in the direction giving, with respect to each of the 10 succeeding years beginning with **1 June 2014** such information by way of forecasts of:*

- (a) the use, to the best of the Licensee's knowledge and belief, likely to be made of the Network or any part of the Network by persons authorised to convey, store or supply gas under Article 8 of the Order (including the Licensee and any affiliate or related undertaking of the Licensee); and*
- (b) the likely developments to the Network which the Licensee expects from time to time to be taken into account in determining the charges for making connections to that*

system and for entering into arrangements for the conveyance of gas;

as will assist:

- (c) a person seeking to connect a pipe-line of his to the Network or enter into arrangements for the conveyance of gas in identifying and evaluating the opportunities for so doing; and*
- (d) the Authority to monitor issues relating to security of supply.*

2.xx.2 *Co-ordination with Statements of other Designated Pipeline Operators*

The preparation of any statement in accordance with paragraphs 1 and 3 shall, so far as possible be co-ordinated with the preparation of the corresponding or equivalent statement required to be produced by every other Designated Pipeline Operator and such statements shall, so far as possible and save to the extent the Authority consents otherwise, be prepared on a consistent basis.

2.xx.3 *Revised Network forecasts*

Except in so far as the Authority consents to the Licensee not doing so, the Licensee shall, on an annual basis, prepare a revision of any statement prepared under Condition 2.xx.1 so as to ensure that, so far as reasonably practicable, the information in the revised statement is up to date.

2.xx.4 *Provision and Publication of forecasts*

The Licensee shall, subject to any requirement to comply as is appropriate with the listing rules (within the meaning of Part VI of the Financial Services and Markets Act 2000) of the Stock Exchange

and with Condition 2.xx.5:

- (a) *no later than the tenth working day of June in each calendar year, furnish the Authority with a copy of the statement prepared under Condition 2.xx.1 and of each revision of the statement prepared under Condition 2.xx.3;*
- (b) *in such form and manner as the Authority may direct, publish a description of the statement and of each revision; and*
- (c) *send a copy of the statement and of each revision to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which does not exceed such amount as the Authority may from time to time direct.*

2.xx.5 Particular interests

In complying with the requirements of Condition 2.xx.4(b) and (c), the Licensee shall have regard to the need for excluding, so far as practicable:

- (a) *any matter which relates to the affairs of an individual, where the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and*
- (b) *any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporated where publication of that matter would or might seriously and prejudicially affect the interests of that body.*

2.xx.6 Determination by Authority of Particular interests

Except in so far as the Authority consents to the Licensee not doing so, the Licensee shall refer for determination by the Authority any question as to whether any matter seriously and prejudicially affects the interests of an individual or a body of persons.

2.xx.7 Definition

In this Condition:

<i>Designated Pipeline Operator</i>	<i>has the meaning given to it in [Condition 2A.1] of this Licence.</i>
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Costs and benefits

- 6.13. There will be no additional costs associated with this modification as it reflects the current practice of the TSOs. The modification will however ensure consistency between all the TSO licences and so ensure that Article 5 of Directive 2009/73/EC is fully implemented in all the gas TSO licences.