

## WITHOUT PREJUDICE

1 March 2017

Paul Harland  
Finance and Network Assets  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Dear Paul,

### **Re: Licence Modifications - firmus energy Professional and Legal services in relation to GIS**

The Utility Regulator (**UR**) is proposing to modify the Gas Conveyance Licence of Firmus Energy (Distribution) Limited (**FE**) to include an allowance for professional and legal costs associated with the Geographic Information System mapping software (**GIS costs**) which were omitted from the UR's GD17 Final Determination (**Proposed Modification**).

As the UR is aware, the omission of an allowance for GIS costs from the UR's GD17 Decision<sup>1</sup> is a matter on which the Competition and Markets Authority (**CMA**) granted FE permission to appeal on 28 December 2016.<sup>2</sup> Under the Gas (Northern Ireland) Order 1996, the question of whether, and if so what amount, should be allowed for GIS costs as part of FE's allowed operating expenditure for GD17 is presently before the CMA. The CMA has not yet made its determination. In these circumstances, FE does not consider that the UR is the proper body to correct the omission, which will be dealt with by the CMA in its Final Determination. FE does not accept that the UR should make any unilateral licence modification outside the CMA appeal and relies on all of its submissions on this issue to the CMA.<sup>3</sup> The UR did not consult with FE prior to issuing its Consultation Paper and has proceeded with its Proposed Modification notwithstanding FE's strong objections.

This letter responds to the UR's Consultation Paper on the Proposed Modification dated 31 January 2017 without prejudice to FE's position in its appeal before the CMA.

---

<sup>1</sup> UR Decision Paper: Licence Modifications Pursuant to the GD17 Final Determination and other Regulatory Decisions (28 October 2016) (**GD17 Decision**).

<sup>2</sup> CMA, Decision on Permission to Appeal, 28 December 2016.

<sup>3</sup> Letter to CMA responding to UR Permission Submission (16 December 2016); Letter to CMA re UR's proposed licence modification consultation for GIS costs (25 January 2017); FE Reply to UR's Representations and Observations on FE's Notice of Appeal (14 February 2017) (**FE Reply**), paras 3.62-3.93.

# 1. FE's position on the proposed allowance for GIS Costs

Outlined below are the GIS costs submitted by FE as part of its GD17 Business Plan Submission (costs that were not challenged by the UR in its GD17 Draft Determination of 16 March 2016).<sup>4</sup>

Legal and Professional Fees	2017	2018	2019	2020	2021	2022	Total
LPS (mapping)	74,945	76,445	77,945	79,445	80,945	82,445	472,170
GIS support and maintenance	60,000	60,000	66,000	66,000	66,000	66,000	384,000
GIS smallworld licenses	7,775	7,775	7,775	7,775	7,930	8,089	47,118
FME software licenses	3,500	3,500	3,500	3,500	3,570	3,641	21,211
FAAR software licenses	2,000	2,000	2,000	2,000	2,040	2,081	12,121
GIS development	16,500	16,500	16,500	16,500	18,150	19,965	104,115
Landweb fees (land ownership)	700	800	900	1,000	1,100	1,200	5,700
Positional improvement (one off)	30,000	30,000	-	-	-	-	60,000
	195,420	197,020	174,620	176,220	179,735	183,421	1,106,435

Having included an allowance of £1.11 million in the GD17 Draft Determination (for the period 2017-2022), and then removing these costs entirely from the GD17 Final Determination, the UR now proposes to grant FE an allowance of £853,000 pre-efficiency (a reduction of 23% to FE's requested allowance).<sup>5</sup>

FE disagrees with the £853,000 adjustment to its Opex allowance proposed by the UR. As set out in its Business Plan Submission, FE's view is that an increase to its Opex allowance of £1.11 million is required to properly capture its efficient and necessary GIS costs for the GD17 period.

The UR states that it arrived at its proposed allowance of £853,000 based on 2014 actuals. In the Consultation Paper, the UR states that *"Our approach in GD17 has been to generally use 2014 costs as a baseline unless there is strong justification to apply a different allowance"* and that *"no explanation or rationale for the increase in costs had been included in the Business Plan Submission"*.<sup>6</sup>

It is incorrect for the UR to assert that *"no explanation or rationale"* for the increase in GIS costs was provided in FE's Business Plan Submission. In fact, FE's Business Plan Submission devotes 4 pages to explaining why FE expects its GIS costs to increase from GD14 levels (see Appendix 12, pages 28-31). Since the Consultation Paper does not provide any reasoning as to why the UR now proposes to reject the justification provided by FE in its Business Plan, and previously accepted by the UR in its GD17 Draft Determination, FE considers the Consultation Paper is defective. FE is not yet in a position to know the UR's reasons for its change of position and cannot therefore sensibly comment on it at this stage. The reasons previously given by FE, on which no comment is made in the Consultation Paper, included the following:<sup>7</sup>

<sup>4</sup> FE Business Plan Submission (30 September 2015), Appendix 12, page 31.

<sup>5</sup> Figures quoted in 2014 prices.

<sup>6</sup> Consultation Paper, Paras 2.12 and 2.17.

<sup>7</sup> FE Business Plan Submission (30 September 2015), Appendix 12, pages 28-31.

- *LPS mapping*: Cost relates to supply of digital data, 1193 large scale vector map tiles, full NI coverage 1:50k Raster maps and full NI coverage of Pointer address data. The mapping is used as a background to display against the FE network and allow accurate data capture. It is recognised that the FE network will continue to grow and there will be a requirement to increase the number of tiles thus an increase of £1500 per annum is included in the costs (£30 per tile).
- *GIS Support*: Cost relates to all routine maintenance and support of FE's GE Smallworld GIS system including dataset compression, Magik coding, database management, import and export of other datasets, FAAR extracts, upgrades, customization, reports, system health checks, performance monitoring and resolution of faults. This cost is confirmed under a two year contract until the end of 2015 and an increase for 2016 as shown as a one year extension to the contract. It is expected that as the workload increases this cost will increase and an estimation for the costs for the forward years includes the increase shown.
- *GIS Development*: Cost relates to additional development work carried out by FE's GIS consultant AEGIS. The development work is over and above the routine maintenance and support already provided by AEGIS. Development works are charged on a daily basis at 925 Euro per day and would include development of new objects and associated data modeling. Recent examples are the creation of strategic pipes, creation of District Pressure Reduction Module objects, creation of PSSR critical valve objects etc. It is expected that as the network grows and FE's customer base increases, the GIS will be used increasingly for reports and to improve processes and procedures. It is expected that a similar level of development work will continue through the GD17 period with an increase in costs in 2021 and 2022 due to the changes in reports and extra information required by the UR for GD23 process.
- *Positional improvement (one-off)*: FE explains that the Positional Improvement project undertaken by OSNI aimed to redress inconsistencies between existing mapping and the new Global Navigation Satellite Systems (GNSS) based surveys. The objective of the OSNI Positional Improvement project was to improve accuracy of GNSS/GPS positioning for surveying. The OSNI Positional Improvement project has had major effects on most Northern Ireland utilities and government agencies that use OSNI's large scale vector mapping (e.g. FE, PNGL, NIE, NI Water). OSNI proceeded with this project without providing funding or compensation to assist affected parties move data to the newly corrected POST Positional Improvement format. FE will need to carry out this work so that it can carry out a number of its business activities (e.g. responding to emergency gas escapes, complying with health and safety regulations, dial-before-you-dig enquiries). FE noted in its GD17 Business Plan template that the "*Positional Improvement project is underway which will continue through GD17 and which is forecast to cost c. £30,000 per year for years 2017 & 2018.*"<sup>8</sup> Work undertaken to date has been internal background scoping to assess the requirements of the project. Having undertaken this initial in-house scoping, FE plans to employ consultancy support to carry out the project in 2017 and 2018

---

<sup>8</sup> FE Business Plan Submission (30 September 2015), page 75. Detailed cost breakout provided in FE Business Plan Submission (30 September 2015), Appendix 12, pages 28-31.

and predicts costs of £30,000 per annum. Further information can be found in FE's GD17 Business Plan Submission.

FE also notes the statements contained within paragraphs 2.18 to 2.20 of the UR's Consultation Paper which conclude with the statement *"We do not view anything in the figures as suggesting a change in our approach of applying 2014 costs is required."* However, we note that this is, in fact, a change in approach from the UR's GD17 Final Determination paragraph 6.211 which recognised GIS costs, software licences and fees for base maps as *"fixed costs"*.

We further note the UR statement in paragraph 2.19 that *"having considered the evidence of actual costs over several years, [we] have not been persuaded that the increasing size of the system and workload is driving these costs."* FE disagrees with this assessment as system mapping is related to network growth. For example, undertaking development in new areas requires FE to purchase new Licence area maps not previously before held by the company. Once network development is undertaken in those areas, licences for the use and update of those maps must still be purchased in each subsequent year.

In addition, although the actual costs for 2015 and 2016 are lower than the 2014 actual cost, this was a result of the purchase in 2014 of new area maps for network planning. However, gas mains were subsequently not laid by FE in those areas. As mains were not laid in those areas in 2014, renewal was not required in 2015 and 2016. However, this situation will not occur during the GD17 period as FE will develop its network, extending across its franchise areas, following a Network Build Plan assessed by the UR. In commenting upon the Network Build Plan in the GD17 Final Determination paragraph 7.112 the UR stated *"FE provided detailed plans for the development of gas mains in each town comprising 621 individual projects. Each project assessment included a detailed layout of mains, a schedule of works priced using current tendered rates and an economic assessment of the project. The company has prepared a detailed programme of work to provide a logical and efficient build."*

## 2. Issues in dispute before the CMA

FE's Reply Submission sets out a number of serious flaws in the UR's GD17 process concerning the treatment and ultimately omission of GIS costs from the GD17 Decision.<sup>9</sup> FE has serious concerns with the way the UR has responded to this omission, both when it was first brought to the UR's attention by FE and now while the matter is before the CMA. It is also disappointing that the UR's public Consultation Paper presents as fact a number of matters which are disputed by FE in the appeal currently before the CMA. For example:

- The UR states that it *"did not make a substantive decision on the total allowance for GIS costs within the GD17 Decision"*.<sup>10</sup> FE fundamentally disagrees with this assertion for the reasons outlined in both its Notice of Appeal and Reply Submission filed in the appeal currently before the CMA.

---

<sup>9</sup> FE Reply, paras 3.62-3.93.

<sup>10</sup> Consultation Paper, Para 2.5.

- The UR states that “*FE appealed against elements of the GD17 Decision*” and had “*commented on these costs as part of that appeal*”.<sup>11</sup> FE has done more than “comment” on the omission of GIS costs. It is a ground of appeal currently before the CMA (Ground 1C) on which the CMA granted permission to appeal notwithstanding the UR’s objection on the basis that it had not made any decision.
- The UR states that “*any additional allowance in respect of GIS costs could be provided through the opex uncertainty mechanism*”<sup>12</sup>, a view which FE has taken issue with on a number of occasions for the reasons outlined in its Reply Submission and which the UR no longer supports before the CMA.<sup>13</sup>

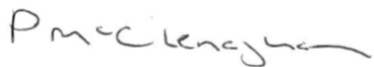
### 3. Right to seek permission to appeal the Proposed Modification

In the context of the appeal before the CMA, the UR has suggested that FE could seek permission to bring a separate appeal solely on the issue of the Proposed Modification if FE disagrees with the UR’s view. For the reasons set out in FE’s Reply Submission, it would be grossly unfair, costly and inefficient if FE was required to re-apply for permission to appeal any new decision on this matter when permission has already been granted by the CMA.

### 4. Conclusion

FE would welcome further engagement on an appropriate allowance for the GIS costs that were omitted from the UR’s GD17 Decision but only in the context of the current CMA appeal process.

Regards,



Peter McClenaghan  
**Regulatory Affairs Manager**

---

<sup>11</sup> Consultation Paper, Para 1.6.

<sup>12</sup> Consultation Paper, Para 3.1

<sup>13</sup> FE Reply Submission, Para 3.75.