



**BILLING DISPUTE REFERRED TO THE UTILITY REGULATOR FOR DETERMINATION
BY [redacted] IN RELATION TO CHARGES LEVIED BY
SSE AIRTRICITY ENERGY SUPPLY (NORTHERN IRELAND) LIMITED.**

FINAL DETERMINATION

14 March 2014

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DETERMINATION

14 MARCH 2014

1 SECTION ONE – INTRODUCTION

- 1.1 On 9 September 2013, the Northern Ireland Authority for Utility Regulation (referred to hereafter as **Utility Regulator**)¹ received for determination under Article 47A of the Electricity (Northern Ireland) Order (the **Order**) a billing dispute submitted on behalf of [redacted] (the **Complainant**) from the Consumer Council for Northern Ireland (**CCNI**).
- 1.2 The Dispute that the Utility Regulator is asked to determine is a billing dispute (the **Dispute**) between the Complainant and SSE Airtricity Energy Supply (Northern Ireland) Limited (**Airtricity**). It relates to charges levied by Airtricity for the supply of electricity to, and the subsequent disconnection of, a commercial property owned by the Complainant at [redacted] (the **Property**).
- 1.3 The matter in dispute:
- (a) has been referred to the CCNI;
 - (b) has not been resolved to the satisfaction of the Complainant within 3 months of it being referred to the CCNI;
 - (c) concerns charges set out in an invoice sent by Airtricity to the Complainant dated 19 May 2013.
- 1.4 It is therefore a Dispute which meets the requirements of Article 47A(4) of the Order.
- 1.5 The practice and procedure followed in connection with the determination of the Dispute is the Utility Regulator's published Policy on the Resolution of Complaints, Disputes and Appeals, dated June 2013 (the **Procedure**). The Procedure has, given the particular nature of

¹ Where legislative or licence provisions are quoted, the reference is to "the Authority".

the Dispute, the status of the Parties and the extent and type of information required, been supplemented and/or revised in respect of the Dispute in order to ensure good practice.

- 1.6 In accordance with the Procedure, the Utility Regulator decided to allocate responsibility:
- (a) for the procedural stages of the case to a Case Management team (namely Barbara Cantley and Ursula Trolan); and
 - (b) for making the draft and final determinations to me Kevin Shiels – Director of Retail and Customer Protection.
- 1.7 Legal input and advice has also been received from the Utility Regulator’s lawyers. In addition the Utility Regulator has received, in response to requests made of NIE in its capacity as the meter services provider, information relating to the meter services provided by NIE in respect of this Property, and the operation of the meter at the property.
- 1.8 I am the Decision Maker and have determined this billing Dispute, in accordance with my delegated authority, for and on behalf of the Utility Regulator.
- 1.9 The Parties were informed of those involved in the decision making process before work began in relation to the Dispute and no objections were raised.
- 1.10 This document sets out my determination in relation to the Dispute.
- 1.11 In making my determination I have:
- (a) been fully briefed by the Case Management team on the background to and facts of the Dispute and the issues arising.
 - (b) received copies of all the documents and correspondence relating to the Dispute. All documents used in the preparation of this determination are listed in Appendix 1 and have either already been shared with the Parties or are enclosed with the determination (Note – appendices have been redacted for publication).
 - (c) received legal advice from the Utility Regulator’s lawyers on various legal aspects of the case - as reflected in this determination.
- 1.12 The parties have seen all of these documents and had the opportunity to comment on them. They also received my draft determination, dated 20 February 2014.

1.13 Both Parties submitted representations in response to the draft determination. All these responses and submissions which have been received in response to the draft determination are indexed in Appendix 1 and enclosed with the determination. I have fully considered all of the submissions which have been made.

1.14 This determination adopts the following structure:

- (a) the Parties (at Section 2);
- (b) the factual background to the Dispute (at Section 3);
- (c) the applicable legal framework (at Section 4);
- (d) the respective views of the Parties (at Sections 5 and 6);
- (e) the issues falling to be determined (at Section 7);
- (f) my determination in relation to Issue 1 (at Section 8);
- (g) my determination in relation to Issue 2 (at Section 9);
- (h) my order (at Section 10).

2 SECTION TWO – THE PARTIES

2.1 The following summary reflects the status of the Parties.

The Complainant

2.2 The Complainant is a private commercial landlord. He is the owner and landlord of the Property at [redacted].

2.3 Up until 6 January 2011 the Property was let out to (and therefore occupied by) a tenant and that tenant had entered into a contract with Airtricity for the supply of electricity to the Property.

Airtricity

2.4 Airtricity is a wholly owned subsidiary of SSE plc, a utility company operating in the gas and electricity markets in Northern Ireland. SSE plc is a Top 40 FTSE-listed company with interests and experience in electricity and gas production, distribution, supply and services.

2.5 Airtricity holds an electricity supply licence granted by the Utility Regulator authorising it to supply electricity in Northern Ireland (the **Licence**). The conditions of the Licence which are relevant to the Dispute are included in Section Four.

2.6 Airtricity supplies approximately 181,000 customers in the Northern Ireland electricity market, of which around 15,000 are small and medium enterprises (SMEs).

2.7 Airtricity was the electricity supplier of the previous tenant at the Property and had a signed contract with agreed terms and conditions with that customer.

3 SECTION THREE – FACTUAL BACKGROUND TO THE DISPUTE

- 3.1 The following summary is derived from the evidence submitted by the Parties in response to information requests from the Utility Regulator. It is also derived from information provided by NIE in relation to disconnection costs and meter readings at the Property.
- 3.2 The Complainant's last tenant vacated the premises on 6 January 2011, at which time the Property became vacant.
- 3.3 The previous tenant had entered into a contract with Airtricity for electricity supply. When the tenant was moving out he/she notified Airtricity and that contract came to an end from the date the tenant vacated the Property i.e. 6 January 2011.
- 3.4 A final meter read of 90674 was supplied by the tenant on 6 January 2011 and was verified as being correct via a meter reading taken by NIE on 18 January 2011.
- 3.5 The Complainant:
- (a) states that the Property was vacant from early January 2011;
 - (b) confirms that he did not agree or enter into a written contract with Airtricity or any other supplier at any time after 6 January 2011;
 - (c) states that the Property was boarded up from early February 2011 to 4 December 2012 and that neither he nor any person authorised by him entered the Property throughout this time.
- 3.6 Airtricity continued to be the registered supplier at the Property.
- 3.7 In its capacity as meter service provider to Airtricity, NIE continued to take meter readings for the Property². The first meter reading taken after 6 January 2011 was taken on 14 April 2011. This meter reading was the same as the meter reading the previous tenant had communicated to Airtricity – 90674.

² NIE took meter readings on 18 January 2011, 14 April 2011, 13 October 2011, 16 January 2012, 16 April 2012, 17 July 2012 and 15 March 2013.

- 3.8 The next meter reading taken by NIE was on 13 October 2011. This meter reading was 90675 and accordingly showed that 1 unit of electricity had been consumed at the Property since the last meter reading i.e. since 14 April 2011³.
- 3.9 In the meantime on 18 July 2011, Airtricity had issued an invoice (number 4781074) to the Complainant⁴ which was based on an estimated reading. This invoice was not paid.
- 3.10 On 17 October 2011, Airtricity sent another invoice to the Complainant. The invoice (number 5530739) 'reversed' the previous invoice (i.e. number 4781074) and was based on the actual reading taken by NIE on 13 October 2011. This invoice was for a total amount of £10.28 (excluding VAT) which comprised of £0.16 (excluding VAT) for the one (1.0) unit of electricity consumed at the premises and a standing charge of £10.12. The consumption amount was based on a meter reading taken by NIE on 13 October 2011 of 90675. The previous meter reading taken by NIE was on 14 April 2011 which was the same as the meter reading given by the tenant on 6 January 2011 and verified by NIE on 18 January 2011 – 90674. According to the meter readings electricity was therefore consumed at the premises at some point between the dates 14 April 2011 (meter read 90674) and 13 October 2011 (meter read 90675).
- 3.11 Airtricity did not receive the payment demanded by invoice number 5503079 and between 17 October 2011 and 19 October 2012 (date of disconnection letter) issued a further eight invoices to the Complainant.
- 3.12 Given the number of invoices issued during the period noted in paragraph 3.11 that were either reversed and/or based on estimated meter readings it is not straightforward to ascertain the actual amount that Airtricity was attempting to recover in respect of the actual consumption during that period.
- 3.13 The last actual meter reading taken by NIE for the Property (before disconnection) during this period was on 17 July 2012 (a read of 90708). This meter reading was referred to by

³ For completeness, the Utility Regulator asked NIE to confirm its [the UR's] understanding that the usage recorded by the meter (no matter how small) was due to electricity being taken at the Property rather than for running the meter (i.e. the meter recording its own usage) and NIE confirmed that the Utility Regulator's understanding was correct.

⁴ The invoice (and all other invoices and correspondence) was addressed to the "New Occupier". For the purposes of this draft determination as the Property was untenanted I shall refer to the invoices as being sent to the Complainant.

Airtricity in one of the three invoices that it issued on 17 September 2012 although the actual invoice is based on an estimated reading for the period up to 16 August 2012.

- 3.14 Of the eight invoices issued during the period 17 October 2011 – 19 October 2012 there is only one invoice that requests a payment which would, in part, be based on an actual reading. This is invoice number 7820974 dated 17 September 2012.
- 3.15 That invoice demanded a payment of £88.35 (including VAT). It was accompanied by two other invoices which did not show an amount due but which referred to there being an actual meter reading of 90708 on 17 July 2012. Part of the payment requested was therefore based on that actual meter reading although the actual invoice itself – because it was purportedly for the period to 16 August 2012, was based on an estimated meter reading for that end date.
- 3.16 The invoice issued on 17 September was not paid. On 4 October 2012 Airtricity issued a reminder letter to the Complainant informing him of an outstanding balance of £88.35.
- 3.17 On 16 October 2012, Airtricity sent another invoice (number 40976191) for the period 16 August 2012 to 16 October 2012 which was based on estimated meter readings.
- 3.18 On 19 October 2012, Airtricity sent a disconnection letter advising the Complainant that the supply of electricity would be disconnected as a result of an outstanding balance of £88.35 (including VAT) on the account. It also stated that the Complainant would be liable for disconnection charges.
- 3.19 The amount remained unpaid and on 30 November 2012 Airtricity sent a market message to NIE requesting the disconnection of the Property. In accordance with industry agreements and procedures NIE undertakes, on request, the physical disconnection of premises for and on behalf of electricity suppliers.
- 3.20 An NIE operative visited the Property on 10 December 2012 to carry out the disconnection but was unable to gain access and left a “warrant card” at the Property.
- 3.21 On 13 December 2012 Airtricity issued a letter to the Complainant which detailed the warrant application process. This letter provided the Complainant with the warrant hearing details and advised the Complainant that charges would be levied in the event that a warrant was granted.

- 3.22 The warrant hearing took place on 11 January 2013, and a warrant was granted on the same date.
- 3.23 On 25 January 2013 an NIE operative again visited the premises, with the warrant, to undertake the disconnection. The operative determined that the relevant connection point (essentially the location of the meter) was not located in [redacted]. Therefore, the operative could not undertake the disconnection because the warrant was to enter the premises detailed on the warrant i.e. [redacted]. Accordingly a warrant would be required in order to carry out the disconnection by way of entering the premises at which the meter was located.
- 3.24 On 11 February 2013 Airtricity issued a further letter to the Complainant which detailed the warrant application process. Again, this letter provided the Complainant with the warrant hearing details and advised the Complainant that charges would be levied in the event that a warrant was granted.
- 3.25 The second warrant hearing took place on 8 March 2013 and a warrant was granted on the same date for the premises at which the meter was.
- 3.26 The second warrant was executed by an NIE operative, and the Property was disconnected on 15 March 2013. A meter read was taken by the NIE operative at the time of disconnection. The meter read of 90726 shows that 52 units of electricity were consumed at the Property between 14 April 2011 and 15 March 2013.
- 3.27 A final invoice of £585.41 (excluding VAT⁵) was sent from Airtricity to the Complainant on 13 May 2013 (number 267060230).
- 3.28 This invoice comprised:
- (a) an amount for number of units consumed, totalling £8.21;
 - (b) an amount reflecting a standing charge totalling £105.03 (as calculated from 6 January 2011);
 - (c) an amount purporting to relate to disconnection charges (2 x £109 for the visits which did not result in disconnection + £250 for the visit which resulted in disconnection).

⁵ VAT removed as per invoice

- 3.29 It is this final invoice which is the subject of the billing dispute referred by the Complainant to the Utility Regulator for determination.

4 SECTION FOUR – THE APPLICABLE LEGAL FRAMEWORK

4.1 The following is a summary of the applicable law. The Parties were made aware of the legislation under which the Dispute was to be determined. No submissions have been received from either party with regard to the applicable legal framework.

4.2 As part of my consideration of the Dispute I have read the appropriate parts of the relevant legislation as detailed below and taken legal advice on matters relating to interpretation of the relevant legislation where required.

Article 47A of the Order

4.3 The Dispute is referred to the Utility Regulator for determination under Article 47A of the Order.

4.4 This reads as follows:

“47A

(1) *A Billing Dispute –*

(a) *may be referred by the customer who is party to the dispute to the Authority for determination in accordance with this Article; and*

(b) *on such a reference, shall be determined by order made by the Authority or, if the Authority thinks fit, an arbitrator appointed by the Authority.*

(2) *In this Article “billing dispute” means a dispute between an electricity supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of electricity supply services.*

(3) *The practice and procedure to be followed in connection with the determination of billing disputes shall be such as the Authority thinks appropriate and shall be published by the Authority.*

(4) *Except with the consent of the Authority, no billing dispute may be referred for determination under this Article –*

(a) *unless the matter in dispute has first been referred to the General Consumer Council pursuant to Article 22 of the Energy (Northern Ireland) Order 2003 and the matter has not been resolved to the satisfaction of the customer within 3 months of the matter being referred to the General Consumer Council;*

(b) *after the end of the period of 12 months after the end of the period in respect of which the charge which is the subject of the dispute applies.*

- (5) *Where a billing dispute is referred to the Authority, an order under this Article shall be made and notified to the parties to the dispute within the requisite period or such longer period as the Authority may agree with the person referring the dispute.*
- (6) *For the purposes of paragraph (5), the requisite period in any case means –*
- (a) *the period of 2 months from the date when the dispute was referred to the Authority; or*
 - (b) *where information given to the Authority in relation to the dispute was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.*
- (7) *A person making an order under this Article shall include in the order his reasons for reaching his decision with respect to the dispute.*
- (8) *An order under this Article –*
- (a) *may include provision requiring either party to the dispute to pay a sum in respect of the costs and expenses of the person making the order; and*
 - (b) *shall be final and enforceable as if it were a judgement of the county court.*
- (9) *In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (8)(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.*
- (10) *The Authority or an arbitrator appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by any court.*
- (11) *Neither party to any billing dispute which has been referred to the Authority for determination in accordance with this Article shall commence proceedings before any court in respect of that dispute pending the determination of the dispute in accordance with this Article.*
- (12) *An electricity supplier may not commence proceedings before any court in respect of any charge in connection with the provision by him of electricity supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner (if any) as may be required by any conditions of the electricity suppliers licence, of –*
- (a) *his intention to commence proceedings*
 - (b) *the customer's rights by virtue of this Article.*
- (13) *The powers of the Authority under Article 31 shall also be exercisable for any purpose connected with the determination of any billing dispute referred to him in accordance with this Article as they are exercisable for a purpose mentioned in paragraph (1) of that Article."*

4.5 Also relevant to this Dispute are:

- (a) Paragraph 2 of Schedule 6 to the Order; and
- (b) Paragraph 3 of Schedule 6 to the Order.

4.6 Paragraph 2 of Schedule 6 to the Order reads as follows:

- “(1) Where a customer has not, within the requisite period, paid all charges due from him to an electricity supplier in respect of the supply of electricity to any premises or the provision of an electricity meter, the supplier may, after the expiration of not less than 2 working days’ notice of his intention —*
- (a) cut off the supply to the premises or to any other premises occupied by the customer, by such means as he thinks fit; and*
 - (b) recover any expenses incurred in so doing from the customer.*
- (2) The power of a supplier under sub-paragraph (1) shall also be exercisable at any time which, in relation to a customer, is after the effective date for the purposes of Article 343 of the Insolvency (Northern Ireland) Order 1989 (supplies of gas, water, electricity etc. to insolvent companies).*
- (3) The power of a supplier conferred by sub-paragraph (1) shall not be exercisable as respects any amount which is genuinely in Dispute; but there shall be disregarded for this purpose any Dispute arising under Article 42 or regulations made under it.*
- (4) In this paragraph the “requisite period” means—*
- (a) in the case of premises which are wholly or mainly used for domestic purposes, the period of 20 working days after the making by the supplier of a demand in writing for payment of the charges due; and*
 - (b) in any other case, the period of 15 working days after the making of such a demand.”*

4.7 Paragraph 3 of Schedule 6 to the Order sets out the circumstances in which a contract is ‘deemed’ to have formed between a supplier and an owner/occupier of a property (a Deemed Contract).

4.8 It reads:

- “(1) Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time (“the relevant time”) when he began so to supply electricity.*

- (2) *Where—*
- (a) *the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;*
 - (b) *that supply is not made by the holder of a licence under Article 10(1) (c) or pursuant to an exemption under Article 9; and*
 - (c) *a supply of electricity so conveyed has been previously made by an electricity supplier,*
- the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time ("the relevant time") when he began to take such a supply.*
- (3) *Nothing in sub-paragraph (2) shall be taken to afford a defence in any criminal proceedings.*
- (4) *The Authority shall publish a document containing provision for determining the "appropriate supplier" for the purposes of sub-paragraph (2) and may revise any such document published by it and where it does so it shall publish the revised document.*
- (5) *The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.*
- (6) *Each electricity supplier shall make (and may from time to time revise), a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1) or (2), are to be deemed to have been made.*
- (7) *The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—*
- (a) *the time when the meter is first read after the relevant time; or*
 - (b) *the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,*
- whichever is the earlier.*
- (8) *As soon as practicable after an electricity supplier makes a scheme under this paragraph, or a revision of such a scheme, he shall—*
- (a) *publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;*

- (b) *send a copy of the scheme or revision to the Authority and to the General Consumer Council for Northern Ireland; and*
 - (c) *if so requested by any other person, send such a copy to that person without charge to him.*
- (9) *A scheme under this paragraph may make different provision for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.*

The Licence

4.9 Condition 28 of the electricity supply licence relates to Deemed Contracts.

4.10 Paragraph 1 of Condition 28 provides that:

“The Licensee shall, in accordance with paragraph 3 of Schedule 6 to the Order, make a scheme for determining the terms and conditions of its Deemed Contracts.”

4.11 In addition, paragraph 8 of Condition 28 states:

(8) If the Licensee supplies electricity to a Customer’s premises under a Deemed Contract, it must take all reasonable steps to:

(a) provide that Customer with a notice:

(i) setting out the Principal Terms of the Deemed Contract;

(ii) informing the Customer that Contracts with terms and conditions that may be different from the terms and conditions of Deemed Contracts may be available from the Licensee and of how further information about such terms may be obtained; and

(b) enter into a Contract with the Customer as soon as reasonably practicable.

4.12 I note that, in determining Disputes, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003 (the **Energy Order**) do not apply (see Article 13(2) of the Energy Order).

Practice and procedure

- 4.13 The practice and procedure to be followed in determining this Dispute on behalf of the Utility Regulator is set out in the Procedure, as supplemented or revised in the circumstances of the case and to ensure good governance and best practice.

5 SECTION FIVE – VIEWS OF THE COMPLAINANT

- 5.1 The Dispute was referred to the Utility Regulator by CCNI. CCNI forwarded the information and documentation it had received, including any previous views of the Complainant, to the Utility Regulator. The Utility Regulator has taken such information into consideration where either of the Parties has confirmed that the information continues to be applicable but has undertaken its own investigation of the Dispute.
- 5.2 The views of the Complainant are set out in emails received on the following dates:
- (a) 22 October 2013;
 - (b) 11 November 2013;
 - (c) 25 November 2013 (written representation to the Utility Regulator);
 - (d) 26 November 2013 (response to Airtricity's representation);
 - (e) 11 December 2013;
 - (f) 17 December 2013;
 - (g) 21 February 2014 (in response to the draft determination); and
 - (h) 12 March 2014 (response to Airtricity's letter of 4 March 2014).
- 5.3 I have read all of this information in full and have given full regard to all of these submissions. The following is a summary of the key elements of those submissions.
- 5.4 The Complainant's principal argument is that he was not a customer of Airtricity as he did not have a contract with Airtricity. He states that he did not enter into a written contract with Airtricity or any other supplier for any period within the period 6 January 2011 to 15 March 2013. On that basis he states that he is not responsible for any of the charges levied by Airtricity in connection with the Property.
- 5.5 The Complainant's initial views in respect of the Dispute can be summarised as follows:
- (a) Airtricity had no legal right to put his name on the account without his permission;

- (b) the previous tenant's account documentation contained the Complainant's mobile number, which Airtricity could have used to contact him;
- (c) the Property was boarded up between early February 2011 and December 2012 so there was no way of receiving post during this period;
- (d) no one visited the Property during the time it was boarded up so there was no electricity used during this time;
- (e) there was a sign in the window of [redacted] which had contact details for the Complainant and these could have been used to contact him;
- (f) there could not have been any usage at the Property because the previous tenant had removed all the light fittings; and
- (g) Airtricity did not make enough effort to contact him and resolve the issue before beginning legal proceedings.

5.6 The Complainant's dispute is based on his view that Airtricity was not legally entitled to put his name on the bill for the Property as he was never a customer of Airtricity and also that responsibility lies with Airtricity, as the utility provider, to ensure that it has the correct details for each property.

5.7 In responding to the draft determination, the Complainant:

- (a) made certain submissions and representations which relate to matters that are outside the remit of this Dispute, namely matters concerning Airtricity's processes and/or its compliance with its licence obligations. The Utility Regulator will review, and where necessary respond to, these submissions and representations separately as part of its monitoring functions.
- (b) contended that should he have entered into a written contract with Airtricity, because he would have known that the Property would be vacant for some time, he would not have entered into a contract that included a standing charge. On that basis he would not have agreed to a contract on the "standard Popular tariff".

5.8 In response to Airtricity's letter of 4 March 2014 (relating to the warrant process), the Complainant contends that Airtricity should exhaust other options before reverting to the

court process and should therefore have used the information on its file to contact him before proceeding to court. He states that had Airtricity used the information it held, the visits to the Property would not have been needed.

6 SECTION SIX – VIEWS OF AIRTRICITY

6.1 The views of Airtricity are set out in letters received via email on the following dates:

- (a) 22 November 2013 (written representation to the Utility Regulator);
- (b) 28 November 2013 (response to the Complainant's representation);
- (c) 04 February 2014 (response to Utility Regulator's request for composition of its 'standard disconnection charge');
- (d) 26 February 2014 (response to the Utility Regulator's draft determination); and
- (e) 04 March 2014 (response to Utility Regulator's request for further information).

6.2 I have read all of this information in full and I have given full regard to all of these submissions. The following is a summary of the key elements of those submissions.

6.3 Airtricity's initial views in respect of the Dispute can be summarised as follows:

- (a) the Complainant was a customer of Airtricity via a Deemed Contract which started from the date the previous tenant vacated the Property (i.e. 7 January 2011);
- (b) Airtricity made every effort possible to contact the new occupier/owner of the premises at [redacted];
- (c) no post was returned from [redacted] and therefore Airtricity had no reason to believe that the post had not been delivered;
- (d) if at any time throughout the process, before disconnection, the Complainant had contacted Airtricity, the disconnection and disconnection charges could have been avoided;
- (e) ultimately the responsibility for the management of a property belongs with the owner or occupier of the property in question and cannot be placed on the utility provider; and
- (f) the methodology used by Airtricity to determine 'standard' administration charges (relating to disconnection) is not subject to regulatory approval and is considered commercially sensitive.

6.4 In responding to the draft determination Airtricity made the following submissions and representations:

- (a) It started to supply electricity under a deemed contract from 7 January 2011 by virtue of being the registered supplier for the Property.
- (b) This is because:
 - (i) the definition of ‘supply’ in Article 3 of the Order provides that “supply” in relation to electricity, means supply through electric lines...” and this means that once electricity is delivered via the network to the meter point, the supply of electricity occurs by virtue of a supplier being the registered supplier to a premises.
 - (ii) NIE’s Statement of Charges provides for a use of system charge to be levied on a supplier where a supply of electricity is provided over electric lines and such charge may include a standing charge to cover costs that do not vary with the extent to which supply is taken up.
 - (iii) It is accepted by all industry stakeholders that the supply of electricity is considered to be the provision of supply to the property and not the extent to which the supply is taken up.
 - (iv) NIE’s Connection Agreement refers to supply as the supply of electricity to premises. This may include the provision of services required or undertaken in respect of such supply. The agreement makes no reference or requirement for consumption to have taken place in order for supply to have been provided to the premises.
- (c) The formation of a deemed contract is no different to that of a regular contract and where a customer chooses to enter into a contract for supply they are considered to have taken a supply of electricity from the point in time at which their supply point is registered to the supplier.
- (d) In order for a warrant to be issued by the courts, it must be demonstrated that reasonable attempts have been made to gain access to the relevant premises. The warrant process requires a regular disconnection visit to be attempted and therefore Airtricity was required by the warrant process to incur the costs of the disconnection

visit of 10 December 2012 in order to progress the warranted disconnection of the Property.

- (e) Paragraph 2(1) of Schedule 6 to the Order provides for Airtricity to cut off the supply by such means as it thinks fit and recover any expenses incurred in doing so. Therefore, Airtricity is entitled to determine such means as it considers appropriate in order to cut off supply to a premises. Airtricity determined that in order to cut off the premises it was necessary to undertake an initial disconnection visit and follow it with a warranted disconnection.
- (f) It chose to cut off the Property through the normal, established industry process which is undertaken by NIE on its behalf. The costs of the visits were incurred by Airtricity using the established industry processes.
- (g) Under and in accordance with the Order, it is entitled to recover any expenses [emphasis added by Airtricity] and not only direct costs incurred.

6.5 In light of the assertions made by Airtricity in respect of the warrant process (as summarised in paragraph 6.4(d) above), the Utility Regulator asked Airtricity to set out the legal basis for these assertions.

6.6 In response to this request, Airtricity stated:

- (a) In order to obtain a warrant the Courts of Northern Ireland require applicants to appropriately justify that the warrant is reasonably required.
- (b) In its experience in seeking warrants, the Courts require Airtricity to demonstrate that it has utilised an appropriate process including attempted engagement with the customer or owner of the premises and exhausting other options before reverting to the Court process.
- (c) In previous proceedings where Airtricity has not been able to demonstrate that it has followed an appropriate process with customers or owners of premises, the Courts have been unwilling to grant a warrant in such circumstances.
- (d) Airtricity is seeing with regular frequency that the Courts are requesting additional and varying information in relation to the disconnection process.

- (e) Airtricity does not believe that, if it were to move straight to a warranted disconnection, warrant applications would be successful under these circumstances as it would not have exhausted other options available.
- (f) It is strongly of the view that the process it follows is a reasonable and proportionate process which is required by the Courts of Northern Ireland.

7 **SECTION SEVEN – ISSUES TO BE DETERMINED**

7.1 The initial thinking on the issues falling to be determined by the Utility Regulator was set out in letters sent to the Parties, dated 15 November 2013, and confirmed in the draft determination.

7.2 Having discussed the background to and facts of the case, reviewed all of the submissions and information received from the Parties and taken legal advice on relevant matters, I consider that there are two specific issues to be determined.

7.3 The issues to be determined are therefore as follows.

Issue One

7.4 The first issue to be determined is the amount of charges (if any) that Airtricity is entitled to recover from the Complainant in respect of the supply of electricity to the Property.

Issue Two

7.5 The second issue to be determined is the amount of charges (if any) that Airtricity is entitled to recover from the Complainant in respect of the cutting off of the supply of electricity to the Property.

8 **SECTION EIGHT –DETERMINATION IN RELATION TO ISSUE ONE**

- 8.1 In order to determine on each of the two issues identified in Section Seven it is first necessary to determine whether the Complainant was a customer of Airtricity. In other words whether there was a contract in place between the Complainant and Airtricity.

Deemed Contract

- 8.2 Both parties are agreed that a written contract was not entered into between them. The question that therefore arises is whether Airtricity is deemed to have contracted with the Complainant, i.e. whether a Deemed Contract was in place.
- 8.3 Airtricity contends that it had a Deemed Contract with the Complainant (in his capacity as the owner of the Property) from the date that the previous tenant vacated the Property on 6 January 2011. [Redacted].
- 8.4 As noted in Section Four, a Deemed Contract will arise in the circumstances specified in paragraphs 3(1) and 3(2) of Schedule 6 to the Order.
- 8.5 Airtricity is the holder of a licence under Article 10(1) (c) of the Order. By virtue of paragraph 3(2) (b) of Schedule 6, a Deemed Contract cannot arise under paragraph 3(2).
- 8.6 It is therefore necessary and appropriate to consider only whether a Deemed Contract arose by virtue of paragraph 3(1) of Schedule 6 which provides:

*“where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or owner if the premises are unoccupied) for the supply of electricity as from the time (the **relevant time**) when he began so to supply electricity.”*

- 8.7 It can be seen that there are two particular tests that are to be fulfilled for a Deemed Contract to arise under paragraph 3(1) of Schedule 6. Firstly, the electricity supplier in question must be supplying electricity to the premises, and secondly it must be doing so otherwise than under a contract.
- 8.8 Airtricity confirms that its contract with the previous tenant came to an end when the previous tenant gave notice, in accordance with that contract, that he/she ceased to be the occupier. No further written contract was entered into.

Supplying Electricity for purposes of establishing a Deemed Contract

- 8.9 A Deemed Contract is formed from the date that an electricity supplier begins to supply electricity otherwise than in pursuance of a contract.
- 8.10 Airtricity contends that where it is registered (in the industry systems) as the supplier at a premises it is supplying electricity to such premises simply by virtue of the fact that it is the registered supplier.
- 8.11 It states that because the definition of supply in Article 3 of the Order refers to supply through electric lines, once electricity is supplied through the network to the meter point, the supply of electricity occurs by virtue of the supplier being the registered supplier to the premises.
- 8.12 It therefore contends that because it was the registered supplier at the Property on 7 January 2011, it began to supply electricity to the Property on that date and consequently had a Deemed Contract which was effective from 7 January 2011.
- 8.13 Airtricity also submits that NIE's Charging Statement supports its contention that, for the purposes of establishing the start date of a Deemed Contract, it is supplying electricity to a premises simply by virtue of being the registered supplier of the premises. This is because it provides for NIE to levy use of system charges which incorporate a standing charge that does not vary with the extent to which supply is taken up.
- 8.14 I have taken further legal advice in respect of these submissions.
- 8.15 The definition of 'supply' in Article 3 of the Order is circular as it refers to 'supply' being 'supply' (through electric lines) and therefore does not assist in determining whether and when a deemed contract is formed. This definition merely confirms that for the purposes of determining the activity which is prohibited without a licence authorisation, supplying electricity means supplying electricity through electric lines as opposed to supplying electricity by other means (e.g. battery power).
- 8.16 However, it is very clear that what is meant by supplying electricity to premises, for the purpose of interpreting the provisions set out in paragraph 3(1) of Schedule 6 is not informed by NIE's distribution use of system charges or its connection charges.
- 8.17 It is acknowledged that in order to supply electricity to customers suppliers need to ensure that electricity gets delivered to the premises. Suppliers do this by entering into a distribution use of system agreement with NIE and thereby pay NIE for delivering the

electricity to the premises (a Distribution Use of System (DUoS) Agreement). But the DUoS Agreement does not and cannot define what constitutes the supply of electricity. Rather, supply is defined by the relationship between the supplier and the end customer.

8.18 The word 'supply' should be given its natural meaning in English. For the purposes of the Dispute, my view (based on legal advice received) is that electricity would need to be consumed in order for a deemed contract to arise.

8.19 I note Airtricity's submission that where a supplier enters into a 'normal' contract with a customer it has the ability to recover certain charges which are not dependent on the customer consuming electricity; for example, recovering charges relating to the standing charge element of the applicable tariff. However, in these circumstances the customer has agreed to pay such charges by virtue of agreeing the basis of the "normal" contractual relationship. The position with regard to deemed contracts is different because the customer has not effectively 'agreed' to the contractual relationship until he/she has first taken (i.e. consumed) a supply of electricity.

Start Date of Deemed Contract

8.20 In order to ascertain whether a supply of electricity had been taken at any time at the Property following the previous tenant leaving, the Utility Regulator asked NIE, in its capacity as meter services provider, for any meter readings it had taken for the Property since 18 January 2011 (the date that it had taken a meter reading to verify the meter reading given to Airtricity by the previous tenant). The meter readings provided by NIE, which accord with those meter readings which are annotated as actual meter readings on the invoices sent by Airtricity to the Complainant, show that there was consumption at the Property after Airtricity's contract with the previous tenant had come to an end. None of the Parties have disputed the accuracy of these meter readings and paragraph 10((2) of Schedule 7 to the Order confirms that:

"The register of a meter to which this paragraph applies⁶ shall be admissible in any proceedings as evidence of the quantity of electricity supplied through it."

8.21 Given that there was (as evidenced by meter readings) consumption at the Property after the previous tenant had moved out and his contract terminated, a Deemed Contract was

⁶ The paragraph applies to meters used for ascertaining the quantity of electricity supplied to any persons (see paragraph 10(1) of Schedule 7 to the Order).

formed between Airtricity, in its capacity as the electricity supplier supplying the electricity, and the Complainant, in his capacity as the owner of the Property where it is unoccupied (the Complainant confirms that the Property was unoccupied).

- 8.22 However, a Deemed Contract arises only from the date electricity was first supplied (i.e. taken) at the Property otherwise than under a contract.
- 8.23 Airtricity contends that the start date of the Deemed Contract is 7 January 2011. The meter readings taken by NIE show that there was no consumption of electricity at the Property between 6 January 2011 and 14 April 2011. The meter reading taken by NIE on 14 April 2011 was exactly the same as the meter reading it had taken on 18 January 2011. A Deemed Contract cannot therefore have arisen at any time between these dates. Airtricity was the registered supplier for the Property during this period but it did not supply electricity to the Property at any time between these dates.
- 8.24 The next meter reading was taken on 13 October 2011 and showed that one (1) unit of electricity had been consumed since 14 April 2011.
- 8.25 The Complainant contends that he did not enter the Property at any time [prior to it being disconnected] and has not therefore used any electricity. The meter readings taken by NIE show otherwise, not only for the period between 14 April 2011 and 13 October 2011 (which is one unit) but also for subsequent periods. The evidence shows that electricity was consumed at the Property during the period that the Complainant states that he did not enter the Property.
- 8.26 The Utility Regulator can only determine on the basis of the evidence before it. That evidence is that there was one unit of electricity consumed at the Property between 14 April 2011 and 13 October 2011. Legal responsibility for electricity consumed at the Property in circumstances where it was unoccupied (as confirmed by the Complainant) lies with the owner of the Property (i.e. the Complainant).
- 8.27 However, that responsibility starts only from the date that electricity is first consumed at the Property otherwise than under a contract.
- 8.28 The evidence available shows that a Deemed Contract between Airtricity and the Complainant cannot have started on 7 January 2011. This is because the meter reading taken

by NIE on 14 April 2011 is the same as the meter reading taken by previous tenant on 6 January 2011 and verified as being accurate by an NIE reading taken on 18 January 2011.

- 8.29 Airtricity has not submitted any evidence which demonstrates or otherwise supports 7 January 2011 as being the start date of the Deemed Contract.
- 8.30 However, a Deemed Contract was formed between Airtricity and the Complainant at some point between 14 April 2011 and 12 October 2011. This is evidenced by the meter reading taken on 13 October 2011 which shows one unit of consumption. It is not known for sure when that unit of electricity was consumed.
- 8.31 Therefore, in the absence of any evidence to the contrary, the only evidence which is available to me shows that the earliest date a Deemed Contract did definitely exist is 12 October 2011. It may well have existed before then, but because it is not known when the one unit of electricity was consumed the only fact as to which I can be satisfied on a balance of probabilities is that it will have been consumed by 12 October 2011.
- 8.32 On the basis of the evidence before me my conclusion is that the start date of the Deemed Contract is 12 October 2011.
- 8.33 Having established that a Deemed Contract was in place between the Complainant and Airtricity from 12 October 2011, the matter for me to determine in relation to Issue One is the amount of charges for the supply of electricity that Airtricity is entitled to recover pursuant to that Deemed Contract.
- 8.34 This necessitates considering the terms and conditions, especially as to price, of the applicable Deemed Contract.

Terms and Conditions of the Applicable Deemed Contract

- 8.35 Paragraph 3(5) of Schedule 6 to the Order provides that –

“The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.”

- 8.36 The scheme being referred to in paragraph 3(5) is a scheme required to be made by the electricity supplier (e.g. Airtricity) under paragraph 3(6) of Schedule 6 (the **scheme**).

- 8.37 The scheme has to be published, sent to the Authority and CCNI and to any other person requesting it.
- 8.38 Airtricity did not make such a scheme until 1 June 2013.
- 8.39 That Airtricity did not have a scheme on 12 October 2011 (the start date of its Deemed Contract with the Complainant) does not negate the validity or existence of that Deemed Contract. A Deemed Contract is formed, in the circumstances set out in paragraphs 3(1) and (2)⁷ of Schedule 6, irrespective of whether or not the electricity supplier has made a scheme.
- 8.40 However, what it does mean is that the Deemed Contract with the Complainant did not have express terms and conditions. In other words there is no written document which sets out the rights and obligations of the Parties under that Deemed Contract. In the absence of express terms and conditions it is necessary to imply the applicable terms and conditions.
- 8.41 Airtricity states that the terms and conditions which are implied for its Deemed Contracts are its standard terms and conditions for contracts and with regard to the Property these are its “Standard Terms and Conditions for the Supply of Electricity to Metered Premises”.
- 8.42 Airtricity’s ‘Standard Terms and Conditions for the Supply of Electricity to Metered Premises’ do not set out the terms and conditions as to price. In response to the Utility Regulator’s request for further information and clarification, Airtricity states that the implied terms and conditions as to price for its Deemed Contract is the price applicable under its Popular Tariff. This is the standard tariff that applies to premises of the type as the Property.
- 8.43 In the absence of express terms and conditions for its Deemed Contracts (or any type of Deemed Contract), the Utility Regulator concludes that the implied terms should be those that the Parties would be expected to have entered into had they concluded an express written agreement between them.
- 8.44 In light of the evidence received by the Utility Regulator it is possible to be clear as to what these terms and conditions would have been, since Airtricity has a clear standard form of contract, and standard pricing, for the supply of electricity to premises such as the Property. The Utility Regulator concludes that, had the Complainant and Airtricity entered into a written contract:

⁷ The circumstances specified in paragraph 3(2) do not apply to this Dispute.

- (a) the supply of electricity to the Property from 12 October 2011 would have been governed by the terms and conditions set out in Airtricity's Standard Terms and Conditions for the Supply of Electricity to Metered Premises; and
- (b) the tariff applicable under that written contract would have been Airtricity's Popular Tariff (as it is the standard tariff applicable to premises having the same characteristics (in relation to the supply of electricity) as the Property).

8.45 In responding to the draft determination, the Complainant submits that, in relation to price, the implied terms and conditions of the Deemed Contract should not relate to the Popular Tariff because had he entered into a contract with Airtricity it would not have been on that tariff. The Complainant submits that because he knew that the Property would be unoccupied for some time he would have signed up to a tariff which did not include a standing charge.

8.46 However, the Complainant did not enter into a contract and does not contend, or provide any information in support, that at the applicable time (i.e. on 12 October 2011) there was a tariff available from Airtricity that did not include a standing charge.

8.47 On the evidence before me there are no other terms and conditions which constitute a credible candidate for the terms and conditions that it is necessary to imply into the Deemed Contract. Therefore for the purposes of this determination, the implied terms and conditions of Airtricity's Deemed Contract with the Complainant are:

- (a) in respect of terms and conditions excluding price, its Standard Terms and Conditions for the Supply of Electricity to Metered Premises (as applicable on 12 October 2011); and
- (b) in respect of terms and conditions relating to price, its Popular Tariff (at the rate it applied throughout the period of the Deemed Contract).

Determination on Issue One

8.48 I have concluded above that –

(a) A Deemed Contract was formed between Airtricity and the Complainant on 12 October 2011; and

(b) Airtricity's implied terms and conditions of the Deemed Contract provide for charges to be calculated on the basis of its Popular Tariff.

8.49 In light of the above my determination in relation to Issue One is that Airtricity is entitled to recover charges applicable under the Popular Tariff for the supply of electricity to the Property for the period 12 October 2011 (the start date of the Deemed Contract) to 15 March 2013 (the date on which the supply of electricity to the Property was cut off).

8.50 The total amount that Airtricity is entitled to recover for the supply of electricity to the Property is £79.41 (excluding VAT).

8.51 The amount is calculated on the following basis:

Consumption/Usage Charges for the Relevant Period (excluding VAT)

Dates	Previous Meter read	Current Meter Read	Units	Rate	Total £
12/10/2011 to 13/10/2011	90674	90675	1	0.1593	0.1593
14/10/2011 to 16/4/2012	90675	90678	3	0.1593	0.4779
17/4/2012 to 17/7/2012	90678	90708	30	0.1593	4.779
18/7/2012 to 15/3/2013 ⁸	90708	90726	6.00	0.1593	0.9558
			12.00	0.148	1.776
			52		£8.15

Standing Charge for the Relevant Period (excluding VAT)

From	To	No. of units	Standing Charge rate	Amount
12/10/2011	01/10/2012	355	0.1409	£50.02
01/10/2012	15/03/2013	165	0.1287	£21.24
				£71.26

Total Standing Charge due

9 SECTION NINE –DETERMINATION IN RELATION TO ISSUE TWO

⁸ Usage recorded in this period occurred over a tariff change on 01/10/12. As a result usage has been pro-rated before and after the price change on the basis of 75 days at the 0.1593 rate (from 18/7/2012 – 30/9/2012) and 165 days at the 0.148 rate (from 1/10/2012 – 15/3/2013), in each case rounded to the nearest full unit.

- 9.1 The second issue that I am required to determine is the amount of charges (if any) that Airtricity is entitled to recover from the Complainant as incurred by it in cutting off the supply of electricity to the Property.
- 9.2 Before reaching a determination on this Issue Two, it is necessary to consider and conclude whether Airtricity had an entitlement to cut off the Property.

Cutting off the Supply of Electricity

- 9.3 Airtricity has statutory rights to cut off the supply of electricity to premises in circumstances where the customer has a debt. These are set out in paragraph 2(1) of Schedule 6 to the Order which provides:

“Where a customer has not within the requisite period⁹ paid all charges due from him to an electricity supplier in respect of the supply of electricity to any premises or the provision of an electricity meter, the supplier may after the expiration of not less than two working days’ notice of his intention –

- (a) cut off the supply to the premises or to any other premises occupied by the customer by such means as he thinks fit; and*
- (b) recover any expenses incurred in doing so from the customer.”*

- 9.4 Section Eight of this determination concludes that the Complainant was a customer of Airtricity pursuant to the Deemed Contract formed on 12 October 2011.

- 9.5 The evidence (as referred to in Section Eight) submitted by Airtricity shows that:

- (a) It sent an invoice to the Complainant on 17 September 2012 which was, at least in part, for actual consumption at the Property.
- (b) That invoice was not paid by the Complainant by its due date.
- (c) Airtricity issued a reminder letter on 4 October 2012 requesting payment of the outstanding charges.
- (d) On 19 October 2012, in light of the charges demanded not having been paid, Airtricity issued a letter informing the Complainant of its intention to disconnect the Property for reason of the unpaid charges.

⁹ The requisite period for a non-domestic property is 15 days from the making of the demand (i.e. essentially 15 days from the date of the invoice).

- 9.6 Airtricity was entitled to give this notice because it had demanded charges from its customer, the Complainant, which had remained unpaid for 15 working days after the date of the demand (17 September 2012).
- 9.7 The disconnection took place on 15 March 2013. Airtricity had given notice of the disconnection on 19 October 2012 and had therefore in accordance with the statutory provisions given at least 2 working days' notice of the disconnection.
- 9.8 Accordingly my conclusion in relation to this ancillary matter for the purposes of informing my determination in relation to Issue Two is that Airtricity was entitled, under paragraph 2(1)(a) of Schedule 6 to the Order, to cut off the supply of electricity to the Property by reason of unpaid charges.

Recovery of Costs

- 9.9 I have concluded above, having taken legal advice on the relevant issues, that Airtricity was entitled to cut off the supply to the Property by virtue of its rights under paragraph 2(1)(a) of Schedule 6 to the Order.
- 9.10 Paragraph 2(1)(b) of Schedule 6 provides that Airtricity may:
- “recover any expenses incurred in doing so from the customer”.*
- 9.11 What is meant by ‘in doing so’ is the ‘cutting off’ of the supply of electricity which is referred to in paragraph 2(1)(a) of Schedule 6.
- 9.12 Airtricity contends that because:
- (a) paragraph 2(1)(a) provides for it to cut off supply by “such means as it thinks fit”;
and
- (b) paragraph 2(1)(b) provides for it to recover any expenses in cutting off the supply,
- this means that it can follow any process it determines appropriate to cut off the supply and recover any (meaning all) of its expenses in following that particular process.
- 9.13 I have concluded that Airtricity has misinterpreted the applicable legislation.
- 9.14 My legal advice confirms that my role as set out in Article 47A(2) is to determine the amount of the charge that Airtricity is entitled to recover from the Complainant. This is confirmed by

Article 47A(2) of the Order which provides that a billing dispute is “a dispute...concerning the amount of the charge which the supplier is entitled to recover...”.

- 9.15 Paragraph 2(1)(b) of Schedule 6 to the Order confirms, for the purposes of determining the amount of the ‘disconnection’ charge, that Airtricity is entitled to recover expenses (costs) incurred in cutting off the supply.
- 9.16 It is right that it can cut off the supply by such means as it thinks fit. However, what this means is that it can decide how (i.e. the method in which) the supply is cut off and who should undertake that activity. For example, the supply could be cut off by way of de-energisation (essentially removing a particular fuse at the meter point), by way of permanent physical disconnection, or by way of some other method. It can also determine whether to utilise in-house resource and expertise or to engage an agent to do so on its behalf.
- 9.17 It is also right that Airtricity can recover any expenses it incurs in cutting off the supply. However, as set out in my draft determination this does not mean that Airtricity is entitled simply to recover all or any costs it may have incurred in getting itself to the position to cut off the supply. What it means is that the costs that Airtricity is, in accordance with the legislation, entitled to recover are those costs which it incurs in order to carry out the physical disconnection of the Property. It does not, as Airtricity contends, extend to all and any costs and expenses incurred in following a process, as determined by it, in arriving at the end point of physical disconnection.
- 9.18 This means that Airtricity is only entitled to recover those costs that it needed to incur in order to cut off the supply. This will necessarily include the costs incurred in respect of the actual physical activity of cutting off the supply and any costs which needed to be incurred in order for that actual activity of cutting off to be undertaken (e.g. obtaining a warrant).
- 9.19 The invoice which is the subject of the Dispute includes costs which were incurred by Airtricity in respect of abortive visits. These are not costs that Airtricity incurred “in cutting off the supply”.
- 9.20 My draft determination was that Airtricity is not entitled to recover any costs incurred with regard to visits to the Property which were undertaken on 10 December 2012 and 25 January 2013 respectively because:

- (a) The visit on 10 December 2012 did not result in or contribute to cutting off the supply to the Property. It was an abortive visit. The visit was undertaken without a warrant, presumably on the assumption that consent would be given to enter the Property. Airtricity took this decision at its own risk. It did not need to undertake this visit and thereby incur the costs of it and it contributed nothing to the eventual cutting off of the supply. Therefore any costs incurred by Airtricity with regard to this visit are not costs that it is entitled to recover from the Complainant.
- (b) The visit on 25 January 2013 was undertaken with a warrant that was unenforceable because it had been requested and issued for entry to premises other than those at which the meter was located and therefore at which the cutting off the supply to the Property could not be undertaken. It is not known from the evidence submitted by Airtricity whether this was as a result of its error or a third party error. But irrespective of the cause of the error, the position is that the visit did not result in the premises being disconnected and did not need to be undertaken. Therefore any costs incurred by Airtricity with regard to this visit are not costs that it is entitled to recover from the Complainant.

9.21 In responding to the draft determination, Airtricity submits that the visit to the Property on 10 December 2012 was required because:

- (a) in order for a warrant to be issued by the courts it must be demonstrated that reasonable attempts have been made to gain access to the premises previously;
- (b) a warrant is only issued after a regular disconnection visit is attempted; and
- (c) the warrant process requires this visit to be undertaken.

9.22 In response to the above, on 3 March 2014 the Utility Regulator asked Airtricity to set out the legal basis for its assertions. Airtricity responded on 04 March 2014.

9.23 In its response the key points that Airtricity makes are:

- (a) The Courts of Northern Ireland require applicants to appropriately justify that the warrant is reasonably required.
- (b) It is Airtricity's experience in seeking warrants that the Courts require it to demonstrate that it has utilised an appropriate process including attempted

engagement with the customer or owner of the premises and exhausting other options before reverting to the Court process.

- (c) In previous proceedings where Airtricity has not been able to demonstrate that it has followed an appropriate process with customers, the Courts have been unwilling to grant a warrant in such circumstances.
- (d) Airtricity is seeing with regular frequency that the Courts request additional and varying information in relation to the disconnection process.
- (e) Based on experience, Airtricity does not believe that warrant applications would be successful [if regular disconnection visit was not attempted] as it would not have exhausted other options available.

9.24 Having carefully considered Airtricity's response, my decision is that Airtricity has provided sufficient information to evidence that in order to obtain a warrant to enter premises for the purposes of disconnection it is first required to demonstrate to the courts that it attempted to undertake the disconnection without a warrant.

9.25 With regard to the disconnection visit (with warrant) of 25 January 2013, Airtricity contends that the charges are legitimately incurred costs during the process of executing the warrant because:

- (a) paragraph 2(1)(a) of Schedule 6 provides for it to cut off supply by any means it thinks fit;
- (b) it chose to cut off the Property through the normal, established industry process;
- (c) it obtained the warrant based on information available to it as provided by NIE; and
- (d) the charges arose due to NIE not being able to gain access to the Property and due to the information provided to Airtricity with regards to the meter location.

9.26 However, none of the above leads me to determine that the costs incurred by Airtricity in respect of this visit are costs that it is entitled to recover because they fall within costs that it incurred in cutting off the supply. I do not dispute that Airtricity incurred costs in relation to this visit, but they are not costs which it is entitled to recover from the Complainant.

- 9.27 The supply of electricity to the Property was ultimately cut off on 15 March 2013 and accordingly Airtricity can recover costs incurred by it in respect of this visit.
- 9.28 The total amount Airtricity is demanding from the Complainant in respect of the visits undertaken on 10 December 2012 and 15 March 2013 is £359.00 (excluding VAT). This amount is made up of £109.00 for the initial disconnection visit which took place on 10 December 2012 and £250.00 for the warranted disconnection visit which took place on 15 March 2013.
- 9.29 In order for the Utility Regulator to determine that Airtricity is entitled to recover the amount that it contends it is entitled to recover, the Utility Regulator requires evidence to that effect.
- 9.30 Airtricity states that £109.00 is the standard amount that it charges for a normal disconnection visit, and £250.00 is the standard amount that it charges for cutting off supply of electricity to premises.
- 9.31 However, simply because it applies a standard charge does not mean that Airtricity is entitled to recover that amount from the complainant. The amount that it is entitled to recover is the amount it incurred in cutting off the supply to the Property.
- 9.32 Airtricity was therefore requested by the Utility Regulator to provide a breakdown of its actual costs incurred in cutting off the supply of the Property. Having confirmed that it could not give a breakdown of actual costs because it applied a 'standard' charge to such activities, Airtricity was requested to provide a breakdown of how the 'standard' charges are derived.
- 9.33 Airtricity did not provide a breakdown of the 'standard' charge of £109.00 for the 10 December 2012 visit.
- 9.34 The evidence before me is from NIE which provides that NIE charged Airtricity £28.00 for this visit (as noted earlier NIE carries out disconnection visits in its capacity as the meter services provider). My determination is that Airtricity is entitled to recover this charge of £28.00 from the complainant.
- 9.35 With regard to the 15 March 2013 visit, Airtricity has confirmed that £126.00 (excluding VAT) of the 'standard' £250.00 charge constitutes charges that were incurred by NIE in executing the warrant and the carrying out the activity of physically cutting off the supply of electricity

to the Property¹⁰. My determination is that Airtricity is entitled to recover this charge of £126.00 from the complainant.

- 9.36 In responding to the requests made by the Utility Regulator for evidence of its entitlement Airtricity has made the following statements:

“the standard disconnection charge includes an additional administration charge towards the staff costs, letters postage and additional activity with respect to debt collection.”

“the additional administration charges include the cost of resourcing the credit control process associated with issuing a disconnection, this includes a manual review of an account in advance of disconnection, letters issued in relation to the disconnection and any action on the part of Airtricity in requesting or following up in relation to a disconnection.”

- 9.37 Many of the costs which are mentioned in the above, for example ‘in respect of debt collection’, ‘resourcing the credit control process’, ‘following up in relation to a disconnection’, are not costs which are incurred by Airtricity in cutting off the supply of electricity to a premises.

- 9.38 The Utility Regulator acknowledges that electricity suppliers may not necessarily be able to ascertain the precise costs of each individual disconnection. For this reason it requested Airtricity to submit evidence which showed how it determined what its standard charge should be i.e. how its standard charge was derived, the methodology used by it to determine the standard charge.

- 9.39 Airtricity responded to this request by stating:

“The methodology used by SSE Airtricity to determine ‘standard’ administration charges is not subject to regulatory approval and is considered commercially sensitive. As such, it is unclear why the UR has requested this information and the requirement for this information.”

- 9.40 Airtricity is mistaken as to the role of the Utility Regulator with regard to its “‘standard’ administration charges”.

¹⁰ NIE has also confirmed to the Utility Regulator that this is the amount it charged to Airtricity for such activities.

- 9.41 It is right to say that Airtricity's charges are not subject to upfront regulatory approval. However, by virtue of the Utility Regulator's role under Article 47A, Airtricity's charges are subject to regulatory oversight (and effectively ex post assessment) in circumstances where these charges are subject to a billing dispute which has been referred to the Utility Regulator for determination. In respect of such a billing dispute, the Utility Regulator has the role of determining the amount that Airtricity is entitled to recover directly from the complainant. It is for this reason, i.e. to determine the amount of a 'standard' charge that Airtricity is entitled to recover from the Complainant, that the information is requested and required.
- 9.42 In the same correspondence Airtricity states that it "disputes the UR's authority to issue a determination in relation to the quantum of unregulated charges to commercial customers...."
- 9.43 It is not possible to reconcile this statement with the clear role given to the Utility Regulator to determine a dispute "concerning the amount of the charge which the supplier is entitled to recover from the customer..." (Article 47A (2) refers). Therefore, I do not agree with Airtricity's interpretation.
- 9.44 In responding to the draft determination, Airtricity contends that because paragraph 2(1)(b) of Schedule 6 to the Order provides for Airtricity to recover any expenses incurred in cutting off the supply of electricity it is not only those charges that are directly passed through from NIE that are recoverable and that it can recover any expenses incurred.
- 9.45 It is right to say that the legislation enables Airtricity to recover any expense incurred by it in cutting off the supply. My role is to determine the amount that it is entitled to recover from the Complainant. What it is entitled to recover from the complainant is the amount of expenses incurred by it in cutting off the supply.
- 9.46 The onus is on Airtricity to demonstrate, by way of evidence, the amount of the charge that it contends it is entitled to charge. It has not done so.
- 9.47 It failed to submit specific evidence to support its contention that it is entitled to recover:
- (a) the additional £81.00 of the normal disconnection charge of £109.00;
 - (b) the additional £124.00 of the 'standard' charge of £250.00.

- 9.48 Therefore, I cannot determine that these costs as being costs which Airtricity is entitled to recover from the complainant.
- 9.49 My determination for Issue Two is that the amount that Airtricity is entitled to recover from the Complainant for costs incurred in cutting off the supply to the Property is £154.00 (excluding VAT).

10 SECTION TEN - ORDER

- 10.1 Article 47A(1)(b) confirms that the Dispute is to be determined by order made by the Utility Regulator.
- 10.2 Article 47A(5) provides that an order made under Article 47A shall be made and notified to the parties within the requisite period or such longer period as the Authority may agree with the person referring the dispute. The Authority has agreed a longer period with the Complainant which provides for an order to be made by 10 March 2014.
- 10.3 For the reasons given in the sections above, I order that:
- (a) the amount that Airtricity is entitled to recover from the Complainant in respect of the supply of electricity to the Property made under its Deemed Contract with the Complainant is £79.41 (excluding VAT);
 - (b) the amount that Airtricity is entitled to recover from the Complainant as its costs incurred in cutting of the supply of electricity to the Property is £154.00 (excluding VAT);
 - (c) the total amount that Airtricity is therefore entitled to recover from the Complainant is £233.41 (excluding VAT).
- 10.4 I invited submissions from the Parties as to whether I should make any incidental, supplemental or consequential provision – in particular any order as to our costs – in accordance with Article 47A(8)(a) of the Order. Neither Party made any submission on this point.
- 10.5 Having had regard to the matters referred to in Article 47A(8) of the Order, I do not make an order requiring either Party to pay a sum in respect of costs and expenses of the Utility Regulator. This should not be regarded as setting any precedent as to the future.

Kevin Shiels