

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**  
**DECISION UNDER ARTICLE 14(2) OF THE GAS (NORTHERN IRELAND)**  
**ORDER 1996 (AS AMENDED)**

**TO:**

**(1) AES Ballylumford Limited, (2) Bord Gáis Energy Limited, (3) British Gas Trading Limited, (4) Coolkeeragh ESB Limited, (5) ElectroRoute Energy Trading Limited, (6) ESB Independent Energy (NI) Limited (t/a Electric Ireland), (7) firmus energy (Supply) Limited, (8) Flogas Natural Gas Limited, (9) LCC Group Limited (t/a Go Power), (10) Naturgy Limited, (11) ONI Gas Limited, (12) Power NI Energy Limited, (13) Shell Energy Europe Limited, (14) SSE Airtricity Energy Supply (Northern Ireland) Limited, (15) SSE Airtricity Gas Supply (Northern Ireland) Limited, (16) SSE Energy Supply Limited, (17) Viridian Energy Limited, and (18) Viridian Energy Supply Limited (t/a Energia)**

(in each case, a 'Licensee')

The Northern Ireland Authority for Utility Regulation (hereafter referred to as “the **Authority**”) hereby gives notice under Article 14(2) of the Order as follows:

- 1 The modifications involve the introduction of a new Condition 2.19A (Time Limit on the Recovery of Charges), immediately following the existing Condition 2.19, in each of the Licences.
- 2 The full text of the proposed new Condition 2.19A is set out in Schedule 1 to this notice.
- 3 The effect of the proposed modifications will be, in summary:
  - (a) to prevent each Licensee from taking steps to recover charges from customers unless it has sent them a bill for those charges, or otherwise initiated the recovery of the charges, within 13 months after they were incurred;
  - (b) thereby to prevent the Licensees from engaging in the so-called 'back billing' of customers for charges incurred more than 13 months prior to the bill;
  - (c) to apply this restriction in respect of the recovery of charges from both domestic and small business customers;
  - (d) to define small business customers, for this purpose, as being those consuming less than 73.2 MWh of gas annually (whether at a single premises or in aggregate across a number of premises);

- (e) to require Licensees to reflect this restriction in the terms of their contracts and deemed contracts with customers,
  - (f) to create exceptions from the restriction in relation to actions taken by a Licensee before the condition takes effect, and cases in which it could not recover the charges within the usual time limit because:
    - (i) although it took all reasonable steps to do so, it was unable to obtain its own meter reading in respect of the period to which the charges relate;
    - (ii) there has been theft of gas, or interference with the meter, at the premises to which the charges relate.
- 4 On 8 January 2020, the Authority published a notice stating that it intended to modify the Licence to reflect the decisions “Backbilling in the NI Retail Energy Market” January 2020. The notice set out the effect of the proposed modifications and the reasons why the Authority proposed to make those modifications. That notice was to bring the proposed modifications to the attention of persons likely to be affected by them and to invite representation or objections in connection thereto.
- 5 In the notice and Decision Paper, the Authority proposed an implementation date of 1 September 2020. However, following engagement with the industry, the Authority has decided to allow additional time in respect of the required market changes. Therefore, the modifications will take effect on and from 1 October 2020.
- 6 Three representations were made by licensees; however, there were no comments relevant to the modification of the gas licence.
- 7 The Authority has, in pursuance to Articles 14(4) of the Order served a copy of this notice on the Licensee and sent a copy to the Department for the Economy and the Consumer Council NI.

Dated this 9<sup>th</sup> of March 2020



**Jenny Pyper**

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

## SCHEDULE 1 – THE PROPOSED MODIFICATIONS

### Condition 2.19A: Time Limit on the Recovery of Charges

#### The Time Limit

- 2.19A.1 The Licensee shall not recover, or take any steps to recover, any charges for the supply of gas to Relevant Premises more than 13 months after the Relevant Date, unless:
- (a) it has satisfied the requirement of paragraph 2 in relation to those charges; or
  - (b) any one or more of the circumstances described in paragraph 3 applies.

#### Action Taken within the Time Limit

- 2.19A.2 The requirement of this paragraph is that, on a date which falls no more than 13 months after the Relevant Date, the Licensee:
- (a) sent a bill, or any equivalent demand for payment, to the consumer in respect of the charges for the supply of gas; or
  - (b) otherwise took steps to recover the charges for the supply of gas, the effect of which has been (or will be) reflected in the next statement sent to the consumer after those steps were taken.

#### Circumstances in which the Time Limit Does Not Apply

- 2.19A.3 The circumstances described in this paragraph are each of the following:
- (a) the recovery of, or steps taken to recover, the charges for the supply of gas by the Licensee occurred prior to 1 October 2020;
  - (b) the Licensee was unable to satisfy the requirements of paragraph 2 in relation to the charges for the supply of gas in consequence of the fact that:
    - (i) the Licensee was unable to obtain an Actual Meter Reading at the Relevant Premises in respect of the period to which the charges relate, in spite of having taken all reasonable steps to do so; or
    - (ii) the consumer, or any other person in occupation of the Relevant Premises,

has unlawfully taken a supply of gas, or interfered with the metering equipment, at those premises.

- 2.19A.4 The Authority may, following consultation with such persons as it considers appropriate, modify paragraph 2.19A.3 by adding to that paragraph such further descriptions of circumstances as it considers appropriate.

Terms of Relevant Contracts

- 2.19A.5 The Licensee shall ensure that, by no later than 1 October 2020 and at all times after that date, the terms and conditions of all Relevant Contracts contain provisions which reflect the effect of paragraphs 2.19A.1 to 2.19A.3.
- 2.19A.6 The Licensee shall not enforce or otherwise rely on any term or condition of a Relevant Contract to the extent that to do so would be incompatible with its obligations under this condition.

Definitions

- 2.19A.7 In this Condition:

<b>Actual Meter Reading</b>	means a gas meter reading taken by the Licensee or on its behalf (but does not include a meter reading taken by the consumer or an estimated meter reading).
<b>Distribution Network Code</b>	means, in respect of any Non-Domestic Premises, the Network Code applicable in respect of the distribution pipe-line to which that premises is connected.
<b>Non-Domestic Premises</b>	means premises which are not Domestic Premises.
<b>Relevant Contract</b>	means a Contract or Deemed Contract with a consumer at Relevant Premises.
<b>Relevant Date</b>	means, in respect of any charges for the supply of gas:

- (a) where such charges relate to the consumption of units of gas, the date on which those units were consumed or can reasonably be estimated to have been consumed;
- (b) where such charges take the form of a standing charge or other form of charge that is not related to the consumption of units of gas, the date on which such charges were accrued or (if earlier) in respect of which they are levied.

**Relevant Premises** means Domestic Premises or Small Business Premises.

**Small Business Premises** means a Non-Domestic Premises at which the annual consumption of gas, taken together with the annual consumption at all other Non-Domestic Premises (if any) at which the Licensee gives a supply of gas to the same consumer under a Contract or Deemed Contract, is less than 73.2 MWh calculated:

- (a) by reference to the 12 months of consumption data most recently available in respect of the premises;  
or
- (b) where such data is not available, by reference to one of the following:
  - (i) the estimated consumption data in respect of the premises that is used by the Licensee to bill the consumer; or
  - (ii) the Annual Quantity attributable to all Supply Meter Points at the premises (as those terms are defined in the relevant Distribution Network Code).

