



budgetenergy

Northern Ireland's Electricity Company

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Roisin Mc Laughlin
Utility Regulation
Queens House
14 Queen Street
Belfast BT1 6ED

29th March 2018

Dear Roisin,

RE: Consultation on revising UR's enforcement procedure and financial penalties policy

We welcome the issue of the above consultation document. Having read the document, we would like to make some comment / observations under the following main headings:

1. Enforcement Procedure Flowchart
2. Supplier Representation / Input
3. Enforcement Process – specific clauses

1. Enforcement Procedure Flow-Chart:

a) General Comment:

As a general comment, whilst we accept that the current aim of the enforcement procedure is to protect the interests of consumers and to ensure that regulated companies comply with their legislative and licence obligations, we believe that consideration of the interests of suppliers have also to be taken into consideration to have a healthy, functioning market.

While not required by statute, it is to be welcomed that the Enforcement Procedure and flowchart has been documented per this consultation document in the interests of clarity. However, on reading clause 1.9 of Annex 1 Enforcement Process, "We will seek to adhere to the procedures outlined but, for the avoidance of doubt, our Enforcement Procedure does not in itself impose requirements on or purport to fetter our discretion."

This gives rise to a concern that whilst the UR wish suppliers to follow a procedure, it does not itself feel bound by its own procedures. We would submit that this runs counter to one of the stated values of the UR to be consistent.



b) To Publish or not to Publish:

The exercise of the above needs to be undertaken in a manner that is not unfairly prejudicial to the interests of suppliers. We draw attention to the flowchart (Enforcement Action Stage 1), where, even though the fact that the supplier has been found not to have a case to answer it is still intended to publish. This could be detrimental to the reputational and other interests of the supplier and we would not support publication in these instances. Likewise, the decision to publish on opening an investigation at the beginning of the Enforcement Action Stage One before any outcome has been determined is prejudicial to the interests of the supplier and one that we could not support.

2. Supplier Representation / Input

There are several clauses in the consultation where we believe that, in the interests of transparency, fairness and consistency, and to ensure that the legitimate commercial interests of suppliers are not overlooked, there is a case for a formal input from suppliers either through a representative forum or outside professional parties representing suppliers. We draw attention to some examples of clauses where we believe the Enforcement Procedure requires representation and input from suppliers:

- Clause 3.36 Annex 1 refers to the convening of a Settlement Committee which has an important function in the whole settlement process. No information is given in relation to the composition of the Settlement Committee and is something that we would seek to have expanded on and for suppliers as a body, to be represented on this committee
- Clause 3.5 Annex 3 Financial Penalties: "Any penalty must be reasonable..." who determines what is reasonable? What input do suppliers have on this determination? Similarly, reasonable is also referred to in clause 6.12 & 13 of Annex 1. Assessment of gain to licensee and detriment / loss to consumer should also be subject to supplier input in the determination of what is reasonable. In addition, clauses 3.7,9,11 & 12 of Annex 3 in our view require input from the perspective of suppliers
- Clause 3.60 – who determines the "List of Persons" who are authorized to sit on an Enforcement Committee? We would respectfully suggest that suppliers have input to this process as an interested party.
- Clause 3.23 of Annex 3: How was the "penal discount" of 40% arrived at for settlement in first window and 20% in second window. We believe these discounts need to be reviewed and suggest that these should be higher and proportionate to the particular case being investigated.

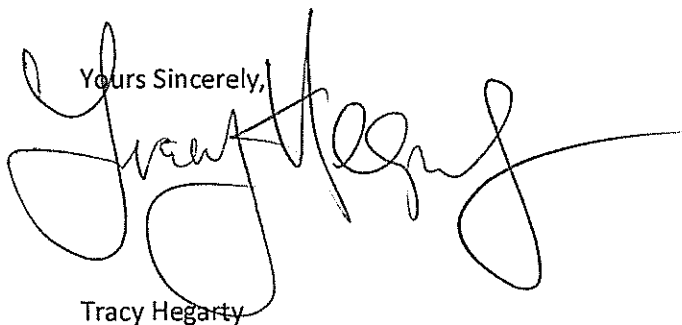
3. **Enforcement Procedure Annex1:**

a) **General Comment not already Referred to:**

- Clause 1.6 – not entirely clear what this means – can this be elaborated on?
- Clause 2.7 – we believe that a 1-day notice is too short and would suggest 3 as an alternative
- Clause 3.20 – we would strongly resist a clause that calls for public consultation on any potential penalty
- Clause 3.22 – who determines the length of the 2 “Window Periods”?
- Clause 3.50 – if there are 2 settlement windows, why is there an insistence that the licensee has to sign a settlement on or before the expiration of the 1st Window?
- Clause 3.52 – why consider a case “contested” after Window 1 when there is a further 2nd Settlement window?
- Clause 3.56/7 - If a case is settled in the 2nd window, why does it have to proceed to the Enforcement Committee? From our viewing, this would appear to contradict the step in the Flow Chart and may need to be corrected.
- Clause 3.69 – is there a commitment to issue the minutes referred to, to the licensee?
- Clause 5.2 – in clause 2.1 of the consultation, the UR sets out 5 principles of good regulation – one of them being transparency. Therefore, in the interest of transparency, should the licensee be made aware of the identity of the complainant?

In summary, we welcome the issue of the consultation and the opportunity to reply to it. Our main comments and themes in relation to the procedures outlined centre on the need for reasonableness, fairness, transparency, consistency and supplier input to the process to be applied throughout the process.

Yours Sincerely,



Tracy Hegarty
Director
Budget Energy Ltd