

6th July 2012

Common Utility Regulatory Letter No: 1 (CURL1)

TO: The Chief Executive

ALL LICENSEES

RE: Information Requests

Dear Sirs

1. General Requirements & Background

The purpose of this letter is to remind all licensees of their obligations in relation to any request for information made by the Authority under either a licence or the Authority's legislative powers.

It is a condition of every licence that the licensee must provide to the Authority such information or reports that the Authority considers necessary in the light of the licence conditions or that it requires for the purpose of performing its functions. The Authority regards this obligation as particularly important, since the receipt by it of accurate and timely information is essential to enable it to meet its statutory objectives.

Information should be provided in such a manner and at such times as the Authority may specify in any written request. Any such request for information from the offices of the Utility Regulator is to be assumed as a formal request for information pursuant to the applicable licence condition.

The Authority also has powers to require licensees to provide information and documents for enforcement purposes under the Energy (Northern Ireland) Order 2003 and Water and Sewerage Services (Northern Ireland) Order 2006.

2. Specific Requirements

We interpret the licence conditions in relation to information requests to mean that the Authority may request sight of any information or reports which it requires in order to perform its various statutory functions.

In line with other regulators, we expect that any information supplied under a request should be reliable, accurate and complete and we may require licensees to certify that this is the case in their response. Where specific information is requested, the Authority expects that it is unambiguous and succinct in its terms.

3. Confidentiality & Freedom of Information

The Authority is aware that some of its requests for information may require licensees to provide confidential or personal information.

The Authority is aware of its duties to treat certain information as confidential under legislation. However, licensees should also note that the Authority is in certain circumstances, under duties of disclosure set out in Freedom of Information and Environmental Information legislation and that it has powers to publish information for the purpose of performing its functions.

For these reasons, in any response to an information request, licensees should clearly mark any information that they consider to be confidential and provide a statement of reasons why they believe it to be so. The Authority will consider those reasons in any use it makes of the information. However, information which is marked as confidential will not automatically be considered as such for the purposes of the relevant legislation.

Where information is provided to us that we consider to be confidential, we may in some cases require that licensees provide both confidential and non-confidential versions of the same information.

4. Timing and Enforcement

The Authority regards compliance with information requests as very important. We expect information requests to be complied with on the date specified in the request. If, however, the information is not available for any reason or the licensee requires an extension, the Authority expects that licensees will communicate this to the Authority promptly, together with a sufficient statement of reasons.

Failure to provide information as requested is a licence breach and if there is no reasonable justification for the failure, may give rise to regulatory enforcement action. For the avoidance of doubt, this includes the provision of information that is inaccurate, incomplete, unreliable or not supplied within the specified timeframe. Such enforcement action could include an enforcement order or a financial penalty, depending on the seriousness of the breach and the relevant circumstances.

Licencees should also note that, in certain circumstances where we have requested information under our statutory powers, failure to provide such information without reasonable excuse is a criminal offence¹. The intentional destruction, suppression or alteration of requested documents is also a criminal offence. On summary conviction, this may give rise to a fine.

The Authority will look sympathetically at requests for extensions to the time needed for complying with an information request if they are timely, cogent and genuine. It will not, however, generally consider such requests made at the last minute, nor regard justifications such as “insufficient management time” or “manpower shortages” as adequate, except in highly exceptional circumstances.

Yours sincerely

Shane Lynch
Chief Executive
For and on behalf of the Northern Ireland Authority for Utility Regulation

¹ Article 51(4) of the Energy (NI) Order 2003 (as amended) and Article 267(1) of The Water & Sewerages Services (NI) Order 2006, as applicable.