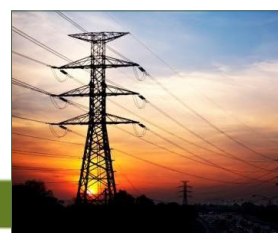


Changes to Gas and Electricity Licences with regards to Appeals to the CMA

Decision Paper on Modifications
necessary due to The Gas and Electricity
Licence Modification and Appeals
Regulations (Northern Ireland) 2015

4 August 2015



About the Utility Regulator

The Utility Regulator (UR) is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

On 1 May 2015, the UR published a consultation paper setting out those licence modifications which we consider necessary or expedient as a consequence of the coming into operation of The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (the Regulations).

These Regulations amended the procedures in the Gas (Northern Ireland) Order 1996 (the Gas Order) and the Electricity (Northern Ireland) Order 1992 (the Electricity Order) so as to enable the UR to modify licence conditions without the requirement for consent from individual licensees or classes of licensees, but with a right for affected licence holders and other specified bodies, including the Consumer Council for Northern Ireland (CCNI), to appeal licence modifications to the Competition and Markets Authority (CMA).

The consultation paper also said that over the coming year, the UR intends to carry out a more in-depth review of our licences and to streamline the processes across all licences. Therefore, we also asked for respondents to provide their comments as to how the process could be simplified.

Throughout this process, the UR followed a collaborative approach. The main licence holders were given the opportunity to comment on the proposed licence modifications in advance of the release of the consultation document and licence holders were also encouraged to contact the UR during the consultation period so that any queries could be addressed.

The UR has now analysed the responses and the purpose of this paper is to set out the responses and subsequent final decisions.

Audience

All licence holders, CCNI and any other group interested in procedures for making referrals to the CMA should read this paper and any party affected by changes in electricity and gas licences.

Consumer impact

The consumer impact will be low. It is the UR's intention to return licence holders as far as possible to the same level of protection as regards their ability to have their case heard by the CMA as was the case prior to the Regulations.

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Glossary

Authority	Utility Regulator
BGE (UK)	Bord Gais Eireann (UK)
BGTL	Belfast Gas Transmission Limited
CC	Competition Commission
CCNI	Consumer Council Northern Ireland
CMA	Competition and Markets Authority
DECC	Department of Energy and Climate Change
DETI	Department for Enterprise Trade and Investment
Electricity Order	The Electricity (Northern Ireland) Order 1992
feDL	firmus energy (Distribution) Ltd
feSL	firmus energy Supply Ltd
Gas Order	The Gas (Northern Ireland) Order 1996
GB	Great Britain
i.e.	that is
IME3	Third Package of European Directives
NRA	National Regulatory Authority
PNGL	Phoenix Natural Gas Limited
PPB	Power Procurement Business

Power NI	Power NI Ltd
PTL	Premier Transmission Limited
Regulations	The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015
SGN	Scotia Gas Networks Northern Ireland Limited
SSE Airtricity	SSE Airtricity Gas Supply NI Ltd
SONI	System Operator for Northern Ireland
UR	Utility Regulator

Chapter 1: Introduction, Background and outline of consultation proposals

- 1.1 The Third Package of European Energy Directives (IME3) contained a requirement for Member States to ensure that National Regulatory Authorities (NRAs) are able to make autonomous, timely decisions about regulatory matters; and that those affected by the NRA's decisions have a suitable right of appeal to an independent body. The Department of Enterprise Trade and Investment (DETI) consulted in 2012¹ and at that time set out their intention to follow the Department for Energy and Climate Change (DECC) proposals in GB in relation to this aspect of IME3. A further consultation paper, specific to the legislative proposals for the energy licence modifications and appeals process was published by DETI in January 2014².
- 1.2 On 6 February 2015, the Regulations³ came into operation. These Regulations change the legislative procedure by which the UR can modify gas and electricity licences. The new procedure in the Gas Order and the Electricity Order, as amended by the Regulations, is consistent with both the procedures in the rest of the UK and the requirements of IME3. As noted in DETI's consultation, the purpose of the Regulations is to establish a compliant and equitable licence modification and appeals regime which provides licensees with a clear and concise process under which licence modifications can be made by the UR (following a robust process of consultation) and with a means by which the UR's licence modification decision may be challenged by licensees and other specified bodies.
- 1.3 The Regulations change the procedure from one where licence modifications can only be made with the consent of the licence holder, to

¹ DETI Consultation on revised procedure for electricity and gas licence modifications and appeals process
http://www.detini.gov.uk/consultation_on_revised_procedure_for_licence_modifications_and_appeals_process.pdf

² DETI Consultation on legislative proposals for energy licence modifications and appeals
http://www.detini.gov.uk/consultation_on_legislative_proposals_for_energy_licence_mod....pdf?rev=0

³ The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015
<http://www.legislation.gov.uk/nisr/2015/1/contents/made>

one where the UR can make licence modifications without consent. However, an appeal to the CMA against the UR's decision to modify can be brought by:

- 1) the licence holder concerned;
- 2) any licence holder materially affected by the decision;
- 3) a qualifying body or association representing a licence holder concerned or a licence holder affected by the decision; or
- 4) the Consumer Council for Northern Ireland.

1.4 The CMA will only allow an appeal if:

- 1) the UR has failed to properly have regard for its statutory duties, or failed to give appropriate weight to its duties;
- 2) the UR based its decision on an error of fact;
- 3) the modification will fail to achieve the effect, which the UR stated as the intended effect when it made the decision to modify; or
- 4) the decision was wrong in law.

1.5 Under the previous procedure, the UR had to obtain the licence holder's consent for licence modifications. Where consent was not received, the UR could refer to the CC, now the CMA. Under the new procedures in the Gas and Electricity Orders (as amended by the Regulations), the UR will no longer be able to refer matters to the CMA. There are, however, a number of cases where UR can make important decisions without the need for a licence modification. In the past, the licence holder could have these decisions looked at by the CMA by making a disapplication notice which then forced the UR to refer the matter to the CMA. Now that the UR can no longer refer matters to the CMA all licence conditions, where in the past UR could make important decisions without the need for a licence modification and which rely on or which make reference to the UR referring matters to the CC/CMA need to be modified.

1.6 On 1 May 2015, the UR published a consultation paper on modifications to be made under the UR's transitional powers set out at Regulations 7 and 8 of the Regulations.⁴ The modifications proposed in the consultation were limited to the conditions of existing licences which the "Authority considers [are] requisite or expedient in consequence of the coming into operation of

⁴ Utility Regulator: Licence Modification and Appeals Consultation, 1 May 2015
http://www.uregni.gov.uk/publications/licence_modification_and_appeals_consultation_may_2015.

these Regulations”. In addition, as part of the consultation, the UR asked a number of questions in relation to the extent to which licence conditions could be further simplified.

- 1.7 The implications of the Regulations with respect to price control conditions fall into two main categories.
 - 1) The first is where licences in their current form allow the licence holders to request disapplication of important decisions implemented by means other than a licence modification and where the UR can refer such a request to the CMA.
 - 2) The second category is where licence holders seek to disapply certain existing licence conditions after a given period of time and where the licence holder considers that a licence condition is no longer appropriate.
- 1.8 The first category applies only to gas licences, the second applies mainly to electricity licences. Under the new procedures, the UR cannot refer matters to the CMA; and the organisations listed in paragraph 1.3 may only refer licence modifications to the CMA (not existing licence conditions nor decisions which do not require modification). The effect of the modifications set out in this paper is to require the UR to make licence modifications in the two circumstances above where previously the UR would have referred the matter directly to the CMA. Licence holders will then have the option of appealing the modification decision to the CMA, using the clear and concise mechanism established by DETI.
- 1.9 Further consequential changes were proposed by the UR to the definitions and licence fee sections of all licences. The changes consulted upon were to delete references to the CC, and replace them with CMA. Further, the CMA has adopted a new method for recovering their costs, so now the responsibility to collect the CMA costs moves from the UR to the CMA. References to recovery of fees related to the CC were proposed to be deleted. It may be necessary for UR to review our licence fee methodology and principles in light of this change. We have already started our review of the methodologies, so we hope to finalise this within the next few months.
- 1.10 In relation to those statutory references which have changed as a result of the Regulations; the UR also proposed to make necessary changes to the conditions of licences to ensure accurate statutory references are cited and

any obsolete references are deleted.

1.11 In advance of the consultation and also during and after the consultation period, the UR carried out an open process of engagement with the main licence holders concerned. The consultation closed on 29 June 2015 and we received five formal responses from:

- 1) SONI;
- 2) SSE Airtricity;
- 3) PNLG;
- 4) NIE; and
- 5) firmus energy⁵.

1.12 In addition, during the engagement process, a number of licence holders stated that they had no comments to make on the proposed licence modifications and would not, therefore, be responding formally to the consultation. These licence holders were broadly content with the process and proposals.

1.13 As part of the consultation process, the UR asked respondents for their comments on the overall approach generally and comments as to how licence conditions could be simplified in the future. In response to this question, the following points were made:

- 1) firmus energy asked for more clarity in respect of some specific drafting points and firmus energy also made the comment that at present the supply and conveyance licences “do not provide an adequate level of clarity regarding the process for licensees wishing to reject any aspect of a determined price control”;
- 2) firmus energy also asked for clarity that a disapplication notice can be withdrawn by the licence holder ;

⁵ firmus energy responded in respect of both their conveyance and supply licence.

- 3) PNGL stated that “PNGL has a transparent and targeted gas distribution licence and has no suggestions as to how its licence might be simplified in the future”;
- 4) SSE said that, in the future, when modifying licences, the UR should provide tracked changed documents to allow licence holders to assess the business readiness and potential implications; and
- 5) SONI asked that a definition of CMA be added to licences.

- 1.14 In relation to firmus energy’s first point, the UR notes that in the future where the licence holder wishes to reject a price control, the UR will bring forward a licence modification. If the licence holder wishes to reject the modification, it can then make an appeal to the CMA under the clear and transparent procedure as set out in the Electricity Order and the Gas Order. The UR will continue to work with licence holders and DETI over the coming year in relation to clarity and transparency. The UR agrees to add clarity that a disapplication notice can be withdrawn by the licence holder. As part of our consultation process, the UR provided a track changed document, it is our intention to continue to do this. UR agrees with SONI’s point and has added a definition of CMA to all licences where necessary.
- 1.15 No general comments were made in relation to the proposed changes regarding licence fees, or updating statutory references. The UR will, therefore, make these changes as proposed.
- 1.16 Annex 1 – 13 of this paper contains all of the final modifications which will take effect from 4 August 2015.

Equality considerations

- 1.17 As part of the consultation, the UR asked if the proposals in the consultation paper have an impact on equality of opportunity in relation to the persons listed in section 75 of the Northern Ireland Act. No comments were received in relation to equality of opportunity. The UR has carried out equality screening and determined that there is no requirement for an Equality Impact assessment.

Chapter 2: Supply Licences

Gas Supply Licences

Consultation Proposals

2.1 Modifications were proposed to the 15 gas supply licences in Northern Ireland. These licences are categorised into three groups:

- incumbent suppliers (former monopoly suppliers who are price controlled within the separate distribution areas)
 - SSE Airtricity Gas Supply NI Ltd (SSE Airtricity) - Greater Belfast
 - firmus energy (Supply) Ltd (feSL) –Ten Towns
- non price regulated suppliers
 - firmus energy (Supply) Ltd – Greater Belfast
 - VAYU Ltd
 - ESBIE (Electric Ireland) Supply
 - LCC Power Ltd
 - Flogas Natural Gas Ltd
 - Energia (Viridian Energy Supply Ltd)
 - Power NI Energy Ltd
 - SSE Airtricity Energy Supply NI Ltd
 - ONI Gas Ltd
- suppliers of power stations
 - British Gas Trading Ltd
 - NIE Energy Ltd
 - AES Ballylumford
 - Coolkeeragh ESB Ltd

2.2 These changes, which are set out below and shown in Appendix 3 of this

paper, affect three areas:

- licence fees (condition 1.11);
- modifications (condition 1.8); and
- price control (conditions 2.4).

- 2.3 For ease of reference, the condition numbers in this section relate to the SSE Airtricity licence, however, the modifications are for all licences.
- 2.4 Condition 1.8, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We proposed to amend this condition to remove references to Article 17 and 17A which have been omitted as a result of the Regulations and to insert instead reference to Articles 14A and 14E and which have been added to the Gas Order. This modification will affect all gas licences. The numbering of this condition varies in some of the power station licences:
- British Gas Trading Ltd, condition 1.7;
 - NIE Energy Ltd condition 1.4; and
 - Coolkeeragh ESB Ltd condition 1.4.
- 2.5 Condition 1.11, the 'Payment of Fees to the Authority'. This defines how the licence fees payable to the UR shall be established. Details of the change are set out in paragraph 1.9 of this paper.
- 2.6 Condition 2.4, 'Charges for gas'. This sets out how the UR can control the charges of the supply company for certain groups of customers where the UR considers that competition does not offer customers sufficient protection. This provision sets out the requirement for the UR to consent to a maximum average price, and the process for the supplier should the UR fail to provide consent. Based on the previous licence conditions, the supplier would issue a disapplication notice to the UR, after which point the UR would have six months to issue a reference to the CC.
- 2.7 The effect of the modification of this condition is to remove the reference to the UR referring the matter to the CMA, as this is no longer possible under the new procedures. Instead, we proposed that the condition would state that the UR will publish a decision to modify condition 2.4.1. For clarity, we proposed that any modification of condition 2.4.1 would be to include, within the condition, reference to the specifics of the price control, and, if possible, reference directly to the element or elements of the price control to which the supplier has issue.
- 2.8 The price control is the mechanism by which the maximum average tariff is approved. The price control sets out how the maximum average price must be calculated and in approving a maximum average price, the UR would

seek to ensure that the principles within the price control have been applied to the maximum average price. However, the price control sits separate to the gas supply licence. In practice, if a supplier wished to disapply a price control they would do so by requesting consent to a maximum average price which would not comply with the principles set out within the price control. As a result of this, the UR would withhold consent, the supplier would issue a disapplication notice within 28 days and within 6 months, we would publish a decision to modify condition 2.4.1, thereby providing the supplier with the right to appeal this modification and make reference to the CMA.

- 2.9 This modification to condition 2.4.1 will affect all gas supply licences with the exception of those licences for supplying power stations. The condition is currently active only in the licences of the incumbent gas suppliers SSE Airtricity and feSL – Ten Towns.

Consultation Responses

- 2.10 Responses were received from SSE Airtricity and feSL. SSE was broadly content with the approach taken. feSL made a number of technical drafting comments which have been taken into consideration including:
- a. that condition 2.4.1(d) should refer to Article 14 [of the Gas Order] in its entirety;
 - b. that condition 2.4.1 should be redrafted, because the consultation stated in paragraph 2.8 that “for clarity we propose that any modification of 2.4.1 would be to include, within the condition, reference to specifics of the price control,” the specifics of the price control are not included in the current proposed modification;
 - c. that the UR should clarify in the licence how its statutory obligation to publish a notification before making a licence modification should be implemented;
 - d. that UR should clarify in the licence the modification appeals process as it relates to price controls;
 - e. in the response in relation to their distribution licence, feDL asked for clarification that the licence holder could withdraw the disapplication notice; and

- f. feSL also made the more general point that they would like to see more clarity.

UR Decisions

2.11 We have considered the points raised by feSL and have discussed these with them separately. We have summarised our findings and decisions below:

- a. the reason we only refer to Articles 14(8) – (10) of the Gas Order is to identify a specific point in time i.e. within 6 months of the date of the disapplication notice, by which the UR must have published a notice under Article 14(8). We believe that reference to the specific sub-paragraphs of the legislation is a clearer and more accurate form of drafting;
- b. we confirm that the intention of paragraph 2.8 is to clarify that, *when there comes to be a change in the price control*, this will be reflected by way of a modification to Condition 2.4.1. This will allow the licence holder to appeal the modification and have its case heard before the CMA. It is not our intention to use the current exercise to include specific price control modifications at this time;
- c. the UR will carry out its statutory obligation to publish a notification in relation to all licence modifications in line with the Gas Order and the Electricity Order provisions. As the process is fully set out in the legislation, we do not propose to include any detail on it in the licences themselves;
- d. in future, the UR will make changes to licence price controls by way of licence modifications. Modifications to gas licences can be appealed to the CMA using the process set out in Article 14 of the Gas Order;
- e. in response to feDL's comment regarding clarification that disapplication notices can be withdrawn by the licence holder, we have decided to add this clarification to all licences where appropriate. We have, therefore, added this to the feSL licence; and

- f. the UR met with feSL to discuss clarity. We will work with feSL as part of the forthcoming supply price control and as part of the wider review into simplifying licences in order to improve the clarity of the drafting in the feSL licence.

2.12 The UR will proceed with the changes to the gas supply licences as consulted upon and with the addition of clarity that the disapplication can be withdrawn.

Electricity Supply Licences

Consultation proposals

2.13 Modifications were proposed to the 16 electricity supply licences held in Northern Ireland. These are categorised into two groups:

- incumbent supplier (former monopoly supplier)
 - Power NI Ltd (Power NI)
- non price regulated suppliers
 - SSE Airtricity
 - Budget Energy
 - Electric Ireland
 - firmus energy
 - ONI Electricity
 - Viridian Energy Supply Ltd (Energia)
 - LCC Power Ltd
 - Open Electric Limited
 - Quinn Energy Supply Ltd
 - Vayu Limited
 - AES Ballylumford
 - Bord Gais Energy Ltd

- Electricity Supply Board
 - Project Plug Limited
 - Gaelectric Green Energy Limited
- 2.14 These changes, which are set out below, affect four areas:
- 1) licence fees condition (condition 11 in the Power NI licence);
 - 2) discrimination condition (condition 15 in the Power NI licence);
 - 3) price control annexes (Annex 2, supply charge restriction condition, and Annex 3 determination of the PPB amount); and
 - 4) Annex 1 of the Power NI licence, which is no longer in use.
- 2.15 For ease of reference, the condition numbers in this section relate to the Power NI licence. While the modifications outlined in this section regarding licence fees and discrimination are for all electricity supply licences, the condition number may vary between supply licences. Modifications regarding price control annexes are only relevant to the Power NI licence.
- 2.16 Condition 11, paragraph 3(c) of the Power NI licence. This refers to the payment of fees to the UR. Details of the change which was proposed in the consultation are set out in paragraph 1.9 of this paper. This proposal relates to all electricity supply licences.
- 2.17 Condition 15 of the Power NI licence. This refers to the duration of discrimination conditions. We propose to modify this condition to remove all references to the CC and allow the supplier to still have a mechanism to appeal. The licensee may now serve a disapplication request and in the event that such a disapplication request is received, the UR will either propose a modification or the licence Condition 14 will cease to apply. The licensee will have the right to appeal the UR's proposed modification to the CMA. Previously, the UR had to refer the matter to the CMA. This relates to all electricity supply licences.
- 2.18 Annex 1 of the Power NI licence. This refers to the 'Non Fossil Fuel Obligation' and it will be removed from the licence as these contracts have now expired. This Annex is, therefore, no longer relevant to the licensee. We are removing the contents of this Annex under the new Article 14 of the Electricity Order modification procedure. The Annex contains drafting which refers to the existing licence modification procedure. If the Annex were still in use, it would be necessary to propose modifications that work in practice with the new procedure. However, as the Annex has expired

this would be a nugatory exercise - we proposed to use the new Article 14 powers to remove the Annex and mark it as 'not used'

- 2.19 Annex 2 and Annex 3 of the Power NI licence. The consequential changes to the Annex 2 and 3 following the introduction of the Regulations were set out in our consultation paper. They are outlined below for ease of reference. In bringing forward the Regulations, DETI sought to replicate the arrangements in Great Britain for licence modifications and appeals. The modifications to Annex 2 and 3 of the Power NI licence also, therefore, follow the Ofgem model and reflect the fact that, where possible and appropriate, Northern Ireland has replicated the arrangements in Great Britain. While the detail of the Ofgem drafting varies from case to case, the drafting which UR most closely followed can be found in the National Grid Electricity Transmission PLC, electricity Transmission Licence, Special Condition 8A⁶.
- 2.20 Annex 2 of the Power NI licence refers to the price control. The consultation proposed to modify this annex so as to ensure that Power NI does not lose its existing ability to have UR decisions reviewed by the CMA. The proposal was to provide that upon receipt of a disapplication request, the UR will either propose a licence modification or if we do not, Annex 2 (or part thereof) which is the subject of the disapplication request, will no longer apply. If Power NI or any other party listed in paragraph 1.3 of this paper do not agree with the proposed modification they have the right of appeal to the CMA. This proposal will, therefore, maintain the level of protection that the licence holder currently enjoys, in terms of its ability to have the case heard by the CMA. This modification will only apply to the Power NI licence as no other supplier has a price control in Annex 2 of their licence. The modifications proposed follow the Ofgem model and reflect the fact that the Northern Ireland approach is to replicate, where possible and appropriate, the GB approach.
- 2.21 There is also a modification to Annex 3 of the Power NI licence which relates to PPB. The changes mirror those being made to Annex 2 and are for the same purposes as stated above.

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<https://epr.ofgem.gov.uk/Content/Documents/National%20Grid%20Electricity%20Transmission%20Plc%20-%20Special%20Conditions%20-%20Current%20Version.pdf>

- 2.22 The modifications to the Power NI licence are included in Appendix 1 of this paper. The modifications to the PPB element of the licence are included in Appendix 2 of this paper.

Consultation Responses

- 2.23 While Power NI did not submit a response to the consultation, they did provide feedback during the consultation period. Power NI stated that they were content with the licence modifications as laid out in the consultation paper as these were as discussed during the UR's engagement with them. The only additional item which they identified was in relation to licence condition 54. Power NI stated:

“This condition refers to Annex 1 which will be “not used”; this may therefore be an opportunity to also set LC54 to “not used”.

- 2.24 SONI, in its response to the licence modification proposed in chapter 4 of this paper, asked that the words “which shall not be earlier than the disapplication date” should not be added to paragraph 5.3 (c) of Annex 1 of the SONI licence. SONI's reason for requesting this was to allow licence holders the opportunity to request and for the UR to agree an earlier disapplication date. The UR agrees that the words should be removed. SONI also asked for the term CMA to be defined in the licence.
- 2.25 The firmus energy response requested the specific reference to the withdrawal of a Disapplication Notice, currently within their licence, be reinstated in the modifications for purposes of clarity.

UR Decisions

- 2.26 As set out in the consultation, the modifications consulted on in relation to Annex 1 of the Power NI licence will proceed using Article 14 of the Electricity Order. An Article 14 notification in relation to Annex 1 of the Power NI licence is contained in appendix 14 of this paper. This notification takes into consideration Power NI's suggestion.
- 2.27 As the proposed drafting in the Power NI licence is very similar to that for SONI and firmus energy, we discussed the requests by firmus energy and SONI with Power NI. Power NI agreed that its licence should be kept consistent with other NI licences.
- 2.28 In response to SONI's request we have not added the words "which shall not be earlier than the disapplication date" to 7.3 (c) (iii) of Annex 2 of Power NI or Annex 3 condition 6.3(c) of PPB as was proposed in the consultation. Also in response to SONI's request, a definition of CMA has been added. As requested by firmus energy, we have clarified for both PPB and Power NI that a disapplication request may be withdrawn at any time.
- 2.29 The UR agrees that the reference to withdrawal of a Disapplication Notice should remain within the firmus energy licence. And for consistency it should also be applied consistently to relevant sections of supply licences. We have decided to change the Power NI licence drafting as follows:
- add "and not withdrawn" to the end of paragraph 7.1(b) in Annex 2;
 - add a new paragraph 7.4(b) in Annex 2 to read "may be withdrawn by the Licensee at any time prior to the Disapplication Date";
 - re-number paragraph 7.4 to account for the new 7.4(b)
- 2.30 The same modifications as set out above in 2.28 will be made to the Power NI licence at paragraph 6 of Annex 3 (PPB) where similar text is found. For Power NI (and other licences where applicable), Condition 15 will have also have these modifications made.
- 2.31 All of the other modifications will proceed as per the consultation.

Chapter 3: Gas Transmission and Distribution Licences

Gas Distribution Licences

Consultation Proposals

3.1 There are currently three gas distribution licence holders in Northern Ireland:

- Phoenix Natural Gas Limited (PNGL);
- firmus energy (Distribution) Ltd (feDL); and
- Scotia Gas Networks Northern Ireland Limited (SGN).

3.2 The SGN licence was granted on 11 February 2015 and has been drafted so as to be consistent with the Regulations and to provide the licence holder with appropriate appeals mechanisms. Hence, we proposed not to make any modifications to this licence.

PNGL

3.3 Conditions proposed to be modified pursuant to the Regulations were Conditions 1.10, 1.14, 2.2 and 2.3.

3.4 Condition 1.10, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We proposed to amend this condition to ensure that Articles of the Gas Order which have been omitted pursuant to the Regulations are no longer referenced in Condition 1.10, and that new relevant Articles that have been added to the Gas Order pursuant to the Regulations are.

3.5 Condition 1.14, the 'Payment of Fees to the Authority' condition. Details of the change which was proposed in the consultation are set out in paragraph 1.9 of this paper.

3.6 Condition 2.2, the 'Territorial Scope and Exclusivity' condition. This details arrangements regarding exclusivity for the conveyance of gas and circumstances under which such exclusivity can be restricted. Based on the current licence arrangements, the licence holder can, should the UR issue

a notice with respect to loss of exclusivity pursuant to Condition 2.2.3, issue a Disapplication Notice (as defined in the licence). Condition 2.2.4 of the current PNGL licence states that the UR can then refer the issue to the CC under Article 15 of the Gas Order. However, pursuant to the Regulations, Article 15 of the Gas Order has been omitted; hence any reference to it has become obsolete and needs to be removed from the licence. That said, the Regulations empower the UR to make licence modifications under Article 14 of the Gas Order as amended, following consultation, without the consent of the licence holder, subject to the right of the licence holder (and the other parties listed in paragraph 1.3 of this paper) to appeal the modification to the CMA. This includes the right for the UR to make licence modifications with respect to loss of exclusivity under Article 14, whether it is following receipt of a Disapplication Notice pursuant to Condition 2.2.4 of the licence or without issuing a notice under Condition 2.2.3 in the first place. Any such licence modification can then be referred to the CMA by the licence holder (or any other party listed under paragraph 1.3 of this paper).

- 3.7 Condition 2.3, the 'Conveyance Charges, Other Terms for the Conveyance of Gas and the provision of Conveyance Services' condition. This sets out the conditions regarding price control reviews and the establishment of conveyance charges. Under current licence arrangements, price control decisions are implemented through a Determination Notice (as defined in the Licence). PNGL can then raise a Review Disapplication Notice (as defined in the licence) which disapplies the determination unless UR refers the matter to the CC. The UR proposed to modify this, as pursuant to the Regulations, the UR can no longer refer matters to the CMA. The purpose of the proposed changes to Condition 2.3 is to enable PNGL to disapply future price control determinations in a similar way as is the case today. To this effect, the proposed drafting requires the UR to modify the licence to include the Determination Values and Designated Parameters (as defined in the licence) of a price control decision. If the licence holder (or any other party listed under paragraph 1.3 of this paper) wishes to appeal the price control decision they can, where relevant, refer the modification to the CMA in accordance with the Gas Order (as amended by the Regulations).

feDL

- 3.8 Conditions proposed to be modified pursuant to the new Regulations are Conditions 1.9, 1.13, 4.1, 4.4, 4.7, 4.9 and 4.10.
- 3.9 Furthermore, a minor modification was proposed to Condition 1.1 to correct a typo in the current licence drafting.

- 3.10 Condition 1.9, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We proposed to amend this condition to ensure that Articles of the Gas Order which have been omitted pursuant to the Regulations are no longer referenced in Condition 1.9, and that new relevant Articles that have been added to the Gas Order pursuant to the Regulations are.
- 3.11 Condition 1.13, the 'Payment of Fees to the Authority' condition. Details of the change which was proposed in the consultation are set out in paragraph 1.9 of this paper.
- 3.12 Conditions 4.1, 4.4, 4.7, 4.9 and 4.10 deal with conveyance charging, price control reviews and disapplication and definitions. The purpose of the proposed changes to Conditions 4.1, 4.4, 4.7, 4.9 and 4.10 is to enable feDL to disapply future price control determinations in a similar way as is the case today. To this effect, the proposed drafting facilitates the implementation of two disapplication/appeal mechanisms.
- 3.13 In line with the proposed changes for the PNGL licence, we proposed that, rather than implementing price control decisions through issuing a Determination Notice (as defined in the licence), the UR will, in future, implement them by updating the Determination Values and Designated Parameters in the licence (such terms, again, as defined in the licence) by modifying the licence. If the licence holder (or any other party listed under paragraph 1.3 of this paper) wishes to appeal the price control decision they can then, where relevant, appeal the modification to the CMA in accordance with the new procedure as set out in the Gas Order (as amended by the Regulations).
- 3.14 The feDL licence in its current form also includes a mechanism whereby feDL can disapply certain licence conditions, the so-called 'Charge Restriction' conditions. This mechanism allows the licence holder to request disapplication of these conditions from a future date. The UR can then refer the matter to the CC or accept the disapplication by taking no further action. As a result of the coming in operation of the Regulations, the UR can no longer refer matters to the CMA. Therefore, we proposed to change the mechanism so that, in response to a Disapplication Request (as defined in the licence) from the licence holder, the UR can decide to modify the licence to change the 'Charge Restriction' conditions or alter the right of the licence holder to disapply on this occasion. In either case, if they are not satisfied with the licence modification decision of the UR, the licence holder (or any other party listed under paragraph 1.3 of this paper) can then refer the matter to the CMA in accordance with the new procedure. If the UR takes no action following receipt of the Disapplication Request, or if the CMA quashes UR's licence modification decision without

substituting it for its own or referring the matter back to the UR, the licence holder may serve a Disapplication Notice to give effect to the disapplication of the 'Charge Restriction' conditions.

Consultation Responses

- 3.15 Two responses were received in relation to the PNGL and feDL licences: one from PNGL and one from feDL. We also took into consideration comments in relation to other licences, where the comment was equally relevant to PNGL and feDL.
- 3.16 The PNGL response indicated that the licensee is in agreement with the modifications proposed.
- 3.17 The points made by feDL included the following:
- a. The consultation does not clarify how the statutory obligation arising from Regulation 3 of the Regulations will be implemented.
 - b. The reference in Condition 4.4.10 to Article 14 of the Gas Order as amended should be to Article 14 in its entirety.
 - c. It is unnecessary for Condition 4.4.11 to state that Conditions 4.2 and 4.3 will continue for the duration of the Licence as that is true for all of the Licence conditions which remain in force until modified. Condition 4.4.11 should instead outline the exact circumstances under which Conditions 4.2 and 4.3 will cease to have effect.
 - d. The time period within which a Disapplication Request pursuant to Condition 4.4.13 can be made should be clarified and aligned with Article 14(3) of the Gas Order as amended.
 - e. The drafting in Condition 4.4.14 should be clarified as follows:

“A Disapplication Notice pursuant to this Condition 4.4.14 may be given in the circumstances described in either Condition 4.4.15 or Condition 4.4.16 and, where it is given, shall:

 - (i) be in writing addressed to the Authority;
 - (ii) ...
 - (iii)”
 - f. Conditions 4.4.15 and 4.4.16 state that a Disapplication Notice has to be served “by the beginning of the period of six months which will end with the Disapplication Date”. It should be specified precisely what “by the beginning” means.

- g. Condition 4.4.16(c)(ii) does not outline the process that would be undertaken should the CMA return a matter to the Authority for reconsideration and determination. The Licence does not clarify if the licensee has a right to serve another Disapplication Notice in respect of another decision made by the UR.
- h. The original Condition 4.4.14 referred to a withdrawal of a Disapplication Notice. This possibility should be provided for in the changes to the Licence.
- i. The original Condition 4.4.15 is now deleted. This condition stated that, where Conditions 4.2. and 4.3 cease to have effect, the licensee shall, in setting its Controlled Charges, no longer be restricted by this Part 4. This condition should be reinstated.
- j. The proposed changes to Condition 4.9 do not reflect updates to the level of allowed capex for network mains construction during the GD14 price control and the additional allowed capex resultant from recent licence extensions.
- k. feDL also made a more general point about wanting more clarity in drafting.

3.18 SONI in their response to the licence modification proposals in relation to the SONI licence suggested that the term CMA should be defined in the licence. As the term CMA is also used in Condition 4.4.16 of the feDL licence, we consider this suggestion to be relevant for the feDL licence as well and have informed feDL accordingly.

3.19 Furthermore, SONI asked that the words “which shall not be earlier than the disapplication date” should not be added to paragraph 5.3 (c) of Annex 1 of the SONI licence. SONI’s reason for requesting this was to allow licence holders the opportunity to request and for the UR to agree an earlier disapplication date. The UR agrees that the words should not be added. As the proposed drafting in Condition 4.4.13 of the feDL licence is aligned with the SONI licence, we consider this suggestion to be relevant for the feDL licence as well and have informed feDL accordingly.

UR Decisions

PNGL

- 3.20 The UR will make the modifications to the PNGL licence in line with those proposed in the consultation⁴. All changes to the PNGL licence are shown as tracked changes in Appendix 8.

feDL

- 3.21 We have considered the points raised by feDL and responded to them in a separate letter. We have summarised our findings and decisions below.
- 3.22 The purpose of the consultation paper is not to set out how specific statutory obligations under the Regulations would be implemented. Further, we believe that the legislation is clear in relation to the UR's notice requirements during a licence modification. We have, therefore, decided not to amend the proposed licence drafting in this instance.
- 3.23 We do not consider it necessary for Condition 4.4.10 to refer to Article 14 of the Gas Order as amended in its entirety. Articles 14(8) to (10) set out the provisions relating to the published notice by which modifications are made. These Articles can only be used to make a modification if the previous requirements of Article 14 have been complied with. We have, therefore, decided not to amend the proposed licence drafting as to do so would not alter the implications of Condition 4.4.10.
- 3.24 We acknowledge that it could be considered unusual to state that certain conditions will apply for the duration of the licence. However, the purpose of this clarification in Condition 4.4.11 is to make clear that the conditions (and the existence of price regulation) do not expire just because the original price control period has come to an end. The provision has been standard in other licences for some time and we, therefore, consider it appropriate to retain it. We also consider that Condition 4.4.11, taken together with the provisions that follow it, sufficiently details the exact circumstances under which Conditions 4.2 and 4.3 will cease to have effect. The UR has decided not to amend the proposed licence drafting in this respect.
- 3.25 As detailed in paragraphs 3.12 to 3.14 above, the proposed feDL licence drafting facilitates two distinct disapplication/appeal mechanisms.
- a. New price control decisions will be implemented through licence changes. The licence changes can then be appealed, where relevant, to the CMA in accordance with the new procedure and timelines set out in the Gas Order (as amended by the Regulations).

- b. The disapplication mechanism set out in Conditions 4.4.11 to 4.4.16 is designed to allow for the disapplication of the 'Charge Restriction' conditions after a certain period of time; for example, to prevent these conditions from being applicable beyond the end of the price control period. With this mechanism, Disapplication Requests can be raised at any time, but the Disapplication Date will be established in line with the licence conditions.

We, therefore, do not agree that further clarification is required regarding the time period within which a Disapplication Request pursuant to Condition 4.4.13 can be made and do not propose to amend the licence drafting in this respect.

- 3.26 The proposed change in drafting for Condition 4.4.14 by feDL would be a different way of drafting to achieve the same effect as the wording proposed in the consultation document. It would have no bearing on the meaning of the provision. We have decided not to amend the proposed licence drafting in this respect.
- 3.27 We consider that the meaning of “by the beginning” as used in Conditions 4.4.15 and 4.4.16 is sufficiently clear. For example, if the Disapplication Date is 1 July, then the Disapplication Notice must be served by 1 January. The proposed licence drafting on this point will, therefore, remain.
- 3.28 The purpose of Condition 4.4.16(c)(ii) is not to outline what happens if the CMA remits a matter back to the UR, but merely to say that, in this circumstance, disapplication does not take place. Having said that, any decision taken by the UR pursuant to the remit of the matter from the CMA and implemented through licence changes can be appealed against in accordance with the new procedure and timelines set out in the Gas Order (as amended by the Regulations), as explained under paragraph 3.25 a above. Also, this will not impact on the right of feDL to submit a new Disapplication Request with respect to another price control period. We have decided that no change to the proposed licence drafting is required.
- 3.29 We have considered the suggestion of feDL to allow for withdrawal of a Disapplication Notice. We agree with the suggestion made and have decided to change the licence drafting as follows:
- remove the word “and” at the end of condition 4.4.14(a);
 - rename condition 4.4.14(b) into 4.4.14(c);
 - add a new condition 4.4.14(b) to read as follows: “may be withdrawn by the Licensee at any time prior to the Disapplication Date; and”; and

- add the following words at the end of condition 4.4.11(b): “and not withdrawn”.

We have also decided to make similar changes to all other licences with equivalent licence conditions.

- 3.30 Condition 4.4.15 was removed from the feDL licence to improve alignment with similar disapplication arrangements in other licences. In practice, if Conditions 4.2 and 4.3 cease to have effect, then the other conditions in part 4 of the licence will not work and will, therefore, have no legal effect. We, therefore, consider that reinstatement of the original Condition 4.4.15 is not required.
- 3.31 The Current Designated Parameters and Determination Values listed under Condition 4.9 are in line with those of the feDL price control model which was re-issued to feDL on 2 July 2015. We note that certain elements of the feDL price control are subject to an uncertainty mechanism. The uncertainty mechanism addresses uncertainties and reduces the related risks to consumers and GDNs by retrospectively adjusting price control allowances based on differences between actual and allowed costs or outputs. Retrospective adjustments of price control allowances under the uncertainty mechanism are typically made when one price control period comes to an end and decisions for the following price control period are being taken. Hence, retrospective adjustments for the current feDL price control period have not been reflected in the Current Designated Parameters and Determination Values listed under Condition 4.9 but will be considered when the uncertainty model is updated as part of the work on the next price control. This includes retrospective adjustments with respect to allowed capex for network mains construction during the current price control period and the additional allowed capex resultant from licence extensions.
- 3.32 We have met with feDL separately to discuss clarity and have agreed to work with them as part of the price control exercise to improve clarity.
- 3.33 In line with the equivalent changes to the SONI licence stated in paragraph 4.11 of this paper, we have decided to insert the following definition in Condition 1.1.6 of the feDL licence:

“Competition and Markets Authority (CMA)” means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013;

- 3.34 In line with the equivalent changes to the SONI licence stated in paragraph 4.7 of this paper, we have decided to remove the following words from Condition 4.4.13(c): “which shall not be earlier than the Disapplication Date”. This will allow the licence holder to request and the UR to agree a disapplication date earlier than the date set out in the licence.
- 3.35 We note that the feDL licence drafting proposed in the consultation⁴ contains two Conditions numbered 4.4.16. We have decided to correct this issue by changing the number of the second one of these Conditions to 4.4.17.
- 3.36 All changes to the feDL licence are shown as tracked changes in Appendix 11.

SGN

- 3.37 As outlined in paragraph 3.2, the SGN licence has been drafted so as to be consistent with the Regulations and we have decided not to make any licence modifications at this stage.
- 3.38 We note, however, that some of the decisions we have taken with consideration of consultation responses received are also relevant to the SGN licence in so far as they refer to conditions that are in equivalent form also contained in the SGN licence. This includes in particular the following:
- inclusion of a definition for CMA;
 - removal of the words “which shall not be earlier than the Disapplication Date” from the end of Condition 4.4.13(c); and
 - inclusion of arrangements to allow for withdrawal of Disapplication Notices.
- 3.39 In the interest of licence consistency, we will consider aligning the SGN licence with these decisions in due course.

Gas Transmission Licences

Consultation Proposals

- 3.40 Modifications were proposed to the three gas transmission licence holders in Northern Ireland:
- Premier Transmission Limited (PTL);
 - Belfast Gas Transmission Limited (BGTL); and
 - Bord Gais Eireann (UK) Limited (BGE UK, now known as GNI (UK))⁷.
- 3.41 These changes will only affect two areas:
- licence fees; and
 - price control disapplication notices.
- 3.42 It is proposed to modify Conditions 1.13.3 (c) and 1.13.6 (iii) of each licence. This removes references to the CC costs in calculating the licence fee (see paragraph 1.9 of this paper).
- 3.43 It is further proposed to amend conditions relating to price control disapplication notices. These are:
- GNI (UK) = Condition 2.2.5;
 - BGTL = Condition 3.1.8.5; and
 - PTL = Condition 3.1.10.5.
- 3.44 Condition 1.13 in each licence deals with calculating licence fees payable. Details of this change are explained in paragraph 1.9.
- 3.45 The other price control conditions listed above refer to disapplication notices. These can be issued by the companies if they disagree with the UR's revenue determination. The current licence conditions allow the UR to refer these disputes to the CC. The proposed changes would mean that:
- the UR would have to publish a decision/licence modification in response to the notice; and
 - individual companies have the ability to appeal to the CMA against these licence changes.
- 3.46 The modifications also propose to increase the response time for a disapplication notice from three to six months. This reflects the fact that

⁷ BGE(UK) has been renamed GNI(UK).

under the proposed changes, the UR may have to ‘reopen’ price control decisions. This is likely to be more time consuming than simply deciding to refer the matter to the CMA.

Consultation Responses

- 3.47 No formal consultation responses were received with regard to the gas transmission proposals. However, the Licensees affected had previously indicated that they had no particular comments on the changes proposed. In a separate response feDL requested clarification in its licence that disapplication could be withdrawn by the licence holder.

UR Decisions

- 3.48 The modifications consulted upon will be made to the licences of GNI(UK), PTL, and BGTL.
- 3.49 In addition, and in light of the response made by firmus energy, we intend to make two further changes in order to ensure that the conveyance licences remain aligned. Firstly, drafting will be added to allow a Disapplication Notice to be withdrawn by the licensee. Also, a new definition will be added to the licences to clarify the term CMA. The final licence modifications for GNI(UK), PTL and BGTL are shown in Appendix 6, 7, and 9 of this paper.

Chapter 4: Electricity Transmission and Distribution Licences

Overview

4.1 There are currently four electricity transmission and distribution licences held in Northern Ireland which are listed below:

- NIE Transmission Licence;
- NIE Distribution Licence;
- SONI Transmission System Operator Licence; and
- Moyle Interconnector Transmission Licence.

4.2 The consequential changes to each of these licences, following the introduction of the Regulations, were set out in the consultation paper. They are outlined below for ease of reference. In bringing forward the Regulations, DETI sought to replicate the arrangements in Great Britain for licence modifications and appeals. The modifications in this section of the paper, therefore, follow the Ofgem model and reflect the fact that, where possible and appropriate, Northern Ireland has attempted to replicate the arrangements in Great Britain. While the detail of the Ofgem drafting varies from case to case, the drafting which the UR most closely followed can be found in the National Grid Electricity Transmission PLC, electricity Transmission Licence, Special Condition 8A⁸.

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<https://epr.ofgem.gov.uk/Content/Documents/National%20Grid%20Electricity%20Transmission%20Plc%20-%20Special%20Conditions%20-%20Current%20Version.pdf>

NIE Ltd Electricity Transmission licence and NIE Ltd Distribution licence and the SONI Ltd Transmission System Operator (TSO) licence.

Consultation proposals

- 4.3 The proposals for NIE transmission and NIE distribution and SONI TSO licences mirror those proposed for Power NI. Condition 7 in both the NIE licences and Condition 8 of the SONI TSO licence deals with calculating annual licence fees payable. Details of changes to licence fee condition are set out in paragraph 1.9 of this paper.
- 4.4 Paragraph 7 of Annex 2 in both NIE licences sets out how long the NIE price control licence conditions may remain in operation ('charge restrictions'). Paragraph 7 of Annex 1 in the NIE distribution licence only and Annex 1 of the SONI TSO licence also contain 'charge restriction' conditions, but for specific charges levied under that annex of each licence.
- 4.5 Annex 2 of the NIE licences, Annex 1 of the NIE distribution licence only and Annex 1 of the SONI licence will be modified in the same way as the Power NI licence. Please see paragraph 2.19 – 2.21 above.

Consultation responses

- 4.6 We received 2 responses in relation to this section of modifications, 1 from SONI and 1 from NIE. NIE was broadly content with the proposals and SONI made the following points:
- a. the words "which shall not be earlier than the disapplication date" should not be added to paragraph 5.3 (c) of Annex 1 of the SONI licence. SONI asked that these words be removed in order to allow the licence holder to request and for the UR to agree a disapplication date earlier than the date set out in the licence;
 - b. the UR should be required to publish a modification decision 9 months before the disapplication date, not 6 months as the UR had proposed. SONI requested this in order to ensure that the latest

date upon which the CMA may reach a decision would be no later than the disapplication date. SONI felt that if the CMA decision was later than the disapplication date there would be uncertainty for the licence holder for a period of 3 months;

- c. a definition of CMA should be introduced to the SONI TSO licence;
- d. SONI also requested clarity on why the SONI Ltd SEM Operator licence was not included in the list of licences modified as a consequence of the Regulations; and
- e. the firmus energy response requested the specific reference to the withdrawal of a Disapplication Notice, currently within their licence, be reinstated in the modifications for purposes of clarity.

UR Decision

4.7 In response to SONI's request, we have not added the words "which shall not be earlier than the disapplication date" to paragraph 5.3 of Annex 1 of SONI's TSO licence. Similarly, we have not added this wording to the sections of Annex 2 of the NIE transmission licence and Annexes 1 and 2 of the NIE distribution licence which contain the same text that refers to disapplication requests.

4.8 The UR does not agree that it should be required to publish a modification decision 9 months before the disapplication date. UR notes that the timing proposed in our original consultation mirrors the timing used in GB licences and that other licence holders with the same timing were content. UR does not feel it is appropriate to depart from the GB timing, which is considered best practice. The reason for the proposed timing was to allow the UR adequate time to publish a decision on a licence modification. In order to publish a price control modification decision, the UR must:

- a. have considered our price control policy;
- b. gathered data from the licence holder to inform our decisions;
- c. drafted our provisional policy conclusions into the form of a detailed licence condition;
- d. consulted on that drafting having given formal notification of 28 days; and

e. made a final decision on the licence modifications.

- 4.9 Taking into account the need for adequate consultation the range of other stakeholders, and consideration of their responses, this cannot realistically be done in 9 months. The additional time permitted to the UR, therefore, simply reflects the different nature of the decision to be made, and is a direct consequence of the change in the legislation. The drafting preserves the basic protections for the licence holder. The licence holder will either have a decision that it can appeal to the CMA if it wishes (which is the new mechanism by which matters can be taken to the CMA) or, if no decision to modify has been made within 12 months, the price control will be able to be disapplied from the disapplication date.
- 4.10 Any outstanding concerns from SONI regarding certainty of revenue will be further addressed as part of the ongoing price control negotiations.
- 4.11 The UR will insert the following definition of CMA into all licences where necessary.

Competition and Markets Authority (CMA)	means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013
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- 4.12 The UR agrees that the reference to withdrawal of a Disapplication Notice should remain within the firmus energy licence. For consistency, it also should be applied to the NIE electricity transmission and distribution licences and the SONI TSO licence. Within the NIE licences and SONI TSO licence a reference is made specifically stating a Disapplication Notice may be withdrawn by the licensee at any time prior to the Disapplication Date. This is reflected in Appendices 4, 5 and 10 to this paper.
- 4.13 The SONI SEM operator licence revenue restrictions and revenue discussions are being considered separately and in a wider context. This separate review will consider the mechanism for referral to the CMA within that context and will aim to ensure consistency with all other licences.

Moyle Interconnector Transmission Licence

Consultation proposals

- 4.14 The proposal to the Moyle Interconnector licence related solely to Condition 8 'Payment of Fees' which deals with calculating annual licence fees payable by the licence holder. Details of changes to the licence fee condition are set out in paragraph 1.9 of this paper.

Consultation responses

- 4.15 No responses were received in relation to the proposed modifications to the Moyle Interconnector licence.

UR Decision

- 4.16 The UR will therefore make the modifications to the Moyle Interconnector licence in line with those proposed to Condition 8.
- 4.17 The modifications are shown in Appendix 12 of this paper.

Chapter 5: Electricity Generation Licences

Overview

- 5.1 There are currently 40 electricity generation licences held in Northern Ireland. Proposed modifications for all the electricity generation licences related to Condition 3 'Prohibition of Cross-Subsidies and Discrimination' and Condition 12 'Payment of Fees'. For the electricity generation licences which defined the 'Competition Commission' an additional modification was proposed to amend this definition to the 'Competition and Markets Authority'.

Consultation proposals

- 5.2 The consequential changes to each of these licences, following the introduction of the Regulations, were set out in the consultation paper. The proposed modifications to Condition 3 would update the disapplication process and the CMA referral process. Condition 12 proposed modifications deal with calculating annual licence fees payable by the licence holder. Details of changes to the licence fee condition are set out in paragraph 1.9 of this paper.

Consultation responses

- 5.3 No responses were received in relation to the proposed modifications to the electricity generation licences.
- 5.4 The firmus energy response requested the specific reference to the withdrawal of a Disapplication Notice, currently within their licence, be reinstated in the modifications for purposes of clarity.
- 5.5 SONI requested the insertion of a definition of CMA within their SONI TSO licence.

5.6 SONI also submitted that the words “which shall not be earlier than the disapplication date” should not be added to paragraph 5.3 (c) of Annex 1 of the SONI licence. SONI asked that these words be removed in order to allow the licence holder to request and for the UR to agree a disapplication date earlier than the date set out in the licence.

UR Decision

5.7 The UR agrees that the reference to withdrawal of a Disapplication Notice should remain within the firmus energy licence. For consistency it also should be applied to the electricity generation licences. Therefore, within each generation licence, a reference is made specifically stating a Disapplication Notice may be withdrawn by the licensee at any time prior to the Disapplication Date. This is reflected in Appendix 13 to this paper

5.8 The definition of CMA consulted upon within the electricity generation licence appendix has been amended to include the word 'and' so as the definition reads as 'Competition and Markets Authority'. The UR will insert the following definition into all electricity generation licences where necessary.

Competition and Markets Authority (CMA)	means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013
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5.9 In response to SONI’s request we have not added the words “which shall not be earlier than the disapplication date” to electricity generation licences where the relevant text refers to disapplication requests.

5.10 The modifications are set out in Appendix 13. For illustrative purposes only, the proposed modifications have been based upon the AES Kilroot Generating Ltd Electricity Generation Licence as a template for all other electricity generation licences. Please note that the relevant and equivalent condition in other existing electricity generation licences may have different numbering or references.