

ELECTRICITY CUSTOMERS WITH MULTIPLE PREMISES IN THE NON- DOMESTIC MARKET

Decision paper

29 January 2013

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1. BACKGROUND

- 1.1. The Utility Regulator (UR) has been considering the competitive position for Customers with multiple premises in the Non-Domestic electricity market and published a consultation entitled “*Electricity Customers with multiple premises in the Non-Domestic market*” on 23 November 2012 (the Consultation).
- 1.2. The current threshold for regulated tariffs, in the Non-Domestic market, is 150MWh annual consumption or, in the absence of consumption information, a Maximum Import Capacity (MIC) above 100kVA.
- 1.3. At present, any premises below this threshold can only be offered a regulated tariff by Power NI while other independent suppliers (including Power NI’s sister company Energia) can compete for these premises. Power NI along with all independent suppliers can offer non-price regulated supply offerings to premises above the threshold.
- 1.4. The purpose of the Consultation was to seek respondents’ views on whether the UR should allow Power NI to offer a non price regulated supply offering to Customers with multiple premises who, in aggregate, consumed more than 150MWh per annum. Up until now Power NI, in order to ensure compliance with their licence, have been obliged to offer only the regulated tariff to any premises using less than 150MWh per annum whether the premises was part of a larger group or not.
- 1.5. The UR set out its ‘minded to’ position in the Consultation. This is reproduced below for ease of reference:

3.5 Our minded to position therefore is to allow Power NI to offer a non price regulated supply offering to Customers with multiple premises provided all the following criteria are satisfied:

3.5.1 A ‘Group’ of premises for the supply of electricity to premises shall be considered to be more than one Non-Domestic premises; and

3.5.2 The Group of premises must be owned or leased by a single legal entity; and

3.5.3 The aggregate consumption of the Group must be in excess of 150MWh per annum; and

3.5.4 The Customer agrees that they want to be treated as a single Customer with multiple premises. If the Customer wishes to avail of the

regulated tariff for each MPRN consuming less than 150MWh per annum, Power NI must treat each MPRN consuming less than 150MWh per annum as a price Regulated Premises. Power NI must record the Customer's choice of whether they wish to avail of the regulated tariff (for each MPRN beneath the 150MWh per annum threshold) or a non-price regulated supply offering for the Group of premises. For the avoidance of doubt this must be an active choice by the Customer and not one that resulted from an "opt out" marketing exercise. The UR will need to approve the mechanism and information provided by which Power NI will offer its current regulated Group Customers the choice of continuing to avail of the regulated tariff for each site or moving to a non-price regulated supply offering; and

3.5.5 Any Customer Power NI offer to supply must be able to revert from being considered a Group to avail of a regulated tariff for any individual MPRN that is below the consumption threshold provided they are not bound by a contractual restriction. Each site retains the right to be treated as a single supply if the owner so wishes.

3.6 No change is proposed for Non-Domestic premises, even if the aggregated consumption for that particular Group of premises is more than 150MWh per annum, unless the above conditions are all satisfied.

1.6. Unless specified otherwise, all references to a "Customer" within this document means a single legal entity in the Non-Domestic electricity market only.

2. RESPONSES TO THE CONSULTATION

2.1. The UR received eleven responses to the Consultation paper, one of which requested confidentiality due to an ongoing tender process. Published submissions were received from the following organisations:

- Airtricity
- Derry City Council
- Electric Ireland
- NEELB
- Newry & Mourne District Council
- NICS Central Estate
- Northern Ireland Water
- Northern Health & Social Care Trust
- Power 2 Business
- Power NI

2.2. In summary, the published responses were from Power NI, two independent suppliers, six large Group Customers and one 'electricity procurement consultant'.

2.3. The Consultation paper requested respondents to provide feedback on four questions that are reproduced below along with the relevant responses. In pursuit of brevity, aggregate views have been used in the 'Respondents' comment sections where they are similar.

CONSULTATION QUESTIONS

Q1. *Are there any discernible differences, for the purposes of procuring a competitive electricity supply, between a Customer with multiple premises and a Customer with single premises that both consume above the unregulated threshold? If you believe there are differences please provide the rationale for each identified variation.*

Respondents Comments

- 2.4. All respondents, except for the two independent suppliers, were supportive and agreed with the principle that there was no discernible difference, for the purpose of price controls, between a Customer with multiple premises and a Customer with single premises that both consume above the 150MWh per annum threshold.
- 2.5. Newry and Mourne DC, who manage tenders on behalf of local authorities, indicated that the change would '*simplify the tender process and make adjudication easier*'. NI Water stated '*by allowing the aggregate of small less than 150MWh sites to be considered (with larger sites), all suppliers are able to compete on a level playing field with no detriment to the value for money gained by the procurement exercise*'. Derry City Council thought the current arrangements excluded Power NI from submitting competitive tenders for Group sites.
- 2.6. Airtricity's view was that there are a number of differences between Customers with multiple premises and those with a single site. Airtricity cited differences in consumption, meter type and costs to service. Airtricity also raised other concerns under Question 1 that are discussed later under Question 4. Electric Ireland did not respond directly to any of the questions posed by the UR but raised several related points that again are discussed later.

Q2. *Do you agree that Customers with multiple premises, that in aggregate consume 150MWh or more per annum, should have the option to avail of either a non-price regulated supply offering for all sites or a price regulated tariff from Power NI for each MPRN consuming less than 150MWh per annum? If not, please explain your rationale.*

Respondents Comments

- 2.7. Again all respondents, except for the two independent suppliers, agreed that Customers with multiple premises whose consumption, in aggregate, was above the current threshold should have the option to either retain a price regulated tariff from Power NI for individual sites or include them in a Group non-price regulated offering.
- 2.8. NI Water indicated that currently Power NI's ability to provide a competitive price to compete for the business of companies, like NI Water, is limited and implementing the proposed change will enable Power NI *'to remain in the competition for that element of our (NI Water's) business'*.
- 2.9. Airtricity did not accept that these Customers should be price deregulated and *'as such does not believe that these customers should be able to avail of non-price regulated supply'*. Airtricity supported this assertion by stating that Power NI retains a dominant market position.
- 2.10. Electric Ireland did not directly respond to this question but made several related points that are again covered under question 4.

Q3. *Do you agree with the requirements and limitations, as set out in 3.5.1 to 3.5.5, which the UR considers must be satisfied in order for Power NI to offer a non-price regulated supply offering to Group Customers? If not, please explain what you believe the requirements and limitations should be.*

Respondents Comments

2.11. Most Group Customer respondents provided supportive responses to this question about the requirements and limitations that define a Group. Power 2 Business indicated that the requirement for ‘the owned and leased by a single legal entity’ condition may exclude Power NI from some “affiliation deals”. The NEELB indicated that the same requirement would discriminate against maintained schools that did not own or lease them and also groups of buildings that wish to jointly procure.

2.12. Power NI said *‘Prescriptive requirements and limitations which are not otherwise justified interfere with the efficient operation of the retail electricity market’* while Airtricity did not agree with the conditions and limitations for many reasons on the basis that competition is not sufficiently developed. Electric Ireland felt that *‘Once a site is reclassified to deregulated rates it should no longer have access to the regulated rate (unless there are exceptional circumstances)’*.

Q4. *Are there any other issues specific to this consultation about Group Customers that have not been considered by the UR in this document?*

Respondents Comments

- 2.13. Power NI indicated that *'While we welcome this consultation, its scope is unnecessarily narrow. Consideration of Groups should be a step along the road to full liberalisation of the non-domestic market'*.
- 2.14. Northern HSC felt that *'domestic premises operated and controlled by businesses should also be able to avail'* (of a competitive supply offering). Power 2 Business reiterated a similar point to that expressed for Question 3, that it would be advantageous to have *'another supplier whom can offer bespoke pricing for businesses/charities that collectively purchase their supplies'*.
- 2.15. In support of the proposed changes NEELB commented that a recent Pool pass through procurement action *'was limited due to the current arrangements'* and it was *'clearly preferable to have as wide a market as possible'*.
- 2.16. Airtricity and Electric Ireland made a number of points that have not been detailed under the previous three Consultation questions. Airtricity expressed concern that the UR had not addressed how the current proposal will be dealt with within the context of the current Power NI price control and do not consider it appropriate to price deregulate this Customer segment until these Customers were identified and removed from the regulated accounts. Furthermore, cross subsidisation could take place allowing Power NI to compete inappropriately against independent suppliers attempting to enter this market.
- 2.17. Airtricity also raised the point about information asymmetry and reiterated the text from a previous UR consultation *"Whilst the threshold is relatively high this is not an issue but as that threshold is lowered (if de-regulation is deemed appropriate) the issue worsens. This is because the incumbent has large amounts of historical consumption data for Customers and can identify all those Customers who would have been "de-regulated"*. Airtricity is also concerned there is no proposal set out as to how the aggregate Group consumption would be monitored and addressed in the event that a Group of sites were to reduce consumption below the 150MWh per annum threshold.

- 2.18. Airtricity also believes there is inadequate competition to allow Power NI to offer Group Customers, with an aggregate demand above 150MWh per annum, the freedom to provide a non-tariff offering.
- 2.19. Electric Ireland stated the proposed price deregulation may expose the *'regulated Customer base to an increased price risk'* and also stated that *'there is no evidence presented to support the UR's assertion that Power NI may not be able to meet the criteria of tenders in many cases'*. Electric Ireland also indicated they do not believe the UR has reviewed the potential negative impacts on the regulated customer base by Group Customers taking advantage of the increased flexibility offered.
- 2.20. Electric Ireland also stated it *'would be important that Power NI specify default 'out of contract' rates (that cannot be the same as or lower than the regulated tariff rates) that would be applied when a contract expires and the (Group) Customer hasn't agreed a new contract'*.

3. THE UTILITY REGULATOR'S CONCLUSIONS

3.1. The UR has carefully considered all the points and comments made by respondents to the Consultation. Our considered views are detailed in this section under separate headings that are intended to represent the relevant points raised by all respondents.

Group Customers' observations

3.2. The main points from Group Customer respondents related to the conditions and limitations that define a Group and in essence related to affiliation tenders for business and domestic premises. The scope of the UR's Consultation was to consult on Non-Domestic Customers with multiple premises that, in aggregate, consume 150MWh or more per annum. The Consultation excluded individual Customers, and small groups, with a consumption of less than 150MWh per annum. By definition, the Consultation also excluded a collection of affiliated customers who were not a single legal entity with individual consumptions below the threshold. These customers were not within the terms of reference of the Consultation and therefore, this decision paper.

Differences between a Customer with multiple premises and a Customer with single premises

3.3. In response to Question 1 the two independent suppliers mentioned several obvious differences between a Customer with multiple premises and a Customer with single premises that both consume above the regulated threshold. The identified differences, although correct, were not considered to have a direct relevance to the UR's decision about Non-Domestic Groups with an annual consumption of at least 150MWh.

Market dominance

3.4. Under question 2, Airtricity did not accept that the Group Customers sites below 150 MWh per annum should be price deregulated on the basis that Power NI retains a dominant market position. Preliminary information received by the UR from NIE would indicate that presently Airtricity has the largest individual share

of the more than 150MWh per annum market at approximately 32%, although Power NI when taken with their affiliate sister company (Energia) collectively has the largest at approximately 40%.

Reversion to a price regulated tariff

3.5. Electric Ireland indicated that Group sites should not be able to revert back to a price regulated tariff once they had been included in a Group competitive supply offering. The UR acknowledges the principle that once sites have transferred to non-price regulated electricity supply contracts it would be inappropriate for those Group sites (under the same legal entity) to transfer back to a regulated price tariff unless there were exceptional circumstances. As oscillating between price regulated tariffs and a competitive supply contract could be at the detriment of other price regulated customers, the UR has decided to prohibit the transfer back.

3.6. As Group Customers, with an aggregate consumption about 150MWh per annum, should always benefit from a competitive supply offering for all their sites the UR does not see the prohibition of individual sites (while they are still under the control of the same legal entity) from reverting back to a regulated tariff as a disadvantage. For the avoidance of doubt, if a MPRN (representing premises that form part of the Group) is transferred to another legal entity and the consumption is less than the current threshold the new owner will be entitled to avail of a price regulated tariff from Power NI.

This change will also resolve the point made by Airtricity, under Question 2, about the monitoring of aggregate Group consumptions.

Out of contract rates

3.7. Electric Ireland indicated that the UR should mandate Power NI to provide default out of contract rates that were higher than the price regulated tariff. The UR does not understand why Power NI, or any other supplier, should be compelled to provide 'out of contract' rates in a competitive market. Electric Ireland's suggestion about the parameters for the 'out of contract rate' could be tantamount to a form of price control. If Customers were being charged a penal

'out of contract rate' by an incumbent supplier, which they could not quickly move from, this would indicate substantive distress in the market that would require wider regulatory intervention.

Asymmetry of information

3.8. Airtricity mentioned the asymmetry of information between Power NI and other suppliers. As the respondent has correctly identified the UR is aware of the asymmetry of information issue that could provide Power NI with some competitive advantage in engaging with existing Group Customers who presently take supply on a Power NI price regulated tariff. It is a natural feature of any market that the incumbent supplier has more information about their customers than other competitors. It is also recognised that this advantage is transient and will normally disappear in the short to medium term as the market matures and customers regularly switch supplier.

3.9. Furthermore, since the publication of the UR views on the asymmetry of information, utility ownership changes have taken place which give other licensed entities information about customers in other sectors of the utility market; information that Power NI does not have. Although this asymmetry of information has to be taken into consideration amongst the many other factors, it should not in isolation restrain the UR from allowing Customers with multiple premises to receive the same treatment as Customers with a single premises when both (in aggregate) consume in excess of the 150MWh per annum threshold.

Impact on other price regulated customers

3.10. Both Airtricity and Electric Ireland made related points about the impact on the residual price regulated customers when the Group Customers migrate to competitively procured supply offerings.

3.11. This issue is part of the wider set of implications when any customer migrates from a price regulated tariff. Intra tariff year the UR recognises that Power NI's hedging requirements, for price regulated customers, have to change when customers migrate to either an independent supplier or a non-price regulated supply offering. Hedging can have both positive and negative impacts on purchase costs and the UR reviews Power NI's hedging strategy for price

regulated customers on an annual basis to ensure it is both sensible and economic. Also, the apportionment of Power NI's operating costs between its regulated and unregulated customer bases will be reviewed and amended as part of the exercise of implementing this decision.

- 3.12. The UR together with Power NI will continue to implement sensible changes to the costs allocated to price regulated customers as any change to current regulation is enacted.

Power NI's present ability to compete

- 3.13. Electric Ireland felt there was no evidence presented to support the UR's assertion that Power NI may not be able to meet the criteria of tenders in many cases.

- 3.14. The UR has empirical evidence to support the statement in the Consultation paper but cannot be more explicit because of commercial confidentiality concerns. The UR's assertion in the Consultation is supported by Power NI and many of the Group Customer responses that have highlighted some of the problems. The UR has been persuaded that having to provide a regulated tariff offer for sites that consume less than 150MWh per annum, as part of a wider Group tender exercise, disadvantages Power NI in one of the most competitive sectors of electricity supply.

4. DECISIONS BY THE UTILITY REGULATOR

4.1. The responses from the six major Group Customers, Power NI and the electricity procurement consultant's are predominately positive and provide support for the UR's 'minded to' position. Group Customers have confirmed that Power NI's inability to offer a competitive offering for all relevant Group sites puts them at a disadvantage. Power NI is no longer deemed to be dominant in the more than 150MWh per annum market sector and the UR considers the present situation, relating to these Group Customers, to be an unreasonable limitation on Power NI's ability to compete.

4.2. As a consequence, from 1 April 2013, the UR will allow Power NI to compete for competitive supply contracts with Group Customers having an aggregate consumption of more than 150MWh per annum. The UR will apply the following conditions to this change in the definition of Regulated Premises:

- A 'Group' of premises for the supply of electricity to premises shall be considered to be more than one Non-Domestic premises;
- The Group of premises must be owned or leased by a single legal entity;
- The aggregate consumption of the Group must be in excess of 150MWh per annum;
- The Customer agrees that they want to be treated as a single Customer with multiple premises. If the Customer wishes to avail of the regulated tariff for each MPRN consuming less than 150MWh per annum, Power NI must treat each MPRN consuming less than 150MWh per annum as a price Regulated Premises. Power NI must record the Customer's choice of whether they wish to avail of the regulated tariff (for each MPRN beneath the 150MWh per annum threshold) or a non-price regulated supply offering for the Group of premises. For the avoidance of doubt this must be an active choice by the Customer and not one that resulted from an "opt out" marketing exercise. The UR will need to approve the mechanism and information provided by which Power NI will offer its current regulated Group

Customers the choice of continuing to avail of the regulated tariff for each site or moving to a non-price regulated supply offering; and

- Each MPRN that is included in a non-price regulated contract will not be able to revert back to a price regulated tariff while it is under control of the same single legal entity.

Supply licence considerations

4.3. As stated in the Consultation document, the UR has the ability under Annex 2 of the Power NI Licence to agree the definition of Regulated Premises that are subject to the price control with the Licensee. Power NI stated their support for the UR's proposed amendments in their response to the Consultation. Therefore this decision does not require a formal change to Power NI's Supply Licence but rather the UR will enact the change, as from the 1 April 2013, by a formally agreed letter to Power NI. The letter will confirm the new definition with regards to Regulated Premises and any related conditionality.

4.4. The letter will also ask Power NI to provide, for the approval of the UR, a written statement outlining the detail of the mechanisms and information Power NI will use to communicate with their current regulated Group Customers who in aggregate consume more than 150MWh per annum about the choice of continuing to avail of the regulated tariff for each premises or moving to a non-price regulated Group supply offering.