

Decision of the Utility Regulator to close its investigation into SSE Airtricity Gas Supply (NI) Limited’s compliance with its gas supply licence and obligation to achieve standards of performance prescribed under section 1 of the Energy Act (NI) 2011

On 1st March 2019 the Northern Ireland Authority for Utility Regulation (“the Utility Regulator”)¹ announced the opening of an investigation into whether SSE Airtricity Gas Supply (NI) Ltd (“the Company”) had complied with the following conditions of its licence to supply gas (“the licence”):² 1.3, 2.13 (when read with Conditions 2.8, 2.9 and 2.12), 2.15, 2.18, 2.19, 2.21 and 2.25 and (ii) failed to achieve standards of performance prescribed under section 1 of the Energy Act (NI) 2011 (see: The Gas (Individual Standards of Performance) Regulations (NI) 2014).

The announcement of the investigation can be accessed via the following link:

<https://www.uregni.gov.uk/news-centre/opening-formal-investigation-respect-sse-airtricity-gas-supply-northern-ireland-limited>

The investigation was conducted in accordance with the provisions of the Utility Regulator’s Enforcement Policy Approach and Procedure 2018 (“the Enforcement Policy”) and considered evidence that suggested that the Company had failed to comply with the licence conditions and standards of performance being investigated.

The standards of performance prescribed under section 1 of the Energy Act (NI) 2011 (see: The Gas (Individual Standards of Performance) Regulations (NI) 2014) are standards of performance required of gas conveyors and gas suppliers in their interaction with customers. These standards of performance include provision for the payment of prescribed sums in certain circumstances.

The requirements of the relevant licence conditions are summarised below:

Condition number	Condition title	Summary of Condition
1.3	Provision of Information to the Authority	This condition relates to the supplier’s obligation to provide information to the Utility Regulator.
2.8	Code of Practice on Complaints Handling Procedure	This condition relates to the supplier’s code of practice on its Complaints Handling Procedure, which contains information for customers on its process for handling complaints.

¹ In this document we use the words “we”, “us”, “our” “UR” and “Utility Regulator” interchangeably to refer to the Northern Ireland Authority for Utility Regulation.

² The Company has a licence to supply gas pursuant to Article 8 and Article 10 of the Gas (Northern Ireland) Order 1996.

2.9	Code of Practice on Services for Prepayment Meter Consumers	This condition relates to the supplier's code of practice for Prepayment Meter Customers, which contains arrangements for domestic customers with this meter type.
2.12	Code of Practice on Payment of Bills	This condition relates to the supplier's code of practice on the payment of bills, which provides information for domestic customers who may have difficulty paying their bills.
2.13	Preparation, Revision Of and Compliance with Codes of Practice	This condition relates to the minimum requirements established for all suppliers' Codes of Practice and the requirement for the supplier to comply with its codes of practice approved by the Utility Regulator.
2.15	Standards of Performance	This condition relates to the supplier's obligations under its established service standards.
2.18	Terms and Conditions of Gas Supply Contracts	This condition relates to the requirements of gas supply contracts.
2.19	Provision of Information to Consumers	This condition relates to the supplier's obligations for communicating with customers, including the information required on customer bills.
2.21	Marketing of Gas	This condition relates to the supplier's marketing of gas to customers.
2.25	Reading, Inspection and Testing and Meters	This condition relates to the supplier's obligation to regularly read, undertake security inspections on and test customer meters.

The Company took the following remedial action in respect of matters under investigation:

- (a) changes in controls and processes directed at strengthening accountability and mitigating against future non-compliance; and
- (b) redress payments to identified customers.

The Company also has plans to increase its investment in systems to (i) improve business operations and (ii) streamline processes previously conducted manually.

The Enforcement Policy provides that a compliance investigation may be closed by way of an alternative resolution offered by the Company under investigation, and accepted as appropriate by the Utility Regulator.

The Company offered an alternative resolution during the investigation. By its offered alternative resolution the Company agreed to:

(a) Complete and submit to the Utility Regulator for review – at the Company's own expense – three consecutive independent audits of its compliance performance and arrangements, the scope of which was agreed with the Utility Regulator.

(b) Provide certain undertakings as to compliance arrangements, which include:

- Prioritisation of compliance across all areas of the business
- Internal audit activities relating to regulatory obligations
- Corporate governance processes supportive of compliance delivery
- Processes to enhance the submission of accurate regulatory information to the Utility Regulator.

(c) Make payments totalling £150,000.00 to the following local charities (in the sum of £75,000.00 each):

- Action for Children
- Friends of the Cancer Centre

Having considered the matter, to include all relevant provisions of the Enforcement Policy, we decided that acceptance of the alternative resolution offered by the Company was appropriate. We further decided that the investigation could be thereby closed, with no further action being taken, except any action required to monitor full compliance by the Company with the terms of (and the obligations set out in) the agreed alternative resolution.

The agreement of the alternative resolution was considered appropriate due to our assessment that it:

- (i) included steps to comprehensively address the full extent of issues under investigation with the aim of ensuring future compliance with licence obligations and standards of performance;
- (ii) included steps that offered effective protection (for consumers) by means of an assurance against future contraventions of the Company's licence and standards of performance;
- (iii) deterred future contraventions by the Company (and other licensed entities) of their regulatory obligations;
- (iv) was a proportionate response to the matters under investigation;

- (v) had due regard to the prioritisation principles (set out in the Enforcement Policy);
- (vi) evidenced a real commitment on the part of the Company to resolve the issues under investigation and mitigate against any future action (or failure to act) in default of regulatory obligations;
- (vii) shall be the subject of careful monitoring by us going forward, with any material default³ likely met with a decision to re-commence the investigation and take further action as appropriate;
- (viii) occurred against the background of the Company taking the remedial action outlined above and thereby assurance that any customer detriment/company gain had been suitably addressed; and
- (ix) occurred in the context of the Company self-reporting matters under investigation and co-operating in the investigation.

Further, prior to making the decision to accept the alternative resolution (and close the investigation), we had due regard to our:

- (a) powers under competition law,⁴ and
- (b) our general statutory duties and principal objective set in Article 14 of the Energy (NI) Order 2003.

Having considered these matters we did not consider that (i) it would be more appropriate to proceed under the Competition Act 1998 or (ii) there was any obstacle to accepting the alternative resolution and closing the investigation presented by our obligations set out in Article 14 of the Energy (NI) Order 2003.⁵

It will be noted that in making its decision to accept the alternative resolution offered by the Company the Utility Regulator makes no formal finding of non-compliance against the Company.⁶

³ It has been agreed that the UR may only seek to re-commence the investigation now closed in respect of breaches of the AR occurring in the two years following its agreement. This is considered proportionate.

⁴ The Utility Regulator is a sectoral regulator which may, in certain circumstances, exercise powers to enforce compliance with competition law: see the Competition Act 1998. For further explanation please see our Guidance on the application of the UR's competition powers (November 2017) which can be found here: <https://www.uregni.gov.uk/sites/uregni/files/media-files/Guidance%20on%20the%20application%20of%20the%20UR%27s%20competition%20powers%20-%20November%202017.pdf>. We had regard to this guidance prior to making our decision to accept the alternative resolution and close the investigation.

⁵ Indeed, acceptance of the alternative resolution was considered consistent with these obligations to include our obligation to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.

⁶ It is noted that the alternative resolution agreed with the Company was agreed after the opening of the formal investigation and the initiation of Enforcement Action Stage I. For further details please refer to the Enforcement Policy.

Northern Ireland Authority for Utility Regulation 08 August 2019.