

Decision of the Utility Regulator to close its investigation into ESB Independent Energy (NI) Limited T/A Electric Ireland compliance with its electricity supply licence

The Utility Regulatory (UR) has completed a compliance investigation into ESB Independent Energy (NI) Limited T/A Electric Ireland ('The Company').

This investigation was conducted in accordance with the provisions of the Utility Regulator's Enforcement Procedure 2016 ("the Enforcement Policy") and considered evidence that suggested that the Company had failed to comply with the obligations within its Electricity Supply licence. The licence conditions that were subject to investigation are summarised below:

Condition number	Condition title	Summary of Condition
4	The Market Registration Framework Agreement	This condition relates to the rules and procedures, applicable to all suppliers, when managing customer registrations.
10	Provision of Information to the Authority	This condition relates to the supplier's obligation to provide information to the Utility Regulator.
26	Duty to Offer Terms	This condition relates to the supplier's duty to offer contract terms to domestic customers.
27	Terms and Conditions of Electricity Supply Contracts	This condition relates to requirements of electricity supply contracts with customers.
33	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.
35	Preparation, Revision Of and Compliance with Codes of Practice	This condition relates to the minimum requirements for all suppliers' Codes of Practice and the requirement for the supplier to comply with its Codes of Practice approved by the Utility Regulator.

36	Report on Performance	This condition relates to the supplier's reporting of information to the UR on the arrangements of its Codes of Practice.
38	Provision of Information to Customers	This condition relates to the supplier's obligations for communicating with customers, including the information required on customer bills.
40	Marketing of Electricity	This condition relates to the supplier's marketing of electricity to customers.
43	Facilitating Supplier Transfers	This condition relates to the supplier systems needed to facilitate the switching of customers.

To address the matters under investigation, the Company took the following actions:

- (a) Implemented changes in business structures (including increased training, specific personnel appointments and role development) directed at strengthening compliance arrangements;
- (b) Adopted new systems and processes for managing licence obligations including the development of customer-facing materials;
- (c) Established internal structures to enhance accountability; and
- (d) Implemented process improvements and quality assurance controls to mitigate against potential future issues.

The applicable Enforcement Policy provides that a compliance investigation may be closed by way of an alternative resolution offered by the Company.

The Company proposed an alternative resolution that involved the following commitments:

- (a) Payments totalling £250,000.00 to the following local charities (in the sum of £50,000.00 each):
 - NSPCC
 - Advice NI
 - Samaritans
 - Aware NI
 - Women's Aid NI

(b) A programme of (up to four) independent audits, completed at the company's own expense, the scope of which will be agreed with the Utility Regulator prior to commencement of each.

(c) A dedicated series of undertakings setting out compliance arrangements that provide for:

- Prioritisation of procedures that deliver compliance with regular internal reviews of their operation;
- Allocation of resources to manage and scrutinise third party agencies;
- Promotion of regulatory awareness across all areas of the business via appropriate personnel training;
- Maintenance of corporate governance processes and reporting structures for compliance-related activity;
- Maintenance of appropriate processes that ensure the accuracy of regulatory returns by all levels of the business.

The Utility Regulator has considered the matter and has accepted the terms of the alternative resolution offered by Company. The compliance investigation is hereby closed. Acceptance of this alternative resolution was considered appropriate due to our assessment that it:

- I. included steps to appropriately address the issues under investigation;
- II. indicated a commitment on the part of the Company to resolve the issues under investigation and mitigate against any future potential default of regulatory obligations;
- III. included steps that offered enhanced protection (for consumers) via appropriate processes and procedures;
- IV. was a proportionate response to the matters under investigation and the steps already taken by the Company;
- V. deterred future contraventions by the Company of its regulatory obligations; and
- VI. will deter future contraventions on the part of other licensed entities.

The Company will be subject to careful monitoring going forward. Should the Company fail in the fulfilment of its commitments, as set out in the accepted alternative resolution, the Utility Regulator may take separate enforcement action, as appropriate.

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,¹ and
- (b) our general statutory duties and principal objective set in Article 12 of The Energy (Northern Ireland) 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 12 of the 2003 Order.²

Northern Ireland Authority for Utility Regulation 19 October 2020

¹ 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.

² Indeed, acceptance of the alternative resolution was considered consistent with these obligations to include our obligation to protect the interests of consumers of electricity supplied by authorised suppliers.