



## **Response by Energia to Utility Regulator Consultation**

### **Enforcement Procedure and Financial Penalties Policy consultation**

**9<sup>th</sup> October 2015**

## **1. Introduction**

Energia welcomes the opportunity to respond to the Utility Regulator's Consultation on Enforcement Procedure and Financial Penalties Policy. As one of the largest independent suppliers on the island of Ireland we take our licence obligations seriously and have in place a series of robust procedures to ensure compliance..

Energia acknowledges the UR's efforts in producing a transparent and robust enforcement policy, one that promotes cooperation, through clear steps and in a manner consistent with good regulatory practice. Transparency in this context is beneficial in engendering cooperation and trust, which is essential for a successful investigation and crucial in protecting the customer and the integrity of the sector. However, we have some minor concerns that certain reasonable steps may be circumvented, or timelines cut short, in an effort to obtain a speedy resolution to certain matters. A speedy resolution to all matters should be a priority of the proposed procedure(s) and to this end, and in adherence with good regulatory practice and without undermining the importance of due process, we suggest that the UR commit to certain minimum standards. Where the UR is obliged to be obliged to they should continue to adhere to the timelines outlined in the Energy Order, and elsewhere should commit to only varying from the described minimum standards through agreement with the relevant parties involved in the investigation.

## **2. General Comments**

Energia welcomes the introduction of UR's improved procedures along with the adoption of the Better Regulation Principles and a commitment to transparency and consistency. However, we consider there to be a number of elements of the proposed procedures that undermine the UR's approach to adopting best practice. A speedy resolution to an investigation is important to all stakeholders however, this should not be at the expense of due process and the opportunity for the party being investigated to respond. It is important that during the URs thorough investigation that the company being investigated has an appropriate amount of time to provide evidence-based responses to the questions being posed. For example, in the interest of speedy resolution, a company may not be afforded the quoted 28 days to respond. Similarly, the UR goes on to state that in more urgent cases that the enforcement committee may consist of only one person, as opposed to the suggested three. As is outlined in the remainder of this response, we suggest the adoption of certain minimum standards that are to apply a uniform approach to all investigations, in the interest of due process and acknowledging the importance of all such matters that may arise, unless it is agreed that such minimum standards are to be deviated from, where possible, in the interest of efficiency and expediency.

### **2.1 Enforcement Committee**

The proposal to limit the members of the enforcement committee to one in more urgent cases would seem counterintuitive. While we acknowledge the need for a speedy resolution in some circumstances, the more urgent cases would certainly benefit from a full committee. An urgent case is more likely to be of a more serious

nature and in such instances, due process arguably plays a heightened role in the investigation. The enforcement committee's role as independent from the investigation team is a key step in ensuring transparent and consistent enforcement actions. The structure consisting of three members, agreeing by consensus, is welcomed. It would seem counterintuitive to include this 'independent' step in the enforcement procedure and then to potentially cut the panel members from three to one in more 'urgent cases'. In the interest of transparency we would suggest a minimum of 3 appropriate members of the enforcement panel and review team for every case, unless a different approach is agreed by the relevant parties to the investigation.

## **2.2 Response Time**

An enforcement procedure works best with a collaborative and open approach by both parties. The proceedings also hinge on the quality and clarity of information from both the Regulator and the company under investigation. As such it is crucial to allow an appropriate amount of time for both sides to provide sufficient evidence while still ensuring that the case is progressing. An information notice as described in the enforcement and procedural document and under Article 51 of the Energy Order is understandably quite broad and does not specify type, quantity or timespan of the data to be requested. Obtaining and delivering data for a broad range of historical data could be time consuming. As such, there should be a reasonable amount of time allowed for the collation and submission of the requested information

While Energia welcomes flexibility within the procedures we are concerned that in certain circumstances that the supplier may not be give sufficient time to prepare a full response to the issue(s) being investigated. Energia believes that there should be a commitment to minimum standards in certain areas. The UR indicates that party under investigated will have 28 days to respond upon receipt of the notice from the investigation team, this however may be cut short depending on the urgency of the case. While acknowledging that certain cases may be urgent, putting together an appropriate response can be time consuming and as such would advocate a minimum standard that should be adhered to, even in more urgent cases. Again, we consider it to be appropriate to permit deviation from the proposed minimum standards, where there is agreement between the relevant parties to do so.

## **3. Closing remarks**

For the most part the proposed enforcement procedure is a welcome development. The UR's proposals are understood to broadly adhere to good regulatory practice, making positive commitments to the procedural steps and details of investigations. The new document provides more detail on how enforcement procedures will progress and the role of both parties in the process. However, the UR also note that these procedures can be set-aside at their discretion, thus potentially affecting the time afforded to parties to respond and the number of people on the enforcement committee subject to change. While this procedural document is nonbinding and needs to reflect the variable nature of an investigation, we strongly believe that such

discretion should rarely, if ever, be exercised, and in furtherance of the commitment to good regulatory practice, minimum standards should be introduced.

Specifically, Energia considers these minimum standards could apply to the response times and the composition of the investigation panel. Energia asks that sufficient time (e.g. 28-days) be given to parties under investigation to respond to information requests, even in more urgent cases, unless more time is reasonably required to prepare a full response. In of addition, the members the enforcement panel should consist of no less than three people, irrespective of the urgency of the case. If the UR wishes to deviate from the commitments outlined in the procedural document, then they should only do so with the agreement of the relevant parties to the investigation.