

09th October 2015
Briege Tyrie
The Utility Regulator
14 Queens Street
Belfast
BT1 6ER

Dear Briege,

Thank you for the opportunity to respond to the consultation on the Utility Regulator's proposed Enforcement Procedure and Financial Penalties Policy.

The Utility Regulator has stated that its approach to enforcement is "*driven by its objectives to protect the interests of consumers and secure that companies comply with their obligations*".

As an integral participant in the gas supply and distribution markets, firmus energy believes that an additional objective of the Utility Regulator driving this consultation should be the protection of energy providers, to ensure fair and competitive market conditions throughout Northern Ireland that will in turn benefit consumers.

A fair-minded and transparent enforcement procedure and financial penalties policy initiated by the Utility Regulator will be of benefit to consumers and energy market participants, such as firmus energy, that strive to be compliant in all aspects of their business activities.

Enforcement Procedure

Article 42(1) of the Energy Order states that where the Utility Regulator is satisfied that a company is contravening, or is likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance.

In line with adhering to Article 42(1), firmus energy supports the need for a transparent and well defined procedure and process.

Firmus energy welcomes the Utility Regulator's proposal that, when investigating possible breaches and making enforcement related decisions, the process will be rigorous, thorough, evidence-based and fair so as to ensure that the outcomes reached are proportionate and consistent.

Although this formal procedure may be necessary at times, firmus energy believes that the Utility Regulator's suggestion on initiating less time consuming, informal and alternative

means, including accepting any undertakings offered by a company to secure compliance, should be seen as a more preferable option when applicable.

Firmus energy concedes that there may be occasion when some energy companies breach licence conditions unwittingly and without knowledge. Such oversights, which can sometimes occur given the extensive scope of gas and electricity regulation, are always likely to be minor infractions and as such, should be treated in an informal manner. Firmus energy accepts that any significant licence breaches should never occur without company knowledge and appreciates that a formal investigation under these circumstances may be necessary.

Following on from the Utility Regulator's Step 1 (Initial Consideration) in the enforcement procedure, the Utility Regulator's second step is to consider whether to investigate the contravention.

The Utility Regulator has provided (para 3.8) a detailed list of factors that will be taken into account when deciding whether a matter should be formally investigated. Firmus energy is content with the relevance of all these criteria, however, the list currently does not reference consideration being given to whether the company voluntarily came forward and willingly disclosed its contravention.

It is our opinion that the Utility Regulator should be encouraging this conduct from energy companies from the outset. Firmus energy recognises that the Utility Regulator supports companies offering undertakings as part of the formal process, but believes there should be further encouragement for companies to profess to violations rather than withhold them. Furthermore, it is our opinion that these disclosures would go some way in preventing the number of long and costly formal investigations. For the purpose of clarifying its position, firmus energy also acknowledges that full disclosure to licence contravention, especially in the case of serious breaches, would not necessarily excuse the energy company from punishment or indeed absolve them from a formal investigation.

Within Step 4 (Decision on proceeding or not to a formal determination) Para 3.23 states that if the Utility Regulator decides that the case should not proceed, *"it will notify the company and will, in appropriate cases, publish a notice of the decision on its website"*. Given that an energy company may be involved in a confidential investigation, on completion there should be no publication regarding the inquiry if the company in question is exonerated of wrongdoing.

Para 3.32 states *"Our enforcement committee may be either our Board or an ad-hoc committee of our Board..."* however para 4.2 states *"Our enforcement committee will generally be comprised of 3 members, who will be Board members or senior employees of the Utility Regulator."* Given these differing statements, the make-up of the committee seems unclear. Firmus energy believes that in the interests of maintaining fair-mindedness and impartiality, the enforcement committee should only include non-executive board members and not senior employees of the Utility Regulator or other key market stakeholders. Furthermore Firmus energy would also reiterate the importance of the enforcement committee being bound by confidentiality agreements put in place to protect sensitive company information.

Financial Penalties Policy

Firmus energy recognises the reasons for the financial penalty legislation detailed in Article 45 of the Energy (Northern Ireland) Order 2003, and acknowledges the benefits this provides in terms of deterring non-compliance and safeguarding consumer interests.

The possibility of an energy provider receiving a financial penalty:

- Encourages compliance with licences and other relevant regulatory documentation,
- acts as a deterrent for companies to reoffend after receiving a penalty,
- promotes and helps to achieve acceptable competition conditions within the market place, and
- safeguards consumer rights.

Firmus energy acknowledges that financial penalties are a contentious issue, especially in relation to the actual value, consistency of application, company differentiation and appropriateness. Firmus energy therefore requests that the Utility Regulator develop procedures and processes that set out the steps the Utility Regulator will follow in arriving at a specific fine, alongside setting fixed fine ranges for licence breaches which fulfil predetermined parameters. Publication of such a process would aid transparency and clarity for both the companies and consumers.

Transparency regarding how the income from penalty payments will be distributed is also essential. Firmus energy supports a process whereby 100% of financial payments received by the Utility Regulator are returned directly to the customer through energy savings. Firmus energy recommends that the details of how this will be accomplished are set out in the Utility Regulator's 'final decisions' paper.

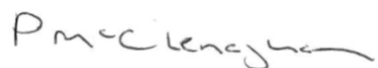
Enforcement Procedure, the Financial Penalties Policy, and Revocation of Licence.

Although referenced briefly within the financial policy (annex 2, para 1.5), there remains some doubt as to the use of the enforcement procedure in terms of implementing a financial penalty under Article 45 of the order, or revoking a licence. The procedural document seems heavily weighted towards Article 42 (Enforcement Orders) and the Utility Regulator should state that the enforcement procedure will also be used in every instance relating to Article 45 (Financial Penalties) and Gas licence revocation.

As part of the financial penalties policy (Annex 2), firmus energy suggests the inclusion of additional narrative. This would state that no financial penalty will be imposed on any company without the Utility Regulator first conducting an investigation in line with its enforcement procedure document. This will give assurance to energy companies that any fines imposed will be a result of a fair-minded and transparent process.

We look forward to our continued involvement in this process.

Kind Regards,



Peter McClenaghan
Regulatory Affairs Manager