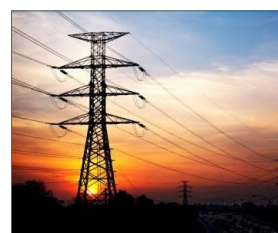


# Final Decision in respect of intention to impose a financial penalty on Gas Networks Ireland (UK) Limited

April 2016



# About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

## Our Mission

Value and sustainability in energy and water.

## Our Vision

We will make a difference for consumers by listening, innovating and leading.

## Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted

Be a united team

Be collaborative and co-operative

Be professional

Listen and explain

Make a difference

Act with integrity

## Abstract

The Utility Regulator issued a consultation on 3 March 2016 on our proposal to impose a financial penalty on Gas Networks Ireland (UK) Limited following an investigation into their failure to comply with Condition 2.2.2(c)(ii)(ab) of the gas conveyance licence.

Following the conclusion of that consultation, we can confirm our decision to impose a penalty in the sum of £0.5m.

## Audience

This document is likely to be of interest to regulated companies in the energy and water industry, government and other statutory bodies and consumer groups with an interest in the energy and water industries.

## Consumer impact

We take the protection of consumers seriously. The imposition of a financial penalty should reassure consumers that when we are aware that a company has breached its licence conditions – we will investigate the issue and when appropriate issue a fine.

## Decision to impose a fine

1. A detailed background of the facts of this case and the actions taken by the investigation team can be found within the Article 45(4) Notice issued on 3 March 2016.<sup>1</sup>
2. In summary, we are satisfied that GNIUK breached Condition 2.2.2(c)(ii)(ab) of its gas conveyance licence (the **Licence**). This provision requires GNIUK to provide us with details of the capital expenditure actually incurred by it in respect of each of the pipeline projects specified. The purpose of this provision is to ensure that the licence holder provides accurate details of capital expenditure for which it will be recompensed through the applicable price control condition of the Licence.
3. However, the information provided by GNIUK to us included details of capital expenditure that had not been incurred in respect of any of the specified pipelines. This was due to the improper allocation of costs between construction projects within the Ervia group (Ervia being GNIUK's parent company).
4. Consequently, we concluded for the period July 2005 to 14 April 2015 (the end date being the date on which GNIUK informed us (by way of providing the KPMG report) of the actual costs incurred in respect of the North West Pipeline Spurs Project (**NWP Spurs Project**) GNIUK was in breach of its licence conditions.
5. We take these provisions seriously. The purpose of the reporting of actual

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<sup>1</sup> [http://www.uregni.gov.uk/publications/gni\\_enforcement\\_notice\\_consultation\\_-\\_march\\_2016](http://www.uregni.gov.uk/publications/gni_enforcement_notice_consultation_-_march_2016)

costs is to ensure that the licence holder is appropriately recompensed for expenditure actually incurred and ensure that any such expenditure which is ultimately paid for by Northern Ireland consumers reflects the actual costs incurred by the licence holder.

6. GNIUK accepts that there had been an improper allocation of costs and that it breached the relevant condition. It has also acknowledged that its internal systems and procedures failed to prevent the circumstances which led to the breach taking place. It has since made improvements to its internal systems and procedures.
7. We have taken into account GNIUK's offer to settle the investigation and make consumer redress payments but do not consider in the circumstances of this case that a consumer redress payment in lieu of a financial penalty is adequate or appropriate.
8. Accordingly, the Authority considered it appropriate in the circumstances of this case to impose a financial penalty and gave notice under Article 45(4) of the Energy (Northern Ireland) Order 2003 (the **Energy Order**) of its proposal to impose a financial penalty of £0.5m

## Responses to the Notice

9. The Authority received three responses to the consultation. A private individual submitted a response which covered issues outside the scope of the Notice and has therefore not been considered as part of this decision paper. Additionally, GNIUK and the General Consumer Council for Northern Ireland (**CCNI**) submitted a response respectively.
10. GNIUK has accepted in full the findings of the Authority, including the proposal to impose a financial penalty of £0.5m.
11. CCNI in their response have queried how the overstated regulatory asset base (**RAB**) will be adjusted in order that any financial detriment to consumers is returned. GNIUK have stated their willingness to work with the Utility Regulator to ensure that the RAB in NI is adjusted appropriately and therefore as part of the investigation process GNIUK provided spreadsheets which calculated the amount of over recovery in NI arising from the misallocation of monies to the NWP Spurs project
12. The over recovery will be returned to customers by reducing GNIUK's required revenues during the 2016/17 gas year. The amount of the adjustment will be calculated in early July as part of the process to derive the postalised charges in the 2016/17 gas year.
13. CCNI sought additional information in respect of how the Authority weighs aggravating and mitigating factors when determining the quantum of a fine.

The principles and factors we use to determine the level of a fine are contained within our Statement of Policy in respect of Financial Penalties.<sup>2</sup> Please be aware we have recently updated our Policy with respect to Financial Penalties.<sup>3</sup> Each case, will, however, be determined on its individual facts and circumstances.

14. Additionally CCNI have stated their preference that financial penalties are returned to customers rather than HM Treasury. The Authority is bound by the Energy Order in respect of the type of penalties it imposes and their return to the Consolidated Fund.<sup>4</sup> Nevertheless, it will consider a company's offer to make a voluntary contribution to a charitable organisation where such contributions address the gravity of the offence concerned and offer a real benefit to consumers.

15. Having reviewed the responses received we have determined that the decision to impose a fine and the quantum of the fine were appropriate. As such a notice under Article 45(6) imposing a fine of £0.5m against GNIUK has been issued.

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<sup>2</sup>

[http://www.uregni.gov.uk/news/view/utility\\_regulator\\_publishes\\_financial\\_penalties\\_policy\\_statements/](http://www.uregni.gov.uk/news/view/utility_regulator_publishes_financial_penalties_policy_statements/)

<sup>3</sup>

[http://www.uregni.gov.uk/publications/enforcement\\_procedure\\_and\\_updated\\_financial\\_penalties\\_policy\\_-\\_decision\\_pap](http://www.uregni.gov.uk/publications/enforcement_procedure_and_updated_financial_penalties_policy_-_decision_pap)

<sup>4</sup> Article 45(10).