

Consultation on the Implementation of the EU Third Internal Energy Package

This response incorporates the comments of Phoenix Natural Gas Ltd (PNGL) to the Utility Regulator's (UR) consultation¹ on the Implementation of the EU Third Internal Energy Package (IME3) and focuses on the licence modifications² proposed by UR to give effect to its proposed final decisions in relation to the gas distribution systems provisions of IME3.

As a general comment, PNGL requested in its response³ to UR's July 2011 consultation⁴ that UR provide a mark-up of the proposed licence amendments against its current licence to ensure that any proposed amendments are fully transparent. This was not provided.

PNGL also commented that it accepted that modifications to its licence would be necessary to implement the requirements of IME3. However PNGL strongly objected to any licence modification proposals which are not a specific requirement of IME3. PNGL pointed out that there are always cost implications for consumers in delivering licence requirements and it is therefore inappropriate for UR to propose licence modifications which are outside the remit of IME3 given that the requirements of IME3 are stringent and PNGL is already subject to a challenging regulatory regime and rigorous legislative requirements. PNGL highlights these concerns in its comments on the proposed licence conditions below.

[New] Condition 1.23: Systems to Facilitate Change of Supplier

PNGL notes that it will be required to ensure that its practices, procedures and systems facilitate supplier transfers within 15 working days. This requirement mirrors the current timeframe within PNGL's Network Code and supporting systems and arguably already ensures that PNGL is meeting the requirements of IME3. However it is worth noting that under the current provisions of PNGL's Network Code, if a gas supplier submits a Registration Request which does not meet all the criteria of PNGL's Network Code (i.e. it is not a valid Registration Request), then the request is rejected. Under PNGL's Network Code a new Registration Request must then be submitted. This effectively "resets the clock" and PNGL will have 15 working days from receipt of the valid Registration Request to facilitate the transfer. Condition 1.23 should be amended to clarify that the 15 working days will only apply on receipt of a valid Registration Request from a gas supplier.

¹http://www.uregni.gov.uk/uploads/publications/Implementation_of_EU_Third_Energy_Package_Notification_of_proposed_final_decisions.pdf

² http://www.uregni.gov.uk/uploads/publications/Annex_4_-_IME3_-_PNG_Gas_Distribution_Licence_Proposed_Modifications_-_Final_Draft_for_consultation_March_2012.pdf

³ http://www.uregni.gov.uk/uploads/publications/PNGL_IME3_response.pdf

⁴ http://www.uregni.gov.uk/uploads/publications/UR_Implementation_of_IME3_July_11.pdf

PNGL remains of the view that paragraph 2 goes beyond the requirements of IME3. PNGL sees no basis in IME3 for the reporting requirements to UR and is of the view that it remains appropriate for reporting activities to sit outside licence requirements which allow PNGL and UR opportunity to discuss and develop templates appropriate to the size and maturity of the competitive supply market and as PNGL's customer switching system develops e.g. PNGL's systems facilitate Supplier Transfers within 15 working days but suppliers have the choice to lengthen this period up to three months. Any switch which takes longer than 15 working days is at the request of the gas supplier and PNGL cannot be considered outside licence standards if this is the case. PNGL will not report Supplier Transfers as "out of standard" when it is not due to any failure by PNGL to comply with the 15 working day timescales.

If UR wishes to monitor compliance with IME3, then the only information required under Condition 1.23.2 is the number of Supplier Transfers completed "out of standard"; it makes no difference to UR whether a Supplier Transfer is completed within 4 working days or within 9 working days, both are "in standard", however it adds an increased administrative burden on PNGL which distracts PNGL's resources who could be applied more efficiently elsewhere. Furthermore the information requested is not readily available to PNGL and will require specifying and developing new reports specifically for this purpose. This will require system changes and hence further cost with no additional benefit for UR, consumers or PNGL.

Furthermore PNGL has engaged in numerous discussions with UR and has developed and agreed appropriate reporting templates to reflect the maturity of competition in the Greater Belfast area e.g. PNGL facilitated weekly reporting for a significant period after the market opened for competition and has only recently discussed and agreed a suitable template for the provision of monthly information as competition advances. It is unclear whether these provisions would replace the current provisions and why such changes are necessary following the considerable time spent by PNGL and UR in developing suitable reporting templates.

Paragraph 2 allows no flexibility for UR and PNGL to develop more appropriate reporting templates as competition advances.

[New] Condition 1.24: Prohibition of Discrimination in provision of services

There are always cost implications for consumers in delivering licence requirements and it is therefore inappropriate for UR to propose licence modifications which are outside the remit of the Directive given that the requirements of IME3 are stringent and PNGL is already subject to a challenging regulatory regime and rigorous legislative requirements.

PNGL engaged in numerous discussions with UR and suppliers and has developed and agreed appropriate systems to facilitate competition in its Licensed Area at the lowest cost to consumers whilst ultimately meeting the needs of those operating in the market.

PNGL strongly believes that decisions made to facilitate competition in the Greater Belfast market should be mindful of the size of the market and therefore costly and time consuming processes must be avoided if an alternative solution which provides the same outcome and does not restrict, prevent or distort competition exists.

PNGL continues to believe that Condition 1.24 is inappropriate. GB gas transporter licence standard special condition A33(3) provides that a licensee must operate its transportation business in a way to ensure it does not restrict, prevent or distort competition as regards supply and shipping of gas. This wording adheres more closely to that in Article 3 of IME3 and is similar to that in Condition 2.7.1(b) of PNGL's Licence.

[New] Condition 1.25: Provision of Information to Gas Suppliers

The obligation to read and inspect meters is a condition within licences of gas suppliers in Northern Ireland, as it is in Great Britain. Gas Distribution Operators in Northern Ireland do not read meters. Gas Distribution Operators cannot therefore provide gas suppliers with actual consumption data as they do not hold a record of customers' meter reads. Gas suppliers in Northern Ireland are responsible for maintaining customer meter reading records and therefore are the only companies in the position to be able to provide the appropriate consumption information to consumers. Therefore UR's insistence to introduce Condition 1.25 into Gas Distribution Operators' licences continues to confuse PNGL when UR are fully aware that Gas Distribution Operators in Northern Ireland do not read meters and therefore do not have a record of actual consumption data.

The only consumption data available to PNGL for each non-daily metered supply meter point (SMP) is its current annual quantity (AQ). This AQ is determined using meter readings **provided by gas suppliers** or based on a default AQ depending on meter type. The AQ may not therefore correspond to actual consumption data. PNGL is under no obligation to maintain historic AQ records. The only AQ information held by PNGL relates to the current year. PNGL does not understand why Condition 1.25 would be implemented solely to facilitate the transfer of AQ information, if this is UR's intention, from Gas Distribution Operator to supplier when suppliers provide the meter reads which make up this figure or the AQ is based on a default set of assumptions. Neither of these metrics would provide consumers with the appropriate consumption data.

In fact, PNGL's SMP Confirmation System currently allows a gas supplier to submit an address from which it may obtain a SMP reference number. Using this SMP reference number, the gas supplier may submit a SMP Information Request which will allow them access to all relevant details for that SMP including its current AQ. In the case of daily

metered customers, the SMP Information Request will also give the supplier access to 365 days consumption data (where available).

PNGL also continues to have concerns with the proposed five working day timescale for provision of this consumption data for the following reason: we can only provide AQs for SMPs as listed on our Asset Register. If a gas supplier submits a SMP Information Request for which PNGL cannot locate an address at first pass, PNGL has to undertake a data validation process. This often involves supplier liaison, site visits etc. to confirm property details. This would be extremely difficult to complete in 5 working days particularly if there is no control over the quantity of requests that can be submitted.

If UR continues to insist on the inclusion of Condition 1.25, then PNGL strongly believes that UR must put in a place a robust process for ensuring that gas suppliers comply with their obligation to obtain a customer's consent before accessing such data. This will ensure compliance with data protection legislation and that Gas Distribution Operators are not exposed to challenges under data protection legislation for complying with licence requirements. UR must be responsible for ensuring that gas suppliers comply with paragraph 3 of proposed Condition 2.28 for gas supply licences.

PNGL does not believe that the provision of a SMP's AQ is the intended application of Condition 1.25 and does not believe that this is what UR expects from a Customer Information Request. Consumption data can only be obtained from suppliers and Condition 1.25 should not therefore be implemented in gas distribution licences.

Other Conditions

PNGL notes that UR largely intends to introduce the following Conditions as outlined in UR's July 2011 consultation:

- [Amended] Condition 1.6: Restriction on Use of Certain Information
- [Amended] Condition 1.16: Independence of the Licensed Business – we appreciate the addition of “*save to the extent the Authority consents to such use or access*” may provide some comfort for distribution licensees, however our comments in our response to UR's July 2011 consultation that 1.16.5(d)(v) is wider than the requirements of the Gas Directive, remain.
- [Amended] Condition 1.17: Business Separation Compliance Plan
- [Amended] Condition 2.7: Conduct of Transportation Business
- [New] Condition 2.7A: Distribution Marketing Code
- Condition 2.8A: Complaints Handling Procedure
- Condition 2.9A: Consumer Information Code – we welcome clarification that each licensee will produce a separate Consumer Information Code albeit in a standard form



PNGL provided a detailed response to UR's July 2011 consultation. PNGL also met with UR to discuss PNGL's response in January 2012. Rather than reiterate our concerns here, we would refer UR to PNGL's response to UR's July 2011 consultation.