

Third Energy Package

Consultation on Further Technical Modifications to Gas and Electricity Licences

This response incorporates the comments of Phoenix Natural Gas Ltd (PNGL) to the Utility Regulator's (UR) consultation on the further technical modifications to gas and electricity licences and focuses on the draft licence conditions proposed by UR to give effect to the gas distribution provisions of IME3. PNGL has commented on each of the draft licence conditions proposed below.

As a general comment, and as previously advised, PNGL accepts that modifications to its licence will be necessary to implement the requirements of IME3. However PNGL strongly objects to any licence modification proposals which are not a specific requirement of IME3. It must be recognised 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.

Chapter 2 – Accounts Condition

The proposed drafting of the new provision in the accounts condition in chapter 2 is an example of UR's proposals going beyond the remit of IME3. Article 30 of the Gas Directive states:

*"Member States or any competent authority they designate, including the regulatory authorities referred to in Article 39(1) and the dispute settlement authorities referred to in Article 34(3), shall, insofar as necessary to carry out their functions, **have right of access to the accounts of natural gas undertakings** as set out in Article 31."*
(emphasis added)

UR is proposing:

*"Without prejudice to any other provision of this Condition, the Licensee shall, on request, give the Authority and/or the Department (as the case may be) access to the Licensee's **accounting records, policies and statements referred to in this Condition.**"* (emphasis added)

The additional access proposed by UR is outside the remit of IME3. The only change that should be made to PNGL's licence is to confer a right of access to PNGL's accounts as follows:

"Without prejudice to any other provision of this Condition, the Licensee shall, on request, give the Authority and/or the Department (as the case may be) access to the Licensee's accounts as set out in Article 31 of the Directive 2009/73/EC."

Chapter 4 – Gas Distribution Licences

PNGL understands that all balancing of the Northern Ireland gas network is currently undertaken by PTL at transmission network level as set out in both the PTL Network Code and the Northern Ireland Network Operator's Agreement (NINOA) and we are not aware of any proposals to amend the current balancing regime.

Although PNGL recognise UR's requirement to be IME3 compliant in relation to balancing we would assume that irrespective of the inclusion of these amended balancing conditions being added to the PNGL Distribution licence that any change in the current balancing regime would be fully consulted upon and discussed with PNG prior to the introduction of a balancing regime at distribution level.

PNGL understands that the current regulating equipment set up on the NI Transmission Network facilitates balancing at transmission level but additional equipment and adjustments to the current technical set up would be required to facilitate balancing at distribution level. This would need addressed before these amended licence conditions could be invoked.

For clarity PNGL's Network Code does facilitate energy balancing to meet the current condition 2.5.2(b)(i) of its licence with the rules which would apply set out in section E of the Code. The Code clearly sets out how balancing charges would be calculated and passed on to gas suppliers.

In relation to the specific wording proposed, PNGL understands the objective to have both Distribution System Operator licences consistent where appropriate but we would suggest that further consideration is given to the changes proposed. Although these simply replicate the current firmus licence wording, the meaning is unclear and lacks the transparency which UR is hoping to achieve in the area of balancing.

PNGL is happy to discuss the issues raised in this note to ensure that the measures may be implemented at the earliest opportunity.