

Consultation on the Implementation of the EU Third Internal Energy Package

This response details the comments of Phoenix Supply Ltd to the Utility Regulator's (UR) consultation on the Implementation of the EU Third Internal Energy Package and focuses on the draft licence conditions proposed by UR to give effect to the retail and consumer provisions of the Directive.

Phoenix Supply's comments on each of the draft licence conditions proposed are detailed below. As a general comment Phoenix Supply notes that, for illustration purposes, UR has shown licence modifications based on a model electricity supply licence. However, as there are differences compared to a model gas supply licence, this is somewhat confusing and some of the proposed modifications are subjective and may therefore cloud gas suppliers' comments in response to this consultation. Phoenix Supply therefore requests that UR provides each licensee with a mark-up of the final draft proposed licence modifications against their current licence once comments to this consultation are received and analysed. Gas licensees should also be provided with a further opportunity to comment on the final draft proposals before engaging in the formal statutory notification procedure. This is similar to the opportunity provided to electricity licence holders.

We would also welcome the opportunity to discuss the consultation paper and our response with UR.

Generally throughout the consultation paper it is evident that UR has sought to "gold plate" the requirements of the Directive. We do not believe that this is necessary and it will yet again increase the regulatory burden on suppliers and increase costs which are ultimately borne by consumers.

Condition 1: Interpretation and construction

Arguably reference to Article 3(12) of the Gas Directive should suffice in the definition of "Consumer Checklist". However, given the gradual opening of the industrial and commercial and domestic gas supply markets in Northern Ireland in the Ten Towns over the next few years and any changes which may arise as a result of the current Common Arrangements for Gas project or the Department of Enterprise, Trade and Investment potential for extending the natural gas network project, it seems appropriate that the roles and responsibilities of persons operating in the Northern Ireland (NI) gas market are included in the Consumer Checklist along with the rights of gas consumers.

[Amended] Condition 27: Terms and Conditions of Electricity Supply Contracts

Phoenix Supply advises that there is no supplier of last resort provision for customers connected to the gas network. Phoenix Supply notes that UR issued a paper for consultation in March 2011¹ and therefore inclusion of paragraph 2(a) in the draft licence modifications for gas suppliers should form part of this review and be consulted upon separately.

Phoenix Supply notes the proposed requirement to explain to and draw domestic consumers' attention to the principal terms of their contract before entering a contract for the supply of gas. Article 3(3) requires transparency regarding contractual terms and conditions and arguably current gas supply licences already secure this by virtue of the requirement on suppliers to provide customers with a written copy of their full terms and conditions before entering a contract. In fact, as a matter of good practice, Phoenix Supply provides each of its new consumers with a copy of their contract on commencement of supply and addresses any individual queries arising therefrom. It is important that customers read the full terms and conditions of every contract they enter into and it would be inappropriate for suppliers to draw customers' attention to only a few specific terms when arguably each of the terms therein are of equal importance. Paragraph 4(a) is not required as current supply licences already meet the requirement of the Directive.

Secondly Phoenix Supply sees no reference to either termination fees for domestic customers or a requirement to have these approved in advance by UR within the Directive. Paragraph 5(d) should therefore be removed.

Phoenix Supply notes the proposal to change the domestic cooling off period from 7 to 10 working days and accepts this.

Phoenix Supply notes the proposal to change the notification period to vary any of the terms and conditions of a gas supply contract from 21 to 28 days in advance of the date the variation is due to take effect. Phoenix Supply does not understand why this modification is necessary given that the current 3 week notification period meets the Directive requirements and provides customers with sufficient time to withdraw from their contract.

Furthermore Phoenix Supply does not believe that the detail of relevant tariffs should be included within the body of the terms and conditions. The terms and conditions should advise customers where information on tariffs can be accessed. Tariff structures and prices have in the past changed on three occasions within a 12 month period and we are not aware of any supplier operating in Great Britain or Ireland who includes their tariff structure and unit prices within the detail of their general terms and conditions. This is not regarded as best practice.

¹ Gas Supplier of Last Resort: Guiding Considerations for Implementation :Consultation Paper

Phoenix Supply considers that a supplier's general terms and conditions should require them to:

- Provide advance notice to customers of either a change in tariff structure or unit rates;
- Provide the actual tariff details to customers in advance of the change occurring;
- Subsequently provide tariff details (i.e. structure, unit price, and any other pricing information) to customers on request; and
- Make tariff details freely available on their website.

UR needs to consider the cost-efficiency of reproducing terms and conditions and circulating these to customers each time a tariff announcement is made where the only change is to the unit rate. Phoenix Supply would welcome further clarification of the intention of paragraph 7(g).

[Amended] Condition 28: Deemed Contracts

Phoenix Supply notes the proposal to apply the same deemed contract provisions for gas supply licensees as for electricity supply licensees. We do however note these are not a requirement of the Directive and are also facilitated by virtue of the provisions of the Energy Act (Northern Ireland) 2011.

Codes of Practice

Phoenix Supply's Codes of Practice charter aims to inform its customers on the range of support services available from Phoenix Supply. Phoenix Supply is not currently obliged under licence to produce Codes of Practice but voluntarily developed these in consultation with UR and the Consumer Council to ensure Phoenix Supply's product and services meet the needs of customers.

Phoenix Supply's Service Charter consists of six simple guides, these are:

1. Using Gas Efficiently in Your Home
2. Using Gas Efficiently in Your Business
3. Services for people with disabilities and older people
4. Paying for your gas
5. Using Pay As You Go (PAYG) meters
6. Making a complaint

Phoenix Supply notes the proposal to introduce Codes of Practice into its licence and align the licence obligations in electricity and gas and will at the relevant time review each of its

codes to ensure that these reflect the requirements. Phoenix Supply's specific comments on each of the proposed Codes of Practice licence conditions are listed below.

[Amended] Condition 30: Code of Practice on payment of bills

Phoenix Supply notes the proposed requirement under paragraph 3(h) to ensure that the recovery of debt is no more than 40% from each transaction amount. Again this is not a Directive requirement and should be removed. Phoenix Supply's current procedures facilitate customising the recovery of debt for each customer and is in line with the recovery rate applied in Great Britain. This allows specific weekly amounts to be collected based on an individual's ability to pay and size of the outstanding debt hence ensures that adequate safeguards are in place. Determining a specific percentage will be paramount to a one-size-fits-all debt collection process and would in fact leave customers in debt in a more vulnerable position. Furthermore Phoenix Supply believes that it is more transparent for customers if they know the specific weekly maximum amount that will be collected for debt e.g. £10. As it stands Phoenix Supply's debt procedures take into account the individual needs of its customers and determine an appropriate debt recovery level based on their individual circumstances. No further licence amendments are required.

In respect of debt collection the rate of debt recovery applied to each transaction is not the crucial factor as a lower rate of debt recovery may in fact result in the customer paying back more debt per week. Phoenix Supply currently applies a debt recovery rate up to a weekly maximum.

Furthermore we are unsure if the proposed 40% rate can in fact be applied to the Quantum system which is a nationally operated system and includes the 'Big Six' suppliers in Great Britain. The debt recovery rate applied is the national rate.

[Amended] Condition 31: Code of Practice on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick

Phoenix Supply notes the current arrangements will be extended to include persons who are blind, partially sighted, deaf or hearing impaired and the proposal to standardise the definition of disabled. Phoenix Supply welcomes this.

Phoenix Supply notes the proposal to extend the October to March gas supply cut off to households containing such vulnerable consumers whether or not they are the customer. Phoenix Supply only disconnects customers as a last resort. However, some recognition must be given to the rights of gas suppliers to recover debt. It is not always possible for a supplier to know or to be able to confirm the occupancy of a household and must base this on the information imparted to him by the consumer. Proposed paragraph 4(d) is therefore too subjective and should be removed.

Phoenix Supply would also comment that its current licence provides for supplies to be cut off in the event of a network emergency. This provision is necessary for the safe operation of the natural gas network and therefore should be retained.

[Amended] Condition 32: Code of Practice on the efficient use of electricity

Phoenix Supply agrees that the current provisions should be extended to include the provision of energy efficiency advice to ALL customers, not just domestic customers. Indeed Phoenix Supply already has a code of practice for its business customers. However, Phoenix Supply does not agree that suppliers should provide a dedicated telephone information service for the provision of such information. This is unnecessary bureaucracy and will increase costs to consumers. Phoenix Supply has a code of practice for the provision of information and publishes energy efficiency tips on its website. Indeed Phoenix Supply refers consumers to its website and provides the number of the Energy Saving Trust Advice Centre for further advice on energy efficiency on the back of bills. Phoenix Supply believes that this best meets the demands of its customers as the Energy Saving Trust will be able to provide its customers with energy efficiency advice on all aspects of energy useage and not just the efficient use of gas. It would be costly and counterproductive to require suppliers to replicate such provisions when arguably Phoenix Supply's customers are being pointed in the direction of a more comprehensive information service than envisaged under paragraph 2(d) of this condition.

[Amended] Condition 33: Code of Practice on Complaints Handling Procedure

Phoenix Supply notes that it will be required to formalise a complaints handling procedure for its domestic and business customers. The provisions of Annex 1(f) of the Directive also require resolution of complaints "preferably within three months". Paragraph 3(a) should therefore reflect the wording of the Directive as there may be elements outside of Phoenix Supply's control which prevent resolution of every complaint within this period. Suppliers should therefore be required to use all reasonable endeavours to process and resolve complaints within three months.

[Amended] Condition 34: Code of Practice on Services for Prepayment Meter Customers

This is a new condition in gas supply licences. Phoenix Supply would ask for further clarification regarding paragraph 4.

[Amended] Condition 35: Preparation, Revision Of and Compliance with Codes of Practice

This is a new condition in gas supply licences.

[New] Condition 35A: Customer Protection: Modification of Conditions

Any licence modifications must be made following consultation with and consent of the relevant licence holder. Phoenix Supply does not accept the inclusion of this open-ended licence condition which goes beyond the remit of the Directive and should be removed.

[Amended] Condition 36: Report on Performance

This is a new condition in gas supply licences. Phoenix Supply notes the requirement to maintain quarterly statistics in relation to domestic customers by payment method, domestic disconnections as a result of debt, complaints received, and number of customers on the Phoenix Energy Care Scheme etc. However, it will not be possible for Phoenix Supply to record the different types of service offered to domestic customers on the Phoenix Energy Care Scheme. The service is completely voluntary and entirely confidential and the leaflet and application form clearly set out the range of services which are available to anyone qualifying for the scheme. Arguably the number of the different type of services offered by Phoenix Supply therefore equals the number of domestic customers on the register.

Furthermore it is impossible to record the number of complaints resolved by Phoenix Supply “to the satisfaction of the complainant” as suggested under 2(e)(ii). If a complaint is resolved, it means that both parties agree otherwise correspondence would continue or the matter would be referred to the Consumer Council or UR. Part 2(e)(ii) should therefore simply read “resolved by the Licensee”. It should also be noted that the term ‘to the satisfaction of the complainant’ is a subjective term and is not always known by the supplier.

[Amended] Condition 38: Provision of Information to Customers

Article 3(12) of the Directive requires that consumers are provided with a copy of the Consumer Checklist and that it is made publicly available. The proposed requirement to provide customers with a copy of the checklist annually goes beyond this requirement and should be removed. Phoenix Supply agrees to make the Consumer Checklist published by UR available on its website, to provide this to new customers before entering a contract for the supply of gas, and to send this to domestic consumers upon request. These provisions alone satisfy the requirements of the Directive. Furthermore if the purpose of the Checklist is to provide transparency across the natural gas industry in NI, then the form and language in which it is available should be consistent. Phoenix Supply therefore believes that UR should produce the Checklist in the form and language it believes appropriate and Condition 38 be amended accordingly.

Phoenix Supply would also question what benefits may be derived by Pay As You Go consumers if UR’s interpretation of paragraph 1(i) of Annex I requires suppliers to send ALL

domestic consumers a bill at least once a year. Pay As You Go consumers can readily access more up-to-date information about their gas consumption via their meter which allows them to regulate and be informed of their consumption. This was recognised by DETI in the Electricity and Gas (Billing) Regulations (Northern Ireland) 2010. Indeed by the time the annual statement would reach a Pay As You Go consumer, the information would already be out-of-date as their meter would provide more accurate information. UR needs to consider the cost-efficiency of introducing this measure which is arguably superfluous to the requirements of the Directive and of no further benefit to consumers hence should be removed.

Phoenix Supply notes the proposed requirement to maintain evidence of the reasonable endeavours it has used to obtain actual meter reads for each of its customers for at least three years is based on UR's debt research. This is not a Directive requirement and the provision should therefore be removed.

Condition 38 broadly reflects the requirements of Annex 1(h) and (i). However Phoenix Supply has some concerns over the practical application of the licence modifications proposed. Take for example a domestic consumer. Suppliers will hold consumption information relating to the period between meter reads, not a 12 month period. Indeed the Electricity and Gas (Billing) Regulations (Northern Ireland) 2010 require suppliers to provide consumers with information about their gas consumption in the corresponding period in the previous year. Phoenix Supply believes that to ensure transparency and accuracy of information, consumption should be based on the metering data held by the supplier and that the provisions within the Electricity and Gas (Billing) Regulations (Northern Ireland) 2010 already meet the requirements of the Directive. Providing data for the 12 month period to the date of the request will be subjective and in Phoenix Supply's opinion, goes beyond the requirements of the Directive. Paragraphs 4(f) and 5 should be amended accordingly. Furthermore the information available to suppliers under Condition 44 should mirror that available to customers should they contact the supplier directly.

Phoenix Supply also notes that UR is considering dealing with under-billing and/or back-billing matters. Again this goes beyond the requirements of the Directive and should not form part of this consultation.

It is entirely inappropriate for suppliers to provide customers with details about switching on each bill. Customers already believe they receive too much information on their bill and this adds further complexity. This information will presumably be captured within the Consumer Checklist. Paragraph 4(g) is not a requirement of the Directive and should be removed.

Similarly the proposed requirement for Phoenix Supply to send an updated bill to a customer within 14 days of the customer registering a self-read is not a requirement of the Directive and therefore paragraph 8 should be removed.

Frequently when customers provide a meter reading (e.g. at the date of a tariff change) they specifically request not to receive a bill as this generates a bill and crystallises a debt which must be paid. Instead the meter reading is held on the account and forms part of the subsequent scheduled bill/statement. UR's proposal is actually to the detriment of consumers.

Phoenix Supply notes that it will now be required to keep its customers informed of the rights to initiate its complaints handling procedure and that complaints can be referred to UR. However Phoenix Supply does not agree that the Directive requires the contact address and telephone number of its complaints handling department and the Consumer Council to be included in all of its promotional material and therefore paragraph 11(b)(iii) should be removed.

[Amended] Condition 40: Marketing of Electricity to Domestic Customers

Phoenix Supply notes UR's proposal to strengthen current arrangements to protect consumers against unfair or misleading selling method. Phoenix Supply strongly supports the strengthening of the current Marketing Code of Conduct as drafted by the Consumer Council of Northern Ireland. We have concerns the current Code may have been breached which has served to mislead consumers. The current Marketing Code of Conduct must be robustly enforced to ensure compliance by suppliers and appropriate action taken against any company found to breach its requirements. Phoenix Supply is concerned that if a culture of mis-selling becomes established it can be very difficult to eradicate.

[New] Condition 42: Wholesale Contracts and Electricity Derivatives

Phoenix Supply agrees that for reasons of good business practice and for dealing with regulatory requests, major traders are likely to keep at least five years of records.

Phoenix Supply notes that it will be required to provide UR with information under this condition. Should UR decide to make available to market participants elements of this information, Phoenix Supply requests that UR enters into discussions with suppliers to determine what information they deem commercially sensitive and cannot be published.

[New] Condition 43: Facilitating Supplier Transfers

Phoenix Supply notes that it will be required to ensure that its practices, procedures and systems facilitate supplier transfers within 15 working days and will inform UR should it become apparent that the numbers of notifications received are jeopardising its ability to comply with this timeframe. This will ensure that UR has opportunity to approve the

appropriate resources to enable Phoenix Supply to process the increased number of notifications and remain in compliance with the 15 working day timeframe.

However, we would point out that the driver of customer switching activity is currently the marketing activities of alternative suppliers and therefore are not known to Phoenix Supply. Therefore, it is unreasonable to expect Phoenix Supply to flag up if the 15 business days is likely to be breached in time for staff to be recruited and trained. Therefore, Phoenix Supply must be adequately resourced under the supply price control to deal with these eventualities.

[New] Condition 44: Provision of Information to Electricity Suppliers

Annex 1(h) requires Phoenix Supply to give any registered supplier access to a customer's metering data where they have consent of the customer. Phoenix Supply believes that to ensure transparency and accuracy of information, Condition 44 should be amended and refer to the provision of metering data held by the supplier, not consumption data. Phoenix Supply has some concerns over the practical application of the licence modifications proposed. Take for example a domestic consumer. Suppliers will hold consumption information relating to the period between meter reads. If the "Customer Information Request" specifies a different period, gas consumption will have to be estimated. While this may not be as subjective for electricity, gas consumption, particularly for domestic consumers, varies significantly throughout the year and is weather dependant. It is therefore more appropriate for suppliers to provide metering data as provided for in the Directive.

Furthermore the requirement to provide the information within five days is arbitrary and beyond the requirements of the Directive and should therefore be removed.

[New] Condition 45: Business Separation

Phoenix Supply does not understand the relevance of this condition. The Directive places obligations on system operators in relation to business separation, not suppliers. Phoenix Supply does not have any input into the compliance plan of Phoenix Natural Gas, which is a specific arrangement between Phoenix Natural Gas and UR and is not made available to Phoenix Supply or indeed any other market participant. It is therefore wrong to place a licence obligation on Phoenix Supply to act in a manner which is consistent with an arrangement to which it is not party. Condition 45 is superfluous to requirements and unworkable in practice and should therefore be removed.