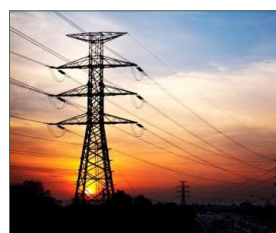


# Power NI Supply Price Control 2017 (SPC17)

Decision Paper  
November 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

This paper sets out the Utility Regulator's (UR) final decisions for the next Power NI Supply Price Control (which begins 1st April 2017). This is the latest in a series of documents the UR has published in relation to this price control. It follows on from the UR's Approach paper published in October 2015 and the consultation paper published in June 2016. This decision paper outlines the rationale for the UR's decisions in relation to the main issues within the control, those being its structure and form, an extension to the current Power NI control and the customer coverage (scope) of regulated tariffs.

## Audience

Consumers and consumer groups; industry; and statutory bodies.

## Consumer impact

This paper sets out the UR's decisions for an extension to the current Power NI price control from April 2017 onwards. The price control establishes the customer coverage, permitted costs and profit margin for the duration of the control period. Subsequent regulated tariffs will have to operate within these limits. The price control decisions will therefore impact on the bills of price regulated customers. Non-domestic customers will no longer be covered by the control and thus will no longer be able to avail of a regulated Power NI tariff.

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<b>Annex</b>	<b>Author</b>	<b>Title</b>
I	Power NI	Electricity and Gas Retail Supply Price Controls 2017 (SPC17)  UR Consultation  Power NI Response
II	enirgy.info	Electricity and Gas Retail Supply Price Controls 2017 (SPC17)  Consultation response from enirgy.info
III	CCNI	Response to the Power NI Supply Price Control 2017 (SPC 17)
IV	Hospitality Ulster	Consultation Response – Power NI Supply Price Control 2017 (SPC17)

# Executive Summary

This decision document presents the final UR decisions on a formal review of the supply price control for Power NI. The technical licence modifications to implement the UR decisions will be issued in December 2016, with the extension to the control to take effect from 1st April 2017.

## Feedback to the Consultation

The UR issued a consultation<sup>1</sup> in October 2015 on the approach we intended to adopt for the supply price control project (SPC17). The paper covered the intended approach, timeline and key issues relevant to the price control process for the three regulated energy suppliers in NI:

- Power NI Ltd (Power NI) in the electricity supply market;
- SSE Airtricity Gas Supply (NI) Ltd (SSE Airtricity) in the gas supply market in Greater Belfast; and
- firmus energy (supply) Ltd (firmus) in the gas supply market in the Ten Towns area.

A further consultation<sup>2</sup> on the proposals for the Power NI control was issued in June 2016. This consultation paper consulted on proposals for the Power NI control only. It covered

- Structure and form of the Power NI control;
- Extension of the current Power NI price control; and
- Scope and coverage of the control.

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<sup>1</sup> <https://www.uregni.gov.uk/consultations/consultation-approach-supply-price-controls-energy-companies-launched>

<sup>2</sup> <https://www.uregni.gov.uk/consultations/consultation-power-ni-supply-price-control-2017-spc17>

The UR received responses from four stakeholders: the Consumer Council for Northern Ireland (CCNI); Power NI; Hospitality Ulster and energy.info.

The UR has published each respondent's full submission as Annexes to this document.

### **Structure and Form**

Respondents to the Proposals consultation largely viewed the existing structure and form of the control to be appropriate, as does the UR. Therefore, the UR has decided to continue with the existing structure. The  $E_t$  term will however require some drafting modifications to reflect the up to date position.

### **Extension to the Current Power NI Price Control**

In line with the consultation proposals, and given the support given to the proposals by stakeholders, we intend to proceed with an extension to the current Power NI price control. This extension will be for a period of two years. The extension is scheduled to run from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2019.

The principles for how the extension will operate are:

- The current control will be extended for two years - until 31 March 2019;
- One-off non-recurring expenditure items that were included as allowable costs in the current control have been removed from the operating expenditure allowance and will not be included in the extension-related allowed costs;
- Estimated efficiencies earned in the current control will be shared 50:50 with customers during the extension period, with the assumption that the remaining efficiency gain will address the move to the new I-SEM model during the extension period and cover any increased costs;

- Cost allocations between the regulated and unregulated businesses of Power NI will be refreshed for each year of the extension to reflect the actual customer numbers and volume splits between the two businesses
- Margin level will remain the same during the extension period.

## Scope & Coverage

The area of scope and coverage received the majority of focus in the respondents' submissions. The UR's June consultation considered:

- (i) the option of removing the price control coverage from the remaining I&C customers currently covered by the control (i.e. small I&C customers using up to 50 MWh per annum);
- (ii) whether a sub-sector of the smallest I&C customers (those using up to 10MWh/annum should be separated out and remain subject to price control protection.

The majority of the respondents supported the removal of the price control on the 0-50MWh market. Hospitality Ulster stated that the retention of the price control was preventing their members accessing the best deals, especially those procured on a group basis or affinity type arrangements. Power NI felt that it was no longer justifiable to price control them alone, given the erosion of market shares and they also highlighted the European context in that the continuation of end user price regulation was contrary to the direction of policy in Europe. However, CCNI were not supportive of the immediate removal of the price control for I&C customers. They felt that the market shares of Power NI and Energia combined have remained resilient. They also felt that, contrary to the view of the UR, there was enough evidence to justify treating the 0-10MWh sub-sector differently to the rest of the 0-50MWh market and retaining price control in this sub-sector.



In response to the CCNI views, the UR examined updated market share information and this is laid out in the tables below.

Table 1 below shows the updated figures for August 2016, as well as those already stated in the June consultation paper.

**Table 1: 0-50 MWh Market Shares by Consumption January 2014, February 2016 and August 2016**

	Airtricity	Electric Ireland	Go Power	Power NI & Energia
<b>January 2014</b>	31%	10%	1%	58%
<b>February 2016</b>	27%	5%	14%	53%
<b>August 2016</b>	28%	5%	17%	50%

Table 1 demonstrates that the prediction of a continuing trend of a decrease in the Power NI and Energia combined market share has occurred. Airtricity's share has increased slightly and Go Power has continued to increase its share. Electric Ireland's share has remained static. This shows that the Power NI and Energia combined market share is being eroded and there has been a fall from a 53% combined market share to 50% in the six months between February and August 2016 showing the rate of attrition is increasing compared with the movement from 58% to 53% over the previous two years. This provides further evidence of the competitive activity in this market. This represents an almost 14% drop in their combined market share in the period from January 2014 to August 2016.

In line with the consultation proposals, and given the overall support given to the proposals by stakeholders and the most recent analysis of market shares, we intend to proceed with the removal of the price control on the 0-50MWh market. Power NI are no longer uniquely dominant in the small I&C market, and in this context it is difficult to justify treating them in a different way than other suppliers in the market.

As regards the issue of whether to separate out and price regulate the 0-10 MWh sub-sector of the I&C market, Table 2 details the updated market share information for the 0-10MWh and the 10-50MWh sub-sectors.

Table 2 – Market shares 0-10MWh and 10-50MWh August 2016

Customer Size	Power NI	Energia	PNI/ Energia	Airtricity	Go Power	Electric Ireland
<b>0-10MWh</b>	49%	8%	57%	24%	15%	3%
<b>10-50MWh</b>	33%	15%	48%	28%	18%	5%

Table 2 highlights that there has been a decrease in the Power NI and Energia combined share in the 0-10MWh from February 2016 figures when it was 60% (now 57% when combined). Airtricity and Go Power have also increased their market share in the 0-10MWh sub-sector. This seems to suggest that activity is increasing in this subsector of the 0-50MWh market as well as in the 0-50MWh market overall.

In line with the conclusions of our June paper, we are still of the view that there isn't enough evidence to support sub-dividing the 0-50MWh market and creating a subsector of 0-10MWh, with the retention of a price control on it. Whilst the June paper showed that there were fewer losses per 1000 in the 0-10MWh sub-sector, the data also indicated that competition is increasing in all of the I&C sub-sectors over time. The Power NI losses per 1000 almost doubled in the 0-10MWh subsector in the period examined. Whilst they are lower in this sub-sector than the others, they still show an increase in competition and market activity. The data also indicates that there is the same number of active suppliers in all 0-50MWh market sub-sectors. The latest market shares also indicate an increase in market activity in the 0-10MWh sub-sector consistent with the 0-50MWh market as a whole. In this context we still believe that it would not be justifiable to separate out the 0-10MWh sub-sector and retain a price control on it, as the evidence that it a

different sector of the market that requires to be treated separately is not conclusive enough to make such a judgement.

We recognise that CCNI do have concerns, but on balance feel that the evidence supports this decision to remove price control intervention on Power NI in the I&C market. We do however feel that we need to consider further whether any other non-price protection measures should be considered for I&C customers, and indeed asked this question in our June consultation. We return to this below.

We also intend to use the UR's Retail Energy Market Monitoring (REMM) framework to gather information on the performance of the retail market, and as an aid to deciding on future policy interventions if competition is not adequately protecting all consumers.

With continued market monitoring via REMM and a planned consultation to examine potential new customer protection measures for the small I&C market, we are of the view that these combined represent a measured approach that balances the duties of the UR to ensure equality of treatment for market participants who have similar market positions and customer protection in a competitive market.

### **Non-price protection measures**

Respondents were also asked for their views on potential customer protection measures which could be implemented in the small I&C market following the removal of the price control. They were also asked for any other measures they felt may be relevant in this context.

In relation to other new measures which could be put in place in the 0-50MWh market, we intend to issue a separate consultation on this which will set out

measures which the UR may potentially implement for all suppliers across the entire small I&C market. This will give stakeholders the opportunity to engage and give their views on the suitability of these measures. These measures may include but may not be limited to:

- Increased tariff transparency for small I&C customers. This would include a requirement on all suppliers to publish tariffs for these customers. This would mirror the final CMA proposal in GB, which requires all suppliers to publish their acquisition and retention tariffs for all small business customers.
- A duty on all suppliers to offer terms to a small I&C customer (similar to the duty to offer terms obligation for domestic customers in the current supply licences);
- A requirement on all suppliers that if deposits are required they must be at a reasonable level and potentially limiting the period for which they can be held;
- Suppliers being prohibited from rolling over contracts of existing customers;
- Consideration of the level of exit fees in the small I&C market;
- Investigation of the technical feasibility of offering a pre-payment solution to small business customers;
- Consideration of the implementation of a 'Energy Broker' code of practice
- Other protections for small business that currently exist for domestic customers such as: transparency of T&Cs with obligation to inform customers if their T&Cs changes; notification of price changes; notification of any fixed term contract periods coming to an end.

Respondents were asked what if anything the UR should do if the combined market share of Power NI and Energia moved substantially above 50% again in the 0-50MWh market. The UR will continue to monitor the combined market shares of Power NI and Energia in this sector and those of other suppliers,

together with other variables related to this I&C market sector through our REMM regime. If any supplier were to establish a position of dominance, there would be a market assessment carried out to establish if any action were required by the UR at that time. However, it is likely that the UR would need to intervene in some form to ensure customer protection and that competition would not be unduly hampered by the actions of a dominant participant. Action taken by the UR could possibly be a reintroduction of the current form of price regulation. This is in place today as a policy response to the dominance of a single supplier.

### **Next Steps**

In early 2017, the UR will formally consult upon proposed modifications to the Power NI licence that are necessary to implement the supply price control decisions as detailed in this document. In formulating the modification proposals, the UR will engage with Power NI to ensure accuracy and transparency of the required legal drafting. The UR will then duly consider all representations made during the 28 day consultation period.

Power NI will have the opportunity to accept or reject the supply price control via the licence modifications. If the licence modifications are accepted by Power NI, the supply price control is due to commence on 1<sup>st</sup> April 2017 and run until 31<sup>st</sup> March 2019. If Power NI does not accept the licence modifications, they may refer the matter to the Competition Commission.

# 1. CONTEXT

1.1 This decision document represents the completion of a formal review of the supply price control for Power NI. The technical licence modifications to implement the UR decisions will be issued in December 2016, with the extension to the control to be in place from 1st April 2017.

1.2 The UR issued a consultation<sup>3</sup> in October 2015 on the approach we intended to adopt for the supply price control project (SPC17). The paper covered the intended approach, timeline and key issues relevant to the price control process for the three regulated energy suppliers in NI:

- Power NI Ltd (Power NI) in the electricity supply market;
- SSE Airtricity Gas Supply (NI) Ltd (SSE Airtricity) in the gas supply market in Greater Belfast; and
- firmus energy (supply) Ltd (firmus) in the gas supply market in the Ten Towns area.

1.3 A further consultation<sup>4</sup> on the proposals for the Power NI control was issued in June 2016. This consultation paper consulted on proposals for the Power NI control only. It covered

- Structure and form of the control;
- Extension of the current Power NI price control; and
- Scope and coverage.

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<sup>3</sup> <https://www.uregni.gov.uk/consultations/consultation-approach-supply-price-controls-energy-companies-launched>

<sup>4</sup> <https://www.uregni.gov.uk/consultations/consultation-power-ni-supply-price-control-2017-spc17>

## Background

- 1.4 In Electricity, the primary statutory duty of the Utility Regulator (UR) is “to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition”<sup>5</sup>.
- 1.5 As the former incumbent monopoly supplier, PowerNI has been price-controlled for many years. The electricity supply market in NI is now fully open to competition and there are now a number of competing suppliers in the market. Most of these suppliers supply to both domestic and Industrial and Commercial (I&C) customers.
- 1.6 However, Power NI continue to supply the majority share of the domestic market and, combined with their affiliated company Energia, some segments of the small I&C market also. The implications of this will be discussed further in the Scope and Coverage section of this paper. The current scope of Power NI price control covers all domestic customers and those I&C customers who consume 50MWh or less per annum. There are approximately 780,000 customers in the domestic electricity market and approximately 51,000 in the “less than 50MWh” annual consumption segment of the I&C market.

## About this document

- 1.7 The purpose of this document is to set out the UR’s decisions in relation to setting the next price control for Power NI. The next price control period is due to commence in April 2017.
- 1.8 This document sets out the UR’s final decisions for the 2017 Power NI supply price control. We have received a number of submissions in response to the June consultation proposals and these have been taken into account when making our final decisions. Sections 2 to 5 of this paper sets out our original proposals and the stakeholder feedback we have

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<sup>5</sup> Article 12 of the Energy (Northern Ireland) Order 2003.

received. Each section then explains our final decision on each of the issues and the reasons for those decisions.

1.9 The following is a brief summary of the issue dealt with within each section of this decision paper:

- Section 2 details the **structure and form** of the control
- Section 3 outlines the final decision on the **extension of the current Power NI price control**;
- Section 4 details the amendments to the **scope of the control** for the non-domestic market and discusses logistics of removing the price control in the I&C market and potential measure which may be implemented in this context.
- Section 5 reviews the **timeframe and next steps** of how the price control will be implemented.

1.10 The UR received four responses to the June Consultation paper. Non-confidential submissions were received from the following organisations:

- Power NI<sup>6</sup>
- energy.info;<sup>7</sup>
- The Consumer Council for Northern Ireland (CCNI)<sup>8</sup>;
- Hospitality Ulster<sup>9</sup>

A copy of each respondent's full submission have been published as annexes to this paper and can be found on our website – [www.uregni.gov.uk](http://www.uregni.gov.uk).

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<sup>6</sup> Annex I. Power NI, *Electricity and Gas Retail Supply Price Controls 2017 (SPC17)*

<sup>7</sup> Annex II. Enirgy.info, *Electricity and Gas Retail Supply Price Controls 2017 (SPC17)* Consultation response from enirgy.info

<sup>8</sup> Annex III. CCNI, Response to the Power NI Supply Price Control 2017 (SPC 17)

<sup>9</sup> Annex IV. Hospitality Ulster, Consultation Response – Power NI Supply Price Control 2017 (SPC17)



### Equality considerations

1.11 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- ii. men and women generally;
- iii. persons with disability and persons without; and
- iv. persons with dependants and persons without.

The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.

1.12 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.

1.13 In order to assist with equality screening of the proposals contained within this supply price control, the UR requested that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals outlined in our October 2015 'Approach' and June 'Proposals' consultations.

1.14 In our Approach and Proposals consultations, the UR asked the following questions regarding our equality considerations:

- *Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?*

- *Do respondents consider that the approach needs to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.*
- 1.15 No adverse equality considerations were highlighted by any respondent so the UR will proceed with the supply price control on that basis.
- 1.16 CCNI did highlight the need for the UR and suppliers to engage with consumers as early as possible to ensure that consumers' priorities are delivered by the price control. No other respondents made any specific comment on these questions.

## 2. STRUCTURE AND FORM

### UR proposals

2.1 The UR laid out the details of the structure and form of the Power NI control in both the approach and the consultation papers. For clarity this is reiterated below.

2.2 The details of the operation of Power NI's supply price control are set out in its Licence. At present, Power NI's maximum allowed unit price of electricity ( $M_t$ ) for customers subject to and within the scope of price control is made up of a number of components:

$$M_t = G_t + U_t + S_t + K_t + (J_t - D_t) + E_t$$

In any given year  $t$ ,

2.3  $G_t$  refers to the cost of the "wholesale" electricity which Power NI purchases and so long as Power NI complies with its Economic Purchasing Obligation, this will be passed directly through to customers via the regulated tariff.

2.4  $U_t$  covers the costs of using the electricity network; these costs are regulated for all Suppliers through the NIE Transmission and Distribution (T&D) price controls.

2.5  $K_t$  is a correction facility whereby under or over-recoveries in the previous year can be collected by the business (under-recovery) or given back to consumers (over-recovery).

2.6  $J_t$  encompasses costs associated with buy-out from the Northern Ireland Renewables Obligation with the  $D_t$  term representing any savings on the buy-out Power NI achieves.

2.7  $E_t$  is associated with costs which are uncontrollable and are passed through to customers via the regulated tariff on a 100% basis. These costs include licence fees; approved IT projects spend required in order to put in place the

systems and processes to comply with licence obligations; and pension deficit costs incurred before 31 March 2015.

2.8 The  $E_t$  element of the control is reviewed and amended in the licence as part of each price control setting process. This will be particularly relevant regarding the pension deficit recovery (which is currently a pass-through item in  $E_t$ ). The Competition Commission ruled during the RP5 referral that the treatment of the pension deficit of NIE should be consistent with Ofgem's treatment of pension deficits of the distribution businesses in GB. The UR decided that it was appropriate to adopt these principles for the other NI regulated energy businesses that seek to pass through pension deficit costs through their regulated tariffs. This is directly relevant to Power NI and their recovery of historic pension deficit. A formal notification of the new arrangements and the cut-off date for the recovery of historical pension deficit was issued December 2014 in the paper "*Pension Deficit Recovery – A Utility Regulator Position Paper*"<sup>10</sup>.

2.9 This paper stated that the cut-off date would be 31 March 2015 and that the historical deficit determined at this time would be recovered over no longer than 10 years. The paper stated that "The companies affected by this decision will need to submit calculations of historical and incremental deficits and illustrate compliance with the RIGS methodology for the purposes of setting regulated tariffs." The UR's intention to apply consistently this policy in relation to pension deficit recovery was previously consulted on as part of the 2012-14 Power NI price control.

2.10 As demonstrated above, the majority of Power NI's costs that go into regulated end tariffs are straight 'pass-through' costs which are subject to other price controls or regulations; and thus this price control review deals principally with the  $S_t$  term of the tariff formula (along with the aforementioned

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<sup>10</sup> <https://www.uregni.gov.uk/publications/ur-position-paper-pension-deficit-recovery>

$E_t$ ), which is in effect Power NI's own operating costs and net profit margin allowed by the regulator. This amount must be sufficient to finance an efficient business of the licensee and should comprise the following elements:

- Operating costs;
- Allowed Margin.

2.11 The Allowed Revenue of  $S_t$  is currently collected on a ratio of a 70% fixed amount plus a 30% variable amount collected on a per customer basis. This was reviewed as part of the last control and as a result it was determined that the split should be adjusted slightly (moving to 70:30 from 67:33).

2.12 The UR proposed, in both the approach and the consultation proposals that the structure and form of the control remain the same.

2.13 The UR asked the following question regarding our proposals on the duration of the control:

***“Do respondents agree with the proposal that the structure and form of the control remain the same?”***

## **Feedback and UR comments**

2.14 Power NI, in their response to the approach, stated that the structure and form of the control remained appropriate and should therefore remain the same.

2.15 In their response to the **approach** consultation, CCNI stated:

*“Uncontrollable costs that are passed through to consumers on a 100% basis, need to be carefully considered by the UR. If there is any influence Power NI can exercise in reducing these costs it must be incentivised to so.”*

2.16 In their response to the **proposals** consultation, CCNI stated:

*“The Consumer Council supports in principle the structure and form of SPC17”*

## **UR Comments**

2.17 The UR agrees with the CCNI view on cost passthrough and would highlight that the costs which are allowed to be 'passthrough' are strictly defined in the Power NI licence and that there is a rigorous process in terms of ensuring that these costs are appropriate, efficiently incurred, required and actually incurred. No pass through costs are approved unless the UR is satisfied that all these criteria have been met.

### **UR's final decision**

2.18 Consistent with the proposals consultation, the UR has decided to retain the Structure and Form of the control in its current format as laid out earlier in this section.

### 3. EXTENSION OF THE CURRENT POWER NI PRICE CONTROL

#### UR proposals

- 3.1 In line with the option outlined in the Approach consultation, the UR June consultation proposed to extend the current Power NI price control by a period of two years. This would mean the extension to the control would run from April 2017 to March 2019.
- 3.2 The proposal for the extension of the current control was in the context of the development of the new ISEM wholesale market and trading arrangements. The development of the new I-SEM wholesale electricity market may materially impact upon the level of operating costs of Power NI in the future. The market arrangements will be very different and much more complex and Power NI will most likely see an increase in required costs as a result of changing many businesses processes, e.g. to become a 24 hour trading operation. The changes to the wholesale arrangements may also ripple through to many other cost lines not directly associated with wholesale operation but nevertheless linked. However, this impact of I-SEM on the Power NI business is difficult to forecast and assess with the necessary accuracy in advance.
- 3.3 The June proposal consultation set out the principles for how the extension will operate:
- The current control will be extended for two years - until 31 March 2019;
  - One-off non-recurring expenditure items that were included as allowable costs in the current control have been removed from the operating expenditure allowance and will not be included in the extension-related allowed costs;
  - Estimated efficiencies earned in the current control will be shared 50:50 with customers during the extension period, with the assumption that

the remaining efficiency gain will address the move to the new I-SEM model during the extension period and cover any increased cost;

- Cost allocations between the regulated and unregulated businesses of Power NI will be refreshed for each year of the extension to reflect the actual customer numbers and volume splits between the two businesses
- Margin level will remain the same during the extension period.

3.4 The UR asked the following question regarding our proposals on the duration of the control:

***“Do respondents agree with the UR minded to proposals in relation to the extension of the Power NI price control?”***

## **Feedback and UR comments**

3.5 Power NI and CCNI responded to this consultation question. The other two respondents did not refer to it.

3.6 CCNI were supportive of the UR proposal for an extension to the current Power NI price control. They stated in their response to the UR consultation:

*“The proposal appears to strike a fair balance between providing certainty for Power NI customers and investors whilst allowing for adjustments to be made in a developing competitive market.”*

3.7 They go on to ask the UR to consider re-examining the current 2.2% margin for Power NI. This is in the context of the CMA review:

*“Under the proposed rollover of the price control Power NI’s profit margin will remain at 2.2%. On this point we note the assessment the CMA made in its recent GB energy market investigation - final report. The CMA*



*estimates that a large stand-alone retail energy supplier should earn (on average) a margin of 1.25% in order to make a 'normal' level of profit<sup>11</sup>.*"

3.8 Power NI, in their response stated:

*"Since the decision in 2013 the risk profile of the business has increased due to deepening competition. It would therefore be reasonable to assume that any subsequent full price control assessment would at least retain or likely increase the allowable net margin."*

3.9 Power NI also expressed the view that it would be very difficult to carry out a standard price control review as the UR has done in the past. Power NI stated:

*"The completion of a full price control is rendered impossible however, primarily due to the development of the ISEM. The ISEM represents a fundamental redesign of the wholesale electricity market with a targeted implementation date part way through the first year of any potential new price control term. As the UR is aware, the ISEM will require suppliers, such as Power NI, to completely change their approach to the wholesale market, transitioning from being a passive real time taker of electricity to an active trading entity that is balance responsible for its metered volumes. This exposes Power NI to significantly greater risk and will require the implementation of specific ISEM trading and risk management functions."*

3.10 Power NI went on to say:

*"While providing a sizeable implementation challenge, the ISEM project also has an impact on the detailed price control considerations. It is generally accepted that the ISEM will increase working capital and operating costs, however the precise nature of these are currently unknown. Full clarity is unlikely to be forthcoming until post ISEM go-live. This introduces a substantial degree of subjectivity into the forecast costs and renders an objective assessment impracticable."*

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<sup>11</sup> CMA Energy Market Report June 2016

### UR Comments

- 3.11 In addressing the CCNI point in relation to margin, whilst this level of margin (1.25%) was discussed in the CMA report, the final figure which was actually recommended by CMA after the analysis had been carried out was actually in the region of 2%<sup>12</sup>. The CMA report recognises that there is a range of margins earned but states that:

*“We consider that greatest weight should be placed on evidence from the GB energy market itself, ie on the margins earned serving I&C customers and on previous GB regulatory determinations (recognising that regulated firms may face fewer risks). On this basis, we consider that an appropriate benchmark EBIT margin is around 2%.”*

- 3.12 The report also went on to state:

*“We note that this figure is higher than the competitive EBIT margin implied by our ROCE analysis (of 1.25%). However, the level of the appropriate EBIT margin will depend on the choice of operating model of an individual firm. Our ROCE analysis is based on a relatively asset-light model under which a firm pays an intermediary a trading fee, rather than holding capital for the purposes of trading collateral, and uses letters of credit rather than cash to meet regulatory collateral requirements. A firm that chose to hold capital rather than pay such fees would, other things being equal, earn a higher EBIT margin. We estimated the competitive EBIT margin implied by our ROCE analysis under the assumption that an equivalent amount of capital was held for trading and regulatory collateral purposes. This indicated a competitive EBIT margin of around 1.9%, which is broadly consistent with a 2% benchmark (see Appendix 9.10).”*

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<sup>12</sup> <https://assets.publishing.service.gov.uk/media/576bcc46ed915d622c00007d/appendix-9-13-retail-profit-margin-comparators-fr.pdf>

- 3.13 Therefore, this would support the level of margin which Power NI currently receives as being reasonable. It does not however support the Power NI view that a full price control assessment would likely increase the allowable margin, as companies in GB also operate in a competitive market. In addition to this, this price control represents an extension to the current control and as such to change the allowed margin would represent a reopening of the control which goes against the principle of an extension.
- 3.14 All respondents who specifically answered the consultation question in relation to the extension of the current Power NI price control were in support of the proposal. We have also addressed the concerns raised by CCNI.

### **UR's final decision**

- 3.15 In line with the consultation proposals, and given the support given to the proposals by stakeholders, we intend to proceed with an extension to the current Power NI price control. This extension will be for a period of two years. The extension is scheduled to run from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2019.

## 4. SCOPE AND COVERAGE

### UR proposals

- 4.1 The UR has up to now price controlled Power NI in the domestic and I&C sectors where they remained dominant and competition from other suppliers was not sufficient to adequately protect customers. As competition has grown and become more effective, the argument has grown for removal of the price control on Power NI and instead more of a reliance on the competition from other suppliers as the primary means to protect consumers in terms of price.
- 4.2 Power NI is currently subject to price control regulation for (i) the whole of the Domestic market; and (ii) I&C customers up to 50MWh per annum consumption. Power NI has argued in recent years that it is no longer uniquely dominant in the I&C electricity market where it is price controlled, and that the market is sufficiently competitive that the price control should be removed from the 0-50MWh I&C market (leaving then only domestic customers within the scope of the price control). The UR has been actively considering these issues in both the October 2015 Approach paper and the June 2016 proposals consultation.
- 4.3 Market share is deemed to be an important factor in the assessment of dominance, as well as a range of other factors and indicators that are also assessed by the UR.
- 4.4 In our June proposals paper, we examined a number of factors in the market:
  - The number of suppliers in the market;
  - Substitutability of the product;
  - Market Share trends; and
  - Customer switching rates.

### **Number of Suppliers**

- 4.5 There are currently 8 active electricity suppliers in the entire Non-Domestic market (or 7 if you combine companies that are members of the same corporate group) though several operate on a very small basis. This situation can be deemed as producing six competing suppliers to Power NI/Energia.

### **Substitutability of the product**

- 4.6 Electricity (electric energy) is a homogeneous commodity and, in principle, the nature of the good consumed by a given customer is the same product that is used by consumers in other parts of the system, regardless of supplier, since in all cases it is electromagnetic energy guided by the networks. In that sense, the substitutability of product between electricity suppliers is very high with little product differentiation. However, as regards electricity per se, and the substitutability of it as a product, the product is the electric energy and there is extremely limited (if any) ability to substitute the product for something else, certainly in the short term time horizon. This reinforces the potential for dominance and market power issues to be of material concern where there is a single supplier, a dominant supplier with unique market power, and/or inter-supplier competition is ineffective.

### **Market Share Trends**

- 4.7 The proposals consultation paper looked at the market shares in the 0-50MWh market for January 2014 and February 2016. In assessing market share, the UR has always assessed a supplier's share based on consumption data (rather than on customer numbers) although this may not necessarily be appropriate for future assessment of market shares in the domestic sector where the variability of consumption between users is less pronounced. Furthermore the combined share of Power NI and its affiliate Energia have been taken together for the assessment of dominance – this is standard practice as they have common shareholders/ultimate controllers. At the time of publication of the June consultation the

combined share of Power N/Energia in the 0-50 MWh sector of the market was 53% by consumption.

- 4.8 Table 3 below shows market shares by consumption in January 2014 and compares these to the latest information submitted in February 2016<sup>13</sup> across the 4 main suppliers in the relevant 0-50 MWh category.

**Table 3: 0-50 MWh Market Shares by Consumption January 2014 and February 2016**

	Airtricity	Electric Ireland	Go Power	Power NI & Energia
January 2014	31%	10%	1%	58%
February 2016	27%	5%	14%	53%

- 4.9 The analysis in the proposals paper showed that the Power NI and Energia market shares are reducing in this market and there has been movement in the distribution of the shares amongst the other suppliers in the market
- 4.10 The paper also highlighted the market expansion following market entry from Go Power and this is another indicator of a healthy market i.e. when a new entrant can expand rapidly following market entry. This expansion has been at the expense of all the three other major suppliers in the market.

### **Customer switching rates**

- 4.11 The June paper also examined customer switching rates as another metric which can determine how active the market is. We highlighted that we did not have specific switching information for the 0-50MWh market but instead showed the customer switching rates for the <70kVA market to estimate the customer churn rate in the small business market

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<sup>13</sup> Market share information provided by NIE up to February 2016

- 4.12 Table 4 below shows the switching rate for the years 2014 and 2015. This was calculated by taking the total switches for the year in the <70kVA market as a percentage of the whole <70kVA market.

**Table 4: Customer switching rates in the <70kVA market for 2014 & 2015**

	2014	2015
<b>Customer Switching %</b>	10%	9%

- 4.13 The annual customer switching rates were circa 10% for 2014 and circa 9 % for 2015. The paper stated that these rates would be considered as a reasonable rate in terms of an active market. They are also comparable with switching rates in the small business sector in RoI.

**Conclusions on retaining the control on the overall 0-50 MWh I&C market**

- 4.14 The proposals paper concluded that, given what the analysis showed, it could be argued that the 0-50MWh I&C market shows signs of active supplier competition, with market shares shifting in terms of distribution amongst the suppliers and switching rates at a reasonably high level. There are a number of active suppliers and Power NI/Energia market share continues to decline slowly but steadily.

**Potential for retention of a price control within the smallest customer (0-10 MWh) sub-sector of the 0-50MWh sector**

- 4.15 The June paper also explored the potential for retaining a sub-sector of the 0-50MWh market within the scope of the price control coverage. The paper provided detail on the analysis the UR carried out to explain this. We

examined the smallest I&C customer sector which are those using 0-10 MWh per annum. As opposed to looking at dominance alone, we tried to establish if there are potential differences in the market and in the customers in the lower end of the 0-50MWh market as opposed to those in the upper end. This analysis cited the customer losses which Power NI has experienced over the last two years, the number of suppliers in the sub-sections of the 0-50MWh sector, net movement in their customer numbers and the potential characteristics of those customers in the lower subsector of the 0-50MWh market.

### Power NI Customer Losses

- 4.16 The June paper examined the losses in each subsector of the 0-50MWh market. This gives an indication of whether the 0-10MWh subsector has greater customer retention to the former incumbent than the other subsectors within the market.

Table 5 – Power NI losses per '000 in 2014 and 2015

Customer Size	2014 Losses per '000	2015 Losses per '000
0-10MWh	35	59
10-20MWh	45	73
20-30MWh	61	105
30-40MWh	78	100
40-50MWh	78	131

- 4.17 The paper concluded that the information in Table 5 could be interpreted in a number of ways. It demonstrates that Power NI do experience a higher number of losses per thousand in the larger I&C customer subsectors. However, it can also be demonstrated that the losses per thousand in the 0-10MWh in 2015 were significantly higher than they were in 2014 (almost double). The same is true for the other sectors and this



indicates that competitive activity in all subsectors of the 0-50MWh market is increasing strongly.

### Number of Suppliers

- 4.18 As with the overall 0-50MWh sector, the number of active suppliers can be looked at to establish if customers in the lower subsectors have access to less suppliers than those in the larger customer subsectors. In addition to Power NI and Energia there are six other competing suppliers in the 0-50MWh market. These suppliers also operate in all subsectors of the 0-50MWh market. Therefore, from this perspective customers in each subsector have as much choice in terms of suppliers as in this market as a whole i.e. a customer in the 0-10MWh subsector has access to the same suppliers as those in the rest of the market.
- 4.19 The market share information for the main suppliers (three of the six competing suppliers are small new entrants and not included in the table) is shown in Table 6 below. It is shown for the 0-10MWh and the 10-50MWh subsectors of the market.

Table 6 – Market shares 0-10MWh and 10-50MWh Feb 2016

Customer Size	Power NI	Energia	PNI/Energia	Airtricity	Go Power	Electric Ireland
<b>0-10MWh</b>	51%	9%	60%	23%	13%	4%
<b>10-50MWh</b>	36%	16%	52%	27%	15%	5%

- 4.20 The table demonstrates as expected that Power NI/Energia do have a higher market share in the smallest size band. However, it also shows that the range of suppliers are equally active in the market sectors shown and compete in all sectors, as can be seen in the similar distribution of market shares in each sub-sector shown.

## Power NI Net Movement in Customer

- 4.21 The June proposals paper also examined the net movement in customers of Power NI in each of the subsectors. The paper highlighted that Power NI obtain circa 70% of the new connections in the 0-50MWh market. This is not a systemic occurrence in that Power NI is not the default or commissioning supplier. A newly connected customer must choose a supplier and Power NI clearly take a large proportion of the new connections. It would appear that many of the newly connected customers in smaller end of the I&C market choose to go with Power NI.
- 4.22 Table 7 below demonstrates that Power NI net movement in customer numbers in each of the sub-sectors is a net loss, except for the 0-10MWh sector in which they have a net increase. The June paper speculated if the potential reasons for this, in conjunction with having fewer losses per thousand in the 0-10MWh sub-sector, are:
- that most new connections are in the 0-10MWh sector;
  - other suppliers are reluctant to take new I&C connections as they are a credit risk; or
  - newly connected customers flock to Power NI for reasons of brand loyalty and perception.

Table 7 – Power NI net movement in customers 2014-16

Customer Size	Jan 2014 Customer Numbers	Jan 2016 Customer Numbers	% Movement
0-10MWh	19,530	20,359	4%
10-20MWh	7,446	5,969	-20%
20-30MWh	2,903	2,720	-6%
30-40MWh	1,650	1,610	-3%
40-50MWh	1,029	943	-8%

## Customer characteristics

- 4.23 Finally, the paper examined the customer characteristics within the subsectors of the 0-50MWh market. The paper highlighted that it could be argued that the smallest I&C customers in the market have certain characteristics which may be part of the reason that the analysis in the previous sections shows that in the 0-10MWh subsector Power NI has less customer losses per thousand and their customer numbers have also seen a net increase as opposed to a decrease in each of the other subsectors.
- 4.24 The average usage in the 0-10MWh sub-sector is 4MWh (determined from the data provided in the reports provided to the UR by NIE) which is around the same as an average domestic customer. The paper highlighted that some small business customers find it difficult to engage in the market with reasons including:
- difficult to compare offers – confusing;
  - focus on their core business allows less time to research into the different options, they don't have specific resource to do it; and
  - lack of buying power.
- 4.25 The paper stated that these reasons likely contribute to making these customers more 'sticky' and less able or willing to switch than larger I&C customers.

## Conclusions on proposal for retention of a price control within the smallest customer (0-10 MWh) sub-sector of the 0-50MWh sector

- 4.26 The June paper concluded that it was the UR's initial view that there wasn't enough evidence to support sub-dividing the 0-50MWh market and creating a subsector of 0-10MWh, with the retention of a price control on it.

- 4.27 The paper also stated the fact that Power NI have pointed out to the UR that they feel the continued retention of a price control in the I&C market is inconsistent with EU law and potentially UR statutory duties.

### **Logistical considerations for a scope change**

- 4.28 The proposals paper also considered the logistical considerations that would need to take place in conjunction with a scope change on the Power NI control or indeed other measures which should be put in place if the scope of the control were to be replaced.
- 4.29 Potential measures suggested in the proposals paper included:
- Requirement for Power NI to write to all the affected I&C customers, with text approved by the UR, informing them of the ending of the control for small I&C customers and informing/reminding them of the existence of competing suppliers and their ability to switch; as a condition of price control removal and the furtherance of the UR statutory duty to promote competition;
  - Potentially sharing of I&C customer data (contact details, consumption, MPRNs) with other suppliers to allow effective marketing from other suppliers. This could potentially be a database, perhaps managed by the network company for example, or made available to other suppliers by Power NI as a one off action and a condition of the price control removal and the furtherance of the UR statutory duty to promote competition. The rationale for such a measure is that as former incumbent Power NI has access to this information on the bulk of the customers in the 0-50MWh market as most customers are either still with Power NI or have at one time been a Power NI customer. Whilst there may be data protection issues with this proposal the UR felt in principle it may be the right thing to do.

- Information session with small business representative bodies and consumer groups to ensure they are aware of the changes and their need to assist their members/consumers access information and the best switching opportunities, if any, for customers; and
  - Implications on the 'K' factor.
- 4.30 The paper also highlighted that the UR was keen to hear any other proposals from respondents which they believed would make the market more open and transparent and the rationale behind any such measures.
- 4.31 The paper also considered the question of what action (if any) should be taken if the Power NI and Energia market share increased again significantly above 50%.
- 4.32 In the light of this analysis and discussion, the UR asked the following question in the Proposals consultation regarding our proposals on the scope and coverage of the control:
- ***Do respondents agree with the UR's proposal to reduce the scope of the Power NI price control and remove price regulation on the 0-50MWh market?***
  - ***Do respondents agree that there is insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market?***
  - ***Do respondents think any other actions need to be taken in advance of the price control being removed on the 0-50MWh market?***
  - ***Do respondents agree with the potential measure of sharing customer data in the 0-50MWh market with all suppliers? Please provide detail if you believe there are potential issues.***
  - ***What other measures do respondents believe could be put in place? Please provide detail and rationale for these measures.***

- ***What are respondents' views on the issues that may arise should Power NI's combined market share in the 0-50MWh sector increase again to substantially above the 50% level? Do respondents consider that regulatory intervention to fully protect customers would then be required?***

## **Feedback and UR comments**

- 4.33 All four respondents expressed views in relation to the scope and coverage of the control.

***Do respondents agree with the UR's proposal to reduce the scope of the Power NI price control and remove price regulation on the 0-50MWh market?***

- 4.34 Hospitality Ulster were supportive of the proposal to remove the price control on the 0-50MWh market. They expressed the view that the current control covering small I&C customers was stopping them from accessing better deals with Power NI. They stated:

*"The current restriction is now actually disadvantaging small / micro business who, after undertaking price and service quality comparisons, would like to remain with Power NI but switch to a supplier with a perceived lower level of service quality, as Power NI are unable to offer any discount on price under the current restrictions."*

- 4.35 They also made the point that the current form of price regulation on Power NI restricts industry bodies having access to such products as affinity deals. They stated:

*"current regulation restricts Industry bodies from securing affinity deals with Power NI and therefore limits the potential to bulk purchase on behalf of members."*

- 4.36 enirgy.info were also supportive of the removal of the price control on the 0-50MWh market:

*“The supposition is that with less than half the market and rival suppliers chasing after Power NI/Energia’s customer base, the market is robustly competitive enough to loosen the regulatory controls.”*

- 4.37 However, they did raise some concerns in relation to the removal of the price control. Their response focused on the findings of the CMA in GB, predominantly in relation to issues around price and that small I&C customers were paying more than they should for their energy. energy.info questioned if such a scenario could happen in the context of the NI market. Their view seemed to suggest that a large contributing factor to this was the lack of transparency in the small I&C tariffs. They highlight that the transparency of tariffs for small I&C may be lost if the price control were to be removed:

*“The solution, in the view of enirgy.info, is to require suppliers which intend to sell in the 0-50 MWh market to publish their prices in so far as that is reasonable so that they can be easily compared. Such an instruction by NIAUR would be in keeping with what is likely to take place in Great Britain.”*

- 4.38 CCNI were less supportive of an immediate removal of the price control on the 0-50MWh market. They stated the view competition if it works correctly can deliver lower prices, however also has the potential discriminate against some customer types:

*“The Consumer Council believes that competition, if designed correctly, can be a key mechanism in delivering lower prices to small businesses. However, competition has the potential, as seen in the electricity retail market in GB, to leave customers who are deemed “high risk” or not financially ‘savvy’, behind.”*

- 4.39 CCNI also included some price analysis in their submission, comparing NI with the ROI and EU. However, they concluded that:

*“it is not clear whether overall the regulated or deregulated market delivers lower prices for consumers”*

- 4.40 CCNI revisited issues which were in the CMA findings particularly around the fact that small I&C customers tended to pay more for their energy than domestics and larger I&C customers. They also highlighted the issues around the lack of transparency in tariffs and the disparity between acquisition and retention tariffs which the CMA drew attention to in their findings. As highlighted previously, these issues were raised by enirgy.info.
- 4.41 CCNI also questioned whether it could be argued that competition was sufficiently developed in the 0-50MWh market to be an appropriate time to remove the price control. They pointed to the fact that only one supplier had more than 20% of market share and that Go Power was the only supplier to have gained market share. They stated the opinion that the combined Power NI and Energia market share had remained resilient in the period. CCNI also stated that removal of the price control at this point may potentially have a distortive impact on future competition in the market.
- 4.42 Power NI were supportive of the proposal to remove the price control again reiterating their view that it was inconsistent with the legal and European contexts. They went on to say:

*“Power NI argued (and continues to believe) that the current non-domestic price regulation is ineffective as the majority of customers are not subject to price regulation; is distortive as a regulated tariff based on an unrepresentative set of cost drivers still acts as a market reference price leading to poor customer outcomes; and is disproportionate as the price control requirements impose additional licence conditions in relation to business separation, independence and the use of assets. These conditions prevent Power NI from realising efficiencies and economies of scale which would benefit consumers.”*



### UR Comments

- 4.43 The majority of respondents were in favour of the removal of the price control in the 0-50MWh market. However, CCNI in particular raised a number of concerns. In relation to the movement in market share, whilst we appreciate the point that CCNI make in terms of the market share redistributing amongst suppliers, we wouldn't agree that it has remained resilient, as there has been almost a 9% drop in their market share over the two year period over which the market share was analysed in the consultation paper. As argued in this paper, it shows a trend of steady reduction of their market share. The UR consultation also highlighted the change in the dynamic of the market activity with the entry of Go Power. Go Power's entry appears to have stimulated a significant amount of activity in the 0-50MWh market. It could be argued that their rapid expansion in market share relatively quickly is both an indicator of a healthy market and that they could continue to erode the other supplier's market shares including those of Power NI and Energia.
- 4.44 In addition to this, since the June consultation we have examined the latest market share figures in the 0-50MWh market. Table 8 below shows the updated figures for August 2016 as well as those already stated in the consultation paper.

**Table 8: 0-50 MWh Market Shares by Consumption January 2014, February 2016 and August 2016**

	Airtricity	Electric Ireland	Go Power	Power NI & Energia
January 2014	31%	10%	1%	58%
February 2016	27%	5%	14%	53%
August 2016	28%	5%	17%	50%

- 4.45 Table 8 demonstrates the prediction of a continuing trend of a decrease in the Power NI and Energia market share has occurred. Airtricity's share has increased slightly and Go Power have continued to increase their share. Electric Ireland's share has remained static. This shows that the Power NI and Energia combined market share is being eroded and there has been a fall from a 53% combined market share to a 50% in the six months between February and August 2016 showing the rate of attrition is increasing compared with the movement from 58% to 53% over the previous two year. This provides further evidence of the activity in this market. This represents an almost 14% drop in their combined market share in the period from January 2014 to August 2016.
- 4.46 We remain of the view that with the market share now at 50% that Power NI are no longer uniquely dominant in this market. In this context, it would no longer be appropriate to treat them in a way that is different from other suppliers in this market.
- 4.47 In relation to CCNI's concerns that removal of the price control could lead to distortion of the market, we would reiterate that we believe that there does appear to be healthy activity in the market and if Power NI are able to compete on price (which could mean lower prices for I&C customers which CCNI are keen to see) it could also stimulate this behaviour from other suppliers. In addition to this, our consultation paper stated that if Power NI did gain substantial market share there would be a policy response from the UR to this and that we would also continue to monitor market shares on an ongoing basis.

***Do respondents agree that there is insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market?***

- 4.48 CCNI responded to this question and did not share the view of the UR that the 0-10MWh sub-sector of the 0-50MWh market wasn't significantly

different enough to treat as a separate market with the retention of a price control on it.

- 4.49 They included analysis on connection (the UR measures market shares for dominance by consumption):

*“while competition has developed in the regulated I&C markets, it has not reached a similar level of maturity that, for example, the I&C 500-1,999MWh segment.”*

- 4.50 They questioned whether suppliers target smaller customers in the same way in which they do with larger I&C customers. In addition to this, CCNI gave the view that there is a risk suppliers could become inactive in the 0-10MWh sub-sector.

- 4.51 Power NI were in agreement with UR’s view that there is insufficient evidence to treat the 0-10MWh subsector differently from the rest of the 0-50MWh market. However, they did acknowledge that there did tend to be a lack of engagement with this type of customer. They did caveat this by making the point that this was a market wide issue and separate from the price control:

*“Power NI believes work can be done in this area, this however is a market wide issue and in no way linked to price regulation.”*

### **UR Comments**

- 4.52 In relation to the CCNI view that the 0-10MWh market could be treated as a separate market we would not agree with this. We carried out analysis in the June paper (which has been summarised again in this paper) to establish whether it could be a justifiable position to treat the 0-10MWh sub-sector as a separate market. This analysis showed that there is the same number of active suppliers within each subsector of the 0-50MWh market and there is a similar distribution of shares amongst suppliers.

- 4.53 As discussed earlier in this section we have examined the updated figures for the market shares in August 2016 in the 0-10MWh sub-sector and the 10-50MWh sub-sector. Table 9 details this updated information.

Table 9 – Market shares 0-10MWh and 10-50MWh August 2016

Customer Size	Power NI	Energia	PNI/ Energia	Airtricity	Go Power	Electric Ireland
<b>0-10MWh</b>	49%	8%	57%	24%	15%	3%
<b>10-50MWh</b>	33%	15%	48%	28%	18%	5%

- 4.54 Table 9 highlights that there has been a decrease in the Power NI and Energia combined share in the 0-10MWh sector (to 57%) from February 2016 figures when it was 60%. Airtricity and Go Power have also increased their market share in the 0-10MWh sub-sector. This could suggest that activity is increasing in this subsector of the 0-50MWh market as well as in the overall 0-50MWh market.
- 4.55 In line with the conclusions of our June paper, we are still of the view that there isn't enough evidence to support sub-dividing the 0-50MWh market and creating a subsector of 0-10MWh, with the retention of a price control on it. Whilst the June paper showed that there were fewer losses per 1000 in the 0-10MWh sub-sector, the data also indicated that competition is increasing in all the I&C sub-sectors over time. The Power NI losses per 1000 almost doubled in the 0-10MWh subsector in the period examined. Whilst they are lower in this sub-sector than the others, they still show an increase in competition and market activity. The data also indicates that there is the same number of active suppliers in all 0-50MWh market sub-sectors. The latest market shares also indicate an increase in market activity in the 0-10MWh sub-sector consistent with the 0-50MWh market as a whole. In this context we still believe that it would not be justifiable to separate out the 0-10MWh sub-sector and retain a price control on it.

***Do respondents think any other actions need to be taken in advance of the price control being removed on the 0-50MWh market?***

- 4.56 Power NI were very supportive of the creation of a level playing field for all suppliers to engage with I&C customers, and felt that it was overdue. They also stated that they would write to all customers informing them of the change and share (though not seek approval for) this correspondence with the UR:

*“A requirement to write to all affected customers would be normal operational practice and Power NI is prepared to commit to facilitating a regulatory review of such a correspondence. It is important to recognise that the customers the UR is referring to are supplied by Power NI and will continue to be supplied by Power NI. Any future tariff developments or product changes would be communicated to customers irrespective of price regulation scope changes.”*

- 4.57 Power NI also committed to working with the UR around the implications of the ‘K factor’.

***UR Comments***

- 4.58 The UR welcomes Power NI’s commitment to working with them to ensure that logistical issues can be resolved in terms of the removal of the price control on the 0-50MWh market. We will continue to work with Power NI to address any issues and concerns and help ensure a smooth transition for those customers impacted by the removal of the price control.

***Do respondents agree with the potential measure of sharing customer data in the 0-50MWh market with all suppliers? Please provide detail if you believe there are potential issues.***

- 4.59 CCNI agreed with this proposal in principle but drew attention to the fact that the small business representatives (at the bilateral meeting held with

them at the UR offices during the consultation phase) gave the view that they thought their members received enough marketing material. CCNI were of the view that there should be further discussion on this if the UR were to take the proposal forward and that the legalities around such a measure should be analysed.

- 4.60 Power NI were not supportive of this proposal, they raised both the issue of data protection and the cost of such a measure. They also stated that it would be unfair that the measure only applied to Power NI:

*“It would be inequitable for only Power NI data to be shared, surely all customers who have not switched in ‘x’ years would be required to be included. In such a circumstance, it would only be appropriate for either NIE Networks or the UR to administer such a system.”*

- 4.61 Power NI also highlighted the issue of what disengaged actually means, for example if a customer has remained with a supplier but switched tariff would they be considered disengaged.

- 4.62 They stated:

*“Power NI believes that the effectiveness of competition would be enhanced by looking at transparency measures across the market rather than explicitly involving a regulatory body in marketing activities.”*

#### **UR Comments**

- 4.63 We accept Power NI’s view that it should not apply to them only and are considering the option that if we were to implement a recommendation like this it would apply to the whole market and not on Power NI alone. However, we are mindful of the data protection implications and this option would need to be considered more fully and consulted upon.

***What other measures do respondents believe could be put in place?  
Please provide detail and rationale for these measures.***

- 4.64 CCNI point to the measures which the CMA have suggested in relation to small businesses. They also suggested that a working group could be useful in helping determine other potential measures to help stimulate small business engagement with the market and help protect small I&C customers. They indicated that a price comparison website and a switching awareness campaign could be useful.
- 4.65 Hospitality Ulster made a number of suggestions with regard to potential measures which the UR could implement to help protect small I&C customers. They highlighted the issue of excessive deposits expected from small business customers as being of concern. They stated:  
*“the current situation regarding deposits must be addressed; with supply companies currently charging excessive deposits. There is a barrier to entry for new or relocating businesses where the premises have a poor credit history.”*  
They went further by saying:  
*“Supply companies should be required to publish all deposit requirements alongside their tariffs and should not be allowed to introduce them during an existing contract period unless there has been a default on payment by the consumer (business).”*
- 4.66 Hospitality Ulster also raised the issue of access to terms, where they proposed that suppliers should be obligated to offer supply to all businesses in the event that the 0-50MWh market is no longer price regulated:  
*“All suppliers should have a ‘must supply’ option, as the proposal could result in a business being unable to secure a supplier.”*
- 4.67 This was a concern also echoed by CCNI in their response to the consultation they stated:

*“We are concerned small businesses with poor credit rating may be denied an electricity supply if the Power NI price control is removed. We ask UR to consider this issue and introduce any measures it deems appropriate, if any, to ensure all small business in NI have access to an electricity supply if the 0-50 MWh I&C market is deregulated.”*

- 4.68 A number of respondents had concerns about clarity of tariffs in the small I&C market. Hospitality Ulster highlighted this in their response:

*“Hospitality Ulster believes the removal of price regulations should be accompanied by a requirement, on all suppliers, to provide an annual notification of all supplier’s tariffs to existing customers to encourage analyses. Suppliers should also be required to make all tariffs public as this would encourage price comparisons websites and support informed consumer choices.”*

- 4.69 As highlighted previously, enirgy.info expressed a similar view in their response to the June consultation and suggested that the only way to prevent this was to stipulate a requirement on suppliers to publish their tariffs so that customers can compare them. Power NI were also in favour of a code of practice which would cover brokers and a ban on rollover contracts.

- 4.70 Power NI made a number of suggestions in relation to measures which could be implemented in the small I&C market. These include a prepayment meter solution for small I&C customers which could assist these customers with budgeting and managing cashflow and alleviate the concerns over deposits. They also felt that these were separate issues to the Power NI price control and should be carried out under the review of effectiveness of competition workstream.

### **UR Comments**

- 4.71 In the context of the CCNI recommendation that a working group be established we are of the view that there isn’t a need for a formal group on



an ongoing basis. We have already formally engaged separately with the small business representatives and CCNI during the consultation period and have encouraged them to engage with their members to help ensure that they are aware of the potential changes and encourage their members to actively engage with the market. We may decide to hold another workshop/meeting with them (if deemed necessary) post the decision paper for the Power NI control to give them the forum to raise queries and concerns. In addition to this, we will formally consult in due course on any proposed new customer protection measures which we may decide to implement and this will give all stakeholders the opportunity to engage with the UR and respond to the consultation to give their views on the proposals. This addresses the point that Power NI made that it would be better to approach implementation of these new measures as a separate workstream to the Power NI price control.

- 4.72 The UR agrees with the issues raised in relation to tariff clarity and is of the view that it is a very important aspect. This was highlighted by the recent CMA review findings in GB, and by all respondents to our June consultation. It was also an issue discussed at the meeting between the UR and the small business representative groups and CCNI. We envisage that some form of measure in relation to tariff clarity and particularly the publication of tariffs for small business will be included in the list of proposed measures for the small I&C market which we will formally consult on. Publication of small business acquisition and retention tariffs is a remedy that the CMA have included in their package of measures following the recent market investigation in GB.
- 4.73 Clarity of tariffs may well encourage the development of a price comparison website. If all suppliers were required to publish small business tariffs on their website it would make the information on prices more accessible and the comparison tool more useful.

- 4.74 Similarly, we also accept the points raised by respondents in relation to the use of rollover contracts, reasonable deposits and ability for small businesses to obtain reasonable terms. We would be of a view that suppliers should not employ a rollover contract which would inflict a penalty on a customer if they subsequently chose to switch supplier or that the terms of any rollover should be unduly onerous. We also believe that the level of any deposit required should be reasonable and reflective of the customer's individual situation and should not be at a level that is prohibitive. The UR would also like to explore options around a requirement on licensees to have a duty to offer terms to any potential customer.

***What are respondents' views on the issues that may arise should Power NI's combined market share in the 0-50MWh sector increase again to substantially above the 50% level? Do respondents consider that regulatory intervention to fully protect customers would then be required?***

- 4.75 CCNI were of the view that there may be some negative outcomes from the removal of the price control on the 0-50MWh market such as increase in price and the potential for a reduction in active suppliers or customers being denied supply. They recommended that the UR continue to monitor the 0-50MWh market for any signs of detriment or an increase in the combined Power NI/Energia market share. They also stated:

*"If any such issues arise, we ask UR to act urgently and decisively to address them, including opting to reintroduce the price control if the evidence of consumer detriment was to support the decision."*

- 4.76 Power NI made the point that it should apply to *any* supplier reaching a market share substantially above the 50% level.

### **UR Comments**

- 4.77 As stated in the June consultation paper the UR will continue to monitor the combined market shares in this sector of Power NI and Energia and indeed other suppliers, together with other variables related to this I&C market sector through our REMM regime. If this scenario were to occur, there would be a need for a market assessment to be carried out to establish if any action were required by the UR at that future time. It is however likely that the UR would need to intervene in some form.

### **Scope and Coverage - UR's final decision**

- 4.78 In line with the consultation proposals, and given the overall support given to the proposals by stakeholders and the most recent analysis of market shares, we intend to proceed with the removal of the price control on the 0-50MWh I&C market. Power NI are no longer uniquely dominant and in this context we cannot justify treating them in a different way than other suppliers in the market. We recognise that CCNI do have concerns but on balance feel that the evidence supports this decision. With continued monitoring and a planned consultation to examine potential measures for the I&C market we are of the view that this will help alleviate these concerns.
- 4.79 We remain of the view that there is insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market. We will continue to work with Power NI to address any issues and concerns and help ensure a smooth transition for those customers impacted by the removal of the price control. This will include Power NI writing to all customers who will be impacted by the change in scope of coverage of the control (which Power NI have already said they intend to do).
- 4.80 With regard to the sharing of customer information, we accept Power NI's view on the potential sharing of customer data in the 0-50MWh market

should not apply to only them. We will continue to consider this as an option for the whole market and may consult on it as part of the potential set of “other protection measures” which could be implemented in the small business market. However, we are mindful of the data protection implications and this option may be unworkable. The UR will investigate this further.

4.81 In relation to “other protection measures” which could be put in place in the 0-50MWh market, we intend to issue a separate consultation on this in the next few months which will set out measures which the UR may implement for all suppliers. This will give stakeholders the opportunity to engage and give their views on the suitability of the measures. These measures may include, but not be limited to:

- Increased tariff transparency for small I&C customers. This would include a requirement on all suppliers to publish tariffs for these customers. This would mirror the final CMA proposal which requires all suppliers to publish their acquisition and retention tariffs for all small business customers.
- A duty on all suppliers to offer terms to a small I&C customer (similar to the duty to offer terms obligation for domestic customers in the current supply licences);
- A requirement on all suppliers that if deposits are required they must be at a reasonable level and potentially limiting the period for which they can be held;
- Suppliers being prohibited from rolling over contracts of existing customers;
- Consideration of the level of exit fees in the small I&C market;
- Investigation of the technical feasibility of offering a pre-payment solution to small business customers;

- Consideration of the implementation of a 'Energy Broker' code of practice
- Other protections for small business that currently exist for domestic customers such as transparency of T&Cs with obligation to inform customers if their T&Cs changes, notification of price changes, notification of any fixed term contract periods coming to an end.

4.82 The UR will continue to monitor the combined market shares of Power NI and Energia in this sector and those of other suppliers, together with other variables related to this I&C market sector through our REMM regime. If any supplier were to establish a position of dominance, there would be a market assessment carried out to establish if any action were required by the UR at that time. However, it is likely that the UR would need to intervene in some form to ensure customer protection and that competition would not be unduly hampered by the actions of a dominant participant. Action taken by the UR could possibly be a reintroduction of the current form of price regulation. This is in place today as a policy response to the dominance of a single supplier.

## 5. TIMEFRAME AND NEXT STEPS

- 5.1 The following table has been used throughout this price control review process. It highlights the various stages of the process and when each milestone was, or the UR anticipates it will be, achieved.

Table 10: Price Control Review timetable

Date	Milestone
October 2015	UR engages with price controlled suppliers
End-October 2015	Utility Regulator consultation paper on price control Approach to be published
November 2015	Utility Regulator to send business efficiency questionnaire (BEQ) to Power NI/Airtricity/firmus
December 2015	End of Approach Consultation
January 2016	Deadline for responses to business efficiency questionnaire
February-April 2016	BEQ Analysis and iteration with the price controlled suppliers & consultation proposals developed.
May 2016	Utility Regulator to publish price control proposals consultation paper
August 2016	End of consultation period
November 2016	Utility Regulator to publish final decision & consult on licence modifications to implement price control decisions – 28 days
April 2017	Licence Modifications become effective

- 5.2 In November 2016, the UR will consult upon proposed modifications to the Power NI licence that are necessary to implement the supply price control decisions as detailed in this document.
- 5.3 The UR will duly consider all representations made during the 28 day consultation period.

- 5.4 Power NI will have the opportunity to accept or reject the supply price control via the licence modifications.
- 5.5 If the licence modifications are accepted by Power NI, the extension to the supply price control is due to commence on 1<sup>st</sup> April 2017 and run until 31<sup>st</sup> March 2019.
- 5.6 If Power NI does not accept the licence modifications, they can refer the matter to the CMA. Their decision would be binding and final.

## Annex I

### Electricity and Gas Retail Supply Price Controls 2017 (SPC17)

#### UR Consultation

#### Power NI Response



# **Electricity and Gas Retail Supply Price Controls 2017 (SPC17)**

## **UR Consultation**

### **Power NI Response**

29 July 2016

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## 1. Introduction

Power NI welcomes the opportunity to respond to the Utility Regulator's (UR) 'Power NI Supply Price Control 2017 (SPC 17) UR Consultation'.

As described in the Consultation Paper, Power NI remains subject to price control regulation. The setting of a reasonable and equitable control is therefore of fundamental importance to the on-going financeability and operation of the business.

In response to the Electricity and Gas Retail Supply Price Controls 2017 (SPC17), UR Approach Consultation; Power NI highlighted the contextual setting in which this review will take place, the existing framework and the potential new or increased risks that the business will face over the control period; the headline item being that of ISEM implementation. Power NI welcomes the UR's consideration of these points as reflected in this consultation.

Power NI further welcomes the inclusion, within this consultation paper, of a proposed removal of price regulation in the non-domestic sector. Power NI believes this is long overdue and entirely appropriate.

This paper will provide further arguments supporting the 2 year price control rollover and removal of price regulation in the non-domestic sector. Power NI will also seek to answer the questions posed by the UR in the Consultation Paper.

## 2. General Comments

Power NI highlighted in our response to the Electricity and Gas Retail Supply Price Controls 2017 (SPC17), UR Approach Consultation; that the existing control is characterised by –

- **A low opex allowance**

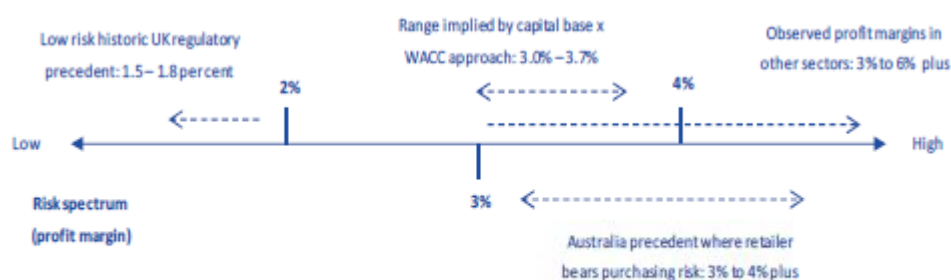
Within the 2014 Price Control Decision Paper, the UR stated that “*we accept Power NI are at, or near, the efficiency frontier*”<sup>1</sup> and held the allowed operating expenditure levels consistent with this view.

The 2013 determination of the current price control allowed a low opex entitlement as compared to an average cost to serve observed by the “big 6” suppliers in GB. This is despite the GB suppliers having significantly more scale.

Notwithstanding future cost pressures in the NI electricity retail sector including ISEM, Power NI’s current opex allowance and its relative position to other relevant energy retailers, reinforces its position at the efficiency frontier.

- **A margin figure set at the low end of the range**

The UR has previously stated that a significant amount of work was undertaken in the analysis of Power NI’s net margin allowance under the 2014 Price Control process. Power NI argued that the 2.2% proposal and subsequent decision was positioned at the low end of the range determined by our consultants, CEPA.



Source: CEPA

The UR using ECA as support, adjusted this calculation and determined that the 2.2% decision was at a mid point of a lower range. It was stated in the Decision Paper that:

*“The UR believes the 2.2% decision to be a fair and reasonable allowance for the margin given the change in risk profile that Power NI has experienced as a result of the emergence of a competitive market.”*<sup>2</sup>

<sup>1</sup> Page 47

<sup>2</sup> Page 9

Since the decision in 2013 the risk profile of the business has increased due to deepening competition. It would therefore be reasonable to assume that any subsequent full price control assessment would at least retain or likely increase the allowable net margin.

The completion of a full price control is rendered impossible however, primarily due to the development of the ISEM. The ISEM represents a fundamental redesign of the wholesale electricity market with a targeted implementation date part way through the first year of any potential new price control term. As the UR is aware, the ISEM will require suppliers, such as Power NI, to completely change their approach to the wholesale market, transitioning from being a passive real time taker of electricity to an active trading entity that is balance responsible for its metered volumes. This exposes Power NI to significantly greater risk and will require the implementation of specific ISEM trading and risk management functions.

It is generally accepted that the ISEM will increase working capital and operating costs, however the precise nature of these are currently unknown. Full clarity is unlikely to be forthcoming until post ISEM go-live. This introduces a substantial degree of subjectivity into the forecast costs and renders an objective assessment impracticable. To progress a conventional new price control determination would require significant business model and cost estimation, exposing Power NI to risk and undermining the evidence based decision making regulatory principle.

For this reason therefore it is entirely appropriate that a rollover is progressed. It is also consistent to previous controls which coincided with significant market changes.

The second main aspect of the URs consultation is the change in scope which removes non domestic customers from price regulation.

Power NI has argued (and continues to believe) that the current non-domestic price regulation is ineffective as the majority of customers are not subject to price regulation; is distortive as a regulated tariff based on an unrepresentative set of cost drivers still acts as a market reference price leading to poor customer outcomes; and is disproportionate as the price control requirements impose additional licence conditions in relation to business separation, independence and the use of assets. These conditions prevent Power NI from realising efficiencies and economies of scale which would benefit consumers.

The analysis supports the removal of price regulation for the remaining non domestic customers and Power NI expects that this will signal the beginning of a series of licence modifications which will begin to align Power NI's licence with all other suppliers' licences. This should therefore facilitate the transformation of the Power NI business and enable the realisation of the above economies of scale to the benefit of customers.

Power NI is also conscious that the UR will be considering the outcomes of the CMA inquiry in GB and some of the recommendations are considered in the scope context. The CMA also recommended that the statutory obligations of the regulator be amended to emphasise the promotion of competition. Power NI believes it would be an important helpful development if the URs obligations were similarly changed and in the interim if the UR were to give greater consideration to the promotion of competition.

### 3. Response to Consultation Questions

***Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?***

A1. No response.

***Q2. Do respondents consider that the proposals for the Power NI price control need to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.***

A2. No response

***Q3. Do respondents agree with the proposal that the structure and form of the control remain the same?***

A3. Power NI considers the current structure and form of the price control as generally appropriate and therefore should remain unchanged.

***Q4. Do respondents agree with the UR minded to proposals in relation to the extension of the Power NI price control?***

A4. As stated in Power NI's response to the UR's Price Control Approach Consultation, the development of the ISEM represents a fundamental redesign of the wholesale electricity market with a targeted implementation date part way through the first year of any potential new price control term. The ISEM will require suppliers, such as Power NI, to completely change their approach to the wholesale market, transitioning from being a passive real time taker of electricity to an active trading entity that is balance responsible for its metered volumes. This exposes Power NI to significantly greater risk and will require the implementation of specific ISEM trading and risk management functions.

While providing a sizeable implementation challenge, the ISEM project also has an impact on the detailed price control considerations. It is generally accepted that the ISEM will increase working capital and operating costs, however the precise nature of these are currently unknown. Full clarity is unlikely to be forthcoming until post ISEM go-live. This introduces a substantial degree of subjectivity into the forecast costs and renders an objective assessment impracticable. To progress a conventional new price control determination would require significant business model and cost estimation, exposing Power NI to risk and undermining the evidence based decision making regulatory principle.

If one accepts the premise that the current price control broadly represents the appropriate building blocks for an efficient supply business, the basis exists for a

continuation of the current price control. The question that remains is whether the new ISEM will so materially change the market and the cost base of Power NI operating in that market so as to require a more radical reappraisal of the price control building blocks, an outcome which will be more accurately determined once the new market has become operational and bedded in. The question arises for Power NI whether it is content to accept the risk of its operating cost base in the new market in the short term. This can only be the case if Power NI expects its efficiency performance under its current price control broadly to mitigate the foreseeable risks during an extension, an assumption we are prepared to make.

Power NI therefore believes a rollover is entirely appropriate.

In Section 3.8 of the Consultation Paper the UR has provided details of the rollover agreement. Power NI believes the work done with the UR to date represents the basis on an equitable agreement.

***Q5. Do respondents agree with the UR's minded to position to reduce the scope of the Power NI price control and remove price regulation on the 0-50MWh market?***

**A5.** Power NI agrees with the UR's minded to position to remove price regulation in the non-domestic sector.

As laid out in Power NI's response to the Approach Consultation, the retention of price regulation in the non-domestic sector is inconsistent with the European context and the requirement for regulators to show demonstrable harm. Power NI argued (and continues to believe) that the current non-domestic price regulation is ineffective as the majority of customers are not subject to price regulation; is distortive as a regulated tariff based on an unrepresentative set of cost drivers still acts as a market reference price leading to poor customer outcomes; and is disproportionate as the price control requirements impose additional licence conditions in relation to business separation, independence and the use of assets. These conditions prevent Power NI from realising efficiencies and economies of scale which would benefit consumers.

The analysis presented by the UR clearly shows that there is active competition between a number of suppliers in the non-domestic market and Power NI's market share is eroding.

It is important to highlight however that the market share figure does not reflect the number of customers subject to price regulation. The inclusion of Energia figures as well as the impact of previous regulatory decisions in respect of Groups has resulted in a lower number being subject to price regulation than the UR has presented. This further strengthens the case for the removal of price regulation and supports Power NI's arguments in relation to the disproportionate, ineffective and distortive effects of price regulation in the non-domestic market.

***Q6. Do respondents agree that there is insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market?***

**A.6.** Power NI agrees with the UR position that there is insufficient evidence to justify treating the 0-10MWh sub-sector differently. In addition, Power NI would question if this is in reality even a sub sector. It must be recognised that the sites consuming 0-10MWh are small consumption sites not necessarily small customers. Caught within the UR's figures will be telephone masts, cash machines, pumping stations, commercial landlord's supplies, commercial new builds and vacant properties. The figures are further impacted by the extensive distribution of renewable generation, through which customers can self supply a large proportion of their demand.

Power NI does acknowledge that within this reporting category there will be a number of micro-businesses. While still a commercial operation, it has been acknowledged both in the Cornwall Report for the UR on the Effectiveness of Competition and in the recent CMA investigation in GB that engagement with this type of customer is low. A number of reasons including the proportionality of electricity costs to overall business costs as well as the transparency of information have been cited. Power NI believes work can be done in this area, this however is a market wide issue and in no way linked to price regulation.

Power NI do believe a number of actions could be taken through the UR's review of the effectiveness of competition and the Answer to Question 9 deals with Power NI's thoughts in this area in more detail.

***Q7. Do respondents think any other actions need to be taken in advance of the price control being removed on the 0-50MWh market?***

A7. Power NI believes the UR's stated goal of creating a 'level playing field' is long overdue and the burden placed upon the business through price regulation and additional licence conditions should not be under estimated. Power NI has been effectively excluded from competition in the commercial market to the detriment of customers.

The UR has raised a number of potential actions in Section 4.58 of the consultation paper. A requirement to write to all affected customers would be normal operational practice and Power NI is prepared to commit to facilitating a regulatory review of such a correspondence. It is important to recognise that the customers the UR is referring to are supplied by Power NI and will continue to be supplied by Power NI. Any future tariff developments or product changes would be communicated to customers irrespective of price regulation scope changes. Is the UR considering mandating all other suppliers to write to customers who have switched away from Power NI due to the restrictions price regulation placed on the business, to inform them Power NI is now allowed to compete for their business?

Power NI would expect that the UR would host a number of information sessions with representative bodies as a matter of course. Power NI would also be willing to host a similar event.

In relation to implications for the 'K' Factor, again Power NI would commit to working with the UR to process the change in the normal regulatory manner.



***Q8. Do respondents agree with the potential measure of sharing customer data in the 0-50MWh market with all suppliers? Please provide detail if you believe there are potential issues.***

**A8.** Power NI notes that sharing of data was a recommendation coming from the CMA inquiry in GB. It remains to be seen if such an arrangement can be implemented in compliance with Data Protection laws.

Power NI is not supportive of a data sharing mechanism. Over and above the data protection compliance issue, there will undoubtedly be significant cost involved in implementing either a temporary or enduring solution.

It would be inequitable for only Power NI data to be shared, surely all customers who have not switched in 'x' years would be required to be included. In such a circumstance, it would only be appropriate for either NIE Networks or the UR to administer such a system. The CMA has recommended Ofgem are the organisation which would implement the system in GB. This leads to further implications in terms of customer definition as NIE Networks only reports premise information, not customer information and questions remain over engagement, does a customer who has switched tariff count as disengaged? There are also timing considerations.

Part of the UR's concern seems to stem from an assumption that Power NI has access to and can market to all former customers no matter when they switched away. Updates and changes to Data Protection laws mandate that companies can only market to customers who have given explicit consent. Prior to these changes Power NI did not seek such consent at registration as we were a monopoly business and following the introduction of competition it was not such an explicit compliance issue. Power NI therefore cannot explicitly market to the full range of customers the UR envisages in the consultation paper.

Power NI believes that the effectiveness of competition would be enhanced by looking at transparency measures across the market rather than explicitly involving a regulatory body in marketing activities.

***Q9. What other measures do respondents believe could be put in place? Please provide detail and rationale for these measures.***

**A9.** Power NI believes that the removal of price regulation is a separate question to that of market enhancements. The UR has undertaken and continues to work on the effectiveness of competition and Power NI is committed to engage positively with that process.

Through this process however, Power NI would like to make a number of recommendations which the UR may wish to consider in the 'effectiveness of competition' workstream. Power NI believes there is now an opportunity to work towards the implementation of a prepayment solution for business customers. Power NI believes such a solution as witnessed by the domestic market, can assist in business budgeting, manage cash flow and would alleviate any concerns business representatives have over the use of deposits.

Power NI further believes that the UR should begin work on a code of practice or other regulation of brokers; a ban on rollover contracts which include a price premium and restrictions on the use of notice periods. It is important to recognise that these issues, to some extent, exist in the market currently and are not linked to price regulation. Suppliers and the UR should however continually work towards enhancing the overall market to ensure that issues experienced in other markets are not replicated in the Northern Ireland context.

***Q10. What are respondents' views on the issues that may arise should Power NI's combined market share in the 0-50MWh sector increase again to substantially above the 50% level? Do respondents consider that regulatory intervention to fully protect customers would then be required?***

A10. Power NI believes Question 10 is flawed. The appropriate question should relate to any suppliers market share being substantially above the 50% level. The removal of price regulation should signal the equal treatment of all suppliers by the UR. In a competitive market it is possible that any participant could develop significant market power. Indeed, in the Northern Ireland market there are a number of suppliers with parent companies far larger than Power NI.

The UR had, through its review of the effectiveness of competition issued a consultation paper outlining a number of post price control options. While this focussed on the domestic sector there would be merit in the UR using that framework as a method of considering the various options available to it should any one supplier develop significant market power in the non domestic market.

## **4. Conclusion**

Power NI welcomes the UR's acknowledgment of the fundamental change presented by the ISEM. As with previous significant market changes Power NI believes a price control roll over is the only appropriate manner in which a price control can be processed.

In relation to the change in scope, Power NI believes the UR's proposal is long overdue and entirely appropriate. Power NI remains disappointed that the UR is not minded to make the change until 01 April 2017 and believes it should have been expedited.

To enable the change Power NI has committed to write to customers, engage with representative bodies and the UR.

Entirely separate to the question of price regulation scope are further market enhancements and consumer protections measures. Power NI has made a number of recommendations above and is committed to continue to work with the UR as the market evolves over time.

## Annex II

energy.info

Electricity and Gas Retail Supply  
Price Controls 2017 (SPC17)

Consultation response from enirgy.info

# Electricity and Gas Retail Supply Price Controls 2017 (SPC17)

## Consultation response from [enirgy.info](http://enirgy.info)

### Preface

This short paper does not purport to be a comprehensive review of NIAUR's proposals for the Power NI Supply Price Control 2017 (SPC 17). It consists rather of some observations which are material to the consultation being undertaken.

The focus of the paper is on the plan to further deregulate the supply of electricity to businesses by the removal of a price control which applies in the 0-50MWh market.

### Summary

Based on EU regulatory norms, there is a powerful, even compelling case for the removal of the last remaining price control in the business electricity market.

This may prove a necessary course of action but it poses significant risks for those firms it is intended to help. Evidence gathered from the fully price deregulated market in Great Britain by the Competition and Markets Authority (CMA) shows that microbusinesses across the water have been paying too much for their electricity and indeed their gas too. Essentially very small companies have not the tools to exploit the advantages of a fully competitive market.

The current regulated Power NI tariff may or may not offer the lowest prices conceivable but it does at least promise fair and reasonable rates. The abolition of the price control not only removes that guarantee but may trigger a move to hide from public view the only set of prices microbusinesses can quickly and easily inspect and which serves as a benchmark for those wanting to switch supplier.

If the market is to be fully price deregulated, in the view of [enirgy.info](http://enirgy.info), NIAUR should commit itself to maintain and indeed enhance existing price transparency. That would translate into a requirement being placed on all suppliers to publish their prices for the 0-50 MWh market. Such a development would be in keeping with the approach adopted by the Competition and Markets Authority (CMA) following its investigation of the GB energy market.

# Report

The case for stripping the last price control from the business supply market, interestingly, does not appear to be driven by those entities which might in theory benefit from it namely the small businesses themselves. No organisation representing small firms appears to have offered a response to the UR Approach Consultation published last October which raised the possibility of deregulation.

Instead the argument for change has been largely put by Power NI, the body that has the price control imposed on it. Power NI in its response to NIAUR on December 8, 2015 bases its case on accepted regulatory practice. It quotes the EU Commission and the Agency for the Cooperation of Energy Regulators both of which oppose continuing price regulation where customers enjoy adequate protection. Based on EU regulatory norms, there is thus a substantial case for the removal of the only price control remaining in the business electricity market.

This case is, on the face of it, reinforced by the evidence adduced by Power NI and indeed by NIAUR too, of how customer switching is steadily eroding the once dominant position enjoyed by Power NI and its sister company Energia in the 0-50MWh market. The latest figures showing how the combined customer numbers for both companies are set to dip below 50%, the point at which NIAUR said a review of the price control was warranted. The supposition is that with less than half the market and rival suppliers chasing after Power NI/Energia's customer base, the market is robustly competitive enough to loosen the regulatory controls.

While the arguments for reform are clear enough, it is less evident how the resulting change will impact on microbusinesses. Some insights may be gleaned from the market across the water. Since NIAUR raised the issue of deregulation last October, the Competition and Markets Authority (CMA) has published several papers relating to its investigation of the energy market in Great Britain including its Final Report.\* These documents have produced a wealth of evidence which allow us to better evaluate the proposal under consideration. Most importantly the CMA has concluded that SME's including microbusinesses, have not been well served by the current deregulated market across the water.

In Its Final Report (FR) the CMA concluded that SME's including microbusinesses were paying too much for their gas and electricity. "We estimate that the profits in excess of the cost of capital earned by the Six Large Energy Firms from the supply of gas and electricity to SME customers amounted to approximately £220 million per year from 2007 to 2014, of which we estimate that approximately £180 million per year related to microbusiness customers." *FR Page 66* . The research also suggested that prices might have been on average 5% higher than would have been the case in a better-functioning market.

\*<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>)

Significantly microbusinesses appear to have been getting a worse deal than both domestic and industrial and commercial customers judging by the higher rate of profit the Six Large Energy Firms were making from them. "EBIT ( earnings before interest and tax ) margins were generally higher in the SME markets than other markets (8% rather than 4% in domestic markets and 2% in I&C markets) and beyond what appears to be justified by risk." *FR Page 65*. Margins on sales of gas to SMEs (10%) were higher than those on sales of electricity (7%).

Microbusinesses are defined by a number of different criteria: power usage up to 100 MWh a year (a ceiling which is twice as high as that applying to the price controlled business market here) or a turnover of up to €2 million a year. In other words many of them are likely to be substantially bigger than those served by the price controlled market here but despite their greater size, they still were not able to protect their own interests adequately.

What these findings demonstrate is that in spite of being freed from the shackles of price controls many microbusinesses have not been able to get a good deal out of the unfettered competition that prevails in the market in Great Britain and which is now set to be introduced here.

It is important to understand why microbusinesses across the water are failing to derive full advantage from the deregulated market. The CMA has produced some findings from research in Great Britain which offer some clues to the behaviour of microbusinesses. Much of this is contained in the CMA's Provisional Findings paper (PF). \*

Unlike domestic customers, micro businesses, at least in Great Britain, cannot avail of cooling off periods should they change their minds shortly after agreeing a new binding contract over the phone. This puts them at greater risk of being locked into an inappropriate tariff. *PF Page 374*

A substantial minority of microbusinesses do not actively select their tariffs. *PF Page 379* Their lack of decision making means they default to tariffs where prices are generally significantly higher.

However more encouragingly the levels of switching are greater among microbusinesses than among households. A survey by Ofgem in 2014 showed that 20% of firms with between 1 and 4 employees switched supplier in the previous year. *PF Page 380*. The same year another survey showed that a only a third of SMEs were supplied with electricity by the original incumbent. *PF Page 382*

\*[https://assets.publishing.service.gov.uk/media/559fc933ed915d1592000050/EMI\\_provisional\\_findings\\_report.pdf](https://assets.publishing.service.gov.uk/media/559fc933ed915d1592000050/EMI_provisional_findings_report.pdf)

Across the water third party intermediaries or brokers play a role in helping micro businesses pick the right tariff for them. The problem is that many small firms distrust brokers. The 2014 Ofgem survey found that only 20% of businesses with one to nine employees had a positive view of energy brokers. *PF Page 385*. Because of concern over the behaviour of some brokers and issues around commission, Ofgem have been prompted to develop a draft code of practice for brokers. The same may be needed here to reassure micro businesses.

The CMA noted that microbusinesses couldn't readily compare prices that were available to them in the market. "In relation to transparency, there is a general lack of price transparency concerning the tariffs that are available to microbusinesses, which results from many of them not being published, and a substantial proportion being individually negotiated between customer and supplier. In particular, the limited availability and low usage of PCWs (price comparison websites) makes it more difficult for microbusinesses to get a view of prices across each market." *FR Page 65*

The CMA has proposed a remedy to deal with this problem of price transparency. "The price transparency remedy will require suppliers to disclose the prices of all their available acquisition and retention contracts to a large proportion of their microbusiness customers. As an additional measure, it will also require suppliers to disclose their out-of-contract (OOC) and deemed contract prices on their websites. The measure in relation to acquisition and retention contracts will significantly increase microbusiness customers' abilities to access and assess price information. It will also facilitate the development of PCWs catering for microbusiness customers, which will further reduce the high search costs faced by microbusiness customers. As a result, the price transparency remedy will address barriers to accessing and assessing information experienced by microbusinesses." *FR Page 68*

The CMA said it had been told that the complexity of the SME market compared with the domestic market would make it difficult to create a PCW for non domestic customers but it was not persuaded that these obstacles were insurmountable. *PF Page 386/7*

## Conclusions

NIAUR may have little choice but to fully price deregulate the electricity supply market for businesses given the fact that the current position appears to be out of step with accepted regulatory norms.

However modifying the oversight of the market, in a way which makes it more like the regime across the water, may disadvantage small firms here. They could find themselves like their counterparts in Great Britain paying too much for electricity largely because they do not have the tools to exploit the advantages of a fully deregulated environment.

At the moment these firms can use the regulated tariff, published by Power NI, as a benchmark to compare what a rival supplier or a broker might be offering. If they make even the most rudimentary attempts to compare and switch, they can never find themselves on the worst tariff.

In a fully deregulated market, there will be no compulsion on Power NI to publish its tariff. In fact it is distinctly possible it will follow the practice of its sister company Energia which does not publish its rates.

In that scenario the smallest firms may find themselves at sea, dependent on sales people or brokers to guide them towards best value. It would take an enormous leap of faith to believe that these microbusinesses will always end up with an optimum tariff.

The solution, in the view of enirgy.info, is to require suppliers which intend to sell in the 0-50 MWh market to publish their prices in so far as that is reasonable so that they can be easily compared. Such an instruction by NIAUR would be in keeping with what is likely to take place in Great Britain.



## Annex III

### CCNI

#### Response to the Power NI Supply Price Control 2017 (SPC 17)



**Response to the Power NI Supply Price Control 2017 (SPC 17)**

**August 2016**

## **1 Introduction**

- 1.1 The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (NI) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).
- 1.2 The Consumer Council welcomes the opportunity to respond to the Utility Regulator (UR) Power NI Price Control 2017 (SPC17). We acknowledge the complexity of the price control process and we welcome the detailed information and analysis the UR has provided.

## **2 Executive Summary**

- 2.1 SPC17 is an opportunity for UR to continue to safeguard the interests of consumers<sup>1</sup>.
- 2.2 SPC17 can benefit consumers by:
- Ensuring that Power NI delivers value for money for consumers;
  - Balancing equitably the financial risks in the business between consumers and the company;
  - Putting the interest of consumers at the heart of any decision regarding the removal of the Power NI price control for 0-50MWh non domestic customers; and
  - Providing a platform to consider and introduce measures aimed at small businesses that help minimise and avoid some of the risks inherent to unregulated retail markets.

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<sup>1</sup> Defined as domestic and non-domestic.

- 2.3 We acknowledge and accept UR's assertion that the I-SEM may have an impact on Power NI's operating costs in a way that is currently uncertain. As such we support the short term (1-2 years) rollover of the current price control. UR states in the SPC17 consultation paper that the "new I-SEM market will 'go-live' in the latter stages of 2017". We support UR's decision to factor this in the SPC17 process.
- 2.4 The Consumer Council asks UR to re-examine the margin it will allow Power NI during the SPC17 period in light of the Competition and Markets Authority (CMA) assessment that large energy suppliers should earn (on average) a margin of 1.25% in order to make a 'normal' level of profit<sup>2</sup>.
- 2.5 We note the proposal to remove the price control for 0-50MWh Industrial & Commercial (I&C) Power NI customers. We recommend that the decision to deregulate is deferred until the end of the rollover period. During the SPC17 period measures should be put in place to prepare small business for the possibility of the removal of price control protection.
- 2.6 The Consumer Council wishes to express its commitment to continue working with UR, the electricity retail industry and wider stakeholders to help develop measures that enable consumers to benefit from competition. We suggest the UR sets up a non domestic 0-50MWh energy retail working group to examine such measures.

### **3 Consumer Context**

- 3.1 Despite the drop in domestic energy prices since 2015, fuel poverty in NI remains at the highest level in the UK<sup>3</sup>. The price of home energy has been consistently a top concern for consumers in NI according to the Consumer Council NI Consumer Outlook Tracking research. In the most recent survey in

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<sup>2</sup> CMA Energy Market Report June 2016.

<sup>3</sup> Annual Fuel Poverty Statistics Report, DECC, 2015 show that 42% of households in NI are experiencing fuel poverty.

May-June 2016<sup>4</sup>, 29% of NI households were concerned about the cost of their energy supply.

3.2 NI discretionary household income remains the lowest in the UK - £103 per week compared to a UK average of £201 per week<sup>5</sup>. The overall employment rate in NI is five percentage points lower than in Great Britain (GB). For some groups, the gap is much wider – 15 percentage points lower for disabled people in NI compared with GB, 12 each for lone parents and 16-24 year olds<sup>6</sup>.

3.3 It is worth noting the importance and contribution that small businesses make to the NI economy and society. For example, 98% of all NI companies employ fewer than 20 people, providing 75% of all private sector jobs<sup>7</sup>.

3.4 Evidence suggests small businesses in NI face some of the same problems as domestic energy customers but do not enjoy the same level of protection. For example:

- NI small businesses “often find it difficult to engage in the energy market”<sup>8</sup>;
- Energy costs have been identified as a major barrier impacting on business success (35%)<sup>9</sup>; and
- Five year survival rates for new small businesses dropped sharply between 2010 and 2016<sup>10</sup>.

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<sup>4</sup> MillwardBrown Ulster: Consumer Council NI Consumer Outlook Tracking. Fieldwork conducted in May-June 2016, report due in September 2016.

<sup>5</sup> Asda Income Tracker Report June 2016.

<sup>6</sup> Joseph Rowntree Foundation, Monitoring Poverty and Social Exclusion in Northern Ireland 2016.

<sup>7</sup> Source: FSB Northern Ireland response to Draft Programme for Government Framework 2016-21.

<sup>8</sup> Consumer Council research Energy information needs of NI small businesses in March 2016.

<sup>9</sup> Source: The Contribution of Small Businesses to Northern Ireland, FSB and UU SME Centre, 2015.

<sup>10</sup> Ibid.

## **4 What electricity supply price control regulation can do for NI consumers<sup>11</sup>**

4.1 Currently price regulation is providing NI domestic and small business consumers with the following benefits:

- For domestic consumers lower prices than GB and the Republic of Ireland (RoI)<sup>12</sup>;
- For small business consumers broadly comparable prices to GB and RoI<sup>13</sup>;
- Transparency that provides confidence the price is a fair one;
- Significant savings for domestic consumers when switching electricity supplier<sup>14</sup>;
- Price protection for disengaged (non-switching) and vulnerable consumers; and
- A guarantee of supply for 0-50MWh non domestic customers.

## **5 Consultation questions**

**Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?**

5.1 Section 75 groups will continue to benefit from the price protection that the Power NI regulated tariffs will provide during the SPC17 period.

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<sup>11</sup> For more information on Consumer Council views on price control regulation refer to our response to UR's consultations of the Review of the Effectiveness of Competition in the Northern Ireland Energy Retail Market.

[http://www.consumer council.org.uk/filestore/documents/Consumer\\_Council\\_response\\_to\\_UR\\_consultation\\_on\\_the\\_review\\_of\\_the\\_effectiveness\\_of\\_competition\\_FINAL.pdf](http://www.consumer council.org.uk/filestore/documents/Consumer_Council_response_to_UR_consultation_on_the_review_of_the_effectiveness_of_competition_FINAL.pdf)

<sup>12</sup> See Table 1 in page 9. Source: NIAUR Quarterly Transparency Report May 2016 using data from semester 2 2015

<sup>13</sup> Ibid.

<sup>14</sup> Data only available for the domestic market.

**Q2. Do respondents consider that the proposals for the Power NI price control need to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.**

5.2. No comment.

**Q3. Do respondents agree with the proposal that the structure and form of the control remain the same?**

5.3. The Consumer Council supports in principle the structure and form of SPC17.

5.4. Under the proposed rollover of the price control Power NI's profit margin will remain at 2.2%. On this point we note the assessment the CMA made in its recent GB energy market investigation - final report. The CMA estimates that a large stand-alone retail energy supplier should earn (on average) a margin of 1.25% in order to make a 'normal' level of profit<sup>15</sup>. The Consumer Council asks UR to consider whether Power NI's margin for the SPC17 period should be re-examined in line with the CMA assessment.

5.5. Regarding Power NI's uncontrollable "passthrough" costs, we recognise UR's support for our view that Power NI must be influenced and incentivised to reduce those. We welcome UR's assurances that any such costs will not be approved unless they are "appropriate, efficiently incurred, required and actually incurred."

**Q4. Do respondents agree with the UR minded to proposals in relation to the extension of the Power NI price control?**

5.6. The proposal appears to strike a fair balance between providing certainty for Power NI customers and investors whilst allowing for adjustments to be made in a developing competitive market.

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<sup>15</sup> CMA Energy Market Report June 2016.

**Q5. Do respondents agree with the UR's minded to position to reduce the scope of the Power NI price control and remove price regulation on the 0-50MWh market?**

**Consumer Interest**

5.7. The Consumer Council believes that promoting the interests of consumers must be at the heart of the Price Control. Protecting the interests of electricity consumers is the primary objective of the UR "wherever appropriate by promoting effective competition". Any decisions must take account of the impact that it will, or is likely to have on consumers. In our view the analysis presented by the UR to support its minded to position focuses primarily on the issue of Power NI's market dominance, rather than the likely impact on consumers and effective competition.

5.8. We have considered this issue on the basis of the level of consumer benefit or detriment that is likely to follow the removal of the price control. Crucial to this is the ability of the affected group to take advantage of the benefits (if any) of deregulation, and how seriously they may be impacted by the detriment (if any).

5.9. The Consumer Council believes that competition, if designed correctly, can be a key mechanism in delivering lower prices to small businesses. However, competition has the potential, as seen in the electricity retail market in GB, to leave customers who are deemed "high risk" or not financially 'savvy', behind.

5.10. The Consumer Council believes that competition in NI must improve the customer experience for all small businesses, and it will only do this by:

- Providing lower prices;
- Providing better customer service;



- Being available to all types of small businesses; and
- Providing increased choice.

## Price

5.11. The Consumer Council recognises it is difficult to predict whether the removal of the price control will have a downward or upward impact on electricity prices. We note the lack of evidence or analysis on this point in the SPC17 consultation paper.

5.12. We have carried out a comparison of NI electricity prices with the UK, ROI and EU15 median across a number of market segments. This is shown in Table 1 below.

**Table 1: Electricity Prices comparison NI, UK, ROI and EU (p/kWh)<sup>16</sup>**

	NI unit rate (p/kWh)	NI differential with UK (%)	NI differential with ROI (%)	NI differential with EU15 median (%)
Domestic	15.17	-5%	-19%	-5%
I & C very small <20MWh	14.2	8%	-4%	10%
I & Small/Medium 500-1,999MWh	11.1	2%	12%	26%
I & C medium 2,000-19,999MWh	9.4	-6%	15%	31%
I & C large & very large >20,000MWh	7.9	-23%	16%	32%

Source: NIAUR Quarterly Transparency Report May 2016 using data from semester 2 2015<sup>17</sup>.

5.13. The figures suggest that prices in the NI electricity regulated markets<sup>18</sup> compare favourably to the non regulated segments when compared with ROI and the EU15 median.

<sup>16</sup> We have removed the data for the I & C small 20-499MWh as it included regulated and non regulated customers.

<sup>17</sup> Power NI reduced its domestic tariffs by 10.3% on 1 April 2016. However, this table presents the most up to date comparable prices.

<sup>18</sup> Domestic, <20MWh and elements of the 20-499MWh row.

5.14. However, overall the evidence is inconclusive as the comparison with the UK market does not follow the same pattern with the exception of the NI domestic sector.

5.15. Furthermore, some of the price differential across market sectors can be attributed to transmission and distribution costs that lie outside the scope of the retail price control.

5.16. Therefore, it is not clear whether overall the regulated or deregulated market delivers lower prices for consumers.

5.17. The recent CMA investigation into the GB energy retail market<sup>19</sup> provides a stark reminder of the potential pitfalls of deregulation of micro businesses on the issue of pricing. The issues identified include the following:

- Lack of price transparency. This phenomenon is developing in the NI 0-50MWh NI market already where Power NI is the only supplier to publish its regulated tariffs;
- Significant and unjustified disparity retention tariffs<sup>20</sup> where the customer actively negotiates with the supplier and “standard” tariffs;
- Margins from retail sales to SMEs (including micro businesses) over the period 2011 to mid-2015, were on average 7% higher than those on sales to domestic customers or I&C customers<sup>21</sup>.

5.18. The issue of disparity between rollover and deemed tariffs, or ad hoc unit rates for “high risk” small business, highlights the fact that only active and

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<sup>19</sup> <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

<sup>20</sup> Rollover tariffs were 29 to 36% higher than retention tariffs for electricity (depending on the size of customer), and 25 to 28% higher for gas. Deemed tariffs were 66 to 82% higher than retention tariffs for electricity, and 70 to 116% higher for gas. Source: CMA Energy Market Investigation: Summary of Final Report June 2016.

<sup>21</sup> Page 5, point 23. CMA- Final energy market report – June 2016

“savvy” small businesses and those with adequate credit ratings can benefit from unregulated markets. The majority of consumers are likely to lose out. This is a major concern for the NI 0-50MWh I&C market given the evidence of lack of engagement<sup>22</sup> and the financial fragility of many of NI’s small businesses.

#### Supplier choice

5.19. Currently seven electricity companies are supplying in the NI 0-50MWh non domestic market<sup>23</sup>. This evidence supports UR’s view that “competition has developed well in the 0-50MWh market whilst the price control has existed”<sup>24</sup>.

**Table 2: 0-50 MWh I&C Market Shares by Consumption January 2014 and February 2016**

	Airtricity	Electric Ireland	Go Power	Power NI & Energia
January 2014	31%	10%	1%	58%
February 2016	27%	5%	14%	53%

Source: UR SPC17 consultation document using data provided by NIE Networks.

5.20. Despite the progress made in terms of the number of suppliers, there is a question mark over the degree of resilience of competition in the non-domestic 0-50MWh market. Using the data in table 2, we can see :

- SSE Airtricity is the only unregulated supplier with a market share above 20%;

<sup>22</sup> Source: UR SPC17 consultation paper and CCNI research into the energy needs of NI small businesses based on evidence provided by the Federation of Small Businesses.

<sup>23</sup> Budget Energy, Electric Ireland, energia, Go Power, Power NI, SSE Airtricity and Vayu.

<sup>24</sup> Point 4.27 of UR SPC17 consultation.

- Power NI & Energia appear to have remained resilient to market loss during the period;
- Only one supplier, Go Power, gained market share during the period January 2014 to March 2016;
- Go Power's growth has come at the expense of the other unregulated suppliers; and
- Two of the "active suppliers" listed in page 22 of the UR consultation paper only account for 1% of the market, or 345 customers<sup>25</sup>.

5.21. The Consumer Council is concerned that the removal of the price control in 2017 may cause some suppliers to become inactive in the 0-50MWh market or push them out completely. This is particularly the case if Power NI was to adopt an aggressive sales and marketing strategy. This would have a negative impact on competition and reduce choice for small businesses.

#### Quality of service

5.22. Electricity is a homogeneous product, the quality of the product does not vary between suppliers and the quality of service only arises when there is a problem such as an unusually high bill or supply interruption<sup>26</sup>. This suggests that quality of service may be a secondary issue for small business.

5.23. UR stated in its consultation document that "competition has developed well in the 0-50MWh market whilst the price control has existed." Existing suppliers are competing already on the quality of their service as well as price. Therefore it is unlikely that small business may benefit from greater quality of service if the Power NI price control is removed.

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<sup>25</sup> Budget and Vayu.

<sup>26</sup> Source: anecdotal evidence provided to the Consumer Council during the research about the energy information needs of NI small businesses, March 2016.

- 5.24. We are concerned small businesses with poor credit rating may be denied an electricity supply if the Power NI price control is removed<sup>27</sup>. We ask UR to consider this issue and introduce any measures it deems appropriate, if any, to ensure all small business in NI have access to an electricity supply if the 0-50 MWh I&C market is deregulated.

### **Nature of NI small business consumers**

- 5.25. The CMA final energy market report found that the unregulated competitive market was not working for small businesses in GB. It states:

“We have also found that a substantial number of micro businesses appear to be achieving poor outcomes in their energy supply. EBIT margins were generally higher in the SME markets than other markets (8% rather than 4% in domestic markets and 2% in I&C markets) and beyond what appears to be justified by risk. We observed that average revenues are substantially higher on the default tariff types that less engaged micro business customers end up on, compared with acquisition or retention tariffs, which require an active choice by customers. These differences in revenues between tariffs go beyond what is justified by costs.”

- 5.26. Consumer Council engagement with small business representatives and UR suggests NI small business share the characteristics of small business in GB and are not yet prepared for deregulation. For example the NI 0-50 MWh I&C market has exhibited the following:

- Limited retail market engagement amongst small businesses in NI and they “often find it difficult to engage in the energy market”<sup>28</sup>; and
- Low (and declining) levels of switching<sup>29</sup>.

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<sup>27</sup> This issue was discussed at the UR SPC17 stakeholder event on 28 June 2016.

<sup>28</sup> Source: UR SPC17 consultation paper and CCNI research into the energy needs of NI small businesses based on evidence provided by the Federation of Small Businesses.

5.27. Table 2 on page 9 supports this point. Despite competition developing well in NI, Power NI retains over 50% of the market share in the 0-50MWh I&C market. Furthermore, between 2014 and 2016 only one supplier increased its market share. It would therefore appear that it is primarily a limited number of ‘savvy’ small business consumers who are switching between suppliers on a regular basis.

5.28. We believe that prior to deregulating the small business market, measures should be introduced to increase engagement among small businesses in NI. This could be part of the preparation for the removal of the price control, whether in April 2017 or at the end of the SPC17 period. We have elaborated on the type of measures required in our response to questions 7 and 9 of this consultation

#### **Power NI market dominance**

5.29. The Consumer Council notes the legal argument for removing the Power NI price control on the 0-50MWh non-domestic market. In particular the interpretation of “legal presumption of dominance” and how this would end with a market share below 50% as per point 4.5 of the consultation paper. However, we repeat, in our view the key determinant in the decision whether to deregulate should be whether it is in the interests of NI consumers.

5.30. We ask UR to consider three further potential market distorting issues that might develop if the price control is removed:

- Power NI will be able to compete on price on the non-domestic 0-50MWh market. This is likely to see the company gain customers and

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<sup>29</sup> Review of the Effectiveness of Competition in the Northern Ireland Energy Retail Market (2014) for UR, prepared by Cornwall Energy.

possibly retain/regain its position of dominance, particularly if it adopts an aggressive sales and marketing strategy;

- Whether a decision to remove the price control from 31 March 2017 may act as a barrier to entry into this segment of the market for new suppliers; and
- Existing active suppliers who have not managed to achieve a satisfactory market share may leave the market.

### **Conclusion on deregulating the 0-50 Mw sector**

5.31. From a consumer interest perspective, the Consumer Council believes it would be prudent to defer the removal of the price control at least until the end of the SPC17 period.

5.32. The deferral would provide adequate time for UR, the electricity retail industry and stakeholders to implement the consumer protection and market improvement measures necessary to ensure local small businesses can reap the benefits competition can bring, while enjoying adequate protection.

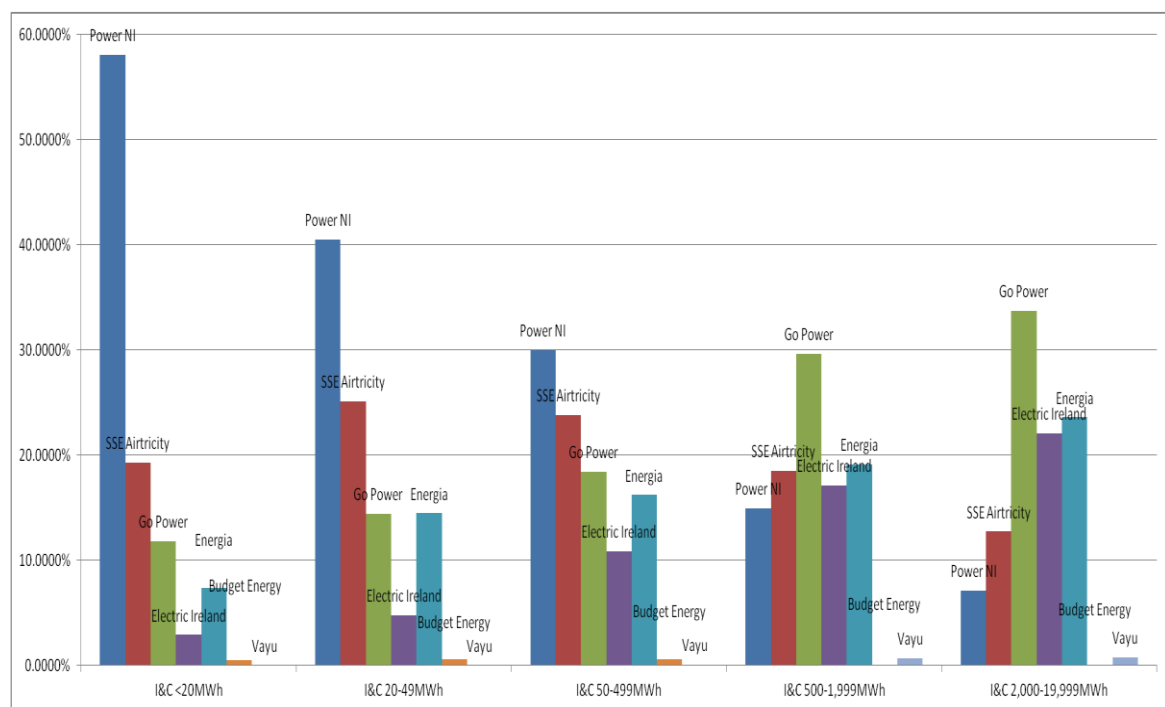
### **Q6. Do respondents agree that there is insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market?**

5.33. We welcome the figures UR has provided about market shares in the 0-10MWh sub sector. These indicate that the combined Power NI & Energia market share remains around 60%. This can be deemed by all accounts to be a “dominant position”.

5.34. Small business representatives who attended the SPC17 stakeholder event on 28 June 2016 stated that typically businesses in this sub sector do not have

the time nor resources to engage with energy suppliers<sup>30</sup>. This is a concern as the removal of the price control would require consumers to engage actively in the energy market to enjoy its benefits.

**Chart 1: I & C electricity market shares by sector (using number of connections)**



Source: Table 8 in UR Quarterly Transparency Report May 2016.

5.35. Chart 1 indicates that while competition has developed in the regulated I&C markets, it has not reached a similar level of maturity that, for example, the I&C 500-1,999MWh segment. This shows a distinctive lack of dominant supplier and that the market share is largely equitable among five suppliers.

5.36. From a supplier perspective Chart 1 poses a question mark on whether sufficient suppliers are pursuing actively new customers in the smaller market segments. For example, the difference between the columns <20MWh and 20-49MWh markets and the rest is stark. In our opinion this

<sup>30</sup> Typically owners of small businesses of four or fewer employees spend eight hours a week dealing with business related paperwork, Source Federation of Small Businesses.



could signal differences in the marketing and sales strategies of local suppliers for each segment of the market.

5.37. We are of the opinion that the risk that suppliers become inactive is higher in the 0-10MWh sub-segment of the market based on the evidence we have presented<sup>31</sup>.

5.38. Our research in March 2016 about the energy information needs of small businesses in NI showed that their first point of contact for energy information is electricity suppliers<sup>32</sup>.

5.39. This evidence suggests that unless suppliers here commit to engage actively in the smaller segments of the I&C market and pursue small businesses, switching rates are unlikely to rise.

5.40. Based on the above evidence, the Consumer Council respectfully disagrees with UR's assessment that there's "insufficient evidence for the 0-10MWh sub-sector being treated differently to the rest of the 50MWh market". The Consumer Council asks UR to consider our evidence when deciding on the removal of the Power NI price control.

**Q7. Do respondents think any other actions need to be taken in advance of the price control being removed on the 0-50MWh market?**

**And**

**Q9. What other measures do respondents believe could be put in place? Please provide detail and rationale for these measures.**

5.41. As we stated in point 3.4 of our response, local small businesses have repeatedly expressed concern to the Consumer Council that they face many

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<sup>31</sup> See point 5.22 of our response for more analysis on this point.

<sup>32</sup> The research indicated also that information about switching and tariffs was considered the most useful.

of the same problems as domestic energy customers but do not enjoy the same level of protection.

5.42. The Consumer Council welcomes the initiative and commitment the UR has shown, to consider and implement a range of measures aimed at helping small business benefit from competition, and protecting them within a deregulated retail market. We would broadly support the measures it has suggested.

5.43. The CMA report provides a blueprint of the type of measures and interventions that UR may consider implementing in NI. The Consumer Council reiterates its commitment to engage and work with UR, the electricity retail industry and stakeholders outside the SPC17 process to ensure competition works for NI small businesses.

5.44. We suggest the UR sets up a non domestic 0-50MWh energy retail working group. The group could:

- Produce a short term strategy for delivering a programme of measures that stimulate engagement with the market and protect small business;
- Review the CMA recommendations on engaging small business in the energy market from an NI perspective;
- Discuss issues around the proposed measure to share customer data in the 0-50MWh market with all suppliers; and
- Provide a forum where small businesses and the local electricity retail industry can discuss issues, activities and areas of common interest.

5.45. With regards to additional measures that could be implemented in NI, the Consumer Council suggests the following:

- A Switch and Save information campaign - Over the last two years the Consumer Council has successfully run such a campaign for domestic consumers;
- Developing a price comparison tool for small businesses - The Consumer Council has developed a tool for domestic consumers;
- Raising awareness among small businesses of the Consumer Council's statutory complaints role; and
- Using the existing communication network that membership organisations provide.

**Q8. Do respondents agree with the potential measure of sharing customer data in the 0-50MWh market with all suppliers? Please provide detail if you believe there are potential issues.**

5.46. The Consumer Council supports in principle UR's proposal to allow electricity suppliers to share customer data.

5.47. However, we would like to echo concerns from certain business representatives raised at the SPC17 stakeholder meeting on 28 June 2016 about their members being subjected already to "marketing overload"<sup>33</sup>. In our view this issue merits further discussion outside the SPC17 process to ensure this measure results in increased retail market engagement by local small businesses.

5.48. We suggest also UR considers sensitivities and legalities around data protection when decision on

**Q10. What are respondents' views on the issues that may arise should Power NI's combined market share in the 0-50MWh sector increase again to substantially above the 50% level? Do respondents consider that regulatory intervention to fully protect customers would then be required?**

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<sup>33</sup> Not specifically from electricity suppliers.

- 5.49. The Consumer Council believes there are a number of potential negative outcomes resulting from the removal of the Power NI non domestic price control that are outside UR's control. These are higher prices, fewer active suppliers and small businesses being denied supply.
- 5.50. We ask that UR continues to monitor the 0-50MWh retail market closely, to identify the emergence of detrimental issues for consumers resulting from the removal of the price control or an increase in Power NI's market share.
- 5.51. If any such issues arise, we ask UR to act urgently and decisively to address them, including opting to reintroduce the price control if the evidence of consumer detriment was to support the decision.

## **6 Conclusion**

- 6.1 The "protection of the interests of consumers<sup>34</sup> of electricity" ought to be at the heart of any decision about the SPC17 Price Control.
- 6.2 The Consumer Council supports the short term (1-2 years) rollover of the current Price Control because of the uncertainty the impact of I-SEM may have on Power NI's operating costs.
- 6.3 The Consumer Council asks UR to re-examine the margin it will allow Power NI.
- 6.4 The evidence suggests the minded to decision to remove the Power NI price control for 0-50MWh I & C customers is not in the best interest of small businesses. Therefore we recommend that the decision to deregulate is deferred until the end of the rollover period.

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<sup>34</sup> Defined as domestic and non-domestic.

- 6.5 During the SPC17 period, measures should be put in place to prepare small business for the possibility of the removal of price control protection to ensure all small businesses can benefit from deregulation. We suggest the UR sets up a non domestic 0-50MWh energy retail working group to examine such measures.
- 6.6 The Consumer Council wishes to express its commitment to continue working with UR, the electricity retail industry and wider stakeholders to help develop measures that enable consumers to benefit from competition.

If you require further information or you wish to discuss any aspect of this response please contact Paulino Garcia on 02890 251645 or [Paulino.Garcia@consumercouncil.org.uk](mailto:Paulino.Garcia@consumercouncil.org.uk).



Floor 3  
Seatem House  
28-32 Alfred Street  
Belfast  
BT2 8EN

Freephone:	0800 121 6022
Switchboard:	028 9025 1600
Fax:	028 9025 1663
E-mail:	<a href="mailto:info@consumercouncil.org.uk">info@consumercouncil.org.uk</a>
Website:	<a href="http://www.consumercouncil.org.uk">www.consumercouncil.org.uk</a>

## Annex IV

### Hospitality Ulster

#### Power NI Supply Price Control 2017 (SPC17) – Consultation Response



## **Consultation Response**

### **Consumer Council – Power NI Supply Price Control 2017 (SPC17)**

Hospitality Ulster is the professional body representing the Hospitality Industry in Northern Ireland. Our membership includes pubs, bars, café bars, hotels, restaurants and major visitor attractions.

With our core membership consisting of small and micro businesses, this consultation, and the potential benefits, are of particular interest to our organisation and membership.

Response:

- Hospitality Ulster supports the proposal to remove price regulation to the 0-50KWH market.
- The current restriction is now actually disadvantaging small / micro business who, after undertaking price and service quality comparisons, would like to remain with Power NI but switch to a supplier with a perceived lower level of service quality, as Power NI are unable to offer any discount on price under the current restrictions.
- The current regulation restricts Industry bodies from securing infinity deals with Power NI and therefore limits the potential to bulk purchase on behalf of members.
- Hospitality Ulster believes the removal of price regulations should be accompanied by a requirement, on all suppliers, to provide an annual notification of all supplier's tariffs to existing customers to encourage analyses. Suppliers should also be required to make all tariffs public as this would encourage price comparisons websites and support informed consumer choices.
- Hospitality Ulster believes the current situation regarding deposits must be addressed; with supply companies currently charging excessive deposits. There is a barrier to entry for new or relocating businesses where the premises have a poor credit history.
- Supply companies should be required to publish all deposit requirements alongside there tariffs and should not be allowed to introduce them during an existing contract period unless there has been a default on payment by the consumer (business).
- All suppliers should have a 'must supply' option, as the proposal could result in a business being unable to secure a supplier.
- Hospitality Ulster considers the format and terminology used in this consultation to be of a nature that will limit small businesses responses. As a result, we have chosen not to answer the detailed questions and have limited our response to issues understood and raised by our membership. We would recommend that any future consultations are simplified and, where possible, plain English is used.