

# THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

## NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (AS AMENDED)

### **MODIFICATIONS PROPOSED TO AES Ballylumford Limited, Bord Gais Energy Limited, Brookfield Green Energy, Budget Energy Limited, Click Energy, Electric Ireland (ESBIE NI Ltd), Electricity Supply Board (ESB), ElectroRoute Energy, Energia Customer Solutions NI Limited, Evermore ES Limited, firmus energy (supply) limited, Gaelectric Green Energy Limited, Go Power (LCC Power Limited), LLC Group Limited, Naturgy Limited, ONI Electricity Limited, Power NI (NIE energy Ltd), SSE Airtricity Energy Supply Limited & 3T Power Limited – THE ‘LICENSEE’ SUPPLY LICENCE**

The Northern Ireland Authority for Utility Regulation (hereafter referred to as “the Authority”) hereby gives notice under Article 14(2) of the Order as follows:

- 1 The modifications are to insert a new definition of 'small business customer' into Condition 27 paragraph 21 and Condition 27A paragraph 9, new paragraphs 18 – 20 into Condition 27 and new paragraphs 6 – 8 into Condition 27A of the Licence. Current paragraph 18 in Condition 27 will be renumbered as paragraph 21. The modifications are set out in Schedule 1 to this notice.
- 2 The effect of the modifications will be to implement requirements around contracts for small business customers. The proposed amendments to Condition 27 will ensure that, where the Licensee proposes to vary the terms and conditions of a supply contract with a small business customer, it must inform the customer and provide a 21 day notice period together with the small business customer’s right to terminate the contract before the proposed variation is due to take effect. It will also prevent the imposition of any notice period where a fixed term contract with a small business customer has come to an end (including preventing rollover contracts). The Licensee will also be required to inform the small business customer that the fixed term period is coming to an end, their current charges and the charges after the end of that period.
- 3 The modifications to Condition 27A will restrict the amount that the Licensee can require from a small business customer as a security deposit and require information regarding how any deposit is calculated to be available in a clearly understood form on the Licensee's website.
- 4 On 19<sup>th</sup> November 2019 the Authority published a notice stating that it intended to modify the Licence to reflect the decisions “Measures to Enhance the Operation of the Small Business Energy Market” September 2018 and “Decision on the application of exit fees in the small business energy market” October 2019. The notice set out the effect of the proposed modifications and the reasons why the Authority proposed to make those modifications. That notice was to bring the proposed modifications to the attention of persons likely to be affected by them and to invite representation or objections in connection thereto.
- 5 One representation was made by a licensee. It sought clarification on the text set out in modification and has been responded to via email.

- 6 The Authority has, in pursuance to Articles 14(3) and (4) of the Order respectively served a copy of this notice on the Licensee and sent a copy to the Department for the Economy and also the Consumer Council NI.
7. The modifications will take effect from 1<sup>st</sup> May 2020.

Dated this 14<sup>th</sup> day of January 2020

A handwritten signature in black ink, appearing to be 'J. Pyper', written in a cursive style.

**Jenny Pyper**

For and on behalf of the Northern Ireland Authority for Utility Regulation

## SCHEDULE 1 – THE PROPOSED MODIFICATIONS

### **Condition 27: Terms and Conditions of Electricity Supply Contracts**

- 1 The Licensee shall ensure that any Contract it enters, or offers to enter, into with a Customer for a supply of electricity contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the Customer to understand the terms and conditions under which the supply of electricity is, or is to be, made.
- 2 The Licensee shall ensure that the terms and conditions of any Contract it enters into with a Customer for a supply of electricity provide:
  - (a) that the Contract will terminate automatically from the date that a Last Resort Supply Direction, given to another Electricity Supplier, takes effect in relation to the premises supplied under that Contract;
  - (b) that the Licensee will, where the premises is at the date of the Contract connected to an electricity distribution system, start supplying electricity under the Contract by no later than 15 working days after the Relevant Date, unless:
    - (i) the Customer requests that the supply starts from a later date; or
    - (ii) the Registered Supplier for the premises objects to the Supplier Transfer; or
    - (iii) there are other circumstances beyond the Licensee's control which prevent it from starting to supply by that date.
- 3 The Licensee shall not enter, or offer to enter, into a Contract, for the supply of electricity to premises, which contains a term that requires or has the effect of requiring the Customer to:
  - (a) obtain a supply of electricity to the same premises from another Electricity Supplier from a date and for such period as may be specified (whether in the Contract or otherwise) by the Licensee; and

- (b) immediately following the expiry of that specified period, recommence taking a supply of electricity at the premises from the Licensee.
- 4 Before entering into or concluding a Contract with any Domestic Customer, the Licensee shall:
- (a) explain to and draw to the attention of the Domestic Customer, the Principal Terms of the Contract; and
  - (b) inform the Domestic Customer of the Energy Consumer Checklist and of the sources from where the Customer may obtain a copy;
  - (c) provide a copy of the Energy Consumer Checklist free of charge to any Domestic Customer requesting it; and
  - (d) give the Domestic Customer a written copy of the full terms and conditions of the Contract, including without limitation all the information referred to in paragraph 7.
- 5 The Licensee:
- (a) shall determine standard terms and conditions for the supply of electricity to Domestic Customers;
  - (b) may determine different standard terms and conditions for different cases or classes of case or for different areas;
  - (c) shall ensure that each set of standard terms and conditions it determines includes all of the terms and conditions that will apply to any Contract entered into with a Domestic Customer on that set of standard terms and conditions;
  - (d) shall not determine standard terms and conditions which impose an obligation on the Domestic Customer to pay a termination fee, unless any such obligation has been approved in advance by the Authority;
  - (e) shall ensure that an up to date copy of each set of standard terms and conditions that it has determined is published on and accessible from its website;
  - (f) shall not enter, or offer to enter, into a Contract for the supply of electricity with a

Domestic Customer otherwise than on a set of standard terms and conditions as determined in accordance with this paragraph 5.

- 6 The Licensee shall for any different case, class of case or area in respect of which it has determined standard terms and conditions in accordance with paragraph 5, as a minimum determine a set of standard terms and conditions:
- (a) which provide for a Contract of an indefinite length; and
  - (b) in respect of which the terms as to price do not differ as between any Domestic Customers who may enter into that Contract (a **standard evergreen tariff**), provided that the Licensee may have a different standard evergreen tariff for each payment method offered by it.
- 7 The Licensee shall ensure that each set of standard terms and conditions it determines for Domestic Customers shall be fair (as between the Licensee and each Domestic Customer) and shall, as a minimum, include the following:
- (a) the identity and address of the Licensee and any other appropriate contact details;
  - (b) the services to be provided, the service quality levels offered by the Licensee (which may be subject to the approval of the Authority pursuant to Condition 29) and the date for the commencement of the electricity supply under the Contract;
  - (c) the duration of the Contract, the terms and conditions for renewal and for termination of the Contract (which terms and conditions shall be compliant with the requirements of this Condition), the services provided under the Contract and the existence of any right of cancellation or termination of the Contract;
  - (d) (if offered by the Licensee) the types of maintenance service offered under the Contract;
  - (e) a right for the Domestic Customer to withdraw from and cancel the Contract:
    - (i) where a supply of electricity has at any time previously been taken at the premises, within ten working days of entering into the Contract; or
    - (ii) where a supply of electricity has not previously been taken at the premises,

within ten working days of entering into the Contract, or any time up to ten working days prior to the premises being connected to a distribution system, whichever is the later;

- (f) a right for the Domestic Customer to terminate the Contract where the Licensee proposes a variation to the terms and conditions of the Contract and the Domestic Customer does not wish to accept such new terms and conditions;
- (g) the tariffs, charges and other payments which apply to the Contract and are required to be paid by the Domestic Customer, in a manner that enables the Domestic Customer to:
  - (i) identify the applicable tariff and the unit rate, in terms expressed as “pence per kWh”, of the applicable tariff;
  - (ii) identify any other charge or payment, including in particular:
    - (A) any applicable standing charge;
    - (B) any payment which is or has the effect of being a Security Deposit;
  - (iii) where the applicable tariff is not a standard evergreen tariff (because the Contract is not of an indefinite length), compare the unit rate of the applicable tariff against the unit rate of the standard evergreen tariff (in each case expressed in “pence per kWh”) that would apply if the relevant set of standard terms and conditions applied to a Contract of indefinite length;
- (h) the means by which up to date information on all applicable tariffs, charges and other payments (including any discounts and promotions) for the supply of electricity and for any other services which are to be provided under the Contract:
  - (i) can be promptly obtained by the Domestic Customer; and
  - (ii) will be communicated to the Domestic Customer in writing by the Licensee;
- (i) the compensation and the refund arrangements (if any) which will apply if contracted service quality levels, including service quality levels relating to the timing, frequency and accuracy of bills and statements, are not met (which

arrangements may be subject to the approval of the Authority pursuant to Condition 29);

- (j) details of how the Domestic Customer may initiate the Licensee's complaint handling procedure (as established under Condition 33); and
  - (k) details of how the Domestic Customer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice.
- 8 Subject to paragraph 9, the Licensee shall not start to supply electricity under a Contract entered into with a Domestic Customer until the cancellation period referred to in paragraph 7(e) has expired.
- 9 The requirement in paragraph 8 does not apply where:
- (a) the Licensee or any other Electricity Supplier has applied in writing to the Authority for paragraph 8 not to apply in respect of such circumstances or cases as described in the application; and
  - (b) the Authority has issued a direction to the Licensee that the requirement in paragraph 8 shall not apply in respect of such circumstances or cases as are specified in direction and from such date as may be specified in the direction.
- 10 The Authority may, at any time and following consultation with the Licensee, by a further direction amend or revoke a direction (or part thereof) given to the Licensee under paragraph 9(b).
- 11 Where the Licensee proposes to vary any of the terms and conditions of a Contract it has with a Domestic Customer, it shall, by way of sending a notice that:
- (a) sets out the information in clear, transparent and easy to read and understand language; and
  - (b) where the variation relates to terms as to price, sets out the unit rate (expressed in each case in 'pence per kWh') of the Domestic Customer's current tariff and of the proposed new tariff,
- notify each such Domestic Customer of the proposed variation, together with the

Customer's right (as included in the Contract in accordance with paragraph 7(f)) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect.

12 Where the Licensee enters into a Contract with a Domestic Customer which has a fixed term period:

(a) any such Contract may not include any term or condition which has the effect of:

(i) extending the length of that fixed term period; or

(ii) applying a consecutive fixed term period,

unless the Domestic Customer has the right to terminate the Contract at any time in the extended or consecutive fixed term period without payment of a termination fee; and

(b) the Licensee shall, by way of sending a notice, notify each such Domestic Customer of:

(i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date;

(ii) the name and unit rate, expressed as "pence per kWh", of the Domestic Customer's current tariff; and

(iii) details of the standard evergreen tariff, including the applicable unit rate expressed as "pence per kWh", that will apply under the Contract following the expiry date of the fixed term period.

13 The Licensee shall, on the request of a Domestic Customer and without charge, send to that Customer a copy of the then current set or sets of standard terms and conditions (as determined in accordance with this Condition) that are applicable to the request (including, for the avoidance of doubt, the applicable charges and tariffs relating to each such set).

14 The Licensee shall ensure that its standard terms and conditions provide Domestic Customers with a choice of payment methods, including as a minimum making payment:

(a) in arrears (at such frequency as is set out in the terms and conditions);



- (b) by direct debit (at such frequency as is set out in the terms and conditions); and
  - (c) in advance through a prepayment meter.
- 15 Any difference in or between the Licensee's standard terms and conditions, including terms as to price, relating to the choice of payment methods shall be determined by the Licensee on a basis which reflects the costs to the Licensee of providing the different payment methods.
- 16 The Licensee shall not impose on, or request from, a Domestic Customer any charge or payment for the purpose of enabling that Customer to exercise or preventing him from exercising (as the case may be) his right to receive a supply of electricity from his Electricity Supplier of choice.
- 17 Where a Contract also relates to or governs the provision of other goods or services, the Licensee shall ensure that the charges for such other goods or services are identified separately from the Charges for the Supply of Electricity.
- 18 The Licensee shall ensure that the terms and conditions of any Contract it enters into with a Small Business Customer include a right for the Small Business Customer to terminate the Contract where the Licensee proposes a variation to those terms and conditions and the Small Business Customer does not wish to accept such new terms and conditions.
- 19 Where the Licensee proposes to vary any of the terms and conditions of a Contract it has with a Small Business Customer, it shall do so by way of sending a notice to the Small Business Customer that:
- (a) sets out the information in clear, transparent and easy to read and understand language; and
  - (b) where the variation relates to terms as to price, sets out all of the charges included in the Small Business Customer's current tariff and of the proposed new tariff, and;

notify each such Small Business Customer of the proposed variation, together with the Small Business Customer's right (as included in the Contract in accordance with paragraph 27.18) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect.

- 20 Where the Licensee enters into a Contract with a Small Business Customer which has a fixed term period:
- (a) any such Contract may not include any term or condition that prevents the Small Business Customer from terminating the Contract at any time after that initial fixed term period without a notice period or payment of a termination fee;
  - (b) without prejudice to the generality of Condition 27.20(a), any such Contract may not include any term or condition which has the effect of:
    - (i) extending the length of that fixed term period; or
    - (ii) applying a consecutive fixed term period,unless the Small Business Customer has the right to terminate the Contract at any time in the extended or consecutive fixed term period without a notice period or payment of a termination fee; and
  - (c) the Licensee shall, by way of sending a notice, notify each such Small Business Customer of:
    - (i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date, and;
    - (ii) the name and unit rate, expressed as “pence per kWh”, of the Small Business Customer’s current tariff; and
    - (iii) details of all of the charges included in the new tariff, that will apply under the Contract following the expiry date of the fixed term period.

21 In this Condition:

<b>Market Registration Service</b>	means the service described in the electricity distribution licence held by the person that is the owner and/or operator of the Distribution System to which the premises are connected and through which the Customer is supplied with electricity ;
<b>Relevant Date</b>	means the earlier of: <ul style="list-style-type: none"> <li>(i) the day after the end of any period within which the Customer has a right to withdraw from and cancel the Contract; or</li> <li>(ii) 10 working days after the day on which the Customer entered into the Contract.</li> </ul>
<b>Registered Supplier</b>	means the electricity supplier which is registered with the Market Registration Service as being the electricity supplier responsible for providing a supply of electricity to the Customer at the relevant premises.
<b>Small Business Customer</b>	means a Non-Domestic Customer supplied with electricity and consuming less than 50 MWh per annum based on its most recent previous actual 12 months consumption or, where such data is not available, the estimated consumption used for customer billing or the Actual or Estimated Usage Factor (AUF or EUF) as defined in the Market Registration Code approved by the Authority in accordance with a condition of the Distribution Licence held by a Licensed Distributor. This does not include a non-domestic customer that is a single legal entity with more than one premises where the total electricity consumption of those premises is more than 50 MWh per annum.
<b>Supplier Transfer</b>	means, as the case may be, the transfer of responsibility for the supply of electricity to a premises from the

Licensee to another Electricity Supplier or from another Electricity Supplier to the Licensee.

**terms and conditions**

means all the terms and conditions, including terms as to price, of the Contract.

**Condition 27A: Security Deposits**

- 1 The Licensee shall not require a Domestic Customer to pay a Security Deposit in respect of the supply of electricity to the Domestic Customer's premises:
  - (a) where the Domestic Customer agrees for the electricity to be supplied through a prepayment meter and it is safe and reasonably practicable in all the circumstances of the case for the Licensee to supply the premises through such a meter; or
  - (b) where it is unreasonable in all the circumstances of the case to require the Domestic Customer to pay a Security Deposit.
- 2 Any Security Deposit required by the Licensee shall be of an amount that:
  - (a) is reasonable in all the circumstances of the case; and
  - (b) does not exceed the Charges of the Supply of Electricity likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity reasonably expected at the relevant premises by the Domestic Customer..
- 3 The Licensee shall, where it requires a Domestic Customer to pay a Security Deposit, at the same time inform the Domestic Customer of the effect of paragraph 5.
- 4 Subject to paragraph 5, any Security Deposit given by a Domestic Customer shall be repaid by the Licensee:
  - (a) within 28 days where, in the previous 12 months, the Domestic Customer has paid all Charges for the Supply of Electricity demanded from him within 28 days of each written demand made; or
  - (b) as soon as reasonably practicable, and in any event within 1 month, where the Licensee has ceased to supply the Domestic Customer and the customer has paid all Charges for the Supply of Electricity demanded from him.
- 5 Sub-paragraph 4(a) shall not apply where it is reasonable in all the circumstances for the Licensee to retain the Security Deposit.

- 6 The Licensee shall not require a Small Business Customer to pay a Security Deposit in respect of the supply of electricity to the Small Business Customer's premises:
- (a) where the Small Business Customer agrees for the electricity to be supplied through a prepayment meter and it is safe and reasonably practicable in all the circumstances of the case for the Licensee to supply the premises through such a meter; or
  - (b) where it is unreasonable in all the circumstances of the case to require the Small Business Customer to pay a Security Deposit.
- 7 Any Security Deposit required by the Licensee shall be of an amount that:
- (a) is reasonable in all the circumstances of the case; and
  - (b) does not exceed the Charges of the Supply of Electricity likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity reasonably expected at the relevant premises by the Small Business Customer.
- 8 The Licensee shall ensure that the methodology used to calculate the amount of any Security Deposit required to be paid by a Small Business Customer:
- (a) is published on and made readily accessible from its website; and
  - (b) allows the Small Business Customer to reasonably understand the likely amount of any Security Deposit that it may be required to pay.

9 In this Condition:

**Small Business Customer** means a Non-Domestic Customer supplied with electricity and consuming less than 50 MWh per annum based on its most recent previous actual 12 months consumption or, where such data is not available, the estimated consumption used for customer billing or the Actual or Estimated Usage Factor (AUF or EUF) as defined in the Market Registration Code approved by the Authority in accordance with a condition of the Distribution Licence held by a Licensed Distributor. This does not include a non-domestic customer that is a single

legal entity with more than one premises where the total electricity consumption of those premises is more than 50 MWh per annum.