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Gas Transmission
Utility Regulator
Queens House
14 Queen Street
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28th February 2013

Dear Roisin

Implementing the European Gas Regulation (EC) 715/2009 in Northern Ireland

Phoenix Natural Gas Ltd (PNGL) welcomes the opportunity to respond to the Utility Regulator's (UR's) consultation on 'Implementing the European Gas Regulation (EC) 715/2009 in Northern Ireland (NI). PNGL acknowledges the need for UR to implement the requirements of the EU Regulation and are supportive of UR in delivering an appropriate solution for NI to prevent further infringement actions and to avoid significant future penalties being levied against the NI block.

In preparing its response PNGL has focused on the impact any proposed new NI regime may have on distribution operations in NI as well as the general approach set out in the paper to address the Regulation compliance issues. In relation to the area of system operation PNG believe that most of the issues which were identified through the CAG project still exist and therefore we felt it prudent to reiterate our comments to the CAG papers on this subject.

General Observations and Comments on the Proposed NI Compliance Project:

Having considered the consultation paper PNGL remains uncertain as to the timeline for delivery of a fully compliant NI regime. We believe this is important to allow industry to consider the type of regime which can be delivered in the timescales available. We have seen in previous work to address IME2 compliance issues in 2012 that solutions were implemented which could neither be utilised nor brought any benefits to many gas shippers operating in NI. The NI solution should not be seen as a tick box exercise to avoid future infringement action or penalties. We do however note that the consultation paper does recognise the limitations of the solutions implemented in 2012 and this new work stream will look to improve upon these areas.

PNGL also believe that scope of the work envisaged by the Utility Regulator to deliver the Gas Regulation is not completely clear in the paper. We do note that the paper states that the arrangements will build on the work that has been delivered through CAG and if the CAG project regains momentum the NI compliance project can collapse into the new CAG workplan. PNGL acknowledges that a significant amount of work was undertaken with regard to CAG and it would be prudent to build upon this if relevant and necessary for NI compliance but it is also essential that any NI process does not become quickly redundant if the CAG project is resumed. However, PNGL would argue strongly that previously agreed solutions for a project that has stalled for a significant period of time, for which Regulatory Authorities cannot guarantee will ever be resumed, should not be allowed to dictate the final agreed NI regime if they do not bring true cost benefits for the NI gas market and ultimately the NI gas consumer. Any solution should be in the interest of NI.

At the point that the CAG project stalled the proposed CAG Code adopted many elements of the BGE (Gas Link) Code, which would have added levels of complexity to the NI regime that did not previously exist or possibly are not needed to make NI Regulation compliant. We therefore believe the appropriateness of certain previously discussed areas under CAG, in particular many of the business rules being considered, need to be reconsidered in a NI only context.

If it is determined appropriate to progress on the basis of the CAG project proposals we believe that it is essential that any future consultations clearly set out the decisions reached under CAG which are being built upon or are being adopted by the new NI regime. We would highlight that for many aspects of the proposed CAG regime no final decisions papers were issued to industry and therefore significant issues remained unanswered.

Impact on Distribution Operation – Observations and comments

PNGL note that section 1.21 of the consultation paper makes reference to the fact that interface arrangements will be needed between the TSOs or any new single system operator and the distribution system operators in NI. PNGL had engaged extensively with MEL and BGN (Gas link) on the requirements of such an interface under the CAG regime. PNGL would point out that the proposals discussed had identified a significant amount of work required to implement such an interface including the requirement for the development of existing PNGL systems, a new IT interface for the exchange of data as well as an appropriate legal interface agreement. Assuming similar requirements will be involved PNGL feel it is essential that both UR and the TSOs engage with NI Distribution System Operators as soon as possible to allow sufficient time to explore any similar interface proposal for the NI compliance project.

System operation for NI – Observations and Comments

PNGL understood that following the last CAG consultation on the issue of system operation that a contractual joint venture (CJV) was the preferred option for both the Regulatory Authorities and the TSOs. This position appears to have changed with UR once again having introduced the concept of a single system operator and it is unclear in this recent consultation as to the current preferred option, however, PNGLs assessment of Table 4 in the consultation paper is that the Single TSO better delivers on the assessment criteria set by UR. PNGL believe it would be useful if more detail was provided in relation to the cost effectiveness of both options; the paper appeared to indicate that the CJV would be cheaper to set up but not necessarily deliver long term cost benefits whereas the single TSO was considered more cost effective longer term was the more complicated and costly option to implement.

Regardless of the preferred option PNGL would reiterate its belief that it is critical that any structure delivers on the key principles of transparency and independence. In our response to the last CAG consultation PNGL also supported the Regulatory Authorities position that the system operator should be subject to a price control mechanism. As part of the CAG consultation the TSOs presented two different options regarding the structure of a CJV. The current consultation does not clarify if the TSOs are still proposing the same options and we understand that UR has asked the TSOs to provide a further update on any proposed CJV model in a NI only context and therefore PNGL believe it is important that the outcome of this review is provided to industry to allow a more considered response to be made.

If the position of the TSOs has remained unchanged PNGL would again reiterate its belief that the option presented by MEL, whereby there would be a specific price control for the contractual joint venture, would be the most appropriate. However PNGL would again stress its belief that any agreed price control mechanism must ensure that the System Operator is fully incentivised to deliver reductions in operational costs, with future operational savings being passed back to consumers.

The price control should not simply allow the pass through of costs which PNGL understands is the basis of the current MEL price control mechanism in Northern Ireland. PNGL could not support a price control mechanism that simply replicates the current regime.

When considering the joint venture models proposed by both TSOs, PNGL concluded that the model proposed by MEL demonstrated more successfully its ability to fulfil the criteria set out by the Regulatory Authorities for this contractual joint venture.

PNGL felt that the proposal by BGN described as a 'business as usual' model did not deliver a truly transparent solution and in particular the proposal to assign key system operator functions to different TSOs would not support that key principle. PNGL also found it difficult to see how this proposed joint venture structure guarantees the independence of the system operator. It had in PNGL's opinion the potential to create a dominant party in the joint venture and this might not always result in decisions being taken for the betterment of industry. However, PNGL concluded that neither model fully demonstrated their ability to deliver on the key principles of delivering a proper incentivised price control, being cost effective and bring true benefits to the consumer.

Other Comments:

PNGL note that the consultation paper advises that it should be read in conjunction with the relevant CAG papers. However, the paper indicates that there will be a separate consultation on entry exit tariffing. Therefore, PNGL's response does not make reference to this, as we believe that it would be more appropriate to comment on a consultation paper which we assume will be NI specific for this important area. PNGL are keen to see in this future consultation further detail on how UR proposes to create a new NI regime which preserves the principles of the current Postalised tariff structure as well as UR's views on whether this may be necessary to deliver the extension of the natural gas network for which the NI Executive recently announced its support for. We also note that UR is to undertake further discussions with TSOs on Code principles and business rules to apply going forward. It is important that industry is also given an opportunity to comment on any agreed business rules. We believe this is particularly important for distribution operators to ensure these do not impact negatively on their operations, on growth of the downstream gas market and supply competition.

If you have any questions regarding the PNGL response please do not hesitate to contact me.

Yours sincerely

Joanne

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