

# Changes to Gas and Electricity Licences with regards to Appeals to the CMA

Modifications necessary due to The Gas  
and Electricity Licence Modification and  
Appeals Regulations (Northern Ireland)  
2015

April 2015



# About the Utility Regulator

The Utility Regulator (UR) 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 consultation sets out those licence modifications which the UR considers are necessary or expedient as a consequence of the coming into operation of The Gas and Electricity Licence Modifications and Appeals Regulations (Northern Ireland) 2015 (the Regulations).

These Regulations amended the procedures in the Gas and Electricity Orders so as to enable UR to modify licence conditions without the requirement for consent from individual licensees or classes of licensees, but with a right for affected licence holders and other specified bodies including the Consumer Council for Northern Ireland (CCNI) to appeal licence modifications to the Competition and Markets Authority (CMA).

As licence holders and CCNI are permitted under the new Regulations to appeal directly to the CMA, it is no longer possible for the UR to refer matters to the CMA when licence holders do not agree with a UR decision. A number of existing licence conditions rely upon the ability of UR refer matters to the CMA. As this is no longer possible, the licence conditions no longer work in practice and modifications are, therefore, necessary. The modifications proposed as part of this consultation do the minimum necessary to ensure that the existing arrangements within our licences continue to work in practice. However, we intend to carry out a more in-depth review of our licences and to streamline the processes across all licences. We will start this process, in conjunction with the Department, within the next year. This consultation will, therefore, also ask for respondents to provide their comments as to how the process could be simplified.

## Audience

All licence holders, CCNI and any other group interested in procedures for making referrals to the CMA should read this paper and any party affected by changes in electricity and gas licences.

## Consumer impact

The consumer impact will be low. It is the UR's intention to return licence holders as far as possible to the same level of protection as regards their ability to have their case heard by the CMA as was the case prior to the Regulations.

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# Consultation Questions

Q1 Do the proposals within this paper have an impact on equality of opportunity in relation to the persons listed in section 75 of the Northern Ireland Act? If yes please provide reasons and state whether you believe the impact is positive or negative.

Q2 Respondents are asked to comment on the approach taken to modifying electricity supply licences. In particular, do you agree that UR should follow the GB/Ofgem approach?

Q3 Respondents are asked to comment on the approach taken to modifying gas supply licences.

Q4 Respondents are asked for their suggestions as to how the electricity and gas supply licence conditions could be simplified in the future.

Q5 Respondents are asked to comment on the overall approach taken to modifying the gas transmission and distribution licences.

Q6 Respondents are asked to provide suggestions as to how the gas transmission and distribution licence conditions might be simplified in the future.

Q7 Respondents are asked to comment on the overall approach taken to modifying the electricity transmission and distribution licences.

Q8 Respondents are asked to provide suggestions as to how the electricity transmission and distribution licence conditions might be simplified in the future.

Q9 Respondents are asked to comment on the overall approach taken to modifying the generation licences.

Q10 Respondents are asked to provide suggestions as to how the generation licence conditions might be simplified in the future.

# Glossary

Authority	Utility Regulator
BGE (UK)	Bord Gais Eireann (UK)
BGTL	Belfast Gas Transmission Limited
CC	Competition Commission
CCNI	Consumer Council Northern Ireland
CMA	Competition and Markets Authority
DECC	Department of Energy and Climate Change
DETI	Department for Enterprise Trade and Investment
Electricity Order	The Electricity (Northern Ireland) Order 1992
feDL	firmus energy (Distribution) Ltd
feSL	firmus energy Supply Ltd
Gas Order	The Gas (Northern Ireland) Order 1996
GB	Great Britain
i.e.	that is
IME3	Third Package of European Directives
NRA	National Regulatory Authority
PNGL	Phoenix Natural Gas Limited
PPB	Power Procurement Business

Power NI	Power NI Ltd
PTL	Premier Transmission Limited
Regulations	The Gas and Electricity Modification and Appeal Regulations (Northern Ireland) 2015
SGN	Scotia Gas Networks Northern Ireland Limited
SSE Airtricity	SSE Airtricity Gas Supply NI Ltd
SONI	System Operator for Northern Ireland
UR	Utility Regulator

# Chapter 1: Introduction and Background

- 1.1 The Third Package of European Energy Directives (IME3) contained a requirement for Member States to ensure that National Regulatory Authorities (NRAs) are able to make autonomous, timely decisions about regulatory matters; and that those affected by the NRA's decisions have a suitable right of appeal to an independent body. The Department of Enterprise Trade and Investment (DETI) consulted in 2012<sup>1</sup> and at that time set out their intention to follow the Department for Energy and Climate Change (DECC) proposals in GB in relation to this aspect of IME3. A further consultation paper, specific to the legislative proposals for the energy licence modifications and appeals process was published by DETI in January 2014<sup>2</sup>.
- 1.2 On 6 February 2015, The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015<sup>3</sup> (the Regulations) came into operation. The Regulations change the legislative procedure by which the UR can modify gas and electricity licences. The new procedure in the Gas (Northern Ireland) Order 1996 (the Gas Order) and The Electricity (Northern Ireland) Order 1992 (the Electricity Order), as amended by the Regulations is consistent with both the procedures in the rest of the UK and the requirements of IME3. As noted in DETI's consultation, the purpose of the Regulations is to establish a compliant and equitable licence modification and appeals regime which provides licensees with a clear and concise process under which licence modifications can be made by the UR (following a robust process of consultation) and with a means by which the UR's licence modification decision may be challenged by licensees and

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<sup>1</sup> DETI Consultation on revised procedure for electricity and gas licence modifications and appeals process  
[http://www.detini.gov.uk/consultation\\_on\\_revised\\_procedure\\_for\\_licence\\_modifications\\_and\\_appeals\\_process.pdf](http://www.detini.gov.uk/consultation_on_revised_procedure_for_licence_modifications_and_appeals_process.pdf)

<sup>2</sup> DETI Consultation on legislative proposals for energy licence modifications and appeals  
[http://www.detini.gov.uk/consultation\\_on\\_legislative\\_proposals\\_for\\_energy\\_licence\\_mod....pdf?rev=0](http://www.detini.gov.uk/consultation_on_legislative_proposals_for_energy_licence_mod....pdf?rev=0)

<sup>3</sup> The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015  
<http://www.legislation.gov.uk/nisr/2015/1/contents/made>

other specified bodies.

- 1.3 The Regulations change the procedure from one where licence modifications can only be made with the consent of the licence holder, to one where the UR can make licence modifications without consent. However, an appeal to the CMA against the UR's decision to modify can be brought by:
- the licence holder concerned;
  - any licence holder materially affected by the decision;
  - a qualifying body or association representing a licence holder concerned or a licence holder affected by the decision; or
  - the Consumer Council for Northern Ireland.
- 1.4 The CMA will only allow an appeal if:
- the UR has failed to properly have regard for its statutory duties, or failed to give appropriate weight to its duties;
  - the UR based its decision on an error of fact;
  - the modification will fail to achieve the effect, which the UR stated as the intended effect when it made the decision to modify; or
  - the decision was wrong in law.
- 1.5 Under the previous procedure, the UR had to obtain the licence holder's consent for licence modifications. Where consent was not received, the UR could refer to the CC, now the CMA. Under the new procedures in the Gas and Electricity Orders (as amended by the Regulations), the UR will no longer be able to refer matters to the CMA. All licence conditions which rely on or which make reference to the UR referring matters to the CC/CMA will, therefore, need to be modified.
- 1.6 The licence modifications appended to this paper will be made under the UR's transitional powers at Regulations 7 and 8 of the Regulations. The UR is limiting such modifications to the conditions of existing licences which the "Authority considers [are] requisite or expedient in consequence of the coming into operation of these Regulations". It is also our intention to assess the extent to which licence conditions could be further simplified and as part of this consultation, respondents are asked to provide their ideas as to how the licence conditions can be simplified. The UR will discuss all of the responses, including those on simplification, with the Department before

bringing forward our final proposals.

1.7 The implications of the Regulations with respect to price control conditions fall into two main categories.

- The first is where licences in their current form allow the licence holders to request disapplication of important decisions implemented by means other than a licence modification and where the UR can refer such a request to the CC/ CMA.
- The second category is where licence holders seek to disapply certain existing licence conditions after a given period of time and where the licence holder considers that licence condition is no longer appropriate.

1.8 The first category applies only to gas licences and the implications of the new Regulations in that respect are set out in chapters 2 and 3. The price control conditions within gas licences provide for the UR to make determinations modifying a subsidiary document which sets out the parameters which feed into the price control algebra - no modification is made to the actual licence. Current gas licences allow the licence holder to serve a disapplication notice on the UR, requiring us to refer the matter to the CMA. If we take no action following a disapplication notice, the price control decision will no longer apply. Under the new procedure, the UR can no longer refer matters to the CMA. In addition licence holders can only make an appeal to the CMA where the UR has made a decision to modify the licence. The UR is, therefore, proposing to modify gas price control conditions so that either:

- determinations are implemented through licence conditions (and can then be referred to the CMA in line with the new procedure in the Gas and Electricity Orders (as amended by the Regulations); or
- where a disapplication request or disapplication notice is received from the licence holder, the UR will publish a decision on a licence modification (which can then be referred to the CMA in line with the new procedure). As is the case currently, if we take no action the price control decision will no longer apply.

We consider that these proposed changes are necessary as a consequence of the coming into operation of the Regulations. The effect of the changes

will be to ensure that the licence holder continues to have a route to the CMA in relation to price control determinations. In addition, the new procedures in the Gas Order allow any other party listed in 1.3 above to also appeal the modification decision to the CMA.

- 1.9 The second category of price control conditions (referred to at 1.7) applies mainly to electricity licences and details of the implications for electricity supply licences are set out in chapter 2 and for electricity transmission and distribution licences, in chapter 4. In this second category this is where licence holders seek to disapply certain existing licence conditions after a given period of time and where the licence condition is no longer appropriate. An example of this is in electricity price controls. Electricity price controls are set for a given period of time. In the event that a new price control is not in place at the end of the time period, the existing price control continues in effect. This is because in some instances the existing price control may continue to be appropriate and also because it is important that price controls are not allowed to expire. However, the continuation of price controls, while necessary from the perspective of protecting customers in terms of the price they pay, may be considered a risk from the perspective of the licence holder. Therefore, existing electricity price control conditions contain disapplication provisions. These existing disapplication provisions essentially allow electricity licence holders to serve a request on the UR requiring us to refer the price control to the CMA. If we take no action, the licence holder can serve a further notice on the UR and the price control condition, or part of the price control condition, will no longer apply. This normally takes effect from the end of the price control period at the earliest.
- 1.10 As a result of the coming into operation of the Regulations, the UR can no longer refer matters to the CMA and these price control conditions no longer work in practice. As a consequence of the Regulations, we are, therefore, proposing to modify the licences concerned so that these conditions no longer state that the UR will refer the matter to the CMA. We propose that when such a disapplication request is received, the UR will either propose a licence modification or if we do not, the licence condition (or part thereof) which is the subject of the disapplication request and subsequent disapplication notice, will no longer apply. If the licence holder, or any of the parties listed in paragraph 1.3 above are unhappy with the modification, they can then appeal the modification to the CMA. This proposal ensures that the licence holder can have the case heard by the CMA. In addition the

other parties listed in paragraph 1.3 also have a right to appeal the modification.

- 1.11 A number of non price control conditions are also affected. In each of these cases, the UR is proposing to change the condition so that, where the condition currently states that upon receipt of a disapplication notice the UR will refer the matter to the CMA, it will now require the UR to propose a licence modification.
- 1.12 Further consequential changes being proposed by the UR are to the definitions and licence fee sections of all licences. These changes are to delete references to the CC, and replace them with CMA. Further, the CMA has adopted a new method for recovering their costs, so now the responsibility to collect the CMA costs moves from the UR to the CMA. References to recovery of fees related to the CC will be deleted. It may be necessary for UR to review our licence fee methodology and principles in light of this change. We have already started our review of the methodologies, so we hope to finalise this within the next few months.
- 1.13 The UR is also proposing to make necessary changes to the conditions of licences to ensure accurate statutory references are cited and any obsolete references are deleted.

## **Section 75 of the Northern Ireland Act 1998**

- 1.14 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 -
  - persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - men and women generally;
  - persons with disability and persons without; and
  - persons with dependants and persons without.
- 1.15 The UR must also have regard to the promotion of good relations between

persons of different religious belief, political opinion or racial groups.

- 1.16 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.
- 1.17 In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests 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. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Q1 Do the proposals within this paper have an impact on equality of opportunity in relation to the persons listed in section 75 of the Northern Ireland Act? If yes please provide reasons and state whether you believe the impact is positive or negative.

## How to Respond

- 1.18 The UR welcomes industry and other stakeholder views and comments on all the proposals set out in this consultation paper.

The consultation period will close on 29 June 2015

Responses to this consultation should be forwarded to reach the UR on or before 12 noon on 29 June 2015 -

Breige Tyrie  
The Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
Email: [Briege.Tyrie@uregni.gov.uk](mailto:Briege.Tyrie@uregni.gov.uk)

- 1.19 Your response to this consultation may be made public by the UR. If you do

not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

- 1.20 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.
- 1.21 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the UR.
- 1.22 This document is available in accessible formats. Please contact Breige Tyrie on 02890 316326 or [Briege.Tyrie@uregni.gov.uk](mailto:Briege.Tyrie@uregni.gov.uk) to request this.

# Chapter 2: Supply Licences

## Gas Supply Licences

### Overview

2.1 There are currently 15 gas supply licences held in Northern Ireland. These are categorised into three groups:

- incumbent suppliers (former monopoly suppliers who are price controlled within the separate distribution areas)
  - SSE Airtricity Gas Supply NI Ltd (SSE Airtricity)
  - firmus energy (Supply) Ltd (feSL) –Ten Towns
- non price regulated suppliers
  - firmus energy (Supply) Ltd – Greater Belfast
  - VAYU Ltd
  - ESBIE (Electric Ireland) Supply
  - LCC Power Ltd
  - Flogas Natural Gas Ltd
  - Energia (Viridian Energy Supply Ltd)
  - Power NI Energy Ltd
  - SSE Airtricity Energy Supply NI Ltd
  - ONI Gas Ltd
- suppliers of power stations
  - British Gas Trading Ltd
  - NIE Energy Ltd
  - AES Ballylumford
  - Coolkeeragh ESB Ltd

2.2 All three groups are affected by these Regulations to varying degrees and

licence modifications will be needed for all the licences as a result of the new Regulations.

2.3 Three licence modifications are proposed to the gas supply licences. Two of these modifications are consequential licence changes required for all the gas supply licences to remove reference to the CC from the 'Payment of Fees to the Authority' condition and to update references to Articles of the Gas Order in the 'Modifications' condition to be consistent with the Regulations. A further modification is required to the 'Charges for Gas' condition which is currently only active within the incumbent suppliers' licences, but which will be changed in all the gas supply licences. This modification is required to ensure licence holders do not lose their existing appeal mechanism against the maximum average tariff.

2.4 All proposed modifications are shown as tracked changes in Appendix 3.

## **Modifications**

2.5 Condition 1.8, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We propose to amend this condition to remove references to Article 17 and 17A which have been omitted as a result of the Regulations and to insert instead reference to Articles 14A and 14E and which have been added to the Gas Order. This modification will affect all gas licences. The numbering of this condition varies in some of the power station licences:

- British Gas Tracing Ltd, condition 1.7;
- NIE Energy Ltd condition 1.4;
- Coolkeeragh ESB Ltd condition 1.4.

2.6 Condition 1.11, the 'Payment of Fees to the Authority'. This defines how the licence fees payable to the UR shall be established. Details of the change are set out in paragraph 1.12 of this paper.

2.7 Condition 2.4, 'Charges for gas'. This sets out how the UR can control the charges of the supply company for certain groups of customers where the UR considers that competition does not offer customers sufficient protection. This provision sets out the requirement for the UR to consent to a maximum average price, and the process for the supplier should the UR fail to provide consent. Based on the previous licence conditions, the supplier would issue a disapplication notice to the UR, after which point the UR would have six months to issue a reference to the CC.

- 2.8 The effect of the modification of this condition is to remove the reference to the UR referring the matter to the CMA, as this is no longer possible under the new procedures. Instead we propose that the condition will now state that the UR will publish a decision to modify condition 2.4.1. For clarity, we propose that any modification of condition 2.4.1 would be to include, within the condition, reference to the specifics of the price control, and, if possible, reference directly to the element or elements of the price control to which the supplier has issue.
- 2.9 The price control is the mechanism by which the maximum average tariff is approved. The price control sets out how the maximum average price must be calculated and in approving a maximum average price the UR would seek to ensure that the principles within the price control have been applied to the maximum average price. However, the price control sits separate to the gas supply licence. In practice, if a supplier wished to disapply a price control they would do so by requesting consent to a maximum average price which would not comply with the principles set out within the price control. As a result of this, the UR would withhold consent, the supplier would issue a disapplication notice within 28 days and within 6 months, we would publish a decision to modify condition 2.4.1, thereby providing the supplier with the right to appeal this modification and make reference to the CMA.
- 2.10 This modification to condition 2.4.1 will affect all gas supply licences with the exception of those licences for supplying power stations. The condition is currently active only in the licences of the incumbent gas suppliers SSE Airtricity and feSL – Ten Towns.

## **Electricity Supply Licences**

### **Overview**

- 2.11 There are currently 14 electricity supply licences held in Northern Ireland. These are categorised into two groups:
- incumbent supplier (former monopoly supplier)
    - Power NI Ltd (Power NI)
  - non price regulated suppliers
    - SSE Airtricity

- Budget Energy
- Electric Ireland
- firmus energy
- ONI Electricity
- Viridian Energy Supply Ltd (Energia)
- LCC Power Ltd
- Open Electric Limited
- Quinn Energy Supply Ltd
- Vayu Limited
- AES Ballylumford
- Bord Gais Energy Ltd
- Electricity Supply Board
- Project Plug Limited
- Gaelectric Green Energy Limited

2.12 Both these groups are affected by these Regulations to a varying degree and licence modifications will be needed for all the licences as a result of the Regulations.

2.13 Five licence modifications are proposed to the Power NI electricity supply licence and two to all other supply licences. Three of the modifications to the Power NI licence are consequential changes required to ensure that Power NI do not lose their existing appeal mechanism (in the context of the discrimination condition and the 'Price Control' condition) and the removal of the reference to the CC from the 'Payment of Fees' condition. There is also a proposed modification to the PPB Annex 3 of the Power NI licence. As with the other proposed modifications, this is also required to ensure the right of appeal is maintained. The remaining modification will be carried out under the new procedures in Article 14 of the Electricity Order to remove Annex 1 which is no longer relevant. The two modifications which will be applied to all supply licences are the consequential licence changes, as with Power NI's, required to remove reference to the CC from the 'Payment of Fees' condition and to ensure that the licensee does not lose their existing appeal mechanism in the context of the discrimination condition.

## Modifications

- 2.14 Condition 11, paragraph 3(c). This refers to the payment of fees to the UR. Details of the change are set out in paragraph 1.12 of this paper.
- 2.15 Condition 15. This refers to the duration of discrimination conditions. We propose to modify this condition to remove all references to the CC and allow the supplier to still have a mechanism to appeal. The licensee may now serve a disapplication request and in the event that such a disapplication request is received, the UR will either propose a modification or the licence Condition 14 will cease to apply. The licensee will have the right to appeal the UR's proposed modification to the CMA. Previously the UR had to refer the matter to the CMA. This modification will apply to all electricity supply licences.
- 2.16 Annex 1. This refers to the 'Non Fossil Fuel Obligation' and it will be removed from the licence as these contracts have now expired. This Annex is, therefore, no longer relevant to the licensee. We are removing the contents of this Annex under the new Article 14 of the Electricity Order modification procedure. The Annex contains drafting which refers to the existing licence modification procedure. If the Annex were still in use, it would be necessary to propose modifications that work in practice with the new procedure. However, as the Annex has expired this would be a nugatory exercise - we propose to use the new Article 14 powers to remove the Annex and mark it as 'not used'.
- 2.17 Annex 2. This refers to the Power NI price control and will be modified so as to ensure that Power NI does not lose its existing ability to have UR decisions reviewed by the CMA. Annex 2 will be amended such that upon receipt of a disapplication request, the UR will either propose a licence modification or if we do not, Annex 2 (or part thereof) which is the subject of the disapplication request, will no longer apply. If Power NI or any other party listed in paragraph 1.3 of this paper do not agree with the proposed modification they have the right of appeal to the CMA. This proposal will, therefore, maintain the level of protection that the licence holder currently enjoys, in terms of its ability to have the case heard by the CMA. This modification will only apply to the Power NI licence. The modifications proposed follow the Ofgem model and reflect the fact that the Northern Ireland approach is to replicate, where possible and appropriate, the GB approach. While the drafting in the Ofgem licences varies from case to

case, the drafting which UR has most closely followed can be found in the National Grid Electricity Transmission licence, Special Condition 8A<sup>4</sup>.

- 2.18 There is also a modification to Annex 3 of the Power NI licence which relates to PPB. The changes mirror those to Annex 2 and are for the same purposes as stated above.
- 2.19 The modifications to the Power NI licence are included in Appendix 1 and the modifications the PPB element of the licence are included in Appendix 2.

Q2 Respondents are asked to comment on the approach taken to modifying electricity supply licences. In particular, do you agree that UR should follow the GB/Ofgem approach?

Q3 Respondents are asked to comment on the approach taken to modifying gas supply licences.

Q4 Respondents are asked for their suggestions as to how the electricity and gas supply licence conditions could be simplified in the future.

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<https://epr.ofgem.gov.uk/Content/Documents/National%20Grid%20Electricity%20Transmission%20Plc%20-%20Special%20Conditions%20-%20Current%20Version.pdf>

# Chapter 3: Gas Transmission and Distribution Licences

## Gas Distribution Licences

### Overview

- 3.1 There are currently three gas distribution licence holders in Northern Ireland:
- Phoenix Natural Gas Limited (PNGL);
  - Firmus energy (Distribution) Ltd (feDL); and
  - Scotia Gas Networks Northern Ireland Limited (SGN).
- 3.2 The SGN licence was granted on 11 February 2015 and has been drafted so as to be consistent with the Regulations and to provide the licence holder with appropriate appeals mechanisms. Hence, we propose not to make any modifications to this licence.
- 3.3 However, the same is not true for the PNGL and feDL licences. For both licences, modifications are required as a result of the Regulations to ensure licence holders do not lose their existing appeal mechanism against price control decisions and, in the case of PNGL, also against decisions with respect to loss of exclusivity for conveyance of gas in the licensed area or parts of same. Furthermore, consequential licence changes are required for both licences to remove reference to the CC from the 'Payment of Fees to the Authority' condition and to update the references to Articles of the Gas Order in the 'Modifications' condition to be consistent with the Regulations.
- 3.4 The sections below outline the proposed changes to the PNGL and feDL licences as well as the reasons for and effects of these changes.

### PNGL

- 3.5 Conditions proposed to be modified pursuant to the Regulations are Conditions 1.10, 1.14, 2.2 and 2.3.
- 3.6 All proposed modifications are shown as tracked changes in Appendix 8.

- 3.7 Condition 1.10, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We propose to amend this condition to ensure that Articles of the Gas Order which have been omitted pursuant to the Regulations are no longer referenced in Condition 1.10, and that new relevant Articles that have been added to the Gas Order pursuant to the Regulations are.
- 3.8 Condition 1.14, the 'Payment of Fees to the Authority' condition. Details of the change are set out in paragraph 1.12 of this paper.
- 3.9 Condition 2.2, the 'Territorial Scope and Exclusivity' condition. This details arrangements regarding the exclusivity for the conveyance of gas and circumstances under which such exclusivity can be restricted. Based on the current licence arrangements, the licence holder can, should the UR issue a notice with respect to loss of exclusivity pursuant to Condition 2.2.3, issue a Disapplication Notice (as defined in the licence). Condition 2.2.4 of the current PNGL licence states that the UR can then refer the issue to the CC under Article 15 of the Gas Order. However, pursuant to the Regulations, Article 15 of the Gas Order has been omitted; hence any reference to it has become obsolete and needs to be removed from the licence. That said, the Regulations empower the UR to make licence modifications under Article 14 of the Gas Order as amended, following consultation, without the consent of the licence holder, subject to the right of the licence holder to force the matter to the CMA. This includes the right for the UR to make licence modifications with respect to loss of exclusivity under Article 14, whether it is following receipt of a Disapplication Notice pursuant to Condition 2.2.4 of the licence or without issuing a notice under Condition 2.2.3 in the first place. Any such licence modification can then be referred to the CMA by the licence holder (or any other party listed under paragraph 1.3 of this paper).
- 3.10 Condition 2.3, the 'Conveyance Charges, Other Terms for the Conveyance of Gas and the provision of Conveyance Services' condition. This sets out the conditions regarding price control reviews and the establishment of conveyance charges. Under current licence arrangements, price control decisions are implemented through a Determination Notice (as defined in the Licence). PNGL can then raise a Review Disapplication Notice (as defined in the licence) which will disapply the determination unless UR refers the matter to the CC. This mechanism will need to be modified, as pursuant to the Regulations, the UR can no longer refer matters to the CMA. The purpose of the proposed changes to Condition 2.3 is to enable PNGL to disapply future price control determinations in a similar way as is the case today. To this effect, the proposed drafting requires the UR to update the licence with the Determination Values and Designated Parameters (as defined in the licence) of a price control decision. If the

licence holder (or any other party listed under paragraph 1.3 of this paper) wishes to disapply the price control decision they can, where relevant, refer the matter to the CMA in accordance with the Regulations.

## **feDL**

- 3.11 Conditions proposed to be modified pursuant to the new Regulations are Conditions 1.9, 1.13, 4.1, 4.4, 4.7, 4.9 and 4.10.
- 3.12 Furthermore, a minor modification is proposed to Condition 1.1 to correct a typo in the current licence drafting.
- 3.13 All proposed modifications are shown as tracked changes in Appendix 11.
- 3.14 Condition 1.9, the 'Modifications' condition. This lists the Articles of the Gas Order subject to which the licence may be modified. We propose to amend this condition to ensure that Articles of the Gas Order which have been omitted pursuant to the Regulations are no longer referenced in Condition 1.9, and that new relevant Articles that have been added to the Gas Order pursuant to the Regulations are.
- 3.15 Condition 1.13, the 'Payment of Fees to the Authority' condition. Details of the change are set out in paragraph 1.12 of this paper.
- 3.16 Conditions 4.1, 4.4, 4.7, 4.9 and 4.10 deal with conveyance charging, price control reviews and disapplication and definitions. The purpose of the proposed changes to Conditions 4.1, 4.4, 4.7, 4.9 and 4.10 is to enable feDL to disapply future price control determinations in a similar way as is the case today. To this effect, the proposed drafting will facilitate the implementation of two disapplication mechanisms.
- 3.17 In line with the proposed changes for the PNGL licence, it is suggested that, rather than implementing price control decisions through issuing a Determination Notice (as defined in the licence), the UR will, in future, implement them by updating the Determination Values and Designated Parameters in the licence (such terms, again, as defined in the licence). If the licence holder (or any other party listed under paragraph 1.3 of this paper) wishes to disapply the price control decision they can, where relevant, appeal the modification to the CMA in accordance with the new procedure as set out in the Gas Order (as amended by the Regulations).
- 3.18 The feDL licence in its current form also includes a mechanism whereby feDL can disapply certain licence conditions, the so-called 'Charge Restriction' conditions. This mechanism allows the licence holder to request disapplication of these conditions from a future date. The UR could then

refer the matter to the CC or accept the disapplication by taking no further action. As a result of the coming in operation of the Regulations, the UR can no longer refer matters to the CMA. Therefore, we propose to change the mechanism so that, in response to a Disapplication Request (as defined in the licence) from the licence holder, the UR can decide to modify the licence to change the 'Charge Restriction' conditions or alter the right of the licence holder to disapply on this occasion. In either case, if they are not satisfied with the licence modification decision of the UR, the licence holder (or any other party listed under paragraph 1.3 of this paper) can then refer the matter to the CMA in accordance with the new procedure. If the UR takes no action following receipt of the Disapplication Request, or if the CMA quashes UR's licence modification decision without substituting it for its own or referring the matter back to the UR, the licence holder may serve a Disapplication Notice to give effect to the disapplication of the 'Charge Restriction' conditions.

## **Gas Transmission Licences**

### **Overview**

- 3.19 There are currently three gas transmission licence holders in Northern Ireland:
- Premier Transmission Limited (PTL);
  - Belfast Gas Transmission Limited (BGTL); and
  - Bord Gais Eireann (UK) Limited (BGE UK).
- 3.20 All three are affected by the Regulations. However, proposed changes to their licences are limited. These changes will only affect two areas:
- licence fees; and
  - price control disapplication notices.
- 3.21 It is proposed to modify Conditions 1.13.3 (c) and 1.13.6 (iii) of each licence. This removes references to the CC costs in calculating the licence fee (see paragraph 1.12 of this paper).
- 3.22 It is further proposed to amend conditions relating to price control disapplication notices. These are:
- BGE UK = Condition 2.2.5 (f);
  - BGTL = Condition 3.1.8.5 (iii); and

- PTL = Condition 3.1.10.5 (iii).

3.23 The modifications are shown in track change format in Appendix 6, 7 and 9. Further detail as to the reasons for changes and what they mean in practice is set out below.

## **Modifications**

3.24 Condition 1.13 in each licence deals with calculating licence fees payable. Details of change are set out in paragraph 1.12.

3.25 The other price control conditions listed above refer to disapplication notices. These can be issued by the companies if they disagree with the UR's revenue determination. The current licence conditions allow the UR to refer these disputes to the CC. The proposed changes would mean that:

- the UR would have to publish a decision/licence modification in response to the notice; and
- individual companies have the ability to appeal to the CMA against these licence changes.

3.26 The modifications also propose to increase the response time for a disapplication notice from three to six months. This reflects the fact that under the proposed changes, the UR may have to 'reopen' price control decisions. This is likely to be more time consuming than simply deciding to refer the matter to the CMA.

Q5 Respondents are asked to comment on the overall approach taken to modifying the gas transmission and distribution licences.

Q6 Respondents are asked to provide suggestions as to how the gas transmission and distribution licence conditions might be simplified in the future.

# Chapter 4: Electricity Transmission and Distribution Licences

## Overview

- 4.1 There are currently four electricity transmission and distribution licences held in Northern Ireland which are listed below:
- NIE Transmission Licence;
  - NIE Distribution Licence;
  - SONI Transmission System Operator Licence; and
  - Moyle Interconnector Transmission Licence.
- 4.2 The consequential changes to each of these licences following the introduction of the Regulations are outlined below. In bringing forward the Regulations, the Department sought to replicate the arrangements in Great Britain for licence modifications and appeals. The modifications proposed in this section of the paper also, therefore, follow the Ofgem model and reflect the fact that, where possible and appropriate, Northern Ireland has attempted to replicate the arrangements in Great Britain. While the detail of the Ofgem drafting varies from case to case, the drafting which UR most closely followed can be found in the National Grid Electricity Transmission PLC, electricity Transmission Licence, Special Condition 8A<sup>5</sup>.

## **NIE Ltd electricity transmission licence and electricity distribution licence.**

- 4.3 We propose to modify Condition 7 and Annex 2 of both licences. Paragraph 2(c) of Condition 7 is proposed to be deleted and the remaining paragraphs renumbered to account for this deletion. Paragraph 1.1 of

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<https://epr.ofgem.gov.uk/Content/Documents/National%20Grid%20Electricity%20Transmission%20Plc%20-%20Special%20Conditions%20-%20Current%20Version.pdf>

Annex 2 is proposed to be modified to update references to legislation within the definition of “transmission and distribution charge restriction conditions”. Paragraph 7 of Annex 2 is proposed to be modified by substantial amendments throughout.

- 4.4 In addition for the distribution licence only, paragraph 7 of Annex 1 is proposed to be modified. The modifications are a mirror image of the modifications in paragraph 7 of Annex 2.
- 4.5 The modifications are shown in track change in Appendix 4 and Appendix 5. Some further detail as to the reasons for the modifications and what they mean in practice is set out below.

## **Modifications**

- 4.6 Condition 7 in both licences deal with calculating annual licence fees payable by the licence holder. Details of changes to licence fee condition are set out in paragraph 1.12 of this paper.
- 4.7 As a result of the Regulations some provisions in Annex 2 of both licenses that relate to licence modification in specific circumstances will be altered.
- 4.8 They include relevant updates to any references to the amended legislation, as proposed for paragraph 1.1 of Annex 2 and to the applicable processes. The modifications proposed to paragraph 7 of Annex 1 are parallel to the changes to Annex 2.
- 4.9 Paragraph 7 of Annex 2 in both licences ‘the Transmission and Distribution Charge Restrictions’ currently sets out how long price control licence conditions may remain in operation. Paragraph 7 of Annex 1 in the distribution licence has the same effect, but for a specific charge levied under that licence.
- 4.10 Currently upon receipt of a disapplication request the UR may refer the matter to the CMA. We propose to amend Annex 1 and 2 such that upon receipt of a disapplication request the UR will either propose a modification to the Annex or let the Annex remain as it is.

- 4.11 If we propose a modification and NIE or any other party listed in paragraph 1.3 of this paper do not agree with the proposed modification they have the right of appeal to the CMA. If no modification is proposed, the licence holder can serve a further notice on the UR and the Annex (or part thereof) which is the subject of the disapplication request, will no longer apply from a specified date.
- 4.12 This proposal will, therefore, maintain the level of protection that the licence holder currently enjoys, in terms of its ability to have the case heard by the CMA.

## **SONI Transmission System Operator Licence**

- 4.13 We propose to modify Condition 8 ‘Payment of Fees’ and Annex 1 ‘Charge Restrictions’ of the SONI licence.
- 4.14 The modifications are shown in track change in Appendix 10. Some further detail as to the reasons for the modifications and what they mean in practice is set out below.

### **Modifications**

- 4.15 Condition 8 deals with calculating annual licence fees payable by the licence holder. Paragraph 2b (and subsequent references) are proposed to be removed. Details of changes to licence fee conditions are set out in paragraph 1.12 of this paper.
- 4.16 Currently upon receipt of a disapplication request the UR may refer the matter to the CMA. We propose to amend Annex 1 ‘Charge Restrictions’ such that upon receipt of a disapplication request the UR will either propose a modification to Annex 1 or let the Annex remain as it is.
- 4.17 If we propose a modification and SONI or any other party listed in paragraph 1.3 of this paper do not agree with the proposed modification they have the right of appeal to the CMA. If no modification is proposed, the licence holder can serve a further notice on the UR and the Annex (or part thereof) which is the subject of the disapplication request, will no

longer apply from a specified date.

- 4.18 This proposal will, therefore, maintain the level of protection that the licence holder currently enjoys, in terms of its ability to have the case heard by the CMA.

## **Moyle Interconnector Transmission Licence**

- 4.19 We propose to modify Condition 8 'Payment of Fees'.
- 4.20 The modifications are shown in track change in Appendix 12. Some further detail as to the reasons for the modifications and what they mean in practice is set out below.

### **Modification**

- 4.21 Condition 8 deals with calculating annual licence fees payable by the licence holder. Paragraph 3b is proposed to be removed. Details of changes to licence fee conditions are set out in paragraph 1.12 of this paper.

Q7 Respondents are asked to comment on the overall approach taken to modifying the electricity transmission and distribution licences.

Q8 Respondents are asked to provide suggestions as to how the electricity transmission and distribution licence conditions might be simplified in the future.

# Chapter 5: Electricity Generation Licences

## Overview

5.1 There are currently 38 electricity generation licences held in Northern Ireland which are listed below

- AES Kilroot Generating Ltd\*
- AES Kilroot Ltd (Kilroot Power Ltd)
- Altahullion Wind Farm\*
- AES Ballylumford (Ballylumford Power Ltd)
- Brockaghboy Windfarm Ltd\*
- Church Hill Energy Ltd\*
- Carn Hill Windfarm Ltd\*
- Contour Global Solutions (NI)\*
- Coolkeeragh Power Ltd\*
- Cregganconroe Wind Farm Limited\*
- Crighshane Energy Ltd\*
- Crockagarran Wind Farm Ltd\*
- Curryfree Wind Farm Ltd\*
- Dunbeg Windfarm Ltd\*
- Dunmore Wind Farm Ltd\*
- ERE Developments Ltd\*
- Full Circle Generation Limited\*
- Garves Wind Ltd\*
- Gortfinbar Windfarm Ltd\*
- Gruig Wind Farm Ltd
- Hunters Hill Wind Farm Ltd\*
- Hunters Hill Wind Farm Ltd Carrickatane Site\*
- Inishative Wind Farm Limited\*
- Lendrum's Bridge Wind Farm Ltd\*
- Lough Hill Wind Farm Ltd\*
- Mantlin Ltd (Slieve Rushen Wind Farm)\*
- Molly Wind Ltd\*
- Monnaboy Wind Farm Limited\*
- Ora More Energy Ltd\*
- Owenreagh Wind Farm Ltd
- ScottishPower Renewables (UK) Ltd\*
- Screggagh Windfarm Ltd\*

- Slieve Divena Wind Farm Ltd
- Smugledon Windfarm Ltd\*
- SSE Renewables UK Ltd\*
- Tappaghan Wind Farm (NI) Ltd\*
- Thornog Windfarm Ltd\*
- Upper Ballyrogan Wind Farm Ltd\*

\*Licence requires additional modification to the definition of CC.

- 5.2 All the above electricity generation licences are affected by the Regulations and licence modifications are, therefore, required.
- 5.3 All of the licence modifications proposed are consequential to the coming into operation of the Regulations. In respect of those licences with an asterisk, three licence conditions will require modification, while those without an asterisk will require two conditions to be modified. For only those licences which define the CC (marked with an asterisk) they will require this definition to be updated to reflect the new body called the CMA. All the electricity generation licences will require modifications to Condition 3 'Prohibition of Cross-Subsidies and Discrimination' and Condition 12 'Payment of Fees'.

## Modifications

- 5.4 We propose to amend the definition in Condition 1 'Definition of Competition Commission' as the relevant body is now the CMA established by section 25 of the Enterprise and Regulatory Reform Act 2013.
- 5.5 Condition 3 paragraphs 4 to 12 'Prohibition of cross-subsidies and of discrimination'. This condition states that the licensee must ensure that no separate business gives a cross-subsidy to or receives a cross subsidy from the licensee or affiliate or related undertaking. Currently the licensee may seek to disapply this condition and where this happens the UR may refer the matter to the CMA.
- 5.6 We propose to amend the condition such that upon receipt of a disapplication request the UR will either propose a modification to the condition or let the condition remain as it is.

- 5.7 If we propose a modification and the licence holder or any other party listed in paragraph 1.3 of this paper do not agree with the proposed modification they have the right of appeal to the CMA. If no modification is proposed, the licence holder can serve a further notice on the UR and the licence condition (or part thereof) which is the subject of the disapplication request, will no longer apply from a specified date.
- 5.8 This proposal will, therefore, maintain the level of protection that the licence holder currently enjoys, in terms of its ability to have the case heard by the CMA.
- 5.9 Condition 12 deals with calculating annual licence fees payable by the licence holder. Details of changes to licence fee conditions are set out in paragraph 1.12 of this paper.
- 5.10 The proposed modifications are set out in Appendix 13. For illustrative purposes only, the proposed modifications have been based upon the AES Kilroot Generating Ltd Electricity Generation Licence as a template for all other electricity generation licences. Please note that the relevant and equivalent condition in other existing electricity generation licences may have different numbering or references.

Q9 Respondents are asked to comment on the overall approach taken to modifying the generation licences.

Q10 Respondents are asked to provide suggestions as to how the generation licence conditions might be simplified in the future.