

## Annex 3: Belfast Gas Transmission Limited Proposed Licence Modification

- Proposed deletions are indicated by text which has been struck through.
  - Proposed additions are indicated by red text highlighted in yellow.
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### **Condition 1.21: Regulatory Instructions and Guidance**

#### **1.21.1 Introduction**

- (a) The purpose of this Condition 1.21 is to set out the scope, contents, and common governance arrangements for the Regulatory Instructions and Guidance (“RIGs”) published by the Authority pursuant to this condition.
- (b) The RIGs are the primary means by which the Authority directs the Licensee to collect and provide the information to the Authority that the Authority needs to enable it to administer the Price Control Conditions Part 3 of this licence and any determinations made by the Authority under or for the purposes of the Price Control Conditions.

#### **1.21.2 Licensee’s obligation under this condition**

- (a) Unless and so far as the Authority otherwise consents, the Licensee must have in place and maintain appropriate systems, processes, and procedures to enable it:
- (i) to estimate, measure, and record the information detailed in the RIGs (“specified information”); and
  - (ii) to provide such information to the Authority in respect of such periods and within such timeframes as are specified in the RIGs.
- (b) To facilitate compliance with paragraph (a) of this Condition 1.21.2, the accounting records and other records kept by the Licensee with respect to the specified information must:

- (i) be so arranged as to ensure that such information can be separately identified and reasonably attributed as between the Licensee's business and the business of any affiliate or related undertaking of the Licensee; and
- (ii) be maintained for a period of eight years, or such shorter period as set out in the RIGs, from the date that they are made.

### 1.21.3 Scope and content of RIGs

- (a) Subject to paragraphs (b) and (c) of this Condition 1.21.3, the matters that may be included, or for which provision may be made, in the RIGs are:
  - (i) instructions and guidance on the establishment of systems, processes, procedures, and ways for recording and providing specified information;
  - (ii) instructions and guidance on the standards of accuracy and reliability that are applicable to the recording of specified information (including different classes of such information);
  - (iii) a timetable for the development of such systems, processes, and procedures as are required to achieve such standards;
  - (iv) the methodology for calculating or deriving numbers comprising specified information;
  - (v) provision with respect to the meaning of words and phrases used in defining specified information;
  - (vi) requirements as to the form and manner in which, or the frequency with which, specified information must be recorded;
  - (vii) requirements as to the form and manner in which, or the frequency with which, specified information must be provided to the Authority;
  - (viii) requirements as to which (if any) of the specified information is to be subject to audit, the terms on which an auditor is to be appointed by the Licensee for that purpose, and the nature of the audit to be carried out by that person;
  - (ix) requirements as to the circumstances in which the Authority may appoint an examiner to examine the recording of the specified information by the Licensee;

- (x) a statement on whether and to what extent each category of the specified information is required for the purposes of the RIGs; and
  - (xi) provision about how the Authority intends to monitor, assess, and enforce compliance with the RIGs (as to which, see also Condition 1.21.6).
- (b) The provisions of the RIGs must not exceed what is reasonably required to achieve the purposes of this condition, having regard to the materiality of the costs likely to be incurred by the Licensee in complying with those provisions.
- (c) No specified information may exceed what could be requested from the Licensee by the Authority under Condition 1.3.1.

#### 1.21.4 Development and modification of the RIGs

- (a) The Authority may issue new RIGs or modify any existing RIGs by issuing a direction for that purpose to the Licensee.
- (b) Data collected in relation to each formula year must be reported according to the RIGs issued to the Licensee by the Authority as they may be (where applicable) modified in line with this Condition 1.21.4 and with Condition 1.21.5.
- (c) A direction issued by the Authority under paragraph (a) of this Condition 1.21.4 will be of no effect unless the Authority has first:
- (i) given notice to the Licensee that it proposes to issue new RIGs or (as the case may be) to modify the RIGs:
    - (A) specifying the date on which it proposes that the provisions of the document to be issued or modified should take effect;
    - (B) setting out the text of the RIGs to be issued or (as the case may be) modified and the Authority's reasons for proposing to issue or modify it; and
    - (C) specifying the time (which will not be less than a period of 28 days from the date of the notice) within which representations in response to such proposals may be made; and
  - (ii) considered any representations in response to the notice that are duly made and not withdrawn.

- (d) The requirements for the issuing of new RIGs or modification of existing RIGs set out in paragraph (c) of this Condition 1.21.4 may be satisfied by actions taken by the Authority before as well as after the coming into effect of this condition.

#### 1.21.5 Requirements for new or more detailed information

- (a) This Condition 1.21.5 applies if any modified or new RIGs have the effect of introducing a requirement to provide:
- (i) a new category of specified information; or
  - (ii) an existing category of specified information to a greater level of detail, which has not previously been collected by the Licensee, whether under the provisions of the RIGs or otherwise.
- (b) Where this Condition 1.21.5 applies, the Licensee may provide estimates to the Authority in respect of the relevant category of specified information for any formula year specified by the Authority.
- (c) The estimates that are mentioned in paragraph (b) of this condition may be derived from such other information available to the Licensee as may be appropriate for that purpose.

#### 1.21.6 Compliance with the provision of the RIGs

- (a) The Licensee must at all times comply with the provisions of the RIGs for the time being in force pursuant to this condition.
- (b) Where the Licensee holds more than one gas conveyance licence within a single legal entity, it must comply with the requirements of this condition separately in respect of each such licence.
- (c) Nothing in this condition requires the Licensee to provide any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court.

#### 1.21.7 Definitions

For the purposes of this condition:

<b>"examiner"</b>	means, in relation to the RIGs, a person whose degree of knowledge and experience of the matters that are the subject of the RIGs will enable him to properly carry out and complete the tasks required of him under the terms of his nomination by the Authority pursuant to the provisions of the RIGs;
<b>"specified information"</b>	means information (or a category of information) that is so described or defined in the RIGs.
<b>"Price Control Conditions"</b>	Means condition 3.1.6 in this Licence

### **3.1.3 The Forecast Required Revenue**

- (a) The Forecast Required Revenue of the Licensee in respect of the Gas Year which commenced on 1 October 2007 shall be an amount to be determined by the Authority and notified to the Licensee on or before the date that the Licence comes into full force and effect.
- (b) The Forecast Required Revenue of the Licensee in respect of each subsequent Gas Year<sub>t</sub> (other than any Gas Year which is a Post Finance Gas Year) shall be:
- (i) the Licensee's forecast of (aa) (bb) and (cc) below, namely:-
- (aa) the Fixed Amount for such Gas Year<sub>t</sub> (which is represented by the term  $A_t$  in the formula set out in Condition 3.1.4(b)) plus
  - (bb) the amount of the Eligible Pass-Through Costs for such Gas Year<sub>t</sub> (which is represented by the term  $B_t$  in the formula set out in Condition 3.1.4(b)); plus
  - (cc) the Postalisation Adjustment for such Gas Year<sub>t</sub> (which is represented by the term  $C_t$  in the formula set out in Condition 3.1.4(b))

Minus

- (ii) the Licensee's forecast of (dd) and (ee) ~~and (gg)~~ below, namely:-
- (dd) the Ratio Account Credit for such Gas Year<sub>t</sub> (which is represented by the term  $D_t$  in the formula set out in Condition 3.1.4(b)); plus
  - (ee) the Insurance Recoveries for such Gas Year<sub>t</sub> (which is represented by the term  $E_t$  in the formula set out in Condition 3.1.4(b)); plus
  - ~~(gg) the Licensee's OS Revenues Share for such Gas Year (which is represented by the term  $G_t$  in the formula set out in Condition 3.1.4(b)).~~

### 3.1.4 Actual Required Revenue

(a) The Licensee's Actual Required Revenue (ARR<sub>t</sub>) for any Gas Year shall be the amount determined in accordance with the formula set out in Condition 3.1.4(b) for such Gas Year.

(b) The formula for the calculation of the Licensee's Actual Required Revenue is as follows, namely:-

$$ARR_t = (A_t + B_t + C_t + Z^*(S_t)) - (D_t + E_t + G_t).$$

### 3.1.5 Definition of Formula Terms

Z<sub>t</sub>= in respect of any Gas Year: and

(a) ~~the part of S<sub>t</sub> which is not attributable to the value ascribed to that term by the term G<sub>t</sub> embodied in the formula in Condition 3.1.6~~ a factor between 0 to 1, as determined by the Authority for such Gas Year and notified by the Authority to the Licensee on or before the eighth Business Day in November following the end of such Gas Year; and

(b) ~~the part of S<sub>t</sub> which is attributable to the value ascribed to that term by the G<sub>t</sub> term embodied in the formula in Condition 3.1.6, a factor equal to 1;~~

~~G<sub>t</sub>= in respect of any Gas Year, the Licensee's OS Revenues Share for such Gas Year.~~

### 3.1.6 Approved Surplus Determination

(a) **Not used. The formula for the calculation of the Approved Surplus in any Gas Year shall be as follows, namely:**

$$S_t = (BCO_t - ACO_t) + ARF_t - G_t$$

If S<sub>t</sub> is less than zero, it shall be deemed to be zero.

BCO<sub>t</sub>= the amount determined in accordance with Condition 3.1.6 (b) for Gas Year t

ACO<sub>t</sub>= the amount determined in accordance with Condition 3.1.6(c) for Gas Year t

and where  $ARF_t = \sum_{i=3}^1 [(BCO_{t-i} - ACO_{t-i}) - (Z_{t-i} * S_{t-i})]$

where  $i$  is each Gas Year in the period of the three previous Gas Years before Gas Year  $t$

and;

~~where  $G_t$  is the Licensee OS Revenues Share for such Gas Year, as calculated in accordance with the relevant provisions of the OS Scheme.~~

**(b) Determination of BCO**

(i) The Licensee may at any time and shall no later than:

(aa) the first Business Day of July 2008; and

(bb) ~~no later than 15 months prior to each subsequent Review Date (or such alternative date as may be determined by the Authority and notified to the Licensee in writing), the first Business Day of July of every third subsequent year~~

submit to the Authority ~~, in a format to be approved by the Authority,~~ an estimate of its Controllable Operational Expenditure ~~and an estimate of its Uncontrollable Operational Expenditure (as defined in Condition 3.1.6(d))~~ for each of the next ~~three~~ **five** Gas Years. ~~The format of the submission will be set out in the Regulatory Instructions and Guidance (“RIGs”) published by the Authority pursuant to Condition 1.21.~~

~~together with~~ **The Licensee must also submit** such explanation and supporting information as the Licensee considers to be reasonably necessary to permit the Authority to verify that such estimates are reasonable estimates in accordance with Condition 3.1.1(b).

(ii) The Licensee shall provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying **both** the Controllable Operational Expenditure estimates **and the Uncontrollable Operating Expenditure estimates** (including, without limitation, all figures, costs, estimates and assumptions

comprised in or underlying those estimates) in accordance with Condition 3.1.6(b)(i).

- (iii) The Authority shall, ~~no later than 28 days~~ following its verification of the Controllable Operational Expenditure estimates in accordance with Condition 3.1.6(b)(i), notify to the Licensee the amount of BCO (being the sum of the amount of each item of Controllable Operational Expenditure determined to be reasonable by the Authority) that it considers appropriate for each of the next ~~five~~ ~~three~~ Gas Years.

The Authority shall provide details of any changes that it has made to the Licensee's estimates of the Controllable Operational Expenditure **and Uncontrollable Operating Expenditure** together with the reasons for them and give the Licensee an appropriate period (being not less than ~~fourteen~~ **28** days) to comment on them.

- (iv) After consideration of the Licensee's comments referred to in Condition 3.1.6(b)(iii), the Authority shall notify the Licensee in writing of its determination of the amount of BCO for each of the next ~~five~~ ~~three~~ Gas Years, which, for the avoidance of doubt, may be the same as the amount that the Authority notified to the Licensee in accordance with Condition 3.1.6(b)(iii).

#### Revision of BCO

- (v) The Authority may, following a written request from the Licensee to review BCO for any Gas Year, provided that, if such a request is made in respect of the current Gas Year, such request is submitted before 31<sup>st</sup> of August in that Gas Year, to take into consideration any fact or matter that has arisen following the Authority's determination pursuant to Condition 3.1.6(b)(iv), conduct a review of BCO for that Gas Year.

The Licensee shall provide such information and explanation and access to documents and records as the Authority reasonably requires for the purpose of conducting its review. Before making any changes to its determination of BCO, the Authority shall provide details of the changes

and the reasons for them and give the Licensee an appropriate period (not being less than ~~28 fourteen~~-days) to comment on them.

After consideration of the Licensee's comments, the Authority shall notify the Licensee in writing of its determination of the revised BCO for the relevant Gas Year, which, for the avoidance of doubt, may be the same as the amount that the Authority notified to the Licensee in accordance with Condition 3.1.6(b)(iv).

**(c) Determination of ACO**

- (i) The Licensee shall, no later than the first Business Day of November following the end of each Gas Year, submit to the Authority, ~~in a format to be approved by the Authority,~~ a statement detailing the amounts of Controllable Operational Expenditure and **Uncontrollable Operating Expenditure** actually incurred by the Licensee in that Gas Year. **The format of the submission will be set out in the Regulatory Instructions and Guidance ("RIGs") published by the Authority pursuant to Condition 1.21.**
- (ii) The Licensee's ACO for each Gas Year shall be the aggregate of the actual amounts of Controllable Operational Expenditure referred to in the statement submitted in accordance with Condition 3.1.6(c)(i).

**(d) Definition of "Controllable Operational Expenditure"**

For the purposes of this Condition 3.1.6, "Controllable Operational Expenditure" shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2005 and may be amended by the agreement of the Authority and the Licensee from time to time. In the absence of agreement between the Licensee and the Authority, the Authority shall determine the categories of expenditure that comprise Controllable Operational Expenditure and notify the Licensee of its decision in writing.

**(e) Definition of “Uncontrollable Operational Expenditure”**

For the purposes of this condition 3.1.6, “Uncontrollable operation Expenditure” means Operating Expenditure which is outside the reasonable control of the Licensee and which has therefore been included in the list of “Uncontrollable Operating Expenditure” determined as such by the Authority for the purposes of this Condition, as such list may be amended, supplemented or varied by the Authority from time to time.

**(f) Definition of “Review Date”**

- i. 1<sup>st</sup> October 2008, 1<sup>st</sup> October 2011, 1<sup>st</sup> October 2014, 1<sup>st</sup> October 2017 and;
- ii. every fifth anniversary thereafter.