

Annex 4: Northern Ireland Energy Holdings 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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1.1.6 Definitions

"First Operational Commencement Date"	means: (a) the first date for which it is possible for a User to book capacity, pursuant to the provisions of the Network Code, in respect of the Network; or (b) the date specified in any direction issued by the Authority following consultation with the licence holder, as being the date on or from which the Network is deemed to be operational. whichever is the earlier.
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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 4 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:

"examiner" 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;

"specified information" means information (or a category of information) that is so described or defined in the RIGs.

"Price Control Conditions" Means condition 4.5 and 4.7 in this Licence

4.1.2 Definitions

Condition 4.1.2 (b)

Review Date	<p>means:</p> <p>(a) 1 October 2017 and every fifth anniversary thereafter the First Operational Commencement Date (which is also "the first Review Date"); and</p> <p>(b) thereafter, the date of each subsequent review of the rate of return as determined by the Authority at the previous Review Date.</p>
<p>Uncontrollable Operating Expenditure</p>	<p>has the meaning given to that term in Condition 4.7.4.</p>
<p>Virtual Reverse Flow (VRF) Revenues</p>	<p>has the meaning given to that term in Condition 4.7.8.</p>

Condition 4.4: Forecast and Actual Required Revenue

4.4.1 Forecast Required Revenue

The Forecast Required Revenue of the Licensee in respect of each Gas Year shall be calculated by the Licensee as its forecast of its Actual Required Revenue for that Gas Year, on the basis of the formula at Condition 4.4.2, but omitting for this purpose the $Z_t^*(S_t)$ component of that formula.

4.4.2 Actual Required Revenue

- (a) The Licensee's Actual Required Revenue (ARR_t) for any Gas Year shall be the amount determined in accordance with the formula set out in paragraph (b) for such Gas Year.

- (b) The formula for the calculation of the Licensee's Actual Required Revenue in any Gas Year is as follows:

$$ARR_t = (A_t + B_t + C_t + Z_t^*(S_t)) - (D_t + E_t + F_t)$$

Condition 4.4.3: Definition of Formula Terms

F_t	means the Virtual Reverse Flow (VRF) Revenues as calculated in accordance with Condition 4.7.7.
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Condition 4.7: The Approved Surplus and Other ARR Components

4.7.1 ~~The Approved Surplus~~

The formula for the calculation of the Approved Surplus (S_t) in any Gas Year is as follows:

$$S_t = (DCO_t - ACO_t) + ARF_t$$

but such that, where in accordance with this formula S_t is a negative number, it shall be deemed to be zero.

Where:

DCO_t is the Determined Controllable Operating Expenditure in Gas Year t;

ACO_t is the Actual Controllable Operating Expenditure in Gas Year t;

ARF_t is to be determined in accordance with the following formula:

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

where i is each Gas Year in the period of the three Gas Years prior to Gas Year t.

4.7.2 Determination of DCO

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

(i) the first Business Day of July 2016 (or such alternative date as may be determined by the Authority and notified to the Licensee in writing);
and

(ii) ~~the first Business Day of July of every third subsequent year~~ 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),

submit to the Authority, ~~in a format to be approved by the Authority,~~ an estimate of its Controllable Operational Expenditure (a "**Controllable Operating Expenditure Estimate**") and an estimate of its Uncontrollable Operational Expenditure (a "**Uncontrollable Operating Expenditure Estimate**") 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 ~~is a~~ are reasonable estimates in accordance with Condition 4.1.1(b).

(b) 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 each Controllable Operating Expenditure estimate and each Uncontrollable Operating Expenditure Estimate (including all figures, costs, estimates and assumptions comprised in or underlying those estimates) in accordance with paragraph (a).

(c) The Authority shall, ~~no later than 28 days~~ following its verification of a Controllable Operating Expenditure Estimate, notify to the Licensee the amount of the "**Determined Controllable Operating Expenditure**" (DCO)

(being the sum of the amount of each item of Controllable Operating 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 to the Licensee details of any changes that it has made to the Licensee's Controllable Operational Expenditure Estimate ~~and~~ ~~Uncontrollable Operating Expenditure Estimate~~ together with the reasons for them and give the Licensee an appropriate period (being not less than ~~14~~ ~~28~~ days) to comment on them.

- (d) After consideration of any comments received from the Licensee, the Authority shall notify the Licensee in writing of its determination of the amount of the Determined Controllable Operating Expenditure for each of the next ~~five~~ ~~three~~ Gas Years (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (c)).
- (e) The Authority may, following a written request from the Licensee to review the DCO for any Gas Year to take into consideration any fact or matter that has arisen following the Authority's determination pursuant to paragraph (d) – provided that, if such a request is made in respect of the current Gas Year, such request is submitted before 31st of August in that Gas Year – conduct a review of DCO 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 the Determined Controllable Operating Expenditure, the Authority shall provide details of the changes and the reasons for them and give the Licensee an appropriate period (not being less than ~~14~~ ~~28~~ days) to comment on them.

After consideration of the Licensee's comments, the Authority shall notify the Licensee in writing of its new determination of the Determined Controllable Operating Expenditure for the relevant Gas Year (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (d)).

4.7.3 Determination of ACO

- (a) The Licensee shall, by 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 Operating 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.**
- (b) The Licensee’s **"Actual Controllable Operating Expenditure"** for each Gas Year shall be the aggregate of the actual amounts of Controllable Operating Expenditure referred to in the statement submitted in accordance with paragraph (a).

4.7.4 Definition of Controllable Operating Expenditure **and Uncontrollable Operating Expenditure**

For the purposes of this Part 4, **“Controllable Operating Expenditure”** shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be those agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2015 subject to any amendments 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.

For the purposes of this part 4, “Uncontrollable Operating Expenditure” means Operating Expenditure which is outside the reasonable control of the Licensee and which has 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.

~~4.7.7 The Virtual Reverse Flow Revenues~~

~~The VRF Revenues (F) in any Gas Year shall be calculated as the aggregate of the sums received by the Licensee during that year for the provision of Virtual Reverse Flow Services in that year, after the deduction of value added tax (if any) and any other taxes based directly on the amounts so received.~~