

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

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

TO:

(1) AES Ballylumford Limited, (2) Bord Gáis Energy Limited, (3) Brookfield Green Energy, (4) Budget Energy Limited, (5) Project Plug Limited (t/a Click Energy), (6) ESB Independent Energy (NI) Limited (t/a Electric Ireland), (7) Electricity Supply Board (ESB), (8) ElectroRoute Energy Supply NI Limited, (9) Energia Customer Solutions NI Limited, (10) Evermore ES Limited, (11) firmus energy (supply) limited, (12) Gaelectric Green Energy Limited, (13) LCC Power Limited (t/a Go Power), (14) LCC Group Limited (t/a Go Power), (15) Naturgy Limited, (16) ONI Electricity Limited, (17) Power NI Energy Limited (t/a Power NI), (18) SSE Airtricity Energy Supply Limited, and (19) 3T Power Limited

(in each case, a 'Licensee')

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

- 1 The modifications involve the introduction of a new Condition 38A (Time Limit on the Recovery of Charges), immediately following the existing Condition 38, in each of the Licences.
- 2 The full text of the new Condition 38A is set out in Schedule 1 to this notice.
- 3 The effect of the modifications will be, in summary:
 - (a) to prevent each Licensee from taking steps to recover charges from customers unless it has sent them a bill for those charges, or otherwise initiated the recovery of the charges, within 13 months after they were incurred;
 - (b) thereby to prevent the Licensees from engaging in the so-called 'back billing' of customers for charges incurred more than 13 months prior to the bill;
 - (c) to apply this restriction in respect of the recovery of charges from both domestic and small business customers;
 - (d) to define small business customers, for this purpose, as being those consuming less than 50 MWh of electricity annually (whether at a single premises or in aggregate across a number of premises);

- (e) to require Licensees to reflect this restriction in the terms of their contracts and deemed contracts with customers,
 - (f) to create exceptions from the restriction in relation to actions taken by a Licensee before the condition takes effect, and cases in which it could not recover the charges within the usual time limit because:
 - (i) although it took all reasonable steps to do so, it was unable to obtain its own meter reading in respect of the period to which the charges relate;
 - (ii) there has been theft of electricity, or interference with the meter, at the premises to which the charges relate.
- 4 On 8 January 2020, the Authority published a notice stating that it intended to modify the Licence to reflect the decisions “Backbilling in the NI Retail Energy Market” January 2020. The notice set out the effect of the proposed modifications and the reasons why the Authority proposed to make those modifications. That notice was to bring the proposed modifications to the attention of persons likely to be affected by them and to invite representation or objections in connection thereto.
- 5 In the notice and Decision Paper, the Authority proposed an implementation date of 1 September 2020. However, following engagement with the industry, the Authority has decided to allow additional time in respect of the required market changes. Therefore, the modifications will take effect on and from 1 October 2020.
- 6 Three representations were made by licensees. Two sought clarification around the data NIEN will provide suppliers, and its overall approach to this new obligation in the absence of the reciprocal licence condition on the Network Operator. The Authority will ensure that NIEN and suppliers engage directly through the Central Design Authority in order to ensure any concerns are alleviated and the obligation is implemented successfully.
- 7 The Authority has, in pursuance of Article 14(4) of the Electricity Order published this notice on its website, and sent a copy of this notice to each Licensee, to the Department for the Economy, and to the Consumer Council NI.

Dated this 9th of March 2020



Jenny Pyper

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

SCHEDULE 1 – THE PROPOSED MODIFICATIONS

Condition 38A: Time Limit on the Recovery of Charges

The Time Limit

- 1 The Licensee shall not recover, or take any steps to recover, any Charges for the Supply of Electricity to Relevant Premises more than 13 months after the Relevant Date, unless:
 - (a) it has satisfied the requirement of paragraph 2 in relation to those charges; or
 - (b) any one or more of the circumstances described in paragraph 3 applies.

Action Taken within the Time Limit

- 2 The requirement of this paragraph is that, on a date which falls no more than 13 months after the Relevant Date, the Licensee:
 - (a) sent a bill, or any equivalent demand for payment, to the Customer in respect of the Charges for the Supply of Electricity; or
 - (b) otherwise took steps to recover the Charges for the Supply of Electricity, the effect of which has been (or will be) reflected in the next statement sent to the Customer after those steps were taken.

Circumstances in which the Time Limit Does Not Apply

- 3 The circumstances described in this paragraph are each of the following:
 - (a) the recovery of, or steps taken to recover, the Charges for the Supply of Electricity by the Licensee occurred prior to 1 October 2020;
 - (b) the Licensee was unable to satisfy the requirements of paragraph 2 in relation to the Charges for the Supply of Electricity in consequence of the fact that:
 - (i) the Licensee was unable to obtain an Actual Meter Reading at the Relevant Premises in respect of the period to which the charges relate, in spite of having taken all reasonable steps to do so; or
 - (ii) the Customer, or any other person in occupation of the Relevant Premises,

has unlawfully taken a supply of electricity, or interfered with the metering equipment, at those premises.

- 4 The Authority may, following consultation with such persons as it considers appropriate, modify paragraph 3 of this condition by adding to that paragraph such further descriptions of circumstances as it considers appropriate.

Terms of Relevant Contracts

- 5 The Licensee shall ensure that, by no later than 1 October 2020 and at all times after that date, the terms and conditions of all Relevant Contracts contain provisions which reflect the effect of paragraphs 1 to 3 of this condition.
- 6 The Licensee shall not enforce or otherwise rely on any term or condition of a Relevant Contract to the extent that to do so would be incompatible with its obligations under this condition.

Definitions

- 7 In this Condition:

Actual Meter Reading means an electricity meter reading taken by the Licensee or on its behalf (but does not include a meter reading taken by the Customer or an estimated meter reading).

Market Registration Code means the document of that name having effect under and in accordance with the Market Registration Framework Agreement (as that term is defined in Condition 4).

Relevant Contract means a Contract or Deemed Contract with a Customer at Relevant Premises.

Relevant Date means, in respect of any Charges for the Supply of Electricity:

- (a) where such charges relate to the consumption of units of electricity, the date on which those units

were consumed or can reasonably be estimated to have been consumed;

- (b) where such charges take the form of a standing charge or other form of charge that is not related to the consumption of units of electricity, the date on which such charges were accrued or (if earlier) in respect of which they are levied.

Relevant Premises means Domestic Premises or Small Business Premises.

Small Business Premises means a Non-Domestic Premises at which the annual consumption of electricity, taken together with the annual consumption at all other Non-Domestic Premises (if any) at which the Licensee gives a supply of electricity to the same Customer under a Contract or Deemed Contract, is less than 50 MWh calculated:

- (a) by reference to the 12 months of consumption data most recently available in respect of the premises;
or
- (b) where such data is not available, by reference to one of the following:
 - (i) the estimated consumption data in respect of the premises that is used by the Licensee to bill the Customer; or
 - (ii) the actual usage factor or estimated usage factor attributable to the premises as calculated under and in accordance with the provisions of the Market Registration Code.