

**DISPUTE REFERRED TO THE UTILITY REGULATOR IN RELATION TO A BILLING
DISPUTE WITH SSE AIRTRICITY GAS NI LTD**

FINAL DETERMINATION

24 February 2022

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1 SECTION ONE - INTRODUCTION

- 1.1 On 11 August 2021, the Northern Ireland Authority for Utility Regulation (hereafter, the **Utility Regulator**) received notification of a billing dispute (the **Dispute**) between [REDACTED] and SSE Airtricity Gas (NI) Limited (**SSE**): together, the **Parties**.
- 1.2 The Dispute between the Parties relates to charges levied by SSE for the supply of gas to a domestic property owned by [REDACTED] at [REDACTED], Belfast (the **Premises**).
- 1.3 The Utility Regulator has accepted and determines the Dispute in accordance with (i) the provisions of Art 24B of the Gas (NI) Order 1996, as amended (the **1996 Order**) and (ii) its Policy (the **Disputes Policy**) on the Resolution of Complaints, Disputes and Appeals: Guide for Applicants dated 20 August 2018 (**A3**).
- 1.4 The Parties have been advised as to (i) the Utility Regulator's decision to determine the Dispute and (ii) the timetable to be applied in making that determination: see **B96** and **B98** respectively.¹
- 1.5 The Utility Regulator has appointed myself, Mr Jody O'Boyle (Manager, Networks) to determine the dispute (the **Decision-Maker**) (**B93**). I do so as a delegate of the Utility Regulator and on its behalf.
- 1.6 This document is my **Final Determination** in respect of the Dispute and includes the (final) Order I make under Art 24B (8) of the 1996 Order.
- 1.7 In making this Final Determination, I have reviewed and considered the following materials and documents –
- a) A Statement of Case (**the Statement**)(**B125**) prepared for me by the case management team – the Statement sets out an overview of the background to the Dispute, the applicable statutory and regulatory framework, the views of the Parties in respect of the Dispute and the issues to be determined.
 - b) The documents which accompanied the Statement (and also copied to the Parties), which include all of the submissions of the Parties.

¹ That timetable has been adjusted as per the agreement of the Complainant reflected in document B128

- c) Correspondence with the Parties on the issue of the Code Validation Rules (the CVR)(**B123**) which said correspondence post-dated provision of the Statement to the Parties.

1.8 The Parties were afforded the opportunity to comment on

- (a) a draft of the Statement(**B110**), and
- (b) a provisional determination, dated 27 January 2022 (**the Provisional Determination**)(**B130**).

1.9 The comments received from the Parties on the draft Statement were taken into account by the case management team in preparing the final version of the Statement and are reflected within the relevant sections of this Final Determination.

1.10 The purpose of disclosing the Provisional Determination was to provide advance notification to the Parties of my (then) thinking; my proposed decision; and to provide the Parties with an opportunity to make written representations on:

- a) any factual statements made within the Provisional Determination which they believed to be incorrect together with their reasons for any such representations; and
- b) any of the provisional conclusions reached by me with which they disagreed together with their reasons in support of any disagreement.

1.11 In arriving at this Final Determination, I have taken into account the submissions received from the Parties on the Provisional Determination. Those submissions are detailed later in this document.

1.12 This Final Determination is structured as follows:

- The Parties (at Section 2),
- Applicable legal/regulatory framework (Section 3),
- Factual Background and views of the Parties (Section 4),

- Issues falling to be determined (at Section 5), and
- My Final Determination in relation to those issues (at Section 6),
- The Order (at Section 7).
- Closing Observations (at Section 8)

1.13 This Final Determination references a number of documents (including correspondence provided by the Parties) (the **Bundle**). An index to these documents is attached at Appendix 1, and any document which was not included in the Bundle provided to the Parties with the Statement is enclosed with this Final Determination.

1.14 The Bundle comprises –

- Section A - relevant legislation and background documents (referenced A).
- Section B - documents and correspondence relevant to the Dispute (referenced B).

2 SECTION TWO: THE PARTIES

██████████

- 2.1 ██████████ is the person who has referred the Dispute to the Utility Regulator. He resides at the Premises. He is/was at all material times a domestic (gas) customer of SSE.

SSE

- 2.2 SSE is a wholly owned subsidiary of SSE plc, a utility company operating in the gas and electricity markets in Northern Ireland. SSE plc is FTSE-listed Company, with interests and experience in electricity and gas production, distribution, supply and services.
- 2.3 SSE holds a gas supply licence granted by the Utility Regulator authorising it to supply gas in Northern Ireland to domestic customers (**A2**).
- 2.4 SSE supplies approximately 175,000 domestic customers in the Northern Ireland gas market.

3 SECTION THREE: LEGAL AND REGULATORY FRAMEWORK

3.1 The legal/regulatory framework applicable in determining the Dispute is summarised below.

The 1996 Order (A1)

3.2 The Dispute is to be determined under Article 24B of the 1996 Order.

3.3 Art. 24B provides (so far as may be relevant) as follows:

Article 24B: Billing Disputes

(1) A billing dispute—

(a) may be referred by the customer who is party to the dispute to the Authority² for determination in accordance with this Article; and

(b) on such a reference, shall be determined by order made by the Authority or, if the Authority thinks fit, an arbitrator appointed by the Authority.

(2) In this Article “billing dispute” means a dispute between a gas supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of gas supply services.

(3) The practice and procedure to be followed in connection with the determination of billing disputes shall be such as the Authority thinks appropriate and shall be published by the Authority.

(4) Except with the consent of the Authority, no billing dispute may be referred for determination under this Article—

(a) unless the matter in dispute has first been referred to the General Consumer Council pursuant to Article 22 of the Energy (Northern Ireland)

² All references to the “Authority” are to be read as references to the Utility Regulator.

Order 2003 and the matter has not been resolved to the satisfaction of the customer within 3 months of the matter being referred to the General Consumer Council;

(b) after the end of the period of 12 months after the end of the period in respect of which the charge which is the subject of the dispute applies.

(5) Where a billing dispute is referred to the Authority, an order under this Article shall be made and notified to the parties to the dispute within the requisite period or such longer period as the Authority may agree with the person referring the dispute.

(6) For the purposes of paragraph (5), the requisite period in any case means—

(a) the period of 2 months from the date when the dispute was referred to the Authority; or

(b) where information given to the Authority in relation to the dispute was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.

(7) A person making an order under this Article shall include in the order his reasons for reaching his decision with respect to the dispute.

(8) An order under this Article—

(a) may include provision requiring either party to the dispute to pay a sum in respect of the costs and expenses of the person making the order; and

(b) shall be final and enforceable as if it were a judgment of the county court.

(9) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (8)(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(10) The Authority or the arbitrator appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(11) Neither party to any billing dispute which has been referred to the Authority for determination in accordance with this Article shall commence proceedings before any court in respect of that dispute pending the determination of the dispute in accordance with this Article.

(12) A gas supplier may not commence proceedings before any court in respect of any charge in connection with the provision by him of gas supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner (if any) as may be required by any conditions of the gas supplier's licence, of—

(a) his intention to commence proceedings; and

(b) the customer's rights by virtue of this Article.

(13) The powers of the Authority under Article 30 shall also be exercisable for any purpose connected with the determination of any billing dispute referred to him in accordance with this Article as they are exercisable for a purpose mentioned in paragraph (1) of that Article.

The Disputes Policy (A3)

- 3.4 The practice and procedure to be followed by me - as the Decision-Maker - in determining this dispute (on behalf of the Utility Regulator) is set out in the Disputes Policy.
- 3.5 The Disputes Policy shall be supplemented as required in order to ensure good governance and best practice.

Phoenix Nature Gas Limited Distribution Network Code and Code Validation Rules

3.6 As part of its submissions³ on the Dispute SSE has referred to Section M of the Distribution Network Code (**DN Code**) (**A5**) promulgated by Phoenix Natural Gas Limited (**PNGL**) and certain provisions of the Code Validation Rules (**CVR**) (**B123**) a Network Code Side Agreement provided to gas suppliers as part of their accession to the Phoenix Distribution Network Code.

³ See email from SSE of 17 November 2021 at **B105**

4 SECTION FOUR: FACTUAL BACKGROUND TO THE DISPUTE AND THE RESPECTIVE VIEWS OF THE PARTIES

4.1 The following is a summary. The full exposition is to be found in the documents identified in the Bundle. Both Parties have submitted details of previous interaction with the Consumer Council for Northern (the **CCNI**); to whom [REDACTED] referred his dispute about the charges being made by SSE (for gas supplied to the Premises) before referring the Dispute to the Utility Regulator. I have had regard to the Parties' respective submissions to the CCNI⁴ but am in no way bound by the adjudication reached by the CCNI.

4.2 Section 4.3 through to section 4.32 (inclusive) represent the facts as outlined in the draft statement of case (**B110**). They are adopted for the purposes of this Final Determination.

Engagement with PNGL

4.3 On 28 October 2020, [REDACTED] emailed PNGL (**B1**) stating:

After receiving an exceptionally large SSE gas bill I contacted SSE to say that it was impossible that the bill could be so high given that although the gas meter was installed on 13 December 2019 it was not commissioned until 19 February 2020.

4.4 [REDACTED] added that he asked a builder to check for gas leakages. [REDACTED] said that the builder confirmed to [REDACTED] that the engineer who commissioned the boiler at the Premises attended the Premises on 24 June 2020 to discover (and fix) a leak at the Premises' meter; a meter installed by PNGL.

4.5 Following a subsequent (PNGL) engineer visit, PNGL responded to [REDACTED] (**B6**) confirming that all was then in order with the meter at the Premises. PNGL stated that the leak would have been located before entry into the relevant part of the meter so

⁴ It was confirmed in the letter of 29 October 2021 to the Parties (**B98**) that the Decision Maker would take account of the interactions with the CCNI supplied to the Utility Regulator by the Parties.

that any leaked gas would not have registered on the meter and, accordingly, ██████████ would not have been charged (by SSE) for any leaked gas.

- 4.6 PNGL advised that ██████████ contact SSE with regard to any concerns with his bill. The “exceptionally large gas bill” to which ██████████ referred was a gas bill dated 22 September 2020 (**the September 2020 Bill**) (B84). This gas bill covered a period between 13 December 2019 and 15 September 2020. It was based on actual reads. Those reads recorded an overall consumption (for the Premises) of 2,170m³ / 24,043 kWh. The total charge for gas used in the period billed was £983.43. It was the receipt of the September 2020 Bill that prompted ██████████ to contact PNGL and SSE and, ultimately, the CCNI.
- 4.7 ██████████ had (prior to receipt of the September 2020 Bill) received estimated bills from SSE. These bills have been supplied to the Utility Regulator (B85, B86) and (B41)
- 4.8 The first estimated bill was in the amount of £289.56 including VAT. It charged £275.77 for the period 13 December 2019 to 11 March 2020 claiming an estimated usage of 583m³ / 6,269kWh of gas.
- 4.9 The second estimated bill was in the amount of £149.00 including VAT. It charged £141.90 for the period 11 March 2020 to 11 June 2020 to claiming an estimated usage of 325m³ of gas / 3,575kWh.
- 4.10 It is not disputed that ██████████ discharged the first and second estimated bills in full in a timely fashion. No dispute is raised as to the estimated bills.

Engagement with SSE

- 4.11 ██████████ emailed SSE on 27 January 2021, (B14) stating:

Your colleague advised that given the information shared below it was highly likely that a meter had been installed which may not have been correctly set to zero.

- 4.12 SSE responded via email (**B24**) on 17 February 2021 stating that upon investigation the gas meter at the Premises was installed with a meter read of “0” and [REDACTED] had been billed from the correct opening read.
- 4.13 Attached to the email of 17 February 2021 were three new bills (each bearing the date 15 February 2021) for gas consumed at the Premises. SSE stated that these new bills were provided to allow a further breakdown for each individual billing period shown on the new bills.
- 4.14 One of the new bills (**B20: the First New Bill**) detailed that the Premises had consumed 1,063m³/12,139kWh of gas for the period of 19 February 2020 to 4 March 2020 (14 days). The amount billed for the specified period was £542.89 including VAT.
- 4.15 Another new bill (**B22: the Second New Bill**) detailed that the Premises had consumed 766m³/ 8,449kWh for gas for the period of 4 March 2020 to 5 June 2020 (93 days). The amount charged for the specified period was £346.94 including VAT. The amount shown on the bill was for £451.27 (including VAT): a figure that included a figure of £104.33 carried over from the First New Bill.
- 4.16 Another new bill (**B21: the Third New Bill**) detailed that the Premises had consumed 341m³/ 3,703kWh for gas for the period 5 June 2020 to 16 September 2020 (103 days). The amount charged for the specified period was £143.65 including VAT. The amount shown on the bill was for £594.92 (including VAT): a figure that included a figure of £451.27 carried over from the Second New Bill.

Engagement with CCNI

- 4.17 On 27 February 2021, [REDACTED] emailed CCNI (**B25**) and made a case that the volume of gas billed for the periods covered by the First New Bill and the Second New Bill were extremely large and could not have been used by him. He said this:

A double storey extension was undertaken from October 2019 and that there would have no usage between December 2019 and 19 February 2020. I say this because on previous correspondence until the e mail received 17 Feb 2021 (attached) SSE have always used the supply date of 13 December 2019.

From 19 February 2020 there would have been minimal usage in the extension as there were no functioning radiators and minimal in the existing house with only 5 radiators being utilised at most. In addition there was a 10 week period of great weather when only an electric shower was used and I would have been the only occupant. There is no gas cooking at home.

4.18 SSE did not accept that the claimed usage upon which the First New Bill and the Second New Bill were based could not have been consumed in the circumstances. During CCNIs handling of the dispute, SSE provided:

- A screenshot of a PNGL system, showing an installation date of 13 December 2020, with an initial read of 0 (B32).
- The recorded meter reading history from 13 December 2019 – 29 December 2020 (B28).

4.19 SSE also stated (B43):

- PNGL carried out a safety check on 29 October 2020 and no fault was detected with the gas meter.
- No smell of gas was recorded on any visits to the Premises.
- PNGL advised that this leak would not have created additional consumption through the meter, as it was located before the meter.

4.20 SSE did admit an administrative error on its part as regards the bills sent to [REDACTED]. SSE admitted that due to process failures the actual meter reads it had obtained for the premises (for the period after installation of the meter on 13 December 2019) had, incorrectly, not been used to produce the first two (estimated) bills sent to [REDACTED]. [REDACTED] should have been sent bills calculated by reference to actual meter reads that were actually available to SSE. SSE contended that the September 2020 Bill issued to [REDACTED] once the error was appreciated by SSE.

4.21 ██████████ accepted the offer and a (good will) credit for £100.00 was subsequently applied to his account. SSE did not accept that the admitted error would have any bearing on the amounts now billed to ██████████ (on the basis of the actual reads that SSE produced). SSE offered ██████████ a repayment plan.

4.22 On 8 July 2021, in an email to ██████████ (B56), CCNI concluded:⁵

If no new evidence is available then we are unfortunately unable to pursue the issue any further. (...) As the meter test did not identify any faults or issues and the leak would not have affected the usage, [SSE] is not in a position to reduce the bill any further as [it remains] of the opinion that any usage recorded on the meter has been used and must be paid for. Based on the information provided by [PNGL], we must also accept that the meter was started on a zero reading, as without proof that this was not the case, it is just speculation.

View expressed by the Parties in interaction with the Utility Regulator

4.23 In his initial communication with the Utility Regulator (B70) on 11 August 2021, ██████████ disputed the bills stating:

Dear Sirs

I'm not exactly sure how to go about this but in essence this is a complaint about charges that were levied against me between February and June of 2020.

I had a meter installed by PNG in December 2019.

The new gas boiler wasn't installed/connected until 19 Feb 2020 and therefore no gas could have been consumed... I have the Commissioning certificate.

In short I was subsequently billed over £500 for a 14 day period between 19 February and 4 March 2020 and £451 from March to June 2020.

⁵ To clarify, the conclusion of CCNI is set out for information/context only. The Utility Regulator is in no way bound as to the previous conclusions of CCNI on the Dispute. The Utility Regulator judges the matter afresh.

I disputed the Bill and my complaint was rejected by both parties on the basis that PNG could produce a docket showing a zero for the new meter... there is no photo graphic evidence of that as is the normal/standard custom.

I contacted the Consumer Council who under took an investigation finding that there had been a billing issue which I hadn't been made aware of and they secured a reduction goodwill offer of £100. I attach a sample of my e mails with CC.

I should be grateful if you would contact me regarding this complaint.... Bottom line is how on earth could I have used what is a full year's supply of gas for most people in 14 days and close to £1,000 in less than 5 months... I don't know the answer and believe there has been an issue with either the meter or the connection.

4.24 To [REDACTED] email of 11 August 2021 were attached various interactions with the CCNI. The essential features of those communications have been set out above. Also attached were pdf copies of the new bills dated 15 February 2021.

4.25 By emails of 9 September 2021 SSE made a response to the referred Dispute (**B74**). Those emailed responses set out why SSE considered that it could stand over the disputed charges. They followed a meeting between the Utility Regulator and SSE on 2 September 2021. Along with providing confirmation of meter reads and the billed volumes of gas, they stated as follows:

All gas [REDACTED] has been billed for is based on accurate meter readings taken from his meter. All bills are for gas his meter indicates that he has used. [REDACTED] has been billed for a total of £1988.66 worth of gas. To date we have received a total payment of £438.56. Including the £100 GWG credited to [REDACTED] account, he currently has an outstanding balance of £1450.10.

4.26 On 8 November 2021, [REDACTED] sent in an email that re-affirmed that the gas boiler at the Premises wasn't commissioned until 19 February 2020 and therefore no gas prior to that could have been consumed (**B102**).

4.27 [REDACTED] also submitted two photos which he states were taken 30 November 2019 (B103) and 17 December 2019 (B104). According to [REDACTED], the latter photo shows that the meter had been installed but not connected to the boiler which is located to the rear of the property.

4.28 On 17 November 2021, SSE responded (B105) stating that [REDACTED] had not provided any report of when the boiler was tested and connected to the Premises. Nor, stated SSE, had [REDACTED] provided any information from the boiler installer that would demonstrate commissioning and would validate [REDACTED]' account.

4.29 SSE further commented:

[PONGL] confirmed that the meter was installed on 13 December 2019 and that the start reading of 00000 is correct. It was noted that this installation reading complies with the arrangements under Section M within the Distribution Network Code and has been validated under the Code Validation Rules set out (1.3 & 3.12). The fundamentals of the market are built upon the provision of actual meter readings for billing purposes. [PONGL] have validated their installation date/read and, in addition SSE Airtricity are able to evidence their meter readings that have previously been provided.

4.30 SSE contended that a pro-rated usage between 16/12/2020 and 31/03/2021 (105 days) denotes a similar usage profile to the period that is disputed by [REDACTED] (13/12/2019 and 04/03/2020). The reads were set out as follows:

Install read provided by Phoenix Natural Gas of 00000 on 13th December 2019

Meter Reads taken by an SSE Meter Reader

- *01063 taken 4th March 2020*
- *01829 taken 5th June 2020*
- *02170 taken 16th September 2020*
- *02884 taken 16th December 2020*
- *04061 taken 31st March 2021*
- *04417 taken 28th June 2021*

- 4.31 ██████████ responded (**B106**) on 17 November 2021 with an attached photograph (**B107**) of a boiler commissioning statement for the Property, which shows (according to ██████████) a commissioning date of 19 February 2020.
- 4.32 ██████████ added that any pro-rata comparisons of the type contended for by SSE (as per SSE's email of 17 November 2021) were unfair, given that gas had not been actually connected to the boiler until 19 February 2020.

Responses to the Draft Statement of Case

- 4.33 The draft Statement (**B110**) was issued to the Parties on 10 December 2021 (**B109**) along with the accompanying Bundle. Representations on the draft Statement were due to be made by close 22 December 2021.
- 4.34 Both parties acknowledged receipt of the Draft statement and the accompanying bundle on 15 December 2021 (**B112** and **B113**) following a reminder email from the Case Management Team of the same date (**B111**).
- 4.35 No representations were made or received by the Parties by the due date.
- 4.36 The issuing email on 10 December 2021 (**B109**) also requested SSE furnish a copy of the CVR (**B123**) to the Utility Regulator and ██████████ by close 14 December 2021. SSE's acknowledgement of receipt on 15 December 2021 (**B113**) made no reference to this request.
- 4.37 ██████████ noted in his acknowledgement of receipt on 15 December 2021 (**B112**) that

I haven't seen a response or copy of CVR by the due date

- 4.38 On 31 December 2021 the Case Management Team emailed SSE noting SSE's failure to provide the requested CVR by the due date (**B114**). The email further requested SSE provide a copy of the CRV by 12.00 p.m. on 4 January 2022.
- 4.39 SSE responded to this request on 4 January 2022 (**B116**) stating

We are unable to provide the specific Code Validation Rules (CVR) you cite as they are party to the Distribution Network Operator, in this case Phoenix Natural Gas (PNG). The DNO's validation process is cited under Section M.13 of the code. To confirm, we do not have full visibility as to the details and mechanics of this process, other than it's (sic.) reference within the code and that the validity of all meter readings are tested in accordance with it.

- 4.40 [REDACTED], having been copied into the Case Management Team's email, also provided a response (**B115**) stating

I'm sure there must be provision to allow the extension offered to SSE and that the additional 3 weeks will not further delay the determination.

And

Additionally and for clarity I am content with the Draft Statement of Case and although I wasn't afforded an opportunity to speak directly to anyone within the office of the Utility Regulator, unlike SSE/PNG who had a meeting with the Regulator back in September 2021, should visual evidence of the extension work and associated flood damage that occurred in January 2021 be helpful I am happy to release these.

- 4.41 In response to SSE's email (**B116**), on 4 January 2022 the Case Management Team emailed SSE with questions regarding the CVR (**B117**). SSE responded to this request on 5 January 2022 (**B120**) stating

SSE does not have possession or access to the relevant CVR cited in the 17 November 2021. We have searched internally and are unable to obtain a copy of these rules in our records. We have reached out to PNG in an attempt to obtain a more up to date version than the 2012 version cited in the UR's written correspondence dated 04 January 2022. We are happy for the UR to use the aforementioned 2012 version but would kindly request sight of it, should it be determined as an integral aspect of the case

And

we are in contact with PNG to obtain a copy of this CVR and are happy to provide this information, if PNG are in a position to share it with SSE. The challenging timeframe associated with this response has made it difficult to obtain.

4.42 SSE also contended that Section M of the Code provides for start/installation reads to be validated under the CVR by PNGL, and that the supplier acted in accordance with the information received from PNGL as the Distribution Network Operator.

4.43 Following further questions from the Utility Regulator by letter dated 6 January 2022 (B121), SSE further commented by way of email dated 6 January 2022 (B122) that

We are of the understanding that the Operator subjects all Opening Meter Readings (including installation readings) through a validation mechanism (which is additional to that required to be undertaken by SSE as part of its own processes), and may subject any other Meter Reading types submitted through the validation mechanism also. This mechanism is termed the CVR.

4.44 SSE also provided a description as to how “validation” of the type described is performed by PNGL under the CVR together with a copy of the Code Validation Rules (B123).

Responses to the Provisional Determination

4.45 SSE responded to the provisional determination (B130) on 7 February 2022 (B132) stating that it had

no further comments to add at this time

4.46 [REDACTED] also responded to the Provisional Determination on 7 February 2022 (B131). I have had regard to the full contents of [REDACTED]' response.

4.47 In the first instance [REDACTED] stated

I appreciate that you have determined that the actual start date is the 19 February 2020.

4.48 [REDACTED] went on to state:

Having accepted the start date on 19 February 2020 as the date when gas flowed through the meter and that SSE has confirmed an actual meter reading on 4 March I would have thought it reasonable for SSE systems to raise an alarm on the volumes metered.

and

it was me who raised the alarm.

4.49 [REDACTED] again emphasized

I did so because the average domestic home uses approximately 33-38 kWh per day equating to 12,000 kWh per year. Based on the reading taken by SSE Gas on 4 March 2020, I had used 12,139kwh in 14 days, equating to 867kWh per day, which cannot be considered normal and should have signified a problem or issue. Both SSE customer service staff and the Consumer Council said how it was difficult to imagine a house using £542 in 14 days

4.50 [REDACTED] further stated that:

*Your determination is based on the facts presented by SSE re the meter reading as at 13 December 2019 being 0 and subsequent actual meter readings which I was unaware of however all I have ever asked anyone is ... **is all of this reasonable.** Based on my comments above I would ask you to reconsider if it is reasonable to conclude that it is possible I could have utilised so much gas. (Emphasis in the original)*

4.51 In relation to the (provisional) costs order included in the Provisional Determination, [REDACTED] sets out why his circumstances should be regarded as *exceptional* (within the meaning of the UR's Statement on Costs) stating

I think it is entirely appropriate that SSE should meet the costs of this dispute in full. If the errors above had been identified and addressed earlier then I would not be in this position and would not have felt compelled to appeal to you.

and

As regards the balance due in respect of Bills 1 & 2 clearly neither I nor SSE can agree but perhaps in recognition of their error SSE could reconsider their compensation offer and lessen the burden on me and my family.

4.52 [REDACTED] also pointed out that he had never been asked what his financial means were.

4.53 On 11 February 2022 the Case Management Team emailed [REDACTED] (B133) confirming that it had not inquired as to his 'means' and sought to clarify whether [REDACTED] was making the case that he could not afford to pay the type of costs order set out in the provisional determination.

4.54 The 11 February email also asked [REDACTED] to Elaborate on his italicised sentence in his response to the provisional determination.

I think it is entirely appropriate that SSE should meet the costs of this dispute in full. If the errors above had been identified and addressed earlier then I would not be in this position and would not have felt compelled to appeal to you.

4.55 The Case Management Team confirmed that any response to the 11 February email need not be copied over to SSE (given that it might contain private financial information).

4.56 [REDACTED] responded to the email of 11 February by his email of 16 February 2022 (B134). I have had full regard to this email. [REDACTED] did not copy that email to SSE. I do not consider that [REDACTED] is to be criticised for that. Nor do I consider that SSE needs to see and have an opportunity to comment on the contents of [REDACTED] 16 February email before the promulgation of this Final Determination. There is no prejudice to SSE in such circumstances.

4.57 In his 16 February 2021 email [REDACTED] contends

Having accepted the start date on 19 February 2020 as the date when gas flowed through the meter SSE has confirmed an actual meter reading on 4 March 2020. As

an actual person attended the meter he/she would have been able to detect any leak by smell. Clearly no leak was detected at that or any further actual reading or by anyone else for that matter.

and

During the course of their investigation the Consumer Council queried why SSE had not raised an internal alarm due to the excessive use for the period 19 Feb to 4 March. The Consumer Council asked SSE did they not feel they owed me a Duty of Care to raise the alarm but as we now know an admin error meant that the alleged excessive usage wasn't detected or an alarm raised until later that year. Clearly not my fault.

4.58 [REDACTED] also points out that

The same incident occurred in June and no action taken so again not my fault.

4.59 [REDACTED] concludes

Therefore my point is that if the error had been rectified at the time of the first meter reading the usage issue would have been identified earlier and presumably steps taken and perhaps none of this would have been necessary.

I can assure you that I would not have pursued this matter had I not had absolute surety that it just was not possible that I alone, as I was the only inhabitant at that time, could have consumed so much gas in such a short period of time.

This is why I assert that SSE should be liable for your costs.

4.60 In response to the UR's inquiry as to "means" and "time to pay" [REDACTED] made submission about budgeting and further stated:

If the adjudicator determines that I have no case and that I am liable to pay costs I would be able to contribute [REDACTED] within the 28 days but as I say I am still hopeful that the adjudicator will consider the 'reasonableness' of my case and the experience we have had to endure.

And

In the event that he determines in SSE's favour he says that I should pay SSE in full does that mean he has waived SSE's offer of a 'goodwill' £100 as well or perhaps he can encourage SSE to increase their 'goodwill' offer.

- 4.61 On 22 February 2022 [REDACTED] emailed the UR (B136) attaching a letter from SSE (Credit Control Team) dated 15 February 2022 (B135) as to an amount owed on [REDACTED] account and the potential fitting of a pre-payment meter. [REDACTED] indicated that he did not want a pre-payment meter. He further stated that he had understood that he was "protected" from further action as there was an "ongoing dispute".
- 4.62 On 23 February 2022 SSE sent an email (B137) to [REDACTED] (copied to the CMT) confirming that the letter of 15 February 2022 had been an automated letter and could be disregarded.

5 **SECTION FIVE: ISSUES TO BE DETERMINED**

5.1 The Statement sets out the issues for determination. I agree with the issues as set out in the Statement.

5.2 On 27 October 2021 (**B96**) the Utility Regulator wrote to the Parties to confirm that it considered the Dispute to be a dispute as to the charges levied by SSE for gas supplied to the Premises as (and only as) recorded in the First New Bill and the Second New Bill, rather than a dispute as to the September 2020 Bill. Neither of the Parties has challenged that ruling as to the proper scope of the Dispute.

5.3 It follows that the Issues for determination are as follows:

- **First Issue (Issue One)** - What amount of charges (if any) is SSE entitled to recover from [REDACTED] in respect of the supply of gas to the Premises for the billing period covered by the First New Bill (**B20**)
- **Second Issue (Issue Two)** - What amount of charges (if any) is SSE entitled to recover from [REDACTED] in respect of the supply of gas to the Premises for the billing period covered by the Second New Bill (**B22**)
- **Third Issue (Issue Three)** - Whether (depending on the outcome of the First and Second Issues (above) the Utility Regulator should exercise its power (under Art 24B (8)(a) of the 1996 Order) to make a Costs Order as part of the determination of the Dispute, and if so, against whom, and in what amount.

6 SECTION SIX: DETERMINATION

ISSUE ONE

- 6.1 The issues that I must determine are set out in Section Five and have remained unchanged through the draft Statement, the Statement and the Provisional Determination.
- 6.2 My overall finding is that I am (still) satisfied, having considered all of the relevant materials⁶ that SSE is entitled to recover from [REDACTED] - in respect of the supply of gas to the Premises for the billing period covered by the First New Bill (**B20**) - the full amount of charges there billed. My reasons for this are as follows and they are essentially the same as those set out in my Provisional Determination.
- 6.3 It is important at the outset to define the scope of the Dispute. The Dispute is not about the *rate* that SSE has applied for the volume of gas it claims to have supplied to the Premises during the billing periods covered by the First New Bill and the Second New Bill. No dispute is raised on that.
- 6.4 Rather, the Dispute is about the **volume** of gas for which SSE has billed for the billing periods covered by the First New Bill and the Second New Bill. Resolution of Issue One involves looking at the disputed volume of gas billed for as recorded in the First New Bill. Resolution of Issue Two involves consideration of the disputed volume of gas billed for as recorded the in Second New Bill.
- 6.5 However, it seems to me that there is considerable overlap involved in resolving Issue One and Issue Two. The respective cases made on Issue One and Issue Two are (essentially) the same. What follows explains my decision on Issue One. It will also explain why I decide as I do when I come to resolve Issue Two.

⁶ Any failure in this determination to refer to any submission or piece of evidence adduced by either Party should not be construed as evidence of a failure to take that material into account.

6.6 [REDACTED] claims that he could not have used/consumed (at the Premises) the volume of gas recorded in either the First New Bill or the Second New Bill. Again, in referring to the Dispute he said this:

Bottom line is how on earth could I have used what is a full year's supply of gas for most people in 14 days and close to £1,000 in less than 5 months... I don't know the answer and believe there has been an issue with either the meter or the connection".

6.7 In support of his case, [REDACTED] has pointed to the amount of the disputed volume of gas. He has claimed that this is extraordinary when compared to "normal" or "usual" domestic consumption patterns. He has sought to rely upon conditions at the Premises and prevailing weather patterns to support his central submission; namely, that he cannot have used the volumes of gas that SSE says he used across each of the billing periods covered by the First New Bill and the Second New Bill. Both Parties appear to agree that the disputed volumes of gas are high: particularly with regard to the billing period covered by the First New Bill.

6.8 SSE has, however, submitted that the disputed volumes of gas are broadly consistent with the (as yet unchallenged) volumes of gas recorded as consumed at the Premises for a similar period in the year following. SSE points here to the usage recorded in the period commencing 16 December 2020 through to June 2021. It then seeks to employ a pro-rated calculation for gas usage. [REDACTED] has argued that this is a faulty comparison because his boiler was only commissioned on 19 February 2020. Of course, a more central problem with the SSE "comparison" or "pro rata" submission is that it fails to recognise the billing periods relevant to the Dispute

6.9 The Dispute is (as confirmed above) about the volumes of gas claimed to have been supplied to the Premises as detailed on the First New Bill and the Second New Bill. The operative billing period for the First New Bill does not in fact start from 13 December 2019 (being the agreed month of installation of the meter at the Premises). It starts from 19 February 2020.

6.10 Admittedly, the *September 2020 Bill (B84)* used a December 2019/installation date as the start date for the billing period shown on that bill. But the September 2020 Bill was replaced by the First New Bill and the Second New Bill. SSE chose to do that. That

that was so is plain from a reading of the 17 February 2021 correspondence where SSE attached (for [REDACTED]) the new First New Bill, the Second New Bill and the Third New Bill (all bearing a date 15 February 2021)

- 6.11 That choice explains why the Dispute is not about the September 2020 Bill, but is instead about the First New Bill and the Second New Bill. The Parties have agreed that the Dispute is (only) about the First New Bill and the Second New Bill. The (replacement) First New Bill used a *billing period* starting 19 February 2020. It did so because SSE appeared to (then) accept [REDACTED] case as to the commissioning date for the boiler at the Premises (being 19 February 2020).
- 6.12 I consider that it is now too late for SSE to contend (as it appears to implicitly do by deploying the comparison submission) that the relevant billing period for the First New Bill somehow commences at 13 December 2019 - being the (uncontested) date of installation of the meter – and not 19 February 2020, being the date actually used in the First New Bill. It follows that SSE’s “comparison” submission (comparing consumption in the period following 13 December 2019 to that following 16 December 2020) is entirely misplaced. It cuts against the grain of the agreed scope of the Dispute.
- 6.13 Having found (or rather confirmed) that the relevant billing period (for the First New Bill) commences on 19 February 2020 there is, strictly speaking, no need to make any finding on [REDACTED] argument about the date of commissioning of the boiler.
- 6.14 SSE had originally pointed out that [REDACTED] had not supplied any evidence to support his claimed commissioning date. But that changed when [REDACTED] sent in a copy of a commissioning certificate (**B107**). SSE made no submission (thereafter) that that certificate did not support [REDACTED] case as to the date of commissioning. I therefore find that the date of commissioning was as claimed by [REDACTED]: namely, 19 February 2020.
- 6.15 SSE’s case in respect of the disputed gas volumes (for both the First New Bill and the Second New Bill) is not, however, confined to the (rejected) “comparison” with the 2020/21 bills for the Premises. SSE further relies upon the actual meter reads it puts forward. It also asserts that the *installation reading* for the meter should be determined

to be “zero” having regard to interactions with PNGL on that topic: an assertion that is claimed to meet the case put forward by ██████████ that the installation meter read was not in order (i.e., zero).

6.16 I take the installation meter read issue first. SSE has adduced communications from PNGL attesting to a zero start read for the meter. ██████████ has said that these communications in some way deviate from accepted protocols by the absence of a photograph. ██████████ does not substantiate that submission. ██████████ has adduced no other evidence against the PNGL/SSE case as to the installation reading being zero. Weighing the evidence I find that the start/installation reading was (as contended by SSE) zero. I now move onto the subsequent (actual) meter reads for the meter at the Premises.

6.17 SSE has supplied a list of (actual) meter reads for the Premises. ██████████ does not contest these adduced meter reads as reflecting the physical read of the meter on the date the relevant reads were taken/recorded. In those circumstances I accept that the meter reads supplied by SSE do reflect the meter reads as shown on the date the reads were taken. I do not see how I could find otherwise.

6.18 It follows that I proceed on the basis that the installation read for the meter at the Premises was “zero” (as contended by SSE) and the subsequent meter reads were as contended by SSE. That looks to be clear evidence that the disputed volume of gas recorded in the First New Bill and the Second New Bill (for the billing periods recorded in those bills) was supplied (by SSE) to the Premises. But that is not the end of the matter.

6.19 ██████████ has relied upon the fact that there was a leak at the meter; a leak detected (and resolved by tightening) by his engineer in June 2020. It appears to be ██████████ case that this leak could explain what he asserts are the high meter reads for the Premises recorded in the First New Bill and the Second New Bill. I am prepared to accept ██████████ case that such a leak was detected and “fixed” by his engineer. It doesn’t seem that SSE contends otherwise.

6.20 However, I am satisfied that the “leak” reported as fixed by the engineer in June 2020 could not have skewed the meter reads so that they did not accurately reflect the gas

supplied to the Premises during the relevant billing periods shown in the First New Bill or the Second New Bill. Such evidence as there is supports the case that any leak was on the *inlet side* of the meter and could, accordingly, not have resulted in an “increased” meter reading at the meter. [REDACTED] has supplied no evidence to argue against this proposition. Further, no evidence was raised by [REDACTED] to support any finding that there was anything wrong with the installed meter itself in so far as it operated to accurately reflect and record the volume of gas going through it onto the Premises side of the meter.

- 6.21 I also note that [REDACTED] has not adduced any evidence to argue that his commissioned boiler could not (given its capacity to use gas) have used the disputed volume of gas during the relevant billing period for the First Bill (or the Second New Bill).
- 6.22 I have regard here to the case made by [REDACTED] as to the conditions and use of the Premises (and weather conditions) in the period after the installation of the meter. I recall here that I have found that the period of inquiry for use of gas starts on 19 February 2020. There is thus no need to examine circumstances prior to 19 February 2020 (save for assuring myself that the installation meter read was actually “zero”).
- 6.23 I do not consider that the circumstances set out by [REDACTED] (for the period following 19 February 2020) are such (working on the assumption in favour of [REDACTED] that they are factually accurate) provide clear evidence as to the actual gas passing through the meter at the Premises in the period after 19 February 2020 up to the end of the billing period covered by the Second New Bill. It certainly does not carry comparable weight to that to be attached to my findings (above) as to (i) the installation meter read, (ii) the post installation meter reads and (iii) the “leak”
- 6.24 The foregoing reasons were those set out in my Provisional Determination. I have carefully considered whether there is anything in the submissions set out in [REDACTED] [REDACTED] emails of 11 February 2022 an/or 16 February 2022 (**the post PD submissions**) to cause me to doubt my previous (provisional) approach to Issues One/Two. I consider that there is not. For clarity, I do not consider that the SSE letter of 15 February 2022 (**B135**) has any bearing on my decision on the Issues One - Three. However, I shall return to that letter later in my closing observations Section Eight.

6.25 I do, however, consider that the post PD submissions should cause me to change course as to my findings on Issue Three. I shall set out why that is so later in Section Seven. For now, I explain why the post PD submissions do not cause me to reach a different conclusion (to that detailed in my Provisional Determination) on Issue One (and, relatedly, Issue Two).

6.26 I consider that the post PD submissions reflect a re-telling of the essential parts of the previous submissions of [REDACTED]. They re-state why [REDACTED] considers that he is not liable to pay what SSE claims it is entitled to charge as per First New Bill and the Second New Bill. In that way they cannot and do not cause me to change my provisional view on Issue One (and Issue Two). It is right, however to recognise what appears to be a new point made in the post PD submissions. I now address it.

6.27 In his post PD submissions [REDACTED] argues that SSE should have told him earlier about the level of gas being recorded through the Premises' meter. He says that SSE had an opportunity to do that from the taking of the actual readings in March 2020 and June 2020.

6.28 It is argued that things *might* have been different had [REDACTED] been alerted to the level of claimed usage recorded by the actual reading taken in March 2020.

*Therefore my point is that **if** the error had been rectified at the time of the first meter reading the usage issue would have been identified earlier and **presumably** steps taken and **perhaps** none of this would have been necessary*

(Emphasis added)

6.29 It will be recalled that SSE has admitted that it was not until production of the September 2020 Bill that it recognised that an error had taken place and that it did actually have *actual* meter reads for the Premises (starting March 2020).

6.30 It does not seem that the point made by [REDACTED] can assist in the proper resolution of Issue One/Two. At its heart it is speculative. To be fair, [REDACTED] appears to accept that in the language used and quoted above at 6.28.

- 6.31 It is accepted that the error made by SSE is unfortunate. SSE has recognised the failure by agreeing to credit [REDACTED] with £100 as a gesture of good will.
- 6.32 However, it does not seem that the “failure” to notify [REDACTED] sooner (i.e. after the March 2020 actual read) as to the volumes of gas being recorded by his meter (in March 2020 and June 2020) is relevant to my assessment of whether SSE is entitled to levy charges for the volumes of gas it says were registered by the installed meter at the Premises (as recorded in the First New Bill and the Second New Bill).
- 6.33 It is my job in determining the agreed Issue One and Issue Two to determine whether SSE is entitled to charge for the *volumes of gas actually* recorded in the First New Bill and the Second New Bill. It is no part of my task to *speculate* as to what *volume* of gas “might” have been billed for had SSE notified [REDACTED] sooner as to the volume of gas actually recorded in the March 2020 and June 2020 (actual) reads so allowing for/facilitating the taking of unspecified steps.
- 6.34 I note too that [REDACTED] argument could not in any event have any possible bearing on anything that pre-dated the initial March 2020 (actual) read. [REDACTED] does not claim (understandably) that he could have been notified before then. So, on [REDACTED] own case there would be no possible impact on my findings on Issue One. Be that as it may, my decision (as set out above) is that the point is not a good one (in any event) viz. either Issue One or Issue Two.
- 6.35 So, weighing everything up – and having had due regard to the post PD submissions – I (still) consider that the strong evidence of “usage” (by which I mean passage of gas through the meter at the Premises for the billing periods covered by the First New Bill and the Second New Bill) is not displaced by the other evidence or submissions now available. It follows that I find that the disputed volumes of gas recorded as supplied (for the relevant billing periods) in the First New Bill and the Second New Bill were supplied to the Premises during those billing periods.
- 6.36 I therefore (still) find, on Issue One, having carefully considered all the evidence, that I am satisfied that SSE is accordingly (there being no dispute as to the *rate* charged By SSE for any supplied gas) entitled to recover all of the charges set out in the First New Bill. In this way Issue One is decided wholly in SSE’s favour. In so finding I have

proceed on the basis (most favourable to [REDACTED]) that it is for SSE to persuade me that it is (in the language of Art 24B(2) of the 1996 Order) “*entitled*” to recover the charges set out in the First New Bill. My finding is (still) that SSE has – for the reasons set out – discharged that burden.

6.37 I should note that SSE’s case relied upon Section M of the DN Code (**A5**) and the CVR (**B105**). I consider that these provisions do not support the SSE case. Nor do they undermine it.

6.38 SSE’s submissions in this regard are unclear. I derive no real assistance from the SSE reference to Section M/and or the CVR. It seems that SSE sought to support its case on the accuracy/validation of the initial *installation read* by referring to the CVR (with Section M). How the CVR was relevant in this regard is not made clear by the SSE submissions. SSE’s responses to the Utility Regulators January 2022 correspondence are not easy to follow. Nor are they in parts particularly helpful.

6.39 Indeed, I was somewhat surprised that SSE claimed reliance on a document (the CVR) that it later admitted in correspondence with the Utility Regulator (following provision of the Statement) not to have had to hand when it made its relevant submission. I find this a surprising and somewhat peculiar approach from SSE, but not one that in the circumstances causes me (in light of the findings above) to reach a different conclusion on the issue as to the disputed volume of gas recorded in the First New Bill or Second New Bill. It may, however, go some way to explaining my difficulty in ascertaining how Section M of the DN Code read with the CVR supports the case for SSE.

6.40 I shall return to the matter of how SSE dealt with the issue of the CVR in my findings on Issue Three.

6.41 I note that SSE has made no comment on my provisional views as to its conduct of the Dispute (set out above). I confirm my provisional views on that as final.

ISSUE TWO

6.42 Again, the issues that I must determine are set out in Section Five and have remained unchanged through the draft Statement, the Statement and the Provisional Determination.

- 6.43 I am (still) satisfied – having considered all of the relevant materials – that SSE is entitled to recover from ██████████, in respect of the supply of gas to the Premises for the billing period covered by the Second New Bill (**B22**), the full amount of charges there billed. My reasons for this are as follows, and they are essentially the same as those set out in my Provisional Determination
- 6.44 Both Parties make (essentially) the same case in respect of the Second New Bill that they make in respect of the dispute as to the First New Bill.
- 6.45 Again, ██████████ does not dispute the “rate” applied for gas supplied to the Premises. He disputes the volume of gas (recorded in the Second New Bill) to which that rate has been applied.
- 6.46 My (final) findings above in respect of the dispute as to First New Bill (Issue One) carry over and apply to the determination of Issue Two. I need not repeat them. The considerations relevant to the dispute in respect of the Second New Bill are essentially the same as those pertaining to the dispute in respect of the First New Bill. My findings on those considerations so far as they affect the Second New Bill are the same as those rendered in respect of the First New Bill.
- 6.47 To clarify, the way that I have treated/considered the post PD submissions in respect of Issue One apply here too, and in the same way.
- 6.48 Based on those findings – and, again, having carefully considered all the relevant evidence - I am (as stated above) still satisfied that SSE did supply the disputed volume of gas to the Premises for the relevant billing period shown in the Second New Bill.
- 6.49 It follows that I am still satisfied that - there being no dispute as to the *rate* charged for/in respect of that gas - SSE is entitled to recover all of the charges set out in the Second New Bill. In this way Issue Two is (also) decided wholly in SSE’s favour. In so finding I have (again) proceeded on the basis (most favourable to ██████████) that it is for SSE to persuade me that it is (in the language of Art 24B(2) of the 1996 Order) “*entitled*” to recover the charges set out in the Second New Bill. My finding is that SSE has – for the reasons set out (which are essentially the reasons described for finding as I have on Issue One) – discharged that burden.

6.50 I repeat my observations as to SSE's invocation of Section M of the DN Code and/or the CVR in so far as SSE relied upon those documents as supporting its case as to the Second New Bill. Again, those observations are treated as final.

ISSUE THREE

6.51 Again, the issue that I must determine is set out in Section Five and has remained unchanged through the draft Statement, the Statement and the Provisional Determination.

6.52 I now have to decide whether to make a costs order and if so against whom and in what amount; now informed (as I am) by my final decision in respect of Issue One and Issue Two.

6.53 Art 24B (8) of the 1996 Order provides that an Order made in determination of a referred billing dispute (like this one) may include provision requiring either party to pay a sum in respect of the costs and expenses incurred by the Utility Regulator in determining the dispute: an order that shall be final and enforceable as if it were a judgement of the county court.

6.54 The Utility Regulator has previously drawn the Parties' attention to the facility to make a costs order.

6.55 We wrote to ██████████ on 20 August 2021 (**B71**) referencing (i) the mention of a potential costs award in Section D of the Disputes Policy and (ii) our policy on costs as set out in our Information Note on costs published in November 2017 (the **Information Note**)⁷. That letter was included as an attachment to a letter sent to both Parties on 23 September 2021 (**B75**).

6.56 By letter of 29 October 2021 (**B98**) we again drew the Parties' attention to the facility for a costs order: again referring to the relevant part of section D of the Disputes Policy and the Information Note. We said this:

⁷ <https://www.uregni.gov.uk/publications/information-note-cost-recovery-dispute-settlement-role>

Any costs order in this case would be made with reference to Art 24B of the 1996 Order. The costs incurred by the Authority in reaching a FD on the Dispute may exceed (and substantially so) the (relatively modest) amounts involved in the Dispute.

- 6.57 Among other things, the Information Note confirms that other than in exceptional cases, whenever the Utility Regulator determines a dispute in respect of which it has the power to recover its costs, it will make a costs order. It also states that the Utility Regulator will take into account all the circumstances of the case in determining which party (or parties) is required to pay its costs. Without limitation those circumstances include:

. . . the outcome of the dispute, the reasons for reaching that outcome, the conduct of each party in the period giving rise to the dispute, the conduct of each party during the dispute process, the extent to which each party has or has not (for instance through the clarity, or lack of it, of submissions and evidence) contributed to the efficient disposal of the dispute, and the financial means of each party.

- 6.58 Having regard to all of the above, I have given consideration to whether it would be appropriate for the Utility Regulator to make a costs order with regard to the payment of the costs incurred by the Utility Regulator in determining the Dispute.

- 6.59 Having done so, and proceeding for these purposes on the basis of my final determination on Issue One and Issue Two (as set out in above), I have concluded that it would (still) be appropriate to make a costs order making provision for *all* the *external* costs incurred by the Utility Regulator in making the determination.

- 6.60 I have concluded that this is not an exceptional case such that no costs order should be made. I identify no exceptional features in the Dispute (having had full regard to the nature and complexity of the Dispute).

- 6.61 In so concluding I have had regard to the post PD submissions. [REDACTED] makes the case that a domestic customer case/dispute should be considered “exceptional” within the meaning of the Information Note on Costs so that no costs order should be made against that customer. I do not accept that.

6.62 The Information Note says this:

However, the type of situation that the UR would be likely to regard as exceptional is one in which the person referring the dispute has been unsuccessful but lacks the financial means to pay the costs in full (for instance if that person is a domestic customer), and where it would be either inappropriate or inequitable for any other party to the dispute to be required to pay those costs

6.63 The Information Note does not say that the fact that a dispute has been raised by a domestic customer is enough - in and of itself - to render the matter “exceptional” so that no costs order could be made.

6.64 Instead, the Information Note confirms that a case may be considered “exceptional” where a domestic customer refers a dispute, is unsuccessful, AND lacks the financial means to pay the amount in costs that would otherwise be ordered.

6.65 [REDACTED] has made no case that he does not have the means to pay the sort of costs order indicated by the Provisional Costs Order part of the Provisional Decision. I have had careful regard to the post PD submission in so concluding. It follows that this case is not to be considered “exceptional” on (and only on) the basis of [REDACTED] [REDACTED] status as a domestic customer. I find no other basis to render it so. This is not an exceptional case.

6.66 Of course, the “means” of SSE are not in question. SSE has made no comment on the Provisional Costs Order part of the Provisional Determination.

6.67 No provision is to be made for the *internal* costs of the Utility Regulator associated with the making of the final determination on the Dispute. This sets no precedent for future costs orders. The external costs are costs incurred in seeking advice and assistance (in making the final determination of the dispute) from our external legal advisors.

6.68 (Still) not considering the case to be “exceptional” I next consider which party (or parties) is to (or should) be obliged to pay some or all of the external costs of the Utility Regulator. I look here to all the relevant circumstances: now to include my final findings on Issue One and Issue Two and the post PD submissions.

- 6.69 An important circumstance (remains) that this is a case where [REDACTED] has not (based on the (final) findings on Issue One and Issue Two above), succeeded in the Dispute. It has been accepted that SSE is entitled to recover the charges (for gas) set out in the First New Bill and the Second New Bill. That is the “outcome” spoken about in the Information Note. I consider that it is a clear point arguing in favour of ordering that [REDACTED] pay the costs incurred by the Utility Regulator in determining the Dispute.
- 6.70 I have considered whether there are any reasons, in the circumstances of the case, to move away from the starting point and have concluded that there are.
- 6.71 First, at least some of the submissions made by SSE were not helpful. They did not contribute to the efficient handling of the Dispute. Reference is made here to (i) my rejection of the “comparison” point and (ii) my view that the SSE claimed reliance on the DN Code with the CVR was unhelpful and in some respects peculiar.
- 6.72 Second, SSE’s conduct in the phase after the delivery of the Statement was less than satisfactory. It should not be for the Utility Regulator to “chase” a regulated company for proper explanation as to why it has not provided a document specifically sought; or indeed why it had not even acknowledged the making of the request. Nor is it satisfactory for the regulated company to initially respond by saying that it does not have the said document (despite having made reliance on it in a previous submission) and will have to ask for it to be produced by another regulated company before belatedly confirming on further inquiry that it does in fact possess the document sought. None of this conduces to the timely and efficient determination of a dispute referred to the Utility Regulator. SSE’s conduct in this regard is disappointing.
- 6.73 Third, the issuance of the SSE letter of 15 February 2022 (**B135**), which I comment on in Section 8
- 6.74 I (still) consider that the conduct of SSE should be reflected in it being taxed with a liability to pay a proportion of the external costs incurred by the Utility Regulator.
- 6.75 Having given the matter careful consideration, and in exercise of my broad discretion as to costs, I (still) consider that the overall balance is such that [REDACTED] should be

called upon to pay 75% of the Utility Regulator's external costs and SSE should be required to pay the other 25%. This attribution of costs reflects my overall assessment of the circumstances of this case (to include the comments made about SSE's conduct of the Dispute). It also recognises that the outcome is that [REDACTED] has "lost" the Dispute. That is an important consideration.

6.76 In reaching this overall assessment I have had regard to all that [REDACTED] has said in his post PD submissions. I have already set out why I consider that the point about SSE not alerting [REDACTED] sooner to the volume of gas being recorded through the meter (via the actual March 2020 and June 2020) is not a good one so far as resolving Issue One and Issue Two is concerned. The same point cannot assist [REDACTED] viz. my overall assessment on costs.

6.77 It is now confirmed that the Utility Regulators' external costs incurred in determining the Dispute are in the final amount of [REDACTED] (excluding VAT⁸). That is the same amount as was set out in the Provisional Determination. No further external costs have been incurred in the making of this Final Determination. Standing back, I (still) consider that the now confirmed specified costs to be fair and proportionate having regard to all relevant circumstances.

6.78 So far, the post PD submissions have not caused me to change tack from the Provisional Determination. It is at this final point that they do.

6.79 I find myself persuaded that the post PD submissions make out an appropriate case for a relaxation of the time provided for payment of the Costs Order by [REDACTED]

6.80 In my Provisional Determination I provisionally concluded that [REDACTED] would have 28 days from the making of the Final Determination (where that Final Determination to include any Costs Order payable by [REDACTED]) to pay any Costs Order made against him.. I now conclude – having considered the post PD submissions - that it would be appropriate to allow [REDACTED] 3 months to pay his part of the Costs Order.

⁸ VAT is not part of the costs to be recovered in any costs order

- 6.81 To be clear, SSE is still to be allowed 28 days to discharge its part of the Costs Order. There can be no case for SSE needing time to pay. To be fair to SSE, it has made no such submission.
- 6.82 It should be made clear that the Costs Order requires the Parties to pay a VAT exclusive amount. No VAT is charged to the Parties.

7 SECTION SEVEN: THE ORDER

7.1. Having regard to the findings on Issues One to Three, the Order in determination of the referred Dispute is set out below: *The Order*

The referred Dispute is determined by Order as follows:

- (a) SSE is entitled to recover all of the charges set out in the First New Bill and the Second New Bill (subject and without prejudice to the application of any good will payment/ credit applied or to be applied by SSE to the account of ██████████)⁹
- (b) ██████████ is, by no later than **24 May 2022** to pay the Utility Regulator¹⁰ the amount of ██████████ being 75% of the final amount of the external costs incurred by the Utility Regulator in making the determination of the Dispute.
- (c) SSE is, by no later than **28 days** from the date of this Final Determination to pay to the Utility Regulator the amount of ██████████ being 25% of the final amount of the external costs incurred by the Utility Regulator in making the determination of the Dispute.

7.2. The Parties are reminded that interest (at the county court rate) will likely be applied to any part of the payable Costs Order not discharged by the respective due date.

⁹ See the closing observations in Section 8

¹⁰ The Parties can liaise with the Utility Regulator as to specific payment processes. They should do so well before the time due for payment.

8. SECTION EIGHT: CLOSING OBSERVATIONS

- 8.1. These closing observations are not part of my formal determination. I offer them (only) for the assistance and guidance of the Parties.
- 8.2. [REDACTED] has enquired as to whether the determination of the Regulator has any effect on the good will gesture credit applied by SSE. [REDACTED] asked whether I have “waived” the good will gesture. The answer is “no”.
- 8.3. The good will gesture is not part of the Issues for Determination. It stands unaffected by this Final Determination. I do not understand that SSE has given any indication that it intends to withdraw the good will gesture. It appears that it will continue to be applied. The wording of the Order (in Section Seven) has been reconfigured to remove any doubt as to the effect of this Final Determination. Again, the Final Determination has no effect on the good will gesture.
- 8.4. In his post PD submission [REDACTED] enquired as to whether I could “encourage” SSE to offer a more generous good will gesture. I do not consider that to be my role. That said, it is a matter for SSE to reflect upon this Final Determination and decide whether it can be more generous in all the circumstances. Those circumstances now include the issuance of the SSE letter of 15 February 2022 (**B135**). It is to that letter that I now turn.
- 8.5. It is not clear that sending the 15 February 2022 letter to [REDACTED] - during a period in which the amount involved in the letter was still under active consideration in a statutory dispute - was appropriate. [REDACTED] clearly considers that it was not. There is a suggestion in the email of SSE of 23 February 2021 (**B137**) that SSE might accept that.
- 8.6. It would seem prudent for SSE to consider its internal automated procedures in this regard so that they fully respect the jurisdiction of the Utility Regulator to make a determination in regards to disputed bills.
- 8.7. I accept that I have not heard from SSE on this matter and I, therefore, specifically offer no concluded view on the appropriateness of the letter of 15 February 2022. SSE’s email of 23 February 2022 is, nonetheless, to its credit.

8.8. Again, it is for SSE to decide whether the circumstances – which now include the issuance of the 15 February 2022 letter – warrant a more generous approach to good will payments/credits for [REDACTED]. I do not encourage it. Nor do I discourage it.

Mr Jody O'Boyle

For and duly authorised by the Utility Regulator

Appendix 1 – Bundle of Documents

Doc ref	From	To	Date	Document title
A1			14/02/1996	The Gas (Northern Ireland) Order 1996
A2	Utility Regulator	SSE	19/09/2009	Supply Licence
A3	Utility Regulator		20/08/2018	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants
A4	SSE			Complaint Handling Statement and Procedure for Domestic Customers
A5			05/03/2021	Distribution Network Code
B1	PNGL		28/10/2020	Email
B2	PNGL	Complainant	29/10/2020	Email
B3	Complainant	PNGL	29/10/2020	Email
B4	PNGL	Complainant	29/10/2020	Email
B5	Complainant	PNGL	19/11/2020	Email
B6	PNGL	Complainant	23/11/2020	Email
B7	Complainant	PNGL	07/12/2020	Email
B8	PNGL	Complainant	10/12/2020	Email

B9	Complainant	PNGL	10/12/2020	Email
B10	SSE	Complainant	10/12/2020	Email
B11	Complainant	SSE	13/01/2021	Email
B12	SSE	Complainant	13/01/2021	Email
B13	Complainant	SSE	13/01/2021	Email
B14	Complainant	SSE	27/01/2021	Email
B15	PNGL	Complainant	28/01/2021	Email
B16	Complainant	PNGL	28/01/2021	Email
B17	PNGL	Complainant	28/01/2021	Email
B18	Complainant	PNGL	09/02/2021	Email
B19	PNGL	Complainant	09/02/2021	Email
B20	SSE	Complainant	15/02/2021	Gas bill 585453 Feb-March 2020
B21	SSE	Complainant	15/02/2021	Gas bill 585453 June-Sept 2020
B22	SSE	Complainant	15/02/2021	Gas bill 585453 March-June 2020
B23	SSE	Complainant	15/02/2021	Gas bill 585453 Sept-Dec 2020
B24	SSE	Complainant	17/02/2021	Email with attachments

B25	Complainant	CCNI	21/02/2021	Email
B26	Complainant	SSE	21/02/2021	Email
B27	CCNI	SSE	01/03/2021	Email
B28	SSE	CCNI	03/03/2021	Email
B29	SSE	Complainant	23/03/2021	Email
B30	Complainant	SSE	25/03/2021	Email
B31	SSE	Complainant	09/04/2021	Gas bill 585453 Dec-March 2020
B32	SSE	Complainant	13/04/2021	Email
B33	Complainant	SSE	13/04/2021	Email
B34	CCNI	SSE	18/04/2021	Email
B35	CCNI	SSE	19/04/2021	Email
B36	CCNI	SSE	27/04/2021	Email
B37	SSE	CCNI	27/04/2021	Email
B38	CCNI	SSE	07/05/2021	Email
B39	SSE	CCNI	27/05/2021	Email
B40	CCNI	SSE	04/06/2021	Email

B41	SSE	Utility Regulator	10/06/2021	Gas bill 585453 Dec-Mar 2021
B42	CCNI	SSE	14/06/2021	Email
B43	SSE	CCNI	14/06/2021	Email
B44	CCNI	SSE	14/06/2021	Email (2)
B45	CCNI	Complainant	21/06/2021	Email
B46	SSE	CCNI	21/06/2021	Email
B47	Complainant	CCNI	28/06/2021	Email
B48	CCNI	Complainant	28/06/2021	Email
B49	Complainant	CCNI	28/06/2021	Email
B50	CCNI	Complainant	28/06/2021	Email
B51	CCNI	SSE	28/06/2021	Email
B52	SSE	CCNI	28/06/2021	Email
B53	Complainant	CCNI	29/06/2021	Email
B54	CCNI	Complainant	29/06/2021	Email
B55	SSE	Complainant	02/07/2021	Gas bill 585453 March-June 2020
B56	CCNI	Complainant	08/07/2021	Email

B57	CCNI	Complainant	15/07/2021	Email
B58	Complainant	CCNI	16/07/2021	Email
B59	CCNI	SSE	27/07/2021	Email
B60	SSE	CCNI	28/07/2021	Email
B61	CCNI	Complainant	29/07/2021	Email
B62	CCNI	Complainant	04/08/2021	Email
B63	Complainant	CCNI	04/08/2021	Email
B64	CCNI	Complainant	04/08/2021	Email
B65	Complainant	CCNI	04/08/2021	Email
B66	CCNI	SSE	04/08/2021	Email
B67	CCNI	Complainant	05/08/2021	Email
B68	Complainant	CCNI	05/08/2021	Email
B69	Complainant	CCNI	09/08/2021	Email
B70	Complainant	Utility Regulator	11/08/2021	Email
B71	Utility Regulator	Complainant	20/08/2021	Letter
B72	Complainant	Utility Regulator	23/08/2021	Email

B73	Utility Regulator	SSE	02/09/2021	Email
B74	SSE	Utility Regulator	09/09/2021	Email
B75	Utility Regulator	Parties	23/09/2021	Letter
B76	Complainant	Utility Regulator	30/09/2021	Email
B77	SSE	Utility Regulator	30/09/2021	Email
B78	Utility Regulator	SSE	30/09/2021	Email
B79	SSE	Utility Regulator	30/09/2021	Email
B80	Utility Regulator	Parties	30/09/2021	Email
B81	Utility Regulator	Parties	30/09/2021	Email
B82	SSE	SSE	30/09/2021	Email
B83	Complainant	Utility Regulator	01/10/2021	Email with attachments
B84	Complainant	Utility Regulator	01/10/2021	2021-10-01 response attachment 1
B85	Complainant	Utility Regulator	01/10/2021	2021-10-01 response attachment 2
B86	Complainant	Utility Regulator	01/10/2021	2021-10-01 response attachment 3
B87	Utility Regulator	Parties	01/10/2021	Email
B88	SSE	Utility Regulator	01/10/2021	Email

B89	SSE	Utility Regulator	01/10/2021	Letter
B90	Utility Regulator	Parties	07/10/2021	Email
B91	Complainant	Utility Regulator	07/10/2021	Email
B92	SSE	Utility Regulator	07/10/2021	Email with attachment
B93	Utility Regulator	Parties	15/10/2021	Email
B94	Complainant	Utility Regulator	15/10/2021	Email
B95	SSE	Utility Regulator	15/10/2021	Email
B96	Utility Regulator	Parties	27/10/2021	Letter
B97	Utility Regulator	Parties	29/10/2021	Email
B98	Utility Regulator	Parties	29/10/2021	Letter re extension and timetable
B99	Complainant	Utility Regulator	29/10/2021	Email
B100	SSE	Utility Regulator	29/10/2021	Email
B101	Utility Regulator	Parties	02/11/2021	Email
B102	Complainant	Utility Regulator	08/11/2021	Email attaching 2 photos
B103	Complainant	Utility Regulator	08/11/2021	Photo 20191130_134550
B104	Complainant	Utility Regulator	08/11/2021	Photo 20191217_084304

B105	SSE	Utility Regulator	17/11/2021	Email
B106	Complainant	Utility Regulator	17/11/2021	Email with attachment
B107	Complainant	Utility Regulator	17/11/2021	Photo 20211117_144004
B108	Utility Regulator	Parties	19/11/2021	Email
B109	Utility Regulator	Parties	10/12/2021	Email
B110	Utility Regulator	Parties	10/12/2021	Email
B111	Utility Regulator	Parties	15/12/2021	Draft Statement
B112	Complainant	Utility Regulator	15/12/2021	Email
B113	SSE	Utility Regulator	15/12/2021	Email
B114	Utility Regulator	SSE	31/12/2021	Email
B115	Complainant	Utility Regulator	03/01/2022	Email
B116	SSE	Utility Regulator	04/01/2022	Email
B117	Utility Regulator	Parties	04/01/2022	letter
B118	Utility Regulator	Parties	05/01/2022	Email
B119	Complainant	Utility Regulator	05/01/2022	Email
B120	SSE	Utility Regulator	05/01/2022	Email

B121	Utility Regulator	Parties	06/01/2022	Letter
B122	SSE	Utility Regulator	06/01/2022	Email
B123	SSE	Utility Regulator	06/01/2022	Code Validation Rules Document
B124	Utility Regulator	Parties	11/01/2022	Email
B125	Utility Regulator	Parties	11/01/2022	Final statement
B126	Utility Regulator	Parties	20/01/2022	Email
B127	SSE	Utility Regulator	20/01/2022	Email
B128	Complainant	Utility Regulator	21/01/2022	Email
B129	Utility Regulator	Parties	27/01/2022	Provisional Determination Cover Email
B130	Utility Regulator	Parties	27/01/2022	Provisional Determination
B131	Complainant	Utility Regulator	07/02/2022	Email
B132	SSE	Utility Regulator	07/02/2022	Email
B133	Utility Regulator	Parties	11/02/2022	Email
B134	Complainant	Utility Regulator	16/02/2022	Email (not issued)
B135	SSE	Complainant	15/02/2022	Letter
B136	complainant	Utility Regulator	22/02/2022	Email

B137	SSE	Complainant	23/02/2022	Email
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