

Appendix 6: Proposed changes to BGE UK gas transmission licence

Condition 1.13: Payment of Fees to the Authority

1.13.1 In respect of each year, beginning on 1 April, during which the Licence is in force, the Licensee shall pay to the Authority a fee of the amount determined in accordance with this Condition (the **licence fee**).

1.13.2 The Licensee shall pay to the Authority the licence fee for each year (the **relevant year**) within 30 days of the Authority giving notice to the Licensee of the amount due from the Licensee for the relevant year.

1.13.3 For each relevant year, the licence fee shall be the total of:

- (a) an amount that is the Relevant Contribution to the Estimated Costs of the Authority for the relevant year;
- (b) an amount that is the Relevant Contribution to the Estimated Costs of the Consumer Council with regard to the exercise of its functions relating to gas consumers for the relevant year;
- (c) an amount ~~that is the Relevant Contribution to the Estimated Costs of the Competition Commission, in connection with any reference made to it in respect of the Licence or any other licence granted under Article 8(1)(a) of the Order, for the year immediately preceding the relevant year (the **previous year**); and~~
- ~~(d) an amount~~ which is the difference (which may be a positive or negative amount), if any, between:
 - (i) the licence fee that would have been due from the Licensee for the ~~year immediately preceding the relevant year (the **previous year**)~~ had such fee been calculated in relation to the actual costs of:
 - (A) the Authority for the previous year; ~~and~~

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(B) the Consumer Council with regard to the exercise of its functions relating to gas consumers for the previous year; and

~~(C) the Competition Commission, in connection with references of the type referred to in sub-paragraph 1.13.3(c), for the year immediately preceding the previous year; and~~

(ii) the licence fee paid by the Licensee for the previous year,

provided that where the Licence is in force for only a part of the relevant year, the amount payable in respect of that year shall be a proportionate part of the licence fee due for the full year.

1.13.4 Where:

- (a) the Estimated Costs of the Authority or of the Consumer Council are revised during the course of the relevant year (**Revised Costs**);
- (b) the Licensee has paid the licence fee for the relevant year; and
- (c) the Revised Costs would, had they applied to the calculation of the licence fee paid by the Licensee, have resulted in the calculation of a lower licence fee than that paid by the Licensee,

the Authority may, where it is reasonable for it to do so taking into consideration the timing of the Revised Costs and the provisions of paragraph 1.13.3(~~dc~~), refund to the Licensee the difference between the amount of the licence fee paid by the Licensee and the amount of the lower licence fee referred to in paragraph 1.13.4(c) above.

1.13.5 Where the Licensee fails to pay the amount of the licence fee as notified to it under paragraph 1.13.2 above within the 30 day period specified, it shall with effect from the end of that 30 day period pay simple interest on the amount at the rate which is from time to time equivalent to the base lending rate of an institution designated by the Authority for this purpose.

1.13.6 In this Condition:

“Estimated Costs”

- (i) in relation to the costs of the Authority, means the costs estimated by the Authority as likely to be its costs for the relevant year as calculated in accordance with the Principles; ~~and~~
- (ii) in relation to the costs of the Consumer Council, means either:
 - (A) the costs notified to the Authority by the Consumer Council as its estimated costs for the relevant year as approved by the Department; or
 - (B) in the event that the Authority does not receive such notification by 31 July in the relevant year, the costs estimated by the Authority (having regard to any estimate of such costs in any forward work programme published by the Consumer Council in respect of the relevant year) as likely to be the costs of the Consumer Council for the relevant year; ~~and~~
- ~~(iii) in relation to the costs of the Competition Commission, means the costs estimated by the Authority following consultation with the Competition Commission as likely to be the costs of the Competition Commission for the previous year in connection with references of the type referred to in sub-paragraph~~

~~1.13.3(e) above.~~

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“Principles”

means the principles determined by the Authority for the purposes of this Condition generally, following consultation with the Licensee and with others likely to be affected by the application of such principles and as notified to the Licensee in writing.

“Relevant Contribution”

means, in respect of the Estimated Costs, the level of contribution to those costs applicable, whether by way of a specified amount or a stated proportion, to the Licensee as determined under or in accordance with the Principles.

Condition 2.2. Conveyance Charges, Other Terms for the Conveyance of Gas and the Provision of Conveyance Services

2.2.5 Five yearly review of the Capital Revenue Requirement - CRR

(a) The Authority shall:

- (i). following a request from the Licensee to review the CRR Formula for the purposes referred to in Conditions 2.2.5 (b) and (d) provided that such request is submitted no later than twelve (12) months prior to the relevant Review Date; or
- (ii). otherwise if the Authority considers it appropriate,

conduct a review of the CRR Formula in accordance with this Condition 2.2.5 and each such review shall have effect from the next following Review Date.

(b) In any review under this Condition 2.2.5 the Authority shall be entitled to consider whether there have been any changes since 01 October 2004 to the actual values, including Actual Capital Expenditure, grants and capitalised interest, which are used to calculate the CRR Formula (the "CRR Actuals") or to one or more of the following (the "CRR Variables"):

- (i) tax allowances, laws, statutory rules and regulations applicable to the Licensee's development, construction, operation and maintenance of the Economic Network;
- (ii) the inflation rate indicated by the Consumer Prices Index;
- (iii) tax rates;
- (iv) the Rate of Return;
- (v) such other variables as the Authority may determine from time to time after consultation with the Licensee.

(c) The Licensee shall provide such information and explanation, documents and records as the Authority reasonably requires for the purpose of conducting its review in accordance with Condition 2.2.5 (b).

(d) Subject to Condition 2.2.5 (e), if following a review as referred to in Condition 2.2.5 (b) the Authority reasonably deems it necessary or desirable, the Authority shall be entitled by notice in writing to the Licensee with effect from the relevant Review Date to:

- (i) amend, add to and/or delete the CRR Formula, any CRR Actuals or any CRR Variables (“Formula Amendments”); and
- (ii) recalculate the CRR Formula, taking into account any changes to the CRR Actuals and the CRR Variables, to produce an amended CRR_m^{fp} for all future months in the Revenue Recovery Period.

such that from the relevant Review Date, the CRR_m^{fp} will be calculated to ensure:

$$\sum_{m=z}^n \frac{CRR_m^{fp}}{\prod_{m=z}^n (1 + rn_m)} + \sum_{m=1}^{z-1} \frac{CRR_m^{ap}}{\prod_{m=1}^{z-1} (1 + rn_m)} = OAV^p_{m=1} + PVT^p_{m=1}$$

where

- | $m=1$ — is the month when the First Operational Commencement Date, for pipeline p, occurs;
- z is the month of the Review Date;
- n is 300 at the 25th anniversary of the First Operational Commencement Date for pipeline p;
- rn_m is the nominal weighted average Rate of Return in month m calculated in accordance with paragraph 5 of Annex A;
- CRR_m^{fp} is the forecast monthly capital revenue requirement in month m with respect to pipeline p, calculated in accordance with paragraph 2 of Annex A;

- CRR_m^{ap} is the actual monthly capital revenue received in month m with respect to pipeline p , calculated in accordance with paragraph 2 of Annex A;
- OAV_m^p is the opening asset value in month m calculated in accordance with paragraph 2 of Annex A;
- $PVT_{m=1}^p$ is the present value of estimated grossed up tax payments in month $m=1$ calculated in accordance with paragraph 2 of Annex A; and
- p is the North-West Pipeline or South-North Pipeline or any Spur along with any associated Postalised Distribution Pipelines as appropriate.

(e) Before making any amendments to the Formula the Authority shall provide details of the amendments and the reasons for them and give the Licensee an appropriate period (not being less than 28 days) to comment on them.

(f) In the event that the Authority serves a notice under Condition 2.2.5(d):

(i) subject to the remaining provisions of this Condition 2.2.45(f), the Formula Amendments and recalculation referred to in the notice shall have effect on the relevant Review Date;

~~(ii)~~ the Licensee may within 28 days of the date of the notice serve a written notice on the Authority (a "Disapplication Notice"), in which case the Formula Amendments and recalculation referred to in the notice shall not apply;

~~(iii)~~ The Disapplication Notice may be withdrawn by the Licensee at any time within six months of the date of the Disapplication Notice; and

~~(iv)~~ if, within six three months after the date of the Disapplication Notice (provided such Disapplication Notice has not been withdrawn), the Authority makespublishes a reference to the Competition

~~Commission decision~~ under Article ~~45~~14(8) of the Order requiring the Competition Commission to investigate and report on whether the ~~to modify this Condition in respect of the~~ CRR Formula, CRR Actuals and CRR Variables (or any aspect or part of them) ~~applying at that time operate, or may be expected~~ ("the Modification Decision") then, Condition 2.2.5(g) shall apply.

(g) Where this Condition 2.2.5(g) applies and:

(i) the Licensee either:

(A) does not exercise its right to appeal to operate, the CMA against the public interest, and the Competition Commission subsequently concludes that they do, Modification Decision in accordance with Article 14B of the Order; or

(B) does exercise that right, but the CMA refuses permission for or otherwise does not allow the appeal.

~~(e)~~ then the Formula Amendments and recalculation referred to in the Authority's notice under Condition 2.2.4(d) shall apply in the period from the date of that notice to the date of modification pursuant to Article ~~47~~14(9) of the Order, and such adjustment as the Authority may direct shall be made to CRR^{fp}_m for any future months in the Revenue Recovery Period to reflect the retrospective application of the Formula Amendments and recalculation.;

(ii) the Licensee exercises its right to appeal to the CMA against the Modification Decision in accordance with Article 14B of the Order, and:

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(A) the CMA quashes the modification decision of the Authority under Article 14E(2)(a) of the Order; and

(B) the CMA neither remits the matter back to the Authority under Article 14E(2)(b) of the Order nor substitutes its own decision for that of the Authority under Article 14E(2)(c) of the Order,

then the Formula Amendments and recalculation referred to in the Disapplication Notice shall not apply; or

(iii) the Licensee exercises its right to appeal to the CMA against the Modification Decision in accordance with Article 14B of the Order, and the CMA reaches a conclusion other than one of those described in Conditions 2.2.5(g)(i) and (ii), then the CRR Formula, CRR Actuals and CRR Variables shall have effect in accordance with that conclusion or any decisions of the CMA or the Authority made pursuant to it.

2.2.6 Additional Definitions and interpretation

(a) For the purpose of this Condition:-

“Actual Controllable Capital Expenditure” means the cumulative amount of actual Controllable Capital Expenditure in respect of each of the North West Pipeline, the South North Pipeline, or the Spurs and any associated Postalised Distribution Pipelines, as determined by the Authority in accordance with Condition 2.2.2 (f);

“Actual Required Revenue”(ARR) means, for periods when a Designation Order is in place in respect of the Network, the maximum amount which the Licensee is permitted to recover through conveyance charges in any Gas Year, calculated in accordance with the Formula;

“Actual Uncontrollable Capital Expenditure”	means the cumulative amount of actual Uncontrollable Capital Expenditure in respect of each of the North West Pipeline, the South North Pipeline, or the Spurs and any associated Postalised Distribution Pipelines, as determined by the Authority in accordance with Condition 2.2.2 (g);
“Actual Capital Expenditure”	means, in respect of the North West Pipeline, the South North Pipeline, or the Spurs and any associated Postalised Distribution Pipelines, the Actual Controllable Capital Expenditure plus the Actual Uncontrollable Capital Expenditure;
“Actual Operating Expenditure”	means the Operating Expenditure actually incurred by the Licensee (and “Actual Controllable Operating Expenditure” and “Actual Uncontrollable Operating Expenditure” shall be construed accordingly);
“Actual Supplemental Income”	means that Supplemental Income determined to be such approved or determined by the Authority in accordance with Condition 2.2.16 (e);
“Allowed Operating Expenditure”	means that Operating Expenditure determined to be such by the Authority in accordance with Condition 2.2.4 (and “Allowed Controllable Operating Expenditure” and “Allowed Uncontrollable Operating Expenditure” shall be construed accordingly);
“Allowed Supplemental Income”	means that Supplemental Income determined to be such approved or determined by the Authority in accordance with Condition 2.2.16 (d);
“Business Day”	means a day, other than a Saturday or Sunday, on which banks are open for ordinary banking business

in Belfast;

“Buy-Back Capacity” has the meaning given to it in the OS Conditions (as defined in Condition 2A.1.1);

“Capital Expenditure” means Expenditure that relates to property, plant or equipment that would be recognised as an asset under International Accounting Standard 16 ‘Property, Plant and Equipment’ (excluding any attributable interest costs), or any alternative accounting treatment specified by the Authority in any regulatory accounting guidelines issued from time to time;

“CER” or “Commission” means the Commission for Energy Regulation established pursuant to Section 8 of the Electricity Regulation Act, 1999;

“Competition and Markets Authority” or “CMA” means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013;

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