

30th October 2015

Paul Harland
Performance and Finance Manager
The Utility Regulator
Queens House
10-14 Queen Street
BELFAST
BT1 6ED

Dear Paul,

Re: Gas Modification Notice – Strabane Corridor

Firmus energy is grateful for the opportunity to respond to the Consultation on Modification to the Firmus Energy Conveyance Licence (“**Consultation**”) on 1 October 2015 which includes suggested amendments to the firmus energy Conveyance Licence (“**Licence**”).

We note the Utility Regulator’s explanation that such amendments to the Licence are necessary as a result of the award of the Gas to the West Low Pressure Licence to Scotia Gas Networks Northern Ireland Limited (“**SGN**”) and, following on from this, the proposed construction of the pipeline from Maydown to Strabane (the “**Pipeline**”).

We appreciate the Utility Regulator’s desire to expedite the Gas to the West Project and are keen to facilitate the further growth of the gas network in this regard. However, as part of this, it is critical to ensure that the principles and provisions of our Licence and the underlying legislative framework are respected. In particular, we note that the Utility Regulator’s proposals for what is now an updated Pipeline route will cut across our sole right to make connections within the firmus energy exclusive area (“**Exclusive Area**”). Exclusivity is a critical factor underpinning the regulatory regime and our ability to finance the continuing development of the gas network.

In this response, we have helpfully made a number of proposals intended to ensure that the principle of exclusivity can be preserved while also ensuring that the Pipeline can be delivered in a timely and cost-effective manner. All of these proposals have been raised in previous correspondence with the Utility Regulator’s office.

In principle, we accept that the pipeline, as a carrier main, is constructed. We feel that our proposal will help to mitigate any potential for confusion by gas consumers in close proximity to the pipeline.

Approved Route of the Pipeline

Firmus energy notes that the route of the Pipeline has not been referred to within the Consultation.

It was initially suggested by the Utility Regulator, as set out in the Gas to the West Licence Decision dated 11th February 2015 (“**Licence Decision**”), that the Pipeline would not ‘*have an adverse effect on the firmus licence*’ as ‘*the area of the pipeline corridor will be very narrow and would only impact on a very small number of customers who reside some distance from the firmus network*’. We assume that this assurance was provided with consideration of the original route of the Pipeline provided by the Utility Regulator as part of the Gas to the West tender process, which would have passed through a rural area. Indeed, based upon the original route, we calculated that the Pipeline would not impact any potential firmus energy customers. However, our understanding is that the Pipeline route has now moved towards Derry, cutting through the Exclusive Area within the city of Derry. At present we have a significant number of customers on either side of the amended route of the Pipeline. In addition to this, our calculations based on the revised route estimate that, taking expected development in the area into account, a substantial number of potential firmus energy customers may be affected.

Firmus energy would be grateful if the Utility Regulator would confirm that the final agreed route is as per that provided to firmus energy by SGN on 29 June 2015, a copy of which is attached for ease of reference.

While we accept that detailing the route of such a pipeline has not traditionally been included in a licence, to do so would provide clarity and certainty for all stakeholders. As far as firmus energy is aware, this situation is unique in Northern Ireland in that the Pipeline is proposed to pass through an exclusive area rather than merely through a licensed area in which the relevant licensed network operator does not enjoy exclusivity. In the absence of confirmation of the detail of the route, firmus energy will be unable to establish the extent of its Exclusive Area on the basis that the definition of such Exclusive Area is subject to the variable positioning of the Pipeline.

Transit Pipeline

Firmus energy notes that the Pipeline is intended to be a transit pipeline only and is therefore merely required to transport gas to the Strabane area. A transit pipeline from which no connections will be made is entirely consistent with preserving our exclusivity within the Exclusive Area.

In this regard, we note the Utility Regulator’s comment in the Consultation that “*due to the size of the SGN pipeline due to be built...it is not anticipated that there will be any significant connections to the SGN pipeline.*” It is our view that our legal right to exclusivity can only be respected if our own Licence and that of SGN provide a framework in which SGN has no (or no practical) right to make any connections from the Pipeline within our Exclusive Area.

However, the draft licence modification contained in the Consultation states that SGN would have the right to make a connection within our Exclusive Area provided that such connection is made within a 50 metre radius of the Pipeline. We had previously suggested that firmus energy exclusivity only be removed at premises which lie within a 1 metre radius of the Pipeline and that, for the

avoidance of doubt, it be made clear that SGN cannot provide a customer with a connection within the area between the connection point on the North-West pipeline and the boundary of the district of Strabane. We still feel that this is a helpful, reasonable and pragmatic suggestion.

This would be consistent with the reassurance previously provided to firmus energy by the Utility Regulator as part of the Licence Decision that the Pipeline would not *'have an adverse effect on the firmus licence'* as *'the area of the pipeline corridor will be very narrow and would only impact on a very small number of customers who reside some distance from the firmus network'*. Further, as detailed above, it has become apparent that as a result of the amendment to the route of the Pipeline, firmus energy will have a significant number of customers immediately adjacent to the Pipeline on both sides.

We note the Utility Regulator's view that a restriction on SGN's ability to connect customers within our Exclusive Area may be contrary to its duty to promote the development of the gas industry in Northern Ireland. However, we note that the concept of an exclusive area is well established within the regulatory and legislative framework. In this regard, we would encourage the Utility Regulator to see the need to respect the terms of existing licences as an equally – if not more – critical factor underpinning confidence in the industry.

The Consultation further states that *"the only circumstances where we envisage a connection to the SGN pipeline might occur is where a connection to the firmus network is not feasible"*. By definition this would suggest that a connection to the Pipeline within firmus energy's licence area would occur where it is not possible and practical to easily and conveniently connect a potential customer to the firmus network. Firmus energy would like to reiterate that it is committed to itself connecting as many potential customers as possible within its current licence area. We have no information as to the criteria which would be applied by the Utility Regulator in assessing whether a connection to the firmus energy network is or is not *"feasible"*. You will appreciate that full consideration of the licence modifications is impossible in the absence of such information.

Furthermore, while firmus energy note your suggestion that these principles will be reflected in the SGN connection policy prior to its approval, this does not provide firmus energy with the comfort required. The SGN connection policy is not a legally binding document as between firmus energy and SGN. Therefore, to the extent that SGN make connections within the firmus energy licence area to which it should not be entitled, firmus energy would have no direct recourse against SGN. It is also not acceptable that firmus energy is being asked to rely upon the content of SGN's connection policy when same is not yet in existence.

Exclusivity

Clause 9(3) of the Gas (Northern Ireland) Order 1996 (the **"Order"**) provides that no licence may be granted so as to authorise a person to carry on any designated activities in another person's Exclusive Area for the duration of the relevant exclusivity period. Equally, the Licence Decision provides the following explanation:

"Each licence will be 'exclusive'. This means that, once it has been granted, no new gas conveyance licence can be granted in relation to the area covered by that licence for a specified period."

While firmus energy are willing to co-operate with SGN in respect of the Pipeline provided that our right to exclusivity is adequately protected, we do not believe that the amendments to our licence proposed as part of the Consultation are compatible with the concept of exclusivity as defined by the Order.

Further, we consider that the Utility Regulator seeking to reduce our Exclusive Area without reference to the provisions of the Order would set a dangerous precedent whereby our Exclusive Area is at risk of future arbitrary reduction over which we have no control. We would emphasise that exclusivity is a core element of our licence and a necessary foundation of our willingness to invest (and ability to finance) in the continuing development of the network within our licensed area. It creates an environment in which we are able to make long term capital investment decisions on the economically optimised roll-out of the gas network without having to factor in the risk that customers may ultimately connect to a third party's network. While the number of potential customers that may be impacted by the Pipeline may be small (although we are in no position to know this without having been provided with the final route of the Pipeline), the importance of respecting the principle of exclusivity cannot not be underestimated.

Licence Modifications

Taking into account the issues raised above we would suggest that, as a minimum, clause 10 of the Annex to Schedule 3 as contained in the Consultation be replaced with the following:

“10 Any premises at any location within the Enagh, Altnagelvin, Clondermot or Holly Mount electoral wards which lies within a 1 metre radius of the 7 bar pipeline which has been constructed by Scotia Gas Networks NI Limited pursuant to the Gas to the West application process launched on 6 February 2014 together with the Final Decisions published by the Utility Regulator dated 18 November 2014.”

Firmus energy had also suggested that it would be prudent to specifically provide for the following within the firmus energy and SGN licences:

- a) a definition of the Pipeline within both licences such that the Pipeline is a specific route that (save in respect of engineering constraints) cannot be altered;
- b) modification of the SGN Licence to provide that SGN cannot provide a customer with a connection within the electoral wards of Enagh, Altnagelvin, Clondermot and Holly Mount unless that customer is within a 1 metre radius of the Pipeline; and
- c) modification of the ‘territorial scope’ contained in Part 2, Condition 2.1 of the SGN Licence to provide that, within the firmus energy Exclusive Area, SGN may only convey gas through a 7 bar pipeline.

Again, firmus energy would like to reiterate that we appreciate the need to expedite the Gas to the West Project. We are keen to assist the further growth of the gas network and ensure an appropriate and clearly defined platform from the outset of the project. Firmus energy believes that

the above amendments are in line with the Utility Regulator's values and would provide clarity for all parties involved.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Niall Martindale', written in a cursive style.

Niall Martindale

Director of Regulation and Pricing