



**Response by Energia to Commission for
Energy Regulation Draft Decision Paper
CER/11/220**

Review of Electricity and Natural Gas Supply Licences

17 January 2012

1. Introduction

Energia welcomes this opportunity to respond to the Commission for Energy Regulation (CER) on the proposed decision paper following a review of electricity and natural gas supply licences. As part of this review, Energia has previously responded to the consultation paper proposing the modifications. Given the CER proposals to adopt all eleven modifications as consulted upon, apart from one minor textual change (proposed decision 3), we consider many of the points raised in our previous response to remain valid.

The remainder of this response is structured so as to provide a general comment on the process to finalise and publish the new electricity and gas licence. Following this we will highlight important concerns raised by the proposed licence amendments and seek clarity on a number of others.

2. General Comments

Despite the somewhat different contexts within which the reviews of the electricity and gas supply licences are taking place, Energia maintains the appropriate approach to this process remains one of interactive interaction with industry, similar to that undertaken with respect to the gas shipper/supply licence splitting and recent review. In light of the issues raised in this response, we consider it a necessary further step for the CER to revert to suppliers with final proposals and wording.

It is our view that only with an opportunity for suppliers to view and comment on the final proposed wording of the licence, subject to changes arising from this consultation, can this process be aligned with the statutory obligations on the CER pertaining to licence amendments.

3. Specific Comments

As with the previous consultation the comments provided herein are designed to highlight some of the pertinent issues and points of clarity identified with these most recent draft licences reflecting the decisions taken in the draft decision paper. As before, given the most significantly revised document is the electricity licence, comments contained herein are made with reference to the new conditions of this licence. Where similar new conditions are applied to the gas supply licence a read across is appropriate.

Condition 12

Prior to the publication of a decision paper and revised supply licences as part of this review, and notwithstanding the issues outlined in the general comments of this response, Energia consider the clarification of information to be required, time lines associated with it, and the publication of same, to be dealt with as part of this process, and not passed off to a parallel consultation on retail market monitoring. It is important for suppliers to understand the burden on new licence conditions as they are to apply before commenting appropriately on their adoption. Similarly, the CER should be cognisant of the cost and time of such a requirement on suppliers before

its inclusion in the licence, to do otherwise would be placing the cart before the horse.

Condition 20.2

It is important that this paragraph is revised to ensure the provisions pertain only to suppliers of household customers. As read, there is an ambiguity between the previous condition (Condition 20.1 – Conditions which apply to the supply of Household only) and this condition (Condition 20.2 – Licencee’s Customer Charter), that requires, for clarity, a similar explicit reference to the application of Condition 20.2 to households only. At present the drafting is ambiguous and requires clarity so that the intention, as expressed elsewhere, of the CER is for this condition (customer charter) to apply only to households.

Condition 20.3.(a).(i)

Energia calls on the CER to clarify the requirement on suppliers to provide final customers with a copy of the supplier’s terms and conditions applicable to their agreement. This may not be required explicitly in the drafting of the licence. However, Energia consider it important that any new licence conditions do not impose constraints on suppliers, such as the need to provide hard copies of their terms and conditions. This approach is unlikely to fit with the customer acquisition processes, with a move to online offerings, and therefore clarity is requested around the suitability of ‘soft copies’ of terms and conditions being compliant with this requirement.

Condition 20.3.(b).(i-iii)

Energia want to highlight an important issue for licence holders arising from the requirements of this condition and call on the CER to issue clarity and certainty to licence holders with respect to what may be an unintended consequence of the proposed licence condition.

Firstly, Energia is broadly supportive of the introduction and development of Codes of Practice for electricity and gas. We also conditionally support the introduction of the proposed licence condition to ensure compliance with these Codes of Practice. The use of Codes of Practice can be seen to have advantages (flexibility, timing, etc) over available alternatives, such as formal licence modification. However, by making compliance with Codes of Practice a stipulated condition of the supply licences this has the potential of amending the licensee’s requirements under the licence without undertaking the formal process required to do, as applies to licence modifications.

Therefore Energia consider the proposed licence condition to be incomplete by affording the same powers of enforcement to Codes of Practice under the licence but not requiring the same process of consultations for the introduction or amendment of Codes of Practice. To address this shortcoming, considered to be an unintended consequence of the drafting, we propose that CER amend the relevant licence conditions to provide certainty and clarity to licensee’s that any introduction of new Codes of Practice and/or amendment to existing Codes of Practice will be subject to the same rigours of consultation as are required for licence changes. Absent this

certainty, there is a perceived risk that Codes of Practice may be used to circumvent the formal licence amendment process. Formal certainty on this issue is imperative for suppliers.

As previously commented on and pursuant to the more general point on the power of Codes of Practice to increase or amend the requirements on suppliers under the licence, Energia requests clarity to be provided by the CER on the requirement to notify customers of price changes 30 days in advance of any change. Further to this, whether such provisions apply equally to domestic and non-domestic customers. Energia notes that the equivalent requirement pertaining to the relevant EU regulations on this matter require customers to be notified of any change within one month of the change being effected. Once again clarity and justification for exceeding the EU requirements in this area should be provided.

Similarly, it is important that clarity is provided by CER to household suppliers on the practical understanding and implications of the definition of vulnerable customers as proposed in the licence.

Condition 22

It is necessary that clarity is brought by the CER to the intended meaning of “unnecessarily increase” in this newly proposed condition. It is Energia’s view that this condition, as it follows on from S.I. 542/2009, exceeds the requirements specified in European Commission Directive 20006/32/EC. This is a concerning and largely unjustified extension that seeks to impose a significantly greater burden on suppliers than envisaged by the Directive. Specifically, Article 10 of the Directive states;

“1. Member States shall ensure the removal of those incentives in transmission and distribution tariffs that unnecessarily increase the volume of transmitted or distributed electricity.”

As the introduction of the S.I is a matter for the Department for Communications, Energy and Natural Resources (DCENR), and at this point it is unclear as to whether the intention of the DCENR was to exceed the European requirement, or whether this was merely an unintended consequence of employing the general term “energy undertaking”, Energia considers to appropriate that CER might review the wording of this section to ensure that any future change to the requirements under the S.I. are not unnecessarily extended in the licence.

In the context of the proposed new licence condition, as opposed to the intention and wording of the Directive, Energia calls on CER to clarify the suitability of the wholesale market price floor (-€100/MWh) and the apparent conflict between this feature of the market and the newly proposed condition to prohibit incentives to unnecessarily increase the volume of transmitted or distributed energy. It is also important that CER issue more general guidance to suppliers to ensure certainty and clarity around this potentially objectionable new addition to the licence.

Condition 23.5.(d)

Energia welcomes the first step in the provision of clarity by the CER in relation to this new licence requirement surrounding the definition of reasonable request. Nevertheless the continuing position of determining all other related matters on a case by case basis is considered to be unworkable, and lacking the certainty and transparency required in the market.