

CONSULTATION ON PROPOSED UTILITY REGULATOR (SUPPORT FOR DECARBONISATION PREPARATION) BILL

August 2024

Q1. Do you agree that legislation should be brought forward, so that the Utility Regulator may provide advice, information and assistance to support the Department in development of energy proposals, policies, strategies and plans, essential to the fulfilling obligations under Climate Change Act 2022 (NI) 2022?

Yes.

Comments: NIE Networks welcomes this Bill to broaden the Utility Regulator's mandate given that the information, advice and assistance provided to the Department for Economy by the Utility Regulator considers advice, information and assistance sought from wider stakeholders which includes the regulated entities. It is also imperative that the Utility Regulator is appropriately resourced to deliver any additional activities without detracting from all current duties in supporting the delivery of investment urgently required to ensure delivery of the 2030 targets

Additionally, to enable the Utility Regulator to fulfil its ambitions we consider that more comprehensive amendments are required to ensure that its vires are aligned with most recent policy and legislative ambition, see Q4 response for further details. Our view is that these more comprehensive changes are urgently progressed to enable up to date regulatory vires to be in place in advance of critical regulatory considerations e.g. the upcoming SONI price control. We note that the NIE Networks' RP7 price control continues to be assessed against the existing vires.

Q2. Do you agree that consideration should be given to amendments to the powers of the Utility Regulator in future legislation, that might be required by the Department, to support delivery of energy net zero policies?

Yes.

Comments: NIE Networks agrees with this; however, considering the targets set within the Climate Change Act 2022 and the ongoing price control negotiations with NIE Networks and SONI, amendments to existing legislation should be considered urgently, see Q4 response for further details.

Q3. Do you have any views on the costs resulting from the Bill being funded by license fees? We are specifically interested to hear the views of electricity and gas license holders.

Yes.

Comments: NIE Networks has no concerns with the costs explicitly outlined in this consultation i.e. 5no. FTE's, being funded by license fees on the understanding that these fees remain as a pass-through cost as per usual. It is also assumed that these additional costs will be efficiently and proportionally levied amongst all relevant license holders. NIE Networks would like to understand what the Department for Economy and the Utility Regulator's expectations are in terms of additional requests to its regulated companies, including NIE Networks for information, advice and assistance. If this is significantly more than usual then NIE Networks believes that this Bill, if passed, may result in the requirement of supplementary internal resources within NIE Networks to support the Utility Regulator with their additional activities. These indirect costs have not been included in the RP7 submission and it is therefore critical that the Utility Regulator provides sufficient indirect allowances to support this alongside all other activities.

Q4. Are there any other issues you wish to raise?

Yes.

Comments: As referenced in Q1 and Q2, NIE Networks believes that to realise the 2030 targets within the Climate Change Act 2022 and ultimately deliver on Net Zero ambitions for NI, additional legislative changes to further broaden the Utility Regulators vires should be sought alongside the proposition of this Bill. By not altering the UR vires alongside this proposed legislation we have concerns that the extent and impact of what the UR can do and advise the Department on will be limited.

We believe these legislative changes should be supportive where appropriately justified with respect to statutory targets and should provide a mechanism for anticipatory investment. We have communicated this a number of times within the last few years. For example, we responded to the UR Draft Forward Work Programme 2023-24 on 20th February 2024 with the following-

"While regulation in general should protect consumers in terms of costs, we would observe that the statement under the UR that "Price Controls to ensure prices are as low as possible" is a narrow interpretation of the UR's vires/mandate which is "...to protect the interest of electricity consumers..." Protection of consumers should also be viewed in the longer term to include sustainability and security of energy supply which could involve costs in the short term, but longer term security and cost savings. We note that in the UR's Forward Work Plan for 2023-24 they have included a work stream on reviewing their vires to ensure that it is appropriate in light of energy strategy and climate change legislation."

Additionally, on the 11th January 2024, we responded to the Northern Ireland Affairs Committee's Renewable Energy and Net Zero in

Northern Ireland Inquiry with the following -

“Another relevant measure is the Utility Regulator’s vires. Presently the Utility Regulator’s primary and secondary objectives are concerned with consumer protection, efficient service delivery and promotion of competition. We think that facilitation of the statutory RES-E and net zero objectives should be included within the Utility Regulator’s vires. We welcome this review of the UR’s legislative remit into the future and we support extending the remit to include consideration of achieving the net zero targets within the Energy Strategy and Climate Change Act 2022, and wider economic development. However, we understand the UR’s expectation that this is a multi-year project. We would suggest that in the meantime – bearing in mind the urgency to progress the transition of the local energy system to net zero carbon – the UR in conjunction with DfE, should work to broaden to the extent possible their interpretation of the UR’s existing mandate, and take as balanced and holistic view as possible of what it means to ‘[protect] the interests of electricity consumers...’ As the RP7 price control covers the transformational period up to Q1 2031 in the delivery of the Energy Strategy and the overall energy transition, we would also suggest that this broader interpretation of the existing mandate should be agreed with DfE prior to the assessment of the RP7 price control. We also note that the Energy Strategy Action Plan includes consideration of wider legislative and regulatory changes required in future for net-zero.”

Our responses to date echo the recent responses from the Utility Regulator who also recognise the need to broaden their statutory powers further to reflect the transition to net zero and are supportive of this Bill to allow them to “research” the development of a new policy with DfE. For example, on the 17th January, whilst providing oral evidence to the Northern Ireland Affairs Committee’s Renewable Energy and Net Zero in Northern Ireland Inquiry, the UR’s Chief Executive stated¹ -

“The main regulatory challenge that we have at the moment is that our statutory powers are 20 years old. The last major piece of legislation for us was 2003. Ofgem, our equivalent in GB, has had 15 pieces of legislation. We have no powers to support the Climate Change Act 2022. We need powers to be able to support fully the Government in terms of their move to net zero. We are trying to use old bits of legislation and old statutory powers to meet the modern world. We need our legislative powers to come up to date with our equivalent numbers in Ireland and Great Britain. We are behind on that...” “....We are working with the Department for the Economy at the moment to try to bring in interim legislation, which will help us do research around what is needed to be done. A new energy Bill, we were told, will take another three years, but we desperately need that. All the time we are having to make compromises and stretch our existing legislation to make it meet what the future holds. Ofgem and our equivalent in Ireland, CRU, do not have to do that. It hampers us.”

Considering our shared sentiments with the Utility Regulator, whilst also taking in to account the timescales required to bring about a new Energy Bill, NIE Networks believes that the Department for Economy should consider the changes to existing legislation below to allow Northern Ireland to meet the targets set within the Climate Change Act 2022.

Change 1: Through the development and uptake of new technologies, electricity users, including domestic customers, can now produce as well as consume energy. Considering this, the word “consumer” should be updated within relevant legislation to reflect this. This is to ensure that the remit of the UR is to not just protect electricity consumers but also small scale and domestic electricity producers.

Change 2: At present the Utility Regulator’s objective is to promote the development of a gas network. Article 14 of the Energy Order 2003 should be changed to be less technology specific to ensure that regulation facilitates the most recent ambitions set out within Government Policy and Legislation.

Change 3: Article 12 of the Energy Order, which specifically relates to the principal objectives and general duties of the Department and the Authority in relation to electricity, should be altered to further support the role of the Utility Regulator in Northern Ireland to promote the use of renewable, sustainable or alternative forms of energy as these align with the most recent ambitions set out within Government Policy and Legislation.

Change 4: We believe that the UR should have the capacity supported, by their vires, to take in to account wider considerations relating to economic and societal impact.

Change 5: Article 12 of the Energy Order should be altered to support the most recent ambitions set out within Government Policy and Legislation, by including the capacity for the Utility Regulator to approve anticipatory investment where appropriately justified, leading to a more holistic and expedited approach to the development of the electricity network.

¹Northern Ireland Affairs Committee Oral evidence: Renewable Energy and Net Zero in Northern Ireland, HC 428 <https://committees.parliament.uk/oralevidence/14117/pdf/>



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