

REASONS & EFFECTS NOTICE

NOTICE OF INTENTION TO AMEND THE GAS CONVEYANCE ELEMENT OF THE PHOENIX NATURAL GAS LIMITED COMBINED LICENCES FOR THE CONVEYANCE AND SUPPLY OF GAS IN NORTHERN IRELAND

1. The Department of Enterprise, Trade and Investment (herein after referred to as the “Department”) hereby gives notice as follows:
 - (1) The Department, in exercise of the powers conferred by Article 8(1) of the Gas (Northern Ireland) Order 1996 granted licences to Phoenix Natural Gas Limited to convey and supply gas in designated areas of Northern Ireland. Under powers conferred by Schedule 4, Article 15 of the Energy (Northern Ireland) Order 2003, the Department proposes to amend the gas conveyance element of the Phoenix Natural Gas Limited combined licences for the conveyance and supply of gas in Northern Ireland.
 - (2) The reasons for, and effects of, the proposed licence amendment are as follows:

REASONS

2. The aim of Directive 2003/55/EC (“the Directive”) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC is to contribute to the creation of a fully competitive, liberalised market in gas in the European Union, consistent with the EU’s wider energy liberalisation package, and it provides a number of elements intended to open the market to competition. Directive 98/30/EC, which was repealed by the Directive, provided only for partial liberalisation of the gas markets.
3. The text of the Directive can be accessed at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:176:0057:0078:EN:PDF>
4. In addition to steps already taken to liberalise the market, and the regulatory regime that is in place, whereby Northern Ireland was already compliant with a significant number of the requirements of the Directive, the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 were made and came into operation on 1 October 2006. The Regulations which effectively transposed the Directive within Northern Ireland addressed those requirements of the Directive where Northern Ireland was not compliant, subject to derogations granted by the Commission Decision PH (2005) 0791 which provided derogation from specific Articles of the Directive, thus permitting gas supply exclusivity within certain licence areas.
5. Article 13 of the Directive requires a distribution system operator within a vertically integrated undertaking to be independent in terms of its legal form, organisation and decision making from other activities not related to distribution. This Article also requires that the persons responsible for the management of the distribution system operator may not participate in company structures of the integrated natural gas undertaking responsible for the day-to-day operation of the production, transmission and supply of natural gas. These requirements resulted in the separation of gas supply

from distribution within Phoenix Natural Gas and saw establishment of a new gas supply company, Phoenix Supply Limited.

6. The existing Phoenix Natural Gas licence document combines gas conveyance and supply and was granted by the Department in exercise of the powers conferred by Article 8(1) of the Gas (Northern Ireland) Order 1996. The establishment of a new gas supply company required the granting of a new gas supply licence and revocation of the supply element of the combined licence. These changes also required amendment to the conveyance element of the existing conveyance and supply licences to remove references to gas supply activities within this element of the combined licences.
7. Prior to March 2008, Phoenix Natural Gas Limited owned and operated both distribution and transmission assets. The Phoenix gas transmission business consisted of the Belfast Transmission Pipeline ("BTP") which runs from Ballylumford in Island Magee to Tory Town near Carrickfergus, and across Belfast Lough to Knocknagoney, near Holywood. The BTP transports high pressure gas from the Scotland to Northern Ireland Pipeline to three pressure reduction stations at Larne, Tory Town and Knocknagoney, where gas is introduced into the Greater Belfast gas distribution system and to an offtake for the North West Pipeline located at Middle Division at Carrickfergus.
8. As part of the regulatory agreement reached with the owners of Phoenix in November 2006 to reform their regulatory regime, it was agreed that the Phoenix Group would sell its gas transmission business. In March 2008, acquisition of the Phoenix gas transmission business was successfully completed by Northern Ireland Energy Holdings Limited ("NIEH"). The sale of the Phoenix transmission business therefore requires amendment of the conveyance element of the existing conveyance and supply licences to reflect the transaction.

EFFECT

9. The proposal will amend the conveyance element of the current Phoenix Natural Gas licence to reflect the sale of the Phoenix gas transmission business and revocation of the supply element of the combined licences following establishment of Phoenix Supply Limited, a separate gas supply business, and will continue to permit the conveyance of gas through the Phoenix gas distribution network.
10. The proposals will support continued compliance with the specific terms of Directive 2003/55/EC in relation to separation of gas distribution and supply functions and with the terms of the sale of the Phoenix transmission asset.

REPRESENTATIONS ABOUT THE PROPOSED LICENCE AMENDMENT MAY BE MADE BY 30th MARCH 2009 TO –

**SUSAN STEWART
ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
NETHERLEIGH
MASSEY AVENUE
BELFAST
BT4 2JP**

OR E-MAILED TO susan.stewart@detini.gov.uk