



**The Competition & Markets Authority consultation on Energy
Licence Modification Appeals Rules and Guide**

1. Introduction

- 1.1. The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (NI) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).
- 1.2. The Consumer Council welcomes the opportunity to respond to the Competition & Markets Authority's (CMA) consultation on Energy Licence Modification Appeals Rules and Guide.
- 1.3. Since 2012, The Consumer Council has been involved in four energy licence modification appeals to the CMA. Two of these (Phoenix Natural Gas PNG12 and NIE RP5) were under the old rules. The two most recent appeals (firmus energy GD17 and SONI) are ongoing and conducted under the new rules.
- 1.4. In 2012, and again in 2014, when the new appeals process was consulted on in NI by DETI, we expressed concern about the imbalance of resources between energy companies and consumers organisations. Our recent involvement in two CMA appeals (firmus energy and SONI), which have yet to be concluded has raised this fundamental issue again.
- 1.5. The CMA has stated that due to the experience it has gained of energy licence modification appeals, it is proposing to update its existing rules for good order and change its existing rules based on experience of conducting appeals.
- 1.6. The Consumer Council experience of the licence appeals process suggests that the focus is on technical economic outcomes and a consumer perspective is essential to the process. Furthermore, the current lack of certainty on recouping costs leaves the companies in a stronger position for engaging in this formal and legalistic process, leading to an imbalance in resources between industry participants and consumer representatives.

- 1.7. We sought to address these issues prior to this consultation. However, we understand that with appeals ongoing it has not been possible to address them before now. Therefore, The Consumer Council welcomes the opportunity to respond to the CMA's consultation on Energy Licence Modification Appeals Rules and Guide.

- 1.8. Our submission responds to the specific questions asked in the CMA consultation.

2. Do you have any comments on the draft *Energy Licence Modification Appeals Rules and Guide*?

- 2.1. Our overall comment with regard to the Energy Licence Modification Appeals Rules and Guides specifically relates to the comments made in our introduction, i.e. the imbalance in resources between energy companies and consumer organisations.
- 2.2. With regard to costs relating to the Energy Licence Modification Appeals process, we note that in paragraph 6.3 of the Guide that the CMA states that it does not have power to order costs for or against interveners. We are concerned that as a statutory consumer representative, our ability to participate in the appeals process will be hampered if we cannot recoup the appropriate and proportionate costs required to fulfil our statutory role. We would ask the CMA to consider the importance of the statutory Northern Ireland consumer voice in this process and reflect on the need to award proportionate costs to interveners.
- 2.3. Without reassurance that our costs will be covered, we may be unable to adequately represent consumers in the appeals process. Cost coverage for the statutory NI consumer representatives is essential to prevent a bias in favour of the companies, which have large budgets for appeals and referrals.

3. What is your view on the CMA's proposed approach in Rule 10 of the draft *Energy Licence Modification Appeals Rules*, which is to provide that the CMA may take into account whether a third party is materially interested in the outcome of the appeal, when it is considering whether to allow that person to intervene in an energy licence modification appeal?

3.1. The CMA has stated that due to the experience it has gained of energy licence modification appeals, it is proposing to update its existing rules for good order and change its existing rules based on experience of conducting appeals. However, the consultation gives no indication what issue it is attempting to address by the proposed change to Rule 10. Without an understanding of what the issue is, we feel it is impossible for any consultee to make a fully informed response to the proposed change to Rule 10. We ask that the CMA provide the reasons why they propose the change before making a decision.

3.2. The Consumer Council is directly affected by the proposed change in Rule 10. Under the existing arrangements, The Consumer Council has a statutory right to make representations as an 'Interested Third Party' when it is acting in the capacity of representing consumers whose interests are materially affected by the decision. The proposed change to Rule 10 removes the Consumer Council's statutory right to intervene and requires us to seek permission to become an Intervener.

3.3. We are concerned that this new approach will have a threefold effect:

- That The Consumer Council will no longer be automatically entitled to make representations in an appeal and may be excluded from representing consumers (which is our statutory duty under the Energy

(Northern Ireland) Order 2003) in this process. This may cause consumer detriment in the Energy Licence Modification Appeals process.

- The change proposed to Rule 10 which will allow ‘any person’ to apply for permission to intervene, means that the CMA may need to deal with a large number of applications. Such applications are more likely to come from industry representatives who have greater resources than consumer organisations and will quickly identify where their vested material interest lies in an appeal. This only exacerbates the existing imbalance between consumers and industry. This is not what the EC intended when it set out to reform the energy appeals process as part of IME3.

- The proposed change will diminish our statutory role as consumer representative and our principal duty to promote and safeguard the interests of consumers in Northern Ireland. Under the Energy (Northern Ireland) Order 2003, The Consumer Council is the statutory body for energy consumers. This legislation gives the Consumer Council the following duties:
 - Representing the views of consumers;

 - Investigating consumer complaints;

 - Making proposals and providing advice and information about consumer matters;

 - Obtaining and keeping under review information about consumer issues and the views of consumers on these issues; and

 - Publishing information in the consumer interest.

- 3.4. We want to ensure that the new rules will continue to provide opportunity for consumer representatives to be involved in the appeals process whilst clarifying the expectations of such involvement. While acknowledging the economic focus of the appeals procedure, we encourage the CMA to engage with The Consumer Council to ensure that the consumer perspective is adequately considered in the appeals process.

- 3.5. Our recent experience in giving evidence to the CMA appeals leads us to conclude that a discussion between the CMA and The Consumer Council to clarify if and how the intervention will assist the CMA and the extent of the intervention would be helpful to all parties involved in the appeal. This should be done on a case by case basis as the assistance The Consumer Council can provide will vary considerably between different types of appeals.

If you require further information or you wish to discuss any aspect of this response please contact Sinéad Dynan.



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