




Department  
of Energy &  
Climate Change

# **A shortfall cost recovery mechanism for energy supply company administration**

## **DECC consultation document**



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# Introduction

**This consultation seeks comments on modifications to gas and electricity licences in order to set up a cost recovery mechanism for energy supply company administration.**

**The broad framework for energy supply company administration is set out in the Energy Act 2011, including powers conferred on the Secretary of State to modify gas and electricity licences for the purpose of introducing a cost recovery mechanism.**

**The detailed rules of procedure – energy supply company administration rules were published for consultation earlier this year and can be found here: [http://www.decc.gov.uk/en/content/cms/consultations/en\\_sup\\_rules/en\\_sup\\_rules.aspx](http://www.decc.gov.uk/en/content/cms/consultations/en_sup_rules/en_sup_rules.aspx)**

**Separate rules governing the procedure in Scotland were published for consultation in October and can be found here:**

**[http://www.decc.gov.uk/en/content/cms/consultations/sup\\_rules\\_scot/sup\\_rules\\_scot.aspx](http://www.decc.gov.uk/en/content/cms/consultations/sup_rules_scot/sup_rules_scot.aspx)**

# General information

The purpose of this consultation is to give stakeholders the opportunity to comment on proposed licence changes to put in place a cost recovery mechanism for Energy Supply Company Administration.

**Issued:** 7 January 2013

**Respond by:** 15 March 2013

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Consultation reference: URN: 12D/456 – Consultation

**Territorial extent:**

Great Britain.

**How to respond:**

We are happy to accept responses in either written or electronic form.

**Additional copies:**

You may make copies of this document without seeking permission.

Other versions of the document in Braille, large print or audio-cassette are available on request.

**Confidentiality and data protection**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give



an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at [www.decc.gov.uk/en/content/cms/consultations/](http://www.decc.gov.uk/en/content/cms/consultations/). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

### **Quality assurance**

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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# 1. Background

1.1 The Energy Act 2011 includes provisions to establish a special administration regime for energy supply companies, known as energy supply company administration. The purpose of energy supply company administration is to ensure that if a large gas or electricity supply company is in financial difficulty, arrangements are in place to allow the company to continue operating normally until it is either rescued, sold, or its customers transferred to other suppliers. This will reduce the risk of financial failure spreading across the energy market, maintain market stability and therefore protect consumers.

## Rationale

1.2 Energy supply company administration is intended as a backstop to the Supplier of Last Resort arrangements, which allow Ofgem to revoke a supplier's licence if it becomes insolvent and appoint another supplier to take over its customer accounts. This process is generally completed within 48 hours of the company being declared insolvent, in order to protect other market participants from exposure to the failed supplier's debt.

1.3 Experience of small suppliers' insolvency has shown there is a significant risk the Supplier of Last Resort arrangements would not be effective in dealing with the insolvency of large suppliers because of the large volume of customers involved. This would mean that other market participants would face increased exposure to the failed supplier's debt as its customers would continue to be supplied with energy through the industry's balancing and settlement arrangements, rather than under contract. If the supplier in financial distress defaults on the charges incurred through supplying customers through the balancing mechanism, the charges are smeared across other market participants. This has been our experience when smaller suppliers have suffered financial distress.

1.4 If a large supplier became financially distressed and was forced to supply customers through the balancing mechanism, industry systems would be placed under a tremendous strain with the risk of financial failure spreading across the market. That said, the risk of a large supplier becoming insolvent is extremely small and if it were to happen the most likely outcome would be a trade sale, which has been the case in the past. Nonetheless, the Government believes it is

prudent to put in place a framework to deal with such an event (however unlikely it may be) similar to that already in place for electricity transmission and distribution companies and gas transporters.

### How energy supply company administration would work

1.5 Energy supply company administration will allow the company to continue trading normally, potentially with funding provided by the Government, if the company is unable to secure funding from commercial sources, until it is either rescued, sold or its customers transferred to other suppliers. The Secretary of State is empowered to make grants and loans to the company in energy supply company administration and may also give guarantees in respect of any sum borrowed by the energy supply company while it is in energy supply company administration. He may also agree to indemnify the energy administrator (and those involved with the business) against loss or liability incurred during the exercise of his or her duties.

1.6 The Secretary of State is empowered to recover from the company any funding provided to it. As the funding would be classed as an expense of energy supply company administration, its repayment would take priority over debts incurred prior to energy supply company administration.

1.7 However, the Government recognises that any company entering energy supply company administration may not be in a position to repay some, or all of the funding it receives, and included provisions in the Energy Act 2011 to provide for licence changes to allow any funding provided by the Government to be recovered from the industry.

### Cost recovery

1.8 Section 99 of the Energy Act 2011 provides for the modification of licences to allow for the recovery of the amount of any shortfall through raising charges that industry participants are already required to pay as a condition of their licences. If there is any such shortfall in the assets available to a company in energy supply company administration to repay funding provided by the Secretary of State and other specified debts (such as the payment and expenses of the energy administrator and debts arising out of contracts entered into by the company while it is in energy supply company administration), during or at the end of energy supply company administration, then the modified conditions would apply.



## 2. Introducing a cost recovery mechanism

2.1 This consultation document sets out proposals to modify electricity supply and gas shipper licences, the electricity transmission licence (the amended sections of which only apply to National Grid in its role as National Electricity Transmission System Operator) and National Grid's gas transporter licence in respect of its role as National Transmission System operator, in order to put in place a cost recovery mechanism should it ever be needed. The draft licence conditions can be found in Annexes A to D. The proposed changes are marked in red.

2.2 The proposed cost recovery mechanism mirrors that already in place for recovering any shortfall in meeting administration expenses incurred under the special administration regime for electricity transmission and distribution companies and gas transporters, known as energy administration. The cost will be recovered from electricity suppliers and gas shippers. Electricity suppliers pay charges to National Grid for the transmission of electricity. Gas shippers pay charges to National Grid for the conveyance of gas. Shippers pass these costs on to gas suppliers who pass the costs on to customers. Most suppliers also hold a shipper licence. As is the case with energy administration, the Government understands the costs of recovering any shortfall in relation to energy supply company administration may be passed through to gas and electricity consumers.

2.3 Our proposed cost recovery mechanism follows the already well-established principle in energy market trading arrangements that if a market participant, as a result of insolvency, defaults on any charges it is required to pay under industry codes, the cost is socialised across market participants and is ultimately borne by consumers.

2.4 The Government is keen to maintain maximum flexibility in choosing which charge should be raised. This is because modifications to charging regimes are generally undertaken by the relevant industry code panel and are subject to changes that are outside of the Government's control. For instance, the charging methodology in relation to the electricity transmission network sits within the Connection and Use of System Code (CUSC). Any modification must be taken forward through the "CUSC Amendments Process". We therefore propose to amend

licences to allow the Government to direct National Grid to raise **any** of the charges it levies on electricity suppliers and shippers.

## 3. Impact on consumer bills

3.1 We consider in the unlikely event of a large supplier becoming insolvent the most likely outcome would be a trade sale. Only if it were not feasible for Ofgem to appoint a Supplier of Last Resort would it be necessary for a company to enter into energy supply company administration.

3.2 Any impact on customers' bills would depend on the value of the funds provided by Government and the extent to which the Government may recover the funding from the company in the first instance. If the company is rescued or sold as a going concern, we would expect to recover any funding provided in full from the company itself.

3.3 If the company did not survive intact, the extent to which there would be an impact on consumers' bills would depend on:

- the length of time the company is in energy supply company administration;
- the volumes of energy supplied to its customers;
- the sale value of its assets, including customer accounts.

3.4 In our draft impact assessment we have modelled a number of scenarios to evaluate the likely impact on energy bills. The majority of scenarios modelled show only a marginal increase in bills. Under the worst case (and least likely), scenarios tested, cost recovery would increase household energy bills by between £7 and £32 per annum (2010 prices), on average, over a five year payback period.

3.5 It should be noted that in the absence of energy supply company administration, these liabilities would still be passed through to consumers under the market arrangements for dealing with supplier defaults. Energy supply company administration and the cost recovery mechanism protect other market participants from large unpredictable increases in charges, which would be passed through to consumers. Under the cost recovery mechanism the costs can be managed. Industry participants will be given sufficient notice of any increased charges to allow any unmet costs of energy supply company administration to be repaid over a longer time frame and which

can therefore be passed through to consumers in a manner designed to reduce the impact on bills. Energy supply company administration reduces the risk of financial failure spreading across the rest of the industry, which would end up being much more costly for consumers.

## 4. How the cost recovery mechanism would work

4.1 In the event that a shortfall occurs during or at the end of an energy supply company administration, the Secretary of State can choose to trigger the cost recovery mechanism. The Secretary of State, after consultation with Ofgem and National Grid, would issue a direction to National Grid in its role as the national system operator for the gas and electricity transmission systems in Great Britain, to raise, through the charges it levies on gas shippers and electricity suppliers, a specified sum to cover any unmet expenses of the energy supply company administration.

4.2 The shortfall direction will include:

- the details of the amount to be raised;
- to whom it will be paid (this will usually be the Secretary of State)
- which charges will be used;
- when the payments will be made and completed; and
- any interest to be charged on a late payment.

4.3 As soon as reasonably practicable after receiving the shortfall direction and taking into account the timeframe in which shippers and suppliers are able to pass through the additional charges, National Grid will increase its charges and notify those to whom the charges apply (most likely it will be both shippers and electricity suppliers) of :

- the increased charges;
- any changes to the date or time period during which the charges should be paid;
- the reason for the increased charges; and
- any rate of interest rate applicable to late payment of the charges.

4.4 The Secretary of State will decide which charge to increase, after consultation with Ofgem and National Grid, when issuing the shortfall direction. As the cost recovery mechanism works by increasing an existing charge, the starting point for allocation of the costs will depend on the way in which the underlying charge is calculated.

4.5 The Government recognises that there will be cashflow implications for shippers and electricity suppliers and will consider the timescale for recovering costs when issuing a shortfall direction and ensure that it gives adequate notice of payments.

4.6 National Grid will be able to recover its administrative costs for operating the cost recovery mechanism and the Secretary of State will specify a permitted administration fee in the shortfall direction, which National Grid will be able to recover in the same way as it recovers the rest of the money required to be raised by the shortfall direction. This is in line with the existing special administration regime for electricity transmission and distribution companies and gas transporters.

4.7 In order to put in place the cost recovery mechanism it will be necessary to modify the electricity transmission licence (the amended sections of which only apply to National Grid in its role as National Electricity Transmission System Operator), and National Grid's gas transporter licence in respect of its role as National Transmission System operator, electricity supply licences and gas shipper licences.



# 5. Modification of the Electricity Transmission and Gas Transporter (national system operator) Licences

5.1 Annex A sets out proposed changes to standard licence condition C24 of National Grid's electricity licence as the electricity system operator for Great Britain and Annex B sets out the proposed changes to condition C22 of National Grid's Gas Transporter licence in its capacity as the national gas system operator. The proposed changes require National Grid to modify the charges it levies on electricity suppliers and gas shippers to raise specific amounts determined by the Secretary of State as set out in a shortfall direction.

## 6. Modification of gas shipper licences

6.1 The Uniform Network Code (UNC) forms the contractual framework between National Grid as the national gas transporter and the district network transporters and the shippers whose gas is transported. Under the UNC shippers are liable for a number of payments and charges to National Grid Gas (NGG) in its capacity as transmission owner (TO) and system operator (SO) of the National Transmission System (NTS).

6.2 Briefly shippers that enter gas onto the system must pay the following charges:

TO Entry Capacity Charges

TO Entry Commodity Charge

SO Entry Commodity Charge

Shippers that take gas off the system pay the following charges:

TO Exit Capacity Charge

SO Exit Commodity Charge

TO Exit Commodity Charge.

6.3 In 2006, following consultation with the industry, licence condition 19 was inserted into the gas shipper licence to include explicit references to the energy administration (the special administration regime for network and distribution companies) cost recovery mechanism to make clear that shippers are required to pay charges that are modified to raise sums used in making good an energy administration shortfall. The Government proposes to amend licence condition 19 to allow National Grid to raise the charges it levies on shippers to comply with a shortfall direction in relation to energy supply company administration. The proposed amendment to the licence condition is set out at Annex C.

## 7. Modification of electricity supply licences

7.1 Electricity suppliers are required to sign up to the requirements of the industry Connection and Use of System Code and the Balancing and Settlement Code. These Codes require them to pay National Grid's Transmission Network Use of System Charge and the Balancing Services Use of System Charge. These charges are considered sufficiently broad in scope to allow National Grid to increase them for the purpose of complying with a shortfall direction from the Secretary of State without changing the licence.

7.2 However, in order to allow the Secretary of State maximum flexibility in deciding which charges should be raised if he issues a shortfall direction, it is proposed that standard licence condition 15 is modified. The charge specified in this condition is narrower in scope and was originally intended to raise money from suppliers to provide assistance in respect of areas with high distribution costs (Assistance for areas with high distribution costs scheme).

7.3 This condition was amended in 2006 to allow for the charge to be raised in response to a shortfall direction in relation to energy administration (the special administration regime for electricity transmission and distribution companies and gas transporters). The Government is proposing a further amendment so that the charge may be raised to comply with a shortfall direction in relation to energy supply company administration. The proposed amendment to the licence condition is set out in Annex D.

## 8. Competition impacts

8.1 It is the Government's intention to recover any shortfall through charges that distribute the cost equitably and do not lead to any market distortions. We are aware that choosing one particular charge over another may impact disproportionately on certain market participants.

8.2 For instance, on the electricity side, Transmission and Use of System charges contain a locational bias in order to incentivise generators to build sites close to demand (i.e. Scottish generators pay higher charges than those in the South of England), and vice versa (i.e. a supplier in Scotland pays lower charges than a supplier in London), so as to reduce overall transmission costs. Therefore, distributing the shortfall by market share via these charges could mean that network users in some areas would have to contribute a higher proportion than those in other areas.

8.3 In view of the concerns set out above full consideration will be given to the impacts any shortfall direction is likely to have, including the effect on competition, before it is made. At this stage, we can indicate that given the current structure of charges, in order to avoid any distributional impacts it is probable that the Secretary of State would direct National Grid to recover any shortfall through the SO Commodity Charge in relation to gas customers and potentially through the Assistance for Areas with High Distribution Costs Charge in relation to electricity customers.

8.4 As the structure of charges may change over time, it is the Government's intention to keep the flexibility to be able to direct National Grid to raise any of the charges it levies on gas shippers and electricity suppliers.

## 9. Questions for consultation

- 1) Do you think that the proposed licence modifications at Annexes A to D are the most efficient way of establishing a cost recovery mechanism for energy supply company administration? If not, can you suggest alternative approaches.
- 2) Do you think that using particular charges would have disproportionate impacts on certain market participants? Please provide supporting evidence, indicating the scale of these impacts.
- 3) Do you think the proposals would have a disproportionate impact on smaller gas shippers and electricity suppliers? Please provide supporting evidence, indicating the scale of these impacts.
- 4) What action might the Government take to mitigate any potential disproportionate impacts?

# Annex A

## Electricity Transmission Licence

### Standard Condition C24: Energy Administration and Energy Supply Company

#### Administration: National Electricity Transmission System Operator Shortfall Contribution Obligations

1. The purpose of this condition is to require the licensee, in specified circumstances, to modify the charges imposed by it in carrying on its licensed activities (“charges”) to raise such amounts as are specified by the Secretary of State in a shortfall direction:
  - (i) (from the persons; and
  - (ii) in the manner,specified in such shortfall direction, and to pay such amounts to the persons specified in the shortfall direction.
2. Where there is a shortfall during or at the completion of an energy administration or energy supply company administration, the Secretary of State, after consultation with the Authority and the licensee, may issue one or more shortfall directions (including one or more shortfall directions to modify or replace any previously issued shortfall direction or directions) to the licensee specifying:
  - (a) the amount of the shortfall (including the amount of any interest accruing on the shortfall calculated to the date specified in sub-paragraph (f));
  - (b) the amount to be raised by the licensee and applied in making good the shortfall;
  - (c) the persons to whom the amount referred to in sub-paragraph (b) above is to be paid (“shortfall payment recipients”);
  - (d) the rate or rates of interest applicable to any part or parts of the amount referred to in sub-paragraph (b) above, and any other relevant information to enable the licensee to calculate liability (if any) for payment of any interest in respect of any late payment of such amount to or by the licensee;
  - (e) the method or methods by which the licensee may raise the amount referred to in sub-paragraph (b) above (including, without limitation, the manner in which and



persons from whom it is to be raised and whether such amount is to be raised within or outside the licensee's normal billing cycle);

- (f) the date by which the licensee is required to pay the shortfall payment recipients the amount referred to in sub-paragraph (b) above (or, where payment of the amount is required in instalments, the dates on which the licensee is required to make payment of each instalment);
- (g) where the shortfall includes relevant debts owed to more than one shortfall payment recipient, the priority in which the amount referred to in sub-paragraph (b) above is to be applied in discharging those debts;
- (h) the extent to which a subsequent shortfall direction modifies or replaces a previously issued shortfall direction;
- (i) where a shortfall direction is to modify or replace any previously issued shortfall direction, where appropriate, a requirement not to modify charges further pursuant to paragraph 5 below; and
- (j) the amount the licensee is permitted to raise and retain for administering the mechanism contained in this condition ("permitted administration fee") and the manner in which the permitted administration fee is to be raised,

and the licensee shall comply with any such shortfall direction.

3. As soon as reasonably practicable after receiving a shortfall direction, the licensee shall:
  - (a) modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue resulting from the modification will equal the amount to be raised by it as specified in the shortfall direction (including, at the licensee's discretion, any permitted administration fee); and
  - (b) notify the persons who are subject to the charges so modified of:
    - (i) the modifications made to the charges;
    - (ii) any modification to the date or time period within which such charges shall be paid;

- (iii) the reason for those modifications; and
  - (iv) the interest rate applicable to late payment of such modified charges.
- 4. The licensee shall on or before the date (or dates) specified in the shortfall direction pay the amount raised under sub-paragraph 3(a), (excluding any permitted administration fee), to the shortfall payment recipients, in accordance (where applicable) with any priority set out in the shortfall direction. For the avoidance of doubt the licensee shall not at any time be under any liability:
  - (i) to make any payments to any shortfall payment recipient, to the extent that those payments exceed the amount of additional revenue which the licensee has already received pursuant to the modification of its charges in accordance with this condition (excluding any permitted administration fee); or
  - (ii) to pay interest to any shortfall payment recipient in respect of any period for which any payment is late (in whole or in part) where the delay to such payment arises from the late payment of monies to the licensee.
- 5. Save where the Secretary of State specifies otherwise in a shortfall direction modifying or replacing a previously issued shortfall direction, if the amount raised by the licensee under sub-paragraph 3(a) (excluding any permitted administration fee):
  - (a) is less than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall (other than as a result of late, partial or non-payment of the modified charges by one or more party subject to those charges), the licensee shall:
    - (i) as soon as reasonably practicable, modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of that deficit together with any interest as specified in the shortfall direction; and
    - (ii) pay that amount to the shortfall payment recipients as soon as reasonably practicable but otherwise in accordance with the shortfall direction; or

- (b) is more than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall, the licensee shall, as soon as reasonably practicable, further modify its charges so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of the excess together with any accrued interest thereon.
- 6. For the purposes of sub-paragraph 3(a) and paragraph 5:
  - (a) the licensee may modify its charges notwithstanding that it has not given prior notice of such a variation required by any other condition of this licence and/or the CUSC and any charges levied by the licensee after modification pursuant to sub-paragraph 3(a) or paragraph 5 of this condition shall be deemed to be compliant with the licensee's obligations under Condition C4 (Charges for use of system), Condition C5 (Use of system charging methodology) and Condition C13 (Adjustments to use of system charges (small generators)) as from time to time amended;
  - (b) the licensee shall not enter into any agreement with another party which does not permit it to vary its charges in pursuance of this condition and shall take all steps within its power to amend, where necessary, any existing agreement to permit such variation; and
  - (c) in modifying its charges for the purposes of this condition the licensee shall not discriminate between any person or class or classes of person, except in so far as any differences in charges reasonably reflect objective differences between such persons or classes of persons or such differences in charges are required to give effect to the shortfall direction.
- 7. The licensee shall, immediately after making any payment under paragraphs 4 or 5 above, send a notice to the Authority and to the Secretary of State specifying the amount of that payment, the shortfall payment recipients to whom it was paid, the date on which it was paid and whether any of the payment was made up of interest resulting from late payment.
- 8. In calculating the licensee's revenue during any period for the purposes of any charge restriction condition, any change in the licensee's revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.

9. The licensee shall prepare, in respect of each period of 12 months ending on 31 March in which its charges are modified in pursuance of sub-paragraph 3(a) or paragraph 5, a statement showing:
- (a) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 3(a);
  - (b) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 5(a);
  - (c) the aggregate amount of the change in its revenue resulting from any modification to charges in pursuance of sub-paragraph 5(b); and
  - (d) the aggregate payments made by the licensee during that period of 12 months ending on 31 March in accordance with paragraph 4 and, where applicable, sub-paragraph 5(a),

and shall give the statement to the Authority within four months of the expiration of the period to which it relates.

10. On giving the statement mentioned in paragraph 9 to the Authority, the licensee shall also publish it on its website.

11. In this condition:

- (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
- (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition
- (c) “charge restriction condition” means any condition (including, without limitation, any revenue restriction condition) of this licence which places a monetary limitation on the revenue which may be recovered by the licensee during a given period; and
- (d) “shortfall direction” in relation to energy administration means a direction issued by the Secretary of State for the purpose of meeting any “relevant debt”, within the

meaning given to those words in section 169(4) of the Energy Act 2004 or, in relation to energy supply company administration, section 99 (4) of the Energy Act 2011 (including (i) any modifications to such direction made by any subsequent shortfall direction or (ii) any shortfall direction replacing a previous shortfall direction).

## Annex B

### **National Grid Gas Transporter Licence (National Transmission System) Standard Special Condition C22 Energy Administration and Energy Supply Company Administration: NTS Shortfall Contribution Obligations**

(1) The purpose of this condition is to require the licensee, in specified circumstances, to modify the charges imposed by it in carrying on its licensed activities (“charges”) to raise such amounts as are specified by the Secretary of State in a shortfall direction:

(i) from the persons; and

(ii) in the manner,

specified in such shortfall direction, and to pay such amounts to the persons specified in the shortfall direction.

(2) Where there is a shortfall during or at the completion of an energy administration or energy supply company administration the Secretary of State, after consultation with the Authority and the licensee, may issue one or more shortfall directions (including one or more shortfall directions to modify or replace any previously issued shortfall direction or directions) to the licensee specifying:

(a) the amount of the shortfall (including the amount of any interest accruing on the shortfall calculated to the date specified in sub-paragraph (f));

(b) the amount to be raised by the licensee and applied in making good the shortfall;

(c) the persons to whom the amount referred to in sub-paragraph (b) above is to be paid (“shortfall payment recipients”);

(d) the rate or rates of interest applicable to any part or parts of the amount referred to in sub-paragraph (b) above, and any other relevant information to enable the licensee to



calculate liability (if any) for payment of any interest in respect of any late payment of such amount to or by the licensee;

- (e) the method or methods by which the licensee may raise the amount referred to in sub-paragraph (b) above (including, without limitation, the manner in which and persons from whom it is to be raised and whether such amount is to be raised within or outside the licensee's normal billing cycle);
- (f) the date by which the licensee is required to pay the shortfall payment recipients the amount referred to in sub-paragraph (b) above (or, where payment of the amount is required in instalments, the dates on which the licensee is required to make payment of each instalment);
- (g) where the shortfall includes relevant debts owed to more than one shortfall payment recipient, the priority in which the amount referred to in sub-paragraph (b) above is to be applied in discharging those debts;
- (h) the extent to which a subsequent shortfall direction modifies or replaces a previously issued shortfall direction;
- (i) where a shortfall direction is to modify or replace any previously issued shortfall direction, where appropriate, a requirement not to modify charges further pursuant to paragraph 5 below; and
- (j) the amount the licensee is permitted to raise and retain for administering the mechanism contained in this condition ("permitted administration fee") and the manner in which the permitted administration fee is to be raised,

and the licensee shall comply with any such shortfall direction.

- (3) As soon as reasonably practicable after receiving a shortfall direction, the licensee shall:
  - (a) modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue resulting from the

modification will equal the amount to be raised by it as specified in the shortfall direction (including, at the licensee's discretion, any permitted administration fee); and

- (b) notify the persons who are subject to the charges so modified of:
  - (i) the modifications made to the charges;
  - (ii) any modification to the date or time period within which such charges shall be paid;
  - (iii) the reason for those modifications; and
  - (iv) the interest rate applicable to late payment of such modified charges.
  
- (4) The licensee shall on or before the date (or dates) specified in the shortfall direction pay the amount raised under sub-paragraph 3(a), (excluding any permitted administration fee), to the shortfall payment recipients, in accordance (where applicable) with any priority set out in the shortfall direction. For the avoidance of doubt the licensee shall not at any time be under any liability:
  - (i) to make any payments to any shortfall payment recipient, to the extent that those payments exceed the amount of additional revenue which the licensee has already received pursuant to the modification of its charges in accordance with this condition (excluding any permitted administration fee); or
  - (ii) to pay interest to any shortfall payment recipient in respect of any period for which any payment is late (in whole or in part) where the delay to such payment arises from the late payment of monies to the licensee.
  
- (5) Save where the Secretary of State specifies otherwise in a shortfall direction modifying or replacing a previously issued shortfall direction, if the amount raised by the licensee under sub-paragraph 3(a) (excluding any permitted administration fee):
  - (a) is less than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall (other than as a result of late, partial or non-

payment of the modified charges by one or more party subject to those charges), the licensee shall:

- (i) as soon as reasonably practicable, modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of that deficit together with any interest as specified in the shortfall direction; and
  - (ii) pay that amount to the shortfall payment recipients as soon as reasonably practicable but otherwise in accordance with the shortfall direction; or
- (b) is more than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall, the licensee shall as soon as reasonably practicable, further modify its charges so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of the excess together with any accrued interest thereon.
- (6) For the purposes of sub-paragraph 3(a) and paragraph 5:
- (a) the licensee may modify its charges notwithstanding that it has not given prior notice of such a variation required by any other condition of this licence and/or the uniform network code and any charges levied by the licensee after modification pursuant to sub-paragraph 3(a) or paragraph 5 of this condition shall be deemed to be compliant with the licensee's obligations under Standard Special Condition A4 (Charging - General) and Standard Special Condition A5 (Obligations as Regard Charging Methodology) as from time to time amended;
  - (b) the licensee shall not enter into any agreement with another party which does not permit it to vary its charges in pursuance of this condition and shall take all steps within its power to amend, where necessary, any existing agreement to permit such variation; and

- (c) in modifying its charges for the purposes of this condition the licensee shall not discriminate between any person or class or classes of person, except in so far as any differences in charges reasonably reflect objective differences between such persons or classes of persons or such differences in charges are required to give effect to the shortfall direction.
- (7) The licensee shall, immediately after making any payment under paragraphs 4 or 5 above, send a notice to the Authority and to the Secretary of State specifying the amount of that payment, the shortfall payment recipients to whom it was paid, the date on which it was paid and whether any of the payment was made up of interest resulting from late payment.
- (8) In calculating the licensee's revenue during any period for the purposes of the charge restriction conditions, any change in the licensee's revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.
- (9) The licensee shall prepare, in respect of each period of 12 months ending on 31 March in which its charges are modified in pursuance of sub-paragraph 3(a) or paragraph 5, a statement showing:
- (a) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 3(a);
  - (b) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 5(a);
  - (c) the aggregate amount of the change in its revenue resulting from any modification to charges in pursuance of sub-paragraph 5(b); and
  - (d) the aggregate payments made by the licensee during that period of 12 months ending on 31 March in accordance with paragraph 4 and, where applicable, sub-paragraph 5(a),

and shall give the statement to the Authority within four months of the expiration of the period to which it relates.

- (10) On giving the statement mentioned in paragraph 9 to the Authority, the licensee shall also publish it on its website.
- (11) In this condition:
- (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
  - (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
  - (c) “charge restriction condition” means any condition (including, without limitation, any revenue restriction condition) of this licence which places a monetary limitation on the revenue which may be recovered by the licensee during a given period; and
  - (d) “shortfall direction” **in relation to energy administration** means a direction issued by the Secretary of State for the purpose of meeting any “relevant debt”, within the meaning given to those words in section 169(4) of the Energy Act 2004 or, **in relation to energy supply company administration, section 99 (4) of the Energy Act 2011** (including (i) any modifications to such direction made by any subsequent shortfall direction or (ii) any shortfall direction replacing a previous shortfall direction).

# Annex C

## Gas Shipper Licence

### Standard Condition 19 Energy Administration and Energy Supply Company

#### Administration : Shortfall Contribution Obligations

1. Pursuant to Chapter 3 of Part 3 of the Energy Act 2004 and Chapter 5 of Part 2 of the Energy Act 2011 and in accordance with this condition, the licensee shall, for the purpose of raising any sums specified in a shortfall direction, pay to the NTS operator such monies as result from any modification or modifications to the charges of the NTS operator made pursuant to Special Condition C22 (Energy Administration: NTS Shortfall Contribution Obligations) of the NTS operator's gas transporter licence.
2. For the avoidance of doubt, the modified charges to be paid by the licensee in accordance with paragraph 1 above shall be payable in accordance with the licensee's obligations governing the payment of those charges to the NTS operator, except insofar as required by the shortfall direction and so notified to the licensee by the NTS operator.
3. If it does not make the payment or payments required by this condition on or before the date required in accordance with paragraph 2 above, the licensee shall pay to the NTS operator an amount representing the rate or rates of interest applicable to any part or parts of the amount to be raised by the NTS operator, specified in the shortfall direction issued to the NTS operator pursuant to Special Condition C22 (Energy Administration and Energy Supply Company Administration: NTS Shortfall Contribution Obligations) of the NTS operator's licence and set out in the notice given to the licensee by the NTS operator, which interest payment shall be made by the licensee as soon as possible after, and in any event within 28 days, of the date of the invoice from the NTS operator for such payment.
4. In this condition:
  - (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;



- (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition
- (c) “NTS operator” shall have the same meaning as in Standard Special Condition A3 of National Grid Gas plc’s gas transporter licence in respect of the NTS; and
- (d) “shortfall direction” shall have the same meaning as in the Special Condition C22 (Energy Administration and Energy Supply Company Administration : GBSO Shortfall Contribution Obligations) of National Grid Gas plc’s gas transporter licence in respect of the NTS.

# Annex D

## Electricity Supply Licence

### Standard Condition 15: Assistance for areas with high distribution costs scheme: payments to System Operator

15.1 This condition sets out the obligations of the licensee in relation to payments to be made to the System Operator for the purpose of:

- (a) providing assistance with the high costs of distributing electricity incurred by a Relevant Distributor in a Specified Area; and
- (b) raising any sums specified in a Shortfall Direction in order to recover costs arising from the application of an Energy Administration Order to a Protected Energy Company **or an ESC Administration Order to an Energy Supply Company.**

15.2 The payments to which paragraph 15.1 refers are payments made pursuant to:

- (a) in the case of sub-paragraph 15.1(a), the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005; and
- (b) in the case of sub-paragraph 15.1(b), the provisions of Chapter 3 of Part 3 of the Energy Act 2004 **or the provisions of Chapter 5 of Part 2 of the Energy Act 2011, as the case may be.**

### Licensee's duty to pay

15.3 In accordance with paragraph 15.1, the licensee must pay to the System Operator:

- (a) the sums resulting from the pence per kWh tariff specified in accordance with the terms set out in standard condition C21 (Assistance for areas with high distribution costs scheme: payments from authorised suppliers) (for this condition only, "standard condition C21") of the Transmission Licence; and
- (b) where applicable, such additional sums as result from any modification of those charges made pursuant to standard condition C24 (Energy Administration **and Energy Supply Company Administration**: GBSO shortfall contribution obligations) (for this condition only, "standard condition C24") of the Transmission Licence.

- 15.4 Subject to paragraph 15.5, the sums to be paid by the licensee in accordance with paragraph 15.3 must be payable on a quarterly basis in each Financial Year (or such other basis as may be specified in standard condition C21 of the Transmission Licence) by:
- (a) the date indicated in each invoice received by the licensee from the System Operator requiring such payment; or
  - (b) where no such date is indicated, no later than 28 days after the date of the invoice.
- 15.5 In the case of sums payable in accordance with sub-paragraph 15.3(b), the licensee must comply with any basis of payment different from that set out in paragraph 15.4 if this is required by the Shortfall Direction and has been notified to the licensee by the System Operator.

### **Late payment charges**

- 15.6 In relation to sums required to be paid by sub-paragraph 15.3(a), the licensee must pay to the System Operator an amount representing 8% above the Base Interest Rate of any payment not made to the System Operator on the date specified pursuant to paragraph 15.4, calculated for each day after the date on which that payment should have been made, until the payment is made.
- 15.7 In relation to any sums required to be paid by sub-paragraph 15.3(b), if the licensee does not make that payment on or before the date required in accordance with paragraph 15.4 or 15.5, it must pay to the System Operator an amount representing the rate of interest applicable to any part of the amount to be raised by the System Operator that is specified in the Shortfall Direction and set out in the System Operator's notice given to the licensee under standard condition C24 of the Transmission Licence, until the payment is made.
- 15.8 Any interest payment owed under paragraph 15.6 or 15.7 must be made by the licensee as soon as possible after, and in any event no later than 28 days after, the date of the System Operator's invoice for such payment.

### **Definitions for condition**

- 15.9 For the purposes of this condition:

**Act** means the Electricity Act 1989.

**Base Interest Rate** means, in respect of any day, the rate per annum which is equal to the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding Business Day.

**Business Day** means any day of the week, other than a Saturday, on which banks are open for domestic business in the City of London.

**Energy Administration Order** has the same meaning as in section 154 of the Energy Act 2004.

**ESC Administration Order** has the same meaning as in section 94 of the Energy Act 2011

**Financial Year** means a period of 12 months beginning on 1 April each year and ending on 31 March of the next calendar year.

**Protected Energy Company** has the same meaning as in section 154 of the Energy Act 2004.

**Energy Supply Company** has the same meaning as in section 94 of the Energy Act 2011

**Relevant Distributor** has the same meaning as in section 184 of the Energy Act 2004.

**Shortfall Direction** has the same meaning as in standard condition C24 of the Transmission Licence.

**Specified Area** means the area specified in the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005.

**System Operator** means the holder, from time to time, of a Transmission Licence.

**Transmission Licence** means a licence granted, or treated as granted, under section 6(1)(b) of the Act and in which Section C of the standard conditions of that licence has effect.



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