




Department
of Energy &
Climate Change

Government response to the consultation on a shortfall cost recovery mechanism for energy supply company administration

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General information

This document sets out the Government response to the consultation on a cost recovery mechanism for energy supply company administration.

The draft consultation was issued on 7 January 2013 and closed on 15 March 2013.

Consultation reference: 12D/456 – Consultation

1 Introduction

1.1 In January this year the Government consulted on proposals to put in place a cost recovery mechanism for energy supply company administration.

1.2 The Energy Act 2011 includes provisions to establish a special administration regime for energy supply companies, known as energy supply company administration (esc administration). The purpose of esc 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 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.

1.3 Esc 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. Experience of small suppliers' insolvency has shown that there is a significant risk that the Supplier of Last Resort arrangements would not be effective in dealing with the insolvency of large suppliers because of the large volumes of customers involved. If a large supplier became financially distressed industry systems would be placed under a tremendous strain and there would be a risk of financial failure spreading across the market. While the financial failure of a large supplier is an unlikely event and would most likely be resolved through a business sale, the Government believes it is prudent to put in place a framework to deal with such an event.

1.4 Esc administration is essentially a contingency measure to deal with a low probability, but high impact event. It will allow the company to continue trading normally, potentially with financial assistance from 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. Under provisions in the Energy Act 2011, the Secretary of State is empowered to make grants, loans and indemnities to a company in esc administration and is empowered to recover from it any such financial assistance provided by the Government.

If the company in esc administration is not able to repay some or all of the financial assistance provided by Government sections 98 and 99 of the Energy Act 2011 give the Secretary of State powers to modify licences to allow for the recovery of the amount of any shortfall by increasing charges that industry participants are already required to pay as a condition of their licences. The Government, therefore, proposed to modify electricity supply and gas shipper licences, the electricity transmission licence (the amended sections of which only apply to National Grid¹ in its role as National Electricity Transmission System Operator) and National Grid's gas transporter² licence in respect of its role as National Transmission System operator, in order to put in place a cost recovery mechanism for esc administration.

1.5 The cost recovery mechanism set out in our consultation document 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. As is the case with energy administration, it is the Government's intention that the costs of recovering any shortfall in relation to energy supplies 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 shippers licence.

1.6 The intention is that 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 esc administration.

1.7 In the consultation document we asked the following questions:

- 1) Do you think that the proposed licence modifications are the most efficient way of establishing a cost recovery mechanism for energy supply company administration? If not, can you suggest alternative approaches.

¹ National Grid Electricity Transmission Plc

² National Grid Gas Plc

- 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?

1.8 The Government received 14 responses to the consultation, the majority of which supported the proposals. The purpose of the consultation was to give interested parties the opportunity to comment on the proposed licence changes. Some respondents also commented on the wider policy design of esc administration. In the following pages we set out our response to these suggestions as well as our response to some of the more detailed comments on the proposed licence changes. A list of respondents can be found at Annex 1.

2 Summary of responses

The majority of respondents supported the Government's proposals for a cost recovery mechanism. The main issues raised by respondents were around:

- the scope of esc administration and whether small suppliers should be exempt from the cost recovery mechanism;
- the notice period for raising charges and the timeframe over which they would be applied;
- the process for determining which charges might be raised; and
- transparency of increased charges.

2.1 Scope of energy supply company administration and the cost recovery mechanism

2.1.1 Some respondents commented on aspects of the broader policy design of esc administration and suggested that it was unfair on smaller suppliers that the Government envisaged applying for an esc administration order only if a large supplier were in financial distress. In a similar vein, a small number of respondents suggested that small suppliers should be exempt from the cost recovery mechanism on the grounds that they do not have the potential to benefit from energy supply administration in the same way as a large supplier. One respondent also argued that large suppliers could load the recovery of increased charges onto "sticky" customers' (customers which have never switched supplier or have given up switching) bills, which would distort competition. Other stakeholders argued that it is important that any shortfall is recovered from all suppliers and shippers equally, otherwise competition would be distorted. One respondent suggested that the rules should contain provision to prohibit a company in esc administration from taking on new customers.

2.1.2 The Government believes that esc administration protects and is in the interests of all suppliers and consumers as it will prevent financial contagion spreading across the market and maintain market stability. Furthermore, it is the Government's long established position that the restrictions placed on creditors' and shareholders' rights under special administration regimes can only be justified in order to ensure the continued operation of essential services. Special administration is therefore a backstop in the event that the usual regulatory procedures would not be effective. In most instances of supplier insolvency we expect it will be feasible to appoint a Supplier of Last Resort.

2.1.3 The Government remains of the view that the cost of recovering any shortfall in meeting the expenses of esc administration should be borne by all suppliers and shippers in proportion to their market share. To exempt a particular class of supplier or shipper would risk distorting the market. It would also make the charges more administratively complex to collect. No evidence was provided by consultees that any class of supplier or shipper would be disproportionately impacted by the proposals provided suppliers and shippers are given adequate notice of increased charges, and charges with a locational element are avoided.

2.1.4 Although we acknowledge it is possible that some suppliers may seek to recover the charges through raising the tariffs of “sticky” customers, as one supplier suggested, this is a function of the general operation of the market, rather than a unique function of the cost recovery mechanism. Ofgem is separately addressing the competitive advantage that some suppliers may enjoy due to a large base of “sticky” customers through its proposals to reform both the domestic and non-domestic market. One of the aims of Ofgem’s final Retail Market Review proposals is to encourage greater customer engagement with the energy market, particularly among “sticky” customers.

2.2 Notice period for increased charges and timeframe for recovery

2.2.1 A number of respondents commented that it is important that suppliers and shippers are given sufficient notice of charge increases so they can adjust their prices accordingly. This would be particularly important for suppliers with a large number of consumers on fixed term contracts. Some respondents suggested that the Government should set out a minimum notice period and a timeframe for National Grid to recover the increased charges.

2.2.2 As set out in the consultation document, the Government agrees that it is important that suppliers and shippers are given sufficient notice of increased charges and that the increased charges are recovered over a timeframe that minimises the impact on consumers’ bills. The extent to which charges may increase and the timeframe for recovery will depend on the extent of any shortfall in meeting the expenses of esc administration. It is therefore important that the Government has the flexibility to determine the notice period and the timeframe over which the increased charges would apply depending on the circumstances at the time. When making any shortfall direction, the Government’s priority will be to keep the impact on consumers’ bills to a

minimum. This will require giving suppliers and shippers adequate notice of any charge increases and a reasonable timeframe for implementation of the charge increases.

2.3 Determining which charges should be used to recover a shortfall

2.3.1 In our consultation document we sought comments on whether increasing any particular charges would have a disproportionate impact on particular suppliers or shippers. We had already identified that charges that 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), could mean that network users in some areas could potentially have to contribute a higher proportion than those in other areas.

2.3.2 Consultees agreed with the Government's assessment that given the current structure of charges, in order to avoid any distributional impacts the most appropriate charges to increase would be the SO Commodity Charge in relation to gas and the Assistance for Areas with High Electricity Distribution Costs Charge (AAHEDC) in relation to electricity.

2.3.3 We do not know how the structure of charges may develop in the future and some respondents suggested that shippers and suppliers should be consulted on which charges are to be increased at the time the Secretary of State issues a shortfall direction to National Grid. The Government agrees and intends, where possible, to undertake a short consultation in advance of issuing a shortfall direction to National Grid on the potential impacts of the charges to be raised.

2.3.4 We reaffirm our intention that any shortfall in meeting the expenses of an esc administration will be distributed across suppliers and shippers in proportion to their market share.

2.4 Transparency of charges

2.4.1 Two respondents suggested that it would be fairer and more transparent if the costs of any shortfall were recovered through taxation rather than increasing the charges levied by National Grid on shippers and suppliers. Some respondents commented that increasing existing charges would hide the true cost of any shortfall. One respondent suggested Government might consider specifying the exact amount that consumers must pay per kwh of electricity and

mandating suppliers to add this as a separate charge to customers' bills. Another suggested it would be preferable to introduce a new charge to recover any unmet costs of esc administration.

2.4.2 The Government believes that as it is consumers that will benefit from esc administration it is fairer that they should bear this cost. In addition, using existing charges is more cost effective as the administrative arrangements are already in place for their collection.

2.4.3 We are confident that, in addition to the short consultation mentioned above, there will be a number of opportunities to ensure that changes to charges imposed by National Grid in relation to esc administration are transparent. National Grid already publishes on its website documents fully explaining its charges (such as the TNUoS Tariff Statement, the NTS Quarterly Charge Setting Report and the AAHEDC Charging Statement and Tariff) as well as the methodology used to calculate them.

2.4.4 Furthermore, the Government's powers under the Energy Act 2011 allow the Secretary of State to modify licences in respect of existing charges only; the provisions do not allow for the creation of new charges.

2.4.5 Having carefully considered the responses to the consultation the Government has concluded that the most effective and efficient way to implement a cost recovery mechanism for esc administration would be to proceed with the proposed licence changes, which can be found at Annexes 2 to 5. The changes are marked in red for ease of reference. The licence changes set out in Annexes 2 to 5 will come into effect on 7 June.

Annex 1 Respondents to the consultation

Good Energy
E.ON UK
ExxonMobil
Smartest Energy Ltd
Centrica
Wales& West Utilities
Ecotricity
first:utility
Haven Power
National Grid plc
Eggborough Power Ltd
Consumer Focus (Now Consumer Futures)
DONG Energy
Scottish Power

Annex 2

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 3

National Grid Gas Transporter Licence (National Transmission System) Standard Special Condition 11D³ 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”);

³ In the consultation document standard special licence condition C22 was amended. As from 1 April 2013 this condition has now been renumbered as Special Condition 11D as part of the new RIIO price control arrangements. This has led to other consequential amendments to the licence condition set out in Annex 4 where relevant cross references have been updated.

- (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 4

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 11D⁴ (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 11D (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:

⁴ The numbering of the licence conditions for the NTS operator's gas transporter licence have been amended as part of the new RIIO price control arrangements as of 1 April 2013.

- (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 11D (Energy Administration and Energy Supply Company Administration :NTS Shortfall Contribution Obligations) of National Grid Gas plc’s gas transporter licence in respect of the NTS.

Annex 5

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: National Electricity Transmission System Operator 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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