

ENERGY

ELECTRICITY

**DRAFT MODIFICATIONS TO THE SPECIAL CONDITIONS OF
NATIONAL GRID ELECTRICITY TRANSMISSION PLC'S
TRANSMISSION LICENCE (EMR No. 2 of 2015)**

Draft modifications to licences under section 6(1) of the Electricity Act 1989 laid before Parliament under section 64(2) of the Energy Act 2013; draft to lie for forty days pursuant to section 64(3) of that Act, during which period either House of Parliament may resolve not to approve the draft.

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MODIFICATIONS TO THE SPECIAL CONDITIONS OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC'S TRANSMISSION LICENCE (EMR No. 2 of 2015)

The Secretary of State makes the following licence modifications in exercise of the powers conferred by sections 45, 64(8), (9) and (13) of the Energy Act 2013 ("the Act").

The Secretary of State has consulted the holder of any licence being modified, the Gas and Electricity Markets Authority and such other persons as the Secretary of State considered appropriate in accordance with section 45(8) of the Act.

A draft of these licence modifications has been laid before Parliament in accordance with section 64(2) of the Act. Neither House of Parliament resolved, within the 40-day period referred to in section 64(3) of the Act, that the Secretary of State should not make the modifications.

Interpretation

1. In these modifications, "special conditions" means the special conditions of the electricity transmission licence granted or treated as granted to National Grid Electricity Transmission plc under section 6(1)(b) of the Electricity Act 1989.

Modifications to the special conditions

2. The special conditions are modified in accordance with paragraph 3 with effect from the day after the date on which this instrument is made.
3. In Special Condition 2N (Electricity Market Reform)—
 - (a) in paragraph 2N.4(c)(ii), at the beginning insert "except where the Authority consents or directs,";
 - (b) in paragraph 2N.6(a), at the beginning insert "subject to paragraphs 2N.6A, 2N.13 and 2N.13A,";
 - (c) after paragraph 2N.6, insert—

"2N.6A Paragraph 2N.6(a) shall not apply to the disclosure of Confidential EMR Delivery Plan Information by the EMR Data Handling Team to the EMR Administrative Team where such disclosure is necessary in order to enable the licensee to perform:

- (a) its EMR Function under regulation 23(2) of the Electricity Capacity Regulations 2014 of advising the Secretary of State on whether to adjust the demand curve for a capacity auction; and

- (b) such other EMR Functions where the Authority has given its prior written consent.

2N.6B Subject to paragraphs 2N.13 and 2N.13A, where Confidential EMR Delivery Plan Information is disclosed to the EMR Administrative Team under paragraph 2N.6A, the licensee shall ensure that the EMR Administrative Team does not disclose that information to a person who is not a member of the EMR Administrative Team or the EMR Data Handling Team without having used all reasonable endeavours to ensure that it is not possible for such a person to identify the generation set, or the owner or operator thereof, which is the subject of that Confidential EMR Delivery Plan Information.”;

(d) for paragraph 2N.8 substitute—

“2N.8 The licensee shall ensure that:

- (a) the EMR Administrative Team is responsible for carrying out the EMR Administrative Functions; and
- (b) subject to paragraphs 2N.8A, 2N.13 and 2N.13A, in presenting Confidential EMR Administrative Information to a person who is not a member of the EMR Administrative Team, the EMR Administrative Team shall use all reasonable endeavours to ensure that it is not possible for such a person to identify the generation set, or the owner or operator thereof, which is the subject of that Confidential EMR Administrative Information.”;

(e) after paragraph 2N.8 insert—

“2N.8A Paragraph 2N.8(b) shall not apply to the disclosure of Confidential EMR Administrative Information by the EMR Administrative Team to the EMR Data Handling Team where such disclosure is necessary in order to enable the licensee to perform:

- (a) its EMR Functions under Part 3 (Electricity capacity reports) of the Electricity Capacity Regulations 2014 of preparing, amending and updating an annual capacity report; and
- (b) such other EMR Functions where the Authority has given its prior written consent.

2N.8B Subject to paragraphs 2N.13 and 2N.13A, where Confidential EMR Administrative Information is disclosed to the EMR Data Handling Team under paragraph 2N.8A, the licensee shall ensure that the EMR Data Handling Team does not disclose that information to a person who

is not a member of the EMR Data Handling Team or the EMR Administrative Team without having used all reasonable endeavours to ensure that it is not possible for such a person to identify the generation set, or the owner or operator thereof, which is the subject of that Confidential EMR Administrative Information.”;

(f) for paragraph 2N.9(b) substitute—

“(b) not be, while a member of the EMR Administrative Team, simultaneously engaged in, or in respect of, any activity of the licensee other than:

- (i) the performance of EMR Administrative Functions; or
- (ii) providing assistance to the EMR Data Handling Team to the extent necessary to enable the licensee to perform its EMR Functions where Confidential EMR Administrative Information has been disclosed to the EMR Data Handling Team under paragraph 2N.8A; and”;

(g) in paragraph 2N.12(b), for “paragraph 2N.13” substitute “paragraphs 2N.13 and 2N.13A”;

(h) in paragraph 2N.12(c), omit “and” and after sub-paragraph (iv) insert—

“PROVIDED THAT Confidential EMR Administrative Information and Confidential EMR Delivery Plan Information shall not be used for the purposes set out in sub-paragraphs (ii) and (iii) unless all reasonable endeavours have been taken pursuant to paragraphs 2N.6(a), 2N.6B, 2N.8(b) or 2N.8B to protect from disclosure the source of such information; and”;

(i) for paragraph 2N.13 substitute—

“2N.13

The licensee may disclose Confidential EMR Information:

- (a) where required by, or by virtue of, any requirement of law or regulation or by, or by virtue of, the rules of any governmental or other regulatory authority having jurisdiction over the licensee;
- (b) where authorised in advance in writing by the Authority;
- (c) to the extent that the person to whom such Confidential EMR Information relates has consented to such disclosure;

- (d) to such other bodies or persons exercising functions conferred by or under Chapters 2, 3 and 4 of Part 2 of the Energy Act 2013 to the extent that such disclosure is required to enable that body or person to carry out those functions; or
- (e) where such disclosure is permitted by regulation 65 of the Electricity Capacity Regulations 2014.”;

(j) after paragraph 2N.13 insert—

“2N.13A The licensee may disclose Confidential EMR Information to:

- (a) its employees, agents, contractors and advisers, other than persons referred to in paragraph 2N.18(a)(vi), to the extent that such disclosure is required to enable the licensee to perform its EMR Functions; or
- (b) to persons engaged in, or in respect of, Shared Services, to the extent necessary to enable them to perform their respective functions;

and in each case the licensee shall procure that:

- (i) the recipients of such Confidential EMR Information only hold the information for such period as is necessary to enable the recipients to perform their respective functions; and
- (ii) prior to disclosure, the recipients of such Confidential EMR Information enter into confidentiality obligations in respect of such information in a form specified in the EMR compliance statement.”; and

(k) in paragraph 2N.32, in the definition of “Relevant Other Competitive Business” for subparagraph (d) substitute—

- “(d) owning and/or operating an entity participating in, or intending to participate in, activities which require a licence under section 6(1)(e) of the Electricity Act 1989.”.

Date

Minister of State

Department of Energy and Climate Change

GUIDANCE NOTE

(This note is not part of the modifications)

These licence modifications are made further to section 45 of the Energy Act 2013 (c. 32) (“the Act”) and modify the special conditions of the transmission licence granted under section 6(1)(b) of the Electricity Act 1989 (c. 29) to the national system operator, National Grid Electricity Transmission plc (“NGET”)¹.

The purpose of these licence modifications is to make a number of amendments to Special Condition 2N, titled “Electricity Market Reform”, which requires NGET to implement certain business separation measures to address potential conflicts of interest arising as a result of NGET carrying out the role of Electricity Market Reform (“EMR”) delivery body under Part 2 of the Act.

The amendments are intended to clarify certain provisions of Special Condition 2N to make it clear that:

- a number of the exceptions to the duty of confidentiality, as set out in paragraph 2N.13, are intended to apply to all types of Confidential EMR Information, including Confidential EMR Administrative Information and Confidential EMR Delivery Plan Information (for example, to ensure that NGET may disclose such information to other parties who are carrying out EMR functions, such as the Low Carbon Contracts Company who may need this information in order to issue Contracts for Difference); and
- NGET may share all types of Confidential EMR Information, including Confidential EMR Administrative Information and Confidential EMR Delivery Plan Information, to specified third parties (including its contractors and advisers, and employees working in shared services) where disclosure is necessary either to enable NGET to perform its EMR delivery role or where the recipients of the information require it in order to discharge their respective functions.

In addition, these licence modifications amend Special Condition 2N to enable Confidential EMR Administrative Information and Confidential EMR Delivery Plan Information to be shared between the EMR Administrative Team and the EMR Data Handling Team, where disclosure is necessary to enable NGET to perform certain specified EMR functions.

The amendments also revise the definition of “Relevant Other Competitive Business” to ensure that this captures not only existing interconnection business which is licensed under section 6(1)(e) of the Electricity Act 1989 but also activities carried out in anticipation of the grant of such a licence.

The Secretary of State will publish the modifications on the website of the Department of Energy and Climate Change as soon as reasonably practicable.

¹ Copies of licences are available at www.ofgem.gov.uk