

# **THE ELECTRICITY ACT 1989**

## **MODIFICATION PURSUANT TO SECTION 11 AND NOTICE OF REASONS FOR MODIFICATION PURSUANT TO SECTION 49A THE TRANSMISSION LICENCE OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

### **WHEREAS**

- 1 National Grid Electricity Transmission plc holds a transmission licence (the "Licence") granted by the Gas and Electricity Markets Authority (the "Authority") under section 6 of the Electricity Act 1989 (the "Act") and is the System Operator (within the meaning in Standard Condition A3(1) (Definitions and Interpretation) of the Licence.
- 2 In accordance with section 11 of the Act, the Authority gave notice on 17 April 2009 on the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)) (the "Notice") that it proposed to modify the Licence by adding:
  - a. Special Condition C1 (Prohibited Activities and Conduct of the Transmission Business) to prevent the licensee from holding, or seeking to hold, a transmission licence that has section E standard conditions in effect, and ensure that the licensee conducts its business in such a manner that it gives no other party an unfair commercial advantage;
  - b. Special Condition C2 (Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests) to require the licensee to put in place and maintain systems of control and other governance and due process arrangements which are necessary to ensure that the licensee maintains appropriate independence and separation; and
  - c. Special Condition C3 (Appointment and Duties of the Business Separation Compliance Officer) to require the licensee to appoint a competent person to facilitate the licensee's compliance with its business separation obligations,(together, the "business separation" conditions) and the Authority specified that any representations or objections to the proposed modifications to the Conditions must be made on or before 15 May 2009.
- 3 In accordance with section 49A of the Act, the reasons for the decision of the Authority to modify the Licence are that business separation between the licensee and any party wishing to become an offshore transmission owner is required since the licensee has access, and will continue to have access, to information that would be advantageous to any party preparing to bid for an offshore transmission licence and without such safeguards the licensee could enable a party to gain an unfair advantage over its competitors.

- 4 Further details of the reasons are set out in various documents including:
  - a. The Government Response to 'Offshore Electricity Transmission – A further Joint Ofgem/DECC Regulatory Policy Update' – Final Consultation Document, 23 March 2009;
  - b. Offshore Electricity Transmission - A further Joint Ofgem/DECC Regulatory Policy Update, 20 November 2008; and
  - c. Offshore Electricity Transmission – A Joint Ofgem/DECC regulatory Policy Update, June 2008, all of which are available (free of charge) from the Ofgem library, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website.
- 5 In accordance with section 11 of the Act the Authority served a copy of the notice on the Licensee and sent a copy of the notice to the Secretary of State and did not receive by 15 May 2009 or at all, a direction from the Secretary of State not to make any modification.
- 6 On 12 May 2009, the Licensee consented in writing to the making of the modifications and by 15 May 2009, the Authority had received two representations but no objection to the notice.
- 7 One respondent agreed with the proposed changes set out in the notice and another respondent (who does not want its identity to be publicly revealed) considered that the proposed drafting did not provide for effective business separation.
- 8 The Authority has carefully considered this representation and the Authority notes that the proposed modifications need to be considered within the context of the standard conditions of the transmission licence, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (SI 2009/1340) and the associated tender rules, and the proposed transmission licence special conditions that will apply to offshore transmission owners.
- 9 The Authority considers that the representation that the proposed drafting did not provide for effective business separation has not taken into account the other safeguards already put in place by other standard and special conditions of the transmission licence, those safeguards that have been introduced by the new tender regulations and will be introduced by the associated proposed tender rules, and the special conditions applying to offshore transmission owners. As such, the Authority has concluded that the proposed business separation conditions as drafted are appropriate.
- 10 The Licensee consented in writing to the Authority to the making of the modifications on 12 May 2009

## **NOW THEREFORE**

In accordance with its powers under section 11 of the Act the Authority **HEREBY MODIFIES** the Transmission licence granted under section 6 of the Act to National Electricity Grid plc by adding to the licence the business separation conditions set out as Special Conditions C1 to C3 in the attached Schedule **WITH EFFECT** on and

from 24 June 2009, the date for the offshore transmission regulatory regime to "Go Active".

This document also constitutes the notice under section 49A of the Act of the reasons for the Authority's decision to modify the Licence.

Dated the 24th day of June 2009

The official seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

Robert Hull

**Director, Regulatory Services**  
**Authorised on behalf of the Gas and Electricity Markets Authority**



**SCHEDULE  
TO  
MODIFICATION PURSUANT TO SECTION 11  
AND  
NOTICE OF REASONS FOR MODIFICATION PURSUANT TO SECTION 49A  
THE TRANSMISSION LICENCE OF NATIONAL GRID ELECTRICITY  
TRANSMISSION PLC**

**Special Condition C1: Prohibited Activities and Conduct of the Transmission Business**

Prohibited Activities

1. Except with the written consent of the Authority, the licensee shall not and shall procure that any subsidiary of the licensee shall not, on its own account (or that of the licensee or of any subsidiary of the licensee as the case may be), hold, or seek to hold, a transmission licence that has Section E (Offshore Transmission Owner Standard Conditions) in effect.

Conduct of the Transmission Business

2. The licensee shall conduct its transmission business in the manner best calculated to secure that, in meeting its obligations under this licence:
  - (a) the licensee;
  - (b) any affiliate or related undertaking of the licensee including, for the avoidance of doubt:
    - (i) any affiliate or related undertaking that intends to participate in a competitive tender exercise to determine a person to whom an offshore transmission licence is to be granted; or
    - (ii) any affiliate or related undertaking participating in a competitive tender exercise to determine a person to whom an offshore transmission licence is to be granted;
  - that is a subsidiary of, or is controlled by an ultimate controller of, the licensee;
  - (c) any user of the national electricity transmission system; or
  - (d) any other transmission licensee;

obtains no unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement, being, in the case of such an

advantage accruing to the licensee, one in connection with a business other than its transmission business.

## **Special Condition C2: Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests**

1. The licensee shall, in carrying out its licensed activities, put in place and at all times maintain such systems of control and other governance arrangements which are necessary to ensure that the licensee complies with the obligations contained in standard condition B5 (Prohibition of Cross-subsidies), standard condition B6 (Restriction on Activity and Financial Ring Fencing), and Special Condition C1 (Prohibited Activities and Conduct of the Transmission Business).
2. Unless otherwise directed by the Authority, the licensee shall by no later than 30 days after this condition comes in to effect have in place a statement (“the statement”), approved by the Authority, describing the practices, procedures and systems which the licensee has adopted (or intends to adopt) to secure compliance with paragraph 1.
3. Where the Authority does not indicate otherwise within 60 days of receipt of the statement, the statement shall be deemed to be approved by the Authority.
4. The statement shall in particular (but without prejudice to the generality of paragraph 1) set out how the licensee shall:
  - (a) maintain appropriate managerial and operational independence of the licensee in undertaking its activities under its licence from any relevant offshore transmission interest;
  - (b) secure that no breach of the requirements of paragraph 1 shall occur as a result of any arrangements for access by any relevant offshore transmission interest or by any person engaged in, or in respect of, the relevant offshore transmission interest with respect to:
    - (i) premises or parts of premises occupied by persons engaged in, or engaged in respect of, the management or operation of the national electricity transmission system under this licence;
    - (ii) systems for the recording, processing or storage of data to which persons engaged in, or engaged in respect of, the management or operation of the national electricity transmission system under this licence have access;

- (iii) equipment, facilities or property employed for the management or operation of the national electricity transmission system under this licence; or
    - (iv) the services of persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the national electricity transmission system under this licence; and
  - (c) manage the transfer of employees from the transmission business of the licensee to any relevant offshore transmission interest.
- 5. The managerial and operational independence referred to in paragraph 4(a) above shall include:
  - (a) the establishment of separate managerial boards for each of:
    - (i) the system operator; and
    - (ii) the relevant offshore transmission interest;
  - (b) the appointment of an officer of the licensee (hereafter referred to as “the Responsible Director for system operation”), being a member of the managerial board for the system operator, who shall assume day-to-day responsibility for maintaining appropriate managerial and operational independence of the licensee in undertaking its activities under its licence, consistent with paragraph 4 of this condition.
- 6. For the purposes of paragraph 5(a), such managerial boards shall consist of at least two members and be responsible for directing the affairs and taking all substantial decisions relating to the business in respect of which they have been established. Each member of such boards who is also a director of National Grid plc shall fulfil their role in relation to the taking of such decisions as if he or she were a director of a legally incorporated company whose sole business is the business in respect of which the board he or she is a member of has been established.
- 7. The licensee shall revise the statement prepared in accordance with paragraph 2 when circumstances change such that the statement prepared in accordance with paragraph 2 no longer secures compliance with paragraph 1. Such revision of the statement shall



only become effective once the Authority has approved the revised statement in accordance with paragraph 2 or 3.

8. The licensee shall use its best endeavours to ensure compliance with the terms of the statement as from time to time revised and approved by the Authority.
9. The licensee shall publish a copy of the approved statement prepared in accordance with paragraph 2 (or the latest approved revision) on its company website within fifteen working days of its approval by the Authority.
10. In this condition “relevant offshore transmission interest” means an affiliate, related undertaking, or business unit of an ultimate controller of the licensee which:
  - (a) is participating in, or intends to participate in, a competitive tender exercise to determine a person to whom an offshore transmission licence is to be granted; or
  - (b) is an offshore transmission owner.

**Special Condition C3: Appointment and duties of the business separation compliance officer**

1. The licensee shall ensure, following consultation with the Authority, that a competent person (who shall be known as the “business separation compliance officer”) shall be appointed for the purpose of facilitating compliance by the licensee with standard condition B5 (Prohibition of Cross-subsidies), standard condition B6 (Restriction on Activity and Financial Ring Fencing), Special Condition C1 (Prohibited Activities and Conduct of the Transmission Business) and Special Condition C2 (Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests) (together, the “relevant duties”).
2. The licensee shall at all times ensure that the business separation compliance officer is engaged for the performance of such duties and tasks as are appropriate for the purpose specified in paragraph 1, which duties and tasks shall include those set out at paragraph 7.
3. The licensee shall ensure that the business separation compliance officer is not engaged in the management or operation of the national electricity transmission system under this licence or the activities of any relevant offshore transmission interest.
4. The licensee shall establish a compliance committee (being a sub-committee of the board of directors of the licensee) for the purpose of overseeing and ensuring the performance of the duties and tasks of the business separation compliance officer set out in paragraph 7 and the compliance of the licensee with its relevant duties. Such compliance committee shall report to the board of directors of the licensee and shall include among its members the Responsible Director for system operation and such persons from within the licensee’s business as are responsible for the management of regulatory issues relating to the licence.
5. The licensee shall procure that the business separation compliance officer:
  - (a) is provided with such staff, premises, equipment, facilities and other resources;  
and

(b) has such access to the licensee's premises, systems, information and documentation

as, in each case, he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him.

6. The licensee shall make available to the business separation compliance officer a copy of any complaint or representation received by it from any person in respect of a matter arising under or by virtue of the relevant duties.

7. The duties and tasks of the compliance officer shall include:

(a) providing advice and information to the licensee (including individual directors of the licensee) and the compliance committee established under paragraph 4 of this condition for the purpose of ensuring the licensee's compliance with the relevant duties;

(b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee in accordance with the statement referred to at paragraph 2 of Special Condition C2 (Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests);

(c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to admit the required co-operation;

(d) investigating any complaint or representation made available to him in accordance with paragraph 6;

(e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;

(f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the compliance committee established under paragraph 4 of this condition, for the purpose of ensuring its implementation of;

(i) the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 2 of Special Condition C2 (Separation

of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests); and

- (ii) any remedial action recommended in accordance with sub-paragraph (e);
  - (g) reporting to the compliance committee any instances which come to his attention, relating to a member of either of the managerial boards established under paragraph 5 of Special Condition C2 (Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests), taking into account the interests of a business other than that in respect of which the board of which he is a member of has been established; and
  - (h) reporting annually to the compliance committee established under paragraph 4 of this condition, in respect of each year after this condition comes into force, as to his activities during the period covered by the report, including the fulfilment of the other duties and tasks assigned to him by the licensee.
8. As soon as is reasonably practicable following each annual report of the business separation compliance officer, the licensee shall produce a report in a form approved by the Authority:
- (a) as to its compliance during the relevant year with the relevant duties; and
  - (b) as to its implementation of the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 2 of Special Condition C2 (Separation of National Grid Electricity Transmission plc and Relevant Offshore Transmission Interests).
9. The report produced in accordance with paragraph 8 shall in particular:
- (a) detail the activities of the business separation compliance officer during the relevant year;
  - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems adopted in accordance with the statement at paragraph 2 of Special Condition C2 (Separation of National

Grid Electricity Transmission plc and Offshore Transmission Owner Businesses); and

- (c) set out the details of any investigations conducted by the business separation compliance officer, including:
    - (i) the number, type and source of the complaints or representations on which such were based;
    - (ii) the outcome of such investigations; and
    - (iii) any remedial action taken by the licensee following such investigations;
  - (d) be accompanied by a certificate, approved by a resolution of the board of directors of the licensee and signed by the Responsible Director for system operation pursuant to that resolution, on the degree to which the licensee has achieved compliance with its relevant duties and that the report of the business separation compliance officer fairly presents the licensee's compliance with its relevant duties.
10. The licensee shall, as soon as reasonably practicable, submit to the Authority a copy of the report produced in accordance with paragraph 8 of this condition, and shall publish the report on its website.
11. Where it considers it appropriate, the Authority may direct the licensee to engage external auditors to audit and report on the licensee's compliance with the relevant duties ("the external audit report").
12. The licensee must submit any external audit report prepared in accordance with paragraph 11 to the Authority, within three working days of receiving it from the external auditor.