

MEMORANDUM OF UNDERSTANDING

BETWEEN THE GAS AND ELECTRICITY MARKETS AUTHORITY

- and -

THE DEPARTMENT OF ENERGY AND CLIMATE CHANGE

- and -

HER MAJESTY'S TREASURY

**Memorandum of Understanding between the Gas and Electricity Markets Authority, the
Department of Energy and Climate Change and Her Majesty's Treasury**

Introduction

1. This Memorandum of Understanding (MoU) is between the Gas and Electricity Markets Authority¹ (the "Authority"), the Department of Energy and Climate Change ("DECC") and Her Majesty's Treasury ("HM Treasury"). Its purpose is to establish a framework for co-ordination between the Authority, DECC, and HM Treasury in response to the financial distress of the holder of a licence granted under sections 6(1) of the Electricity Act 1989 ("Electricity Act") or under sections 7 and 7ZA of the Gas Act 1986 ("Gas Act") ("energy network company"). Nothing in this MoU replaces or affects the legal responsibilities of each of the three parties.
2. In the event of a deterioration in the financial health of an energy network company, Ofgem, DECC and HM Treasury may need to work together in a number of ways. Examples include an inability to secure credit or to meet liabilities by an energy network company experiencing financial distress and/or a requirement for significant external financial support in order to avoid financial failure or to negotiate other major financial obstacles threatening to prevent an energy network company from fulfilling its licence obligations in respect of the security and resilience of energy supplies. This list is not exhaustive.
3. This MoU has been developed following a thorough review of the arrangements for responding in the event an energy network company experiences financial distress. As part of this review the interactions between Ofgem, DECC and HM Treasury were tested and the merits of a MoU identified.

The MoU

¹ The Utilities Act 2000 established the Authority with its principal objective to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition. The Office of Gas and Electricity Markets (Ofgem) is the regulator for the gas and electricity industries in Great Britain on behalf of the Authority.

4. The MoU sets out the role of each party, and explains how they will work together towards the common objective of stabilising an energy network company in financial distress. The division of responsibilities is based on three guiding principles:

- **Accountability.** Each party must be accountable for its actions, so each must have unambiguous and well-defined responsibilities.
- **Avoidance of duplication.** Each party must have a clearly defined role, to avoid second guessing, inefficiency and the unnecessary duplication of effort.
- **Regular information exchange.** This helps each party to discharge its responsibilities as efficiently and effectively as possible.

Ofgem responsibilities

5. Ofgem's principal objective is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition. Ofgem also has a duty to secure that licence holders are able to finance the activities which are the subject of obligations on them under the Gas Act and Electricity Act. At all stages, the primary responsibility for the financial integrity of an energy network company lies with that company's management. Consistent with Ofgem's published guidance², Ofgem is unlikely to recommend support measures within its control (such as the reopening of a price control) for an inefficient energy network company.

6. Ofgem has arrangements in place to monitor the financial health of energy network companies and to respond in the event an energy network company faces deteriorating financial health. In significant cases of financial distress Ofgem will inform DECC and HM Treasury on a timely basis, and will maintain regular communications during the resolution of a case in line with its published procedures (see footnote 2 below).

7. The default position is that Ofgem will lead on all cases of financial distress involving an energy network company and, that if it proves necessary, the Authority will, with the consent of the Secretary of State, make the application for an Energy Administration Order under the Energy Act 2004 ("Energy Act"). In these circumstances, Ofgem's responsibility is to coordinate the

² Arrangements for responding in the event that an energy network company experiences deteriorating financial health: Draft guidance document, 11 May 2009, ref 49/09. Ofgem will shortly publish a final version of this guidance document. <http://www.ofgem.gov.uk/Networks/Policy/Documents/1/Arrangements%20for%20responding%20to%20financial%20distress%20-%20Guidance%20Doc%20FINAL.pdf>

response and actions of all parties until resolution if an energy network company becomes financially distressed. This includes handling liaison with the company concerned, the administrator (once appointed) and to manage the communications with all parties including the press, and Government. However, in all cases, Ofgem expects to manage the pre-administration phase of an energy network company experiencing financial distress.

8. At the pre-administration phase, Ofgem will seek to coordinate the initial response to a developing case of financial distress using its own financial means. This may involve an operational spend to manage the consequences of an energy network company experiencing financial distress such as the appointment of external consultants with expertise in administration. In the event that the pre-administration funding requirement is greater than Ofgem's ability to support, Ofgem will consult with and provide a detailed justification for any funding request to cover its operational expenditure to DECC.

DECC responsibilities

9. The Secretary of State for Energy & Climate Change has overall accountability for the security and resilience of energy supplies. If DECC considers an application to be necessary, it may apply itself to place an energy network company in energy administration or it may consent to the Authority making the application pursuant to section 156(1) of the Energy Act. DECC will usually expect to consent to the Authority making the application. However, consistent with the statutory scheme, DECC may at its discretion decide to make the application in its own right.
10. In accordance with Paragraph 7, while the default position is that Ofgem will lead on all cases of financial distress involving an energy network company, the Secretary of State at his own discretion may identify cases, including where he makes the application for an Energy Administration Order, where DECC will assume responsibility for some or all of the tasks which will otherwise fall to Ofgem in accordance with paragraph 7³. Where DECC decides to assume responsibility for tasks in accordance with this paragraph 10, DECC will provide Ofgem with prior

³ Some policy responses fall solely within the Authority/Ofgem's remit, such as an approach by the Energy Administrator to re-open a price control settlement.

written notice setting out those tasks for which it is assuming responsibility. Ofgem will in any event continue to provide policy advice to DECC in managing the energy administration.

11. Where an energy network company is in energy administration and the administrator recommends financial support is necessary, DECC is responsible for determining, subject to HM Treasury consent, pursuant to sections 165 – 167 of the Energy Act whether it will:
 - make grants or loans to the company;
 - agree to indemnities; or
 - provide guarantees.⁴
12. Prior to consulting HM Treasury, DECC will liaise with, and at its discretion consider advice from Ofgem on issues related to the making of grants or loans, agreeing to indemnities or providing guarantees. DECC will seek the consent of HM Treasury prior to agreeing to financial support as provided by sections 165 - 167 of the Energy Act.
13. DECC will consult with Ofgem and HM Treasury on key communications and external messages. DECC is responsible for keeping its ministers up-to-date on developments.
14. Should the failure of an energy network company threaten security of supply, DECC is responsible for invoking the Joint Response Team (JRT) to manage and resolve such a situation.

HM Treasury responsibilities

15. HM Treasury has overall responsibility for setting the ground rules for the administration of public money and is accountable to Parliament for doing so. It is responsible for ensuring Departments, including Ofgem, use their powers only as Parliament has intended and that revenues raised, and resources so raised are spent within agreed limits. In this context HM Treasury would expect to be kept informed by Ofgem and DECC in the event of the deterioration in health of an energy network company and in the event of an application for energy administration or other insolvency procedures in relation to an energy network company and would expect to approve any novel or unusual use of resources by Ofgem or DECC. The specific statutory responsibilities

⁴ DECC will also need to consider whether State Aid considerations apply.

of HM Treasury in circumstances where an energy network company is placed in energy administration and DECC recommends making grants, or loans, agreeing to indemnities or providing guarantees to the energy network company are set out in sections 165-167 of the Energy Act. In these circumstances the approval of HM Treasury is required prior to the Secretary of State for Energy and Climate Change making grants or loans, agreeing to indemnities or giving guarantees.

16. HM Treasury will consult DECC and Ofgem on key communications and external messages. HM Treasury is responsible for keeping its ministers up-to-date on developments.

Co-operation and communication

17. Ofgem, DECC and HM Treasury will cooperate closely in responding to a case of financial distress. This will avoid duplication of effort and prevent organisations or the business concerned being faced with conflicting demands where all organisations have an interest. To facilitate this, Ofgem will lead and arrange the communications between the parties as part of its incident management response process to enable regular communications and consult with each party as appropriate and as defined under Ofgem's responsibilities. Similarly, in circumstances where DECC take the lead at the administration phase, DECC will lead and arrange the communications between the parties as part of its incident management response process to enable regular communications and consult with each party as appropriate and as defined under DECC's responsibilities in this MoU.

Information exchange

18. Free exchange of information is essential if each party is to meet its responsibilities satisfactorily. Information exchange takes place on several levels:
 - Through the regular working level meetings between Ofgem and DECC.
 - Via the Ofgem communications team and joint briefings to both DECC and HM Treasury when cases are being managed.

- At senior executive level between Ofgem, DECC and HM Treasury, through current business as usual briefing arrangements and by the Ofgem incident director during the management of Ofgem's responsibilities in responding to a case of financial distress.
19. It is the responsibility of the three organisations to adopt a proactive, open approach regarding information sharing, and to achieve effective liaison between Ofgem, DECC and HM Treasury. Any information-sharing between the three organisations is subject to relevant restrictions on disclosure of confidential or commercially sensitive information or any other restriction or prohibition in law.
20. It is the responsibility of whichever of the three organisations is first made aware of a case of financial distress to alert the other parties at the earliest possible opportunity as appropriate. Further, it is the responsibility of each of the organisations to keep each other up to date with developments as appropriate.

Crisis management

21. In exceptional circumstances where an energy network company or energy network companies face substantial financial distress Ofgem, DECC and HM Treasury will all work together in the spirit of this MoU and in accordance with the Energy Act to resolve the situation. Senior officials from all parties will be engaged in this process as appropriate.

Arrangements for reviewing the MoU

22. The parties to this MoU agree that this MoU shall be reviewed by the parties by 31st January 2011 (or earlier than this if appropriate) and every two years thereafter to ensure that the MoU remains up to date.

Signatures

23. The MoU has been signed by the Chief Executive at Ofgem or equivalent of the other organisations. This reflects the importance that the organisations place on working effectively together to resolve issues of financial distress where possible in a timely and efficient manner.

Signed on behalf of the Gas and Electricity Markets Authority

Title: Chief Executive, Ofgem


Date:


15.2.10

Signed on behalf of the Department of Energy and Climate Change

Title: Director General, Energy Markets and Infrastructure, Department of Energy and Climate Change

Date:


26/1/10

Signed on behalf of Her Majesty's Treasury

Title: Director, Public Services and Environment, HM Treasury

Date:

4/2/2010

