

To: All holders of an electricity supply licence who are relevant licence holders for the purpose of section 11A of the Electricity Act 1989

Notice of statutory consultation on a proposal pursuant to section 11A of the Electricity Act 1989 to modify standard conditions 1 and 9 of all electricity supply licences

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the Act).
 - In accordance with section 11A (2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the Authority)¹ gives notice that it proposes to modify the standard licence conditions of all electricity supply licences granted or treated as granted under section 6(1) (d) of the Act by amending standard licence conditions 1 and 9 in the manner set out in the schedule to this notice and described in the consultation document accompanying this notice .
2. We are proposing these modifications to support potential third party financing of supplier of last resort levy claims. A copy of the proposed modifications and a more detailed explanation for the reasons for them have been published on our website (<https://www.ofgem.gov.uk>). Alternatively, they are available from foi@ofgem.gov.uk.
3. The effects of the proposed modifications are described in the documents referred to in paragraph 2, above.
4. The envisaged text for the proposed modifications is set out in the schedule to this Notice.
5. Any representations with respect to the proposed licence/modifications must be made on or before 27 January to: Andrew Ryan, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to andrew.ryan@ofgem.gov.uk.
6. We normally publish all responses on our website. However, if you do not want your response to be made public, then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
7. Subject to responses to the statutory consultation, if we decide to make the proposed modifications they will take effect not less than 56 days after the decision is published.

Simon Wilde

Director, Analysis and Assurance

Duly authorised on behalf of the Gas and Electricity Markets Authority

30 December 2021

¹ The terms “the Authority”, “we” and “us” are used interchangeably in this document.

Schedule

The text of the proposed modification to Electricity Supply SLCs 1 and 9 is set out below with text to be deleted marked with ~~strike through~~ and text to be inserted underlined.

Electricity Supply Licence

Condition 1: Definitions for Standard Conditions

Last Resort Supply Payment means a sum of money payable to the licensee or any LRSP Permitted Assignee to compensate for any additional costs it incurs in complying with a Last Resort Supply Direction;

LRSP Permitted Assignee means a person to whom the Authority has consented to the licensee assigning or otherwise disposing of all or any of its rights in relation to a Last Resort Supply Payment pursuant to Condition 9 (Claims for Last Resort Supply Payment).

Condition 9. Claims for Last Resort Supply Payment

Ability to make claim

- 9.1 If the licensee has received the Authority's consent under paragraph 9.5, it may make a claim for a Last Resort Supply Payment, under standard condition 38 (Treatment of Payment Claims for Last Resort Supply) of the Distribution Licence, from each Relevant Distributor.
- 9.2 The licensee must not make a claim for a Last Resort Supply Payment if, and to the extent that, it has waived its ability to do so by Notice given to the Authority before the Authority gave it a Last Resort Supply Direction.

Process for making claim

- 9.3 If the licensee intends to make a claim for a Last Resort Supply Payment, it must:
- (a) give Notice to the Authority of its claim; and
 - (b) give the Authority a calculation of the amount claimed with information to support that calculation,

no later than a date notified to it by the Authority or, in the event that no such date is notified, five years after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.
- 9.4 The total amount of the Last Resort Supply Payment (for this condition only, "the relevant amount") to be claimed by the licensee must not exceed the amount by which:
- (a) the total costs (including interest on working capital) reasonably incurred by the licensee in supplying electricity to premises under the Last Resort Supply Direction and a reasonable profit,

plus

- (b) any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances,

plus

- (ba) any additional (actual or anticipated) interest and finance costs associated with an arrangement approved in accordance with Clause 9.7C,

are greater than:

- (c) the total amounts recovered by the licensee through Charges for the Supply of Electricity to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such Charges).

9.5 If the Authority considers it appropriate in all the circumstances of the case for the licensee to make the claim notified to it in accordance with paragraph 9.3, the Authority will give its consent to the licensee.

9.6 The Authority may determine that:

- (a) an amount other than the one calculated by the licensee is a more accurate calculation of the relevant amount. ; and
- (b) the period over which the relevant amount should be paid should be longer than a single financial year in order to mitigate the impact on consumers.

9.7 If the Authority makes a determination of a more accurate amount under paragraph 9.6 (a), the amount specified by it must be treated as the relevant amount for the purpose of paragraph 9.8.

Transfer of rights in relation to valid claims and/or relevant amounts

9.7A The licensee may assign all or any of its rights in relation to a valid claim and/or the relevant amount provided that the licensee has obtained the Authority's prior written consent to the proposed assignment and identity of the person to whom the assignment is made. .

9.7B If the licensee proposes to assign or otherwise dispose of all or any of its rights in relation to a valid claim and/or relevant amount, it shall give the Authority reasonable notice of its intention to assign or otherwise dispose of such rights together with such further information as the Authority may request relating to: the identity of the proposed assignee or acquirer, the circumstances of such intended assignment or disposal, the costs relating to such assignment or disposal; and/or or the intentions in regard thereto of the person proposing to acquire such rights.

9.6C The licensee may include within any notice provided pursuant to paragraph 9.6A a revised Notice (or revocation of a previous Notice and provision of a new Notice) in accordance with paragraph 9.3 for determination by the Authority, to exclude the licensee's interest on working capital and to include the costs of the financing arrangement, the anticipated interest to be charged by the proposed assignee and any other adjustment mechanisms (all of which require the approval of the Authority) provided that:

(a) unless the Authority consents, the licensee has not already submitted the valid claim to Relevant Distributors; and

(b) the licensee procures from the proposed assignee or acquirer an undertaking on terms acceptable to the Authority relating to the calculation of such interest and other adjustments over the repayment term of the relevant amount, the sharing of any re-financing gains and the provision of information and other matters relating to conditions of the Authority's approval.

Submissions to Relevant Distributors

9.8 A claim by the licensee for a Last Resort Supply Payment from each Relevant Distributor referred to in paragraph 9.1 must specify:

- (a) the respective proportion of the relevant amount to be paid by that Relevant Distributor (being the same as the number of premises located within its Distribution Services Area when expressed as a proportion of the total number of premises located within the Distribution Services Areas of all the Relevant Distributors in question);
- (b) whether payment is to be made by quarterly or monthly instalments;
- (c) the account(s) into which the relevant amount should be paid (which may include the account of an LRSP Permitted Assignee);
- (d) the period over which the relevant amount should be paid; and
- (e) the Authority's determination of the profile of the payments of the relevant amount in each year or for a procedure for the Authority to determine the same in the future.

9.9 Unless the Authority consents otherwise pursuant to an arrangement approved under paragraph 9.7A and 9.7C, a claim for a Last Resort Supply Payment will lapse if the licensee does not make it within six months after the Authority has given its consent under paragraph 9.5.

Definitions for condition

9.10 In this condition:

“Closed Credit Balance”	means any Credit owed, on the date on which a relevant Last Resort Supply Direction took effect, by the other supplier to any Customer for whom the responsibility for the supply of electricity had either transferred from the other supplier to another Electricity Supplier or had otherwise terminated on or before the date on which the relevant Last Resort Supply Direction took effect;
“Customer Credit Balances”	means Closed Credit Balances and Open Credit Balances;
“Credit”	means an amount by which the payments made by a Customer to the other supplier under or in accordance with a Domestic Supply Contract exceeds the sum of:

	<p>a) the total amount of Charges which were due and payable by that Customer to the other supplier under the relevant Domestic Supply Contract on or before the date on which the relevant Last Resort Supply Direction took effect;</p> <p>b) the total amount of Charges relating to electricity supplied to that Customer by the other supplier on or before the date on which the relevant Last Resort Supply Direction took effect that would have fallen due and payable under the relevant Domestic Supply Contract but for that Last Resort Supply Direction; and</p> <p>c) the sum of any amounts equivalent to those described in (a) and (b), above, either that:</p> <ul style="list-style-type: none"> (i) were due and payable; or (ii) would have been due and payable but for a direction issued by the Authority under standard licence condition 8 of a Gas Supply Licence, <p>by that Customer to the other supplier under any contract for the supply of gas to domestic premises, insofar as that sum exceeds the amounts paid by the Customer to the other supplier under a contract for the supply of gas.</p>
“Open Credit Balance”	means any Credit owed by the other supplier to a Customer on the date of the relevant Last Resort Supply Direction.

9.11 For the purposes of this condition, the term “licensee” in the definition of “Charges for the Supply of Electricity” may refer to either the licensee or the other supplier, or both (as the context requires).