

To: All holders of an electricity distribution licence

Electricity Act 1989 Section 11A(1)(b)

Modification of Standard Licence Conditions 1 and 38B, held by the above licensees

1. Each of the licensees to whom this direction is addressed ('the licensee') is the holder of an electricity distribution licence ('the licence') granted or treated as granted under section 6(1)(c) of the Electricity Act 1989 ('the Act').
2. Under section 11A(2) (3) and (4) of the Act, the Gas and Electricity Markets Authority ('the Authority') gave notice on 30 December 2021 ('the Notice') that we proposed to modify the following standard conditions:
 - Standard Licence Condition 1: Definitions for the standard conditions (SLC 1); and
 - Standard Licence Condition 38B: Treatment of payment claims for last-resort supply where Valid Claim is received on or after 1 April 2019 (SLC 38B)
3. A copy of the Notice was published on our website (www.ofgem.gov.uk). We stated that any representations in relation to the modification proposals must be made on or before 27 January 2022.
4. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction from the Secretary of State that the changes should not be made.
5. We received 27 responses to the Notice, which we have carefully considered. We have placed the non-confidential responses on our website. Our response to these comments is set out in the decision document, published alongside this notice.
6. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown in cyan highlight in the attached Annex 2. The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Annex 2 are to correct typographical errors, address minor issues and some other corrections raised in consultation responses. The details of the changes are explained in the accompanying decision document.
7. The Authority considers that it is necessary to modify/ insert these conditions in the manner indicated to better facilitate SoLR competition and to better enable the smoothing of the recovery of SoLR costs.
8. The main effect of these proposed modifications is to:
 - Enable SoLR claims to be assigned to an approved third party;
 - Enable the recovery of approved SoLR costs over more than one year.

9. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules¹ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Annex 1B provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.
10. Under our powers set out in section 11A(1)(b) of the Act, we hereby modify the standard conditions of the electricity distribution licences held by the above specified licensees as set out in Annex 1C. This decision will take effect from 7 May 2022.
11. This document is notice of the reasons for the decision to modify the Electricity Distribution licences as required by s49A(2) of the Act.

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Simon Wilde
Director, Analysis and Assurance
Duly Authorised on behalf of the Gas and Electricity Markets Authority
11 March 2022

¹ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

Annex 1: List of Relevant Licence Holders

Eclipse Power Networks Limited	Eastern Power Networks Plc
Energetics Electricity Limited	Electricity North West Limited
Energy Assets Networks Limited	London Power Networks Plc
Energy Assets Fibre Networks Limited	Northern Powergrid (Northeast) Limited
ESP Electricity Limited	Northern Powergrid (Yorkshire) Plc
Fulcrum Electricity Assets Limited	Scottish Hydro Electric Power Distribution Plc
Harlaxton Energy Networks Limited	South Eastern Power Networks Plc
Independent Power Networks Limited	Southern Electric Power Distribution Plc
Leep Electricity Networks Limited	SP Distribution Plc
Murphy Power Distribution Limited	SP Manweb Plc
The Electricity Network Company Limited	Western Power Distribution (East Midlands) Plc
UK Power Distribution Limited	Western Power Distribution (South Wales) Plc
Utility Assets Limited	Western Power Distribution (South West) Plc
Vattenfall Networks Limited	Western Power Distribution (West Midlands) Plc

All electricity and gas licence holders are listed on our website. Electricity licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/all-electricity-licensees-registered-addresses>

Annex 2: Licence modifications

Condition 1. Definitions and Interpretation

Claimant	means an Electricity Supplier and/or any LRSP Permitted Assignee entitled to receive the benefit of a Last Resort Supply Payment <u>in accordance with a Valid Claim</u> .
<u>LRSP Permitted Assignee</u>	means a person to whom the Authority has consented to an Electricity Supplier <u>has assigned</u> or otherwise <u>disposed</u> of all or any of its rights in relation to <u>or arising from</u> a Last Resort Supply Payment <u>with the Authority's consent</u> .
Specified Amount	means the <u>total</u> amount specified in a Valid Claim (or, where the context requires, the amount specified in a Valid Claim in respect of a particular Regulatory Year) .

Condition 38B. Treatment of payment claims for last-resort supply where Valid Claim is received on or after 1 April 2019

Application of this condition

38B.1 Subject to paragraph 38B.2, this condition applies if the licensee:

- (a) receives from any Claimant a Valid Claim for a Last Resort Supply Payment on or after 1 April 2019; or
- (b) receives from any Claimant a Valid Claim for a Last Resort Supply Payment before 1 April 2019 and has not yet commenced the process of recovering the Valid Claim through Use of System Charges in accordance with standard condition 38A.1(a).

38B.2 This condition does not apply following a successful application for an Energy Supply Company Administration Order in accordance with section 96 Energy Act 2011 as there would not be a Last Resort Supply Direction issued in respect of a particular licensed supplier and an Energy Supply Company Administration Order in respect of that same licensed supplier.

Obligation to pay the Claimant

38B.3 Subject to paragraph 9 and paragraph 9A of this condition, where the licensee receives a Valid Claim, the licensee must make payments to the Claimant, by monthly or quarterly instalments commencing three months after the date on which the Valid Claim was received, such three month period to include the date of receipt of the Valid Claim, so that the total Specified Amount (or in respect of Valid Claims to which paragraph 38.9A applies that part of the Specified Amount that relates to the

[Relevant Regulatory Year](#)) has been paid in full in accordance with a schedule defined by the Authority, and in any event by no later than 15 months from the date on which the Valid Claim was received.

Cumulative effect of separate claims

38B.4 Where the licensee makes payments in respect of more than one Valid Claim within the Regulatory Year t , $SLRA_t$ (as defined in CRC 2B, Calculation of Allowed Pass-Through Items) shall be treated as a single aggregated figure representing the total value of payments made to all Claimants in the Regulatory Year t , excluding Valid Claims subject to paragraph 38B.9 [and paragraph 38B.9A](#) of this condition.

Application of Materiality Threshold

38B.5 If the value of aggregated payments to be made by a licensee in respect of Valid Claims, less the aggregated payments to be made by a licensee in respect of Valid Claims subject to paragraph 38B.9 [and paragraph 38B.9A](#) of this condition, in any Regulatory Year would exceed the Materiality Threshold amount applicable to the licensee, as shown in Appendix 1 (the “Materiality Threshold”), the licensee may within 28 days of receipt of the Valid Claim that results in breach of the Materiality Threshold give notice to the Authority of its intention to increase its Use of System Charges for the Relevant Regulatory Year to the extent that the licensee reasonably estimates is necessary in order to recover the Excess Specified Amount as defined in 38B.7.

38B.6 Subject to paragraph 38B.5 of this condition, where the licensee requires a derogation in order to increase its Use of System Charges for the Relevant Regulatory Year, the Authority may, after consulting with the licensee, give a direction (“a derogation”) to the licensee relieving it of its obligations under the relevant conditions to such extent, for such period of time, and subject to such conditions as may be specified in the derogation.

[38B.7](#) Subject to paragraphs 38B.5 and 38B.6 of this condition, the Excess Specified Amount will equate to the aggregate value of Valid Claims received in a Regulatory Year that would cause the Materiality Threshold in any single Regulatory Year to be breached.

[38B.8](#) Any Valid Claim received after paragraph 38B.7 of this condition has effect, in any Regulatory Year: (a) which does not result in the aggregate value of payments made in respect of Valid Claims exceeding the Materiality Threshold; or (b) in respect of which the licensee has not provided notice under paragraph 38B.5 of this condition; or (c) in relation to which a derogation required by the licensee is not given by the Authority under paragraph 38B.6 of this condition, may not be included in the Excess Specified Amount. The aggregate value of payments made in respect of such Valid Claims shall be recovered in $SLRA_t$ (as defined in CRC 2B, Calculation of Allowed Pass-Through Items) in accordance with paragraph 38B.4 of this condition.

[38B.9](#) Where the licensee has given notice under 38B.5 of this condition and, if applicable, the Authority has given a derogation under paragraph 38B.6 of this condition, it must, [subject to paragraph 38B.9A and](#) unless the Authority directs otherwise:

- (a) in the Relevant Regulatory Year, increase ESA_t in accordance with paragraph 2B.35 of Licence Condition CRC 2B (or paragraph 2B.38 for SSEH), (Calculation of Allowed Pass-Through Items by the Excess Specified Amount);

- (b) in the Relevant Regulatory Year, increase its Use of System Charges in accordance with the approved Use of System Charging Methodology in force under standard condition 13 (Charging Methodologies for Use of System and connection); and
- (c) during the Relevant Regulatory Year, make payments to the Claimant by monthly or quarterly instalments that equate to the total Specified Amount for that Regulatory Year.

38B.9A Where the licensee receives a Valid Claim that contains provision for the payment of the amount specified in the Valid Claim to be paid over a period longer [than 12 months and where such Valid Claim specifies this paragraph 38B.9A applies then:](#)

- (a) ~~than a single Regulatory Year~~ the licensee ~~shall must~~ make payments ~~(including such adjustments for interest and other payments as the Authority may direct)~~ to the Claimant in accordance with a schedule ~~specifidefined~~ by the Authority with the Valid Claim, ~~such schedule may beand~~ updated annually thereafter by direction given by the Authority not less than 3 months prior to the start of the next Regulatory Year, setting out the amount to be paid to the Claimant in ~~respect of each particularthe Relevant~~ Regulatory Year; and
- (b) The licensee shall treat each amount stated in the Authority's schedule and annual direction provided pursuant to ~~this paragraph 38B.9A(a)~~ [as an Excess Specified Amount under paragraphs 38B.9 \(a\) and \(b\) for the particular Regulatory Year in which it is paid-Valid Claim received in each Relevant Regulatory Year for the purposes of payment pursuant to paragraph 38B.3 or 38B.9, as appropriate.](#)

38B.10 The provisions of this condition have effect even if the licensee has not provided the Notice required under paragraph 11 of standard condition 14 (Charges for Use of System and connection).

38B.11 ~~The licensee shall never be obliged to make payments to the Claimant in excess of the Last Resort Supply Payment relating to it as recorded Valid Claim~~[Specified Amount. Any payment of an amount to an LRSP Permitted Assignee shall discharge any requirement to pay that amount to the related Electricity Supplier.](#)

Interpretation

38B.12 For the purposes of this condition:

Excess Specified Amount means the aggregate value of Valid Claims which, in any Regulatory Year, would cause a breach of the Materiality Threshold recovered in accordance with paragraph 38B.9 of this condition.

Materiality Threshold means the amount determined for each licensee in Appendix 1 of this condition.

Relevant Regulatory Year means, in relation to any Valid Claim(s) resulting in breach of the Materiality Threshold:

- (a) where the claim was received by the licensee at least three months before the beginning of the next Regulatory Year, that Regulatory Year; or
- (b) where the claim was received by the licensee less than three months before the beginning of the

next Regulatory Year, the year after the next Regulatory Year.