

To: All holders of an electricity supply licence

Electricity Act 1989

Section 11A (1)(b)

Modification of the Standard Conditions of Electricity Supply Licences

1. Each of the licensees to whom this document is addressed is the holder of a Licence ('the Licence') granted or treated as granted under section 6 of the Electricity Act 1989 ('the Act') to supply electricity.
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority') gave notice on 30 December 2021 ('the Notice') that we propose to modify the following standard special conditions:
 - a. Standard Licence Condition 1: Definitions for the standard conditions (SLC 1); and
 - b. Standard Licence Condition 9: Claims for Last Report Supply Payment.
3. We stated that any representations to the modification proposal 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 that the change 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 accompanying decision document, published alongside this notice.
6. It is necessary to make a number of alterations to the modifications set out in the Notice. These alterations are shown in cyan highlight in the modification text which can be found in an annex to this notice. The reasons for the differences between the modifications set out in the Notice and the modifications are to correct errors in the modifications proposed, improve the modifications proposed and to address minor issues and corrections raised since the issuing of the Notice such as formatting errors.
7. The main effect of these modifications will be to:
 - Enable SoLR claims to be assigned to an approved third party;
 - Enable the recovery of approved SoLR costs over more than one year.
8. Where an application for permission to appeal our decision is made, under section 11C 'Appeal to the CMA' of the Act, to the Competition and Markets Authority (CMA), Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules 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. Annex 1 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'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the Standard Conditions of the Electricity Supply Licence of the licensees in the manner specified in Annex 2. This decision will take effect from 7 May 2022.

This document is notice of the reasons for the decision to modify the Electricity Supply 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

Annex 1 – List of Relevant Licence Holders

All electricity and gas licence holders are listed on our website. Electricity Supply licence holders are listed at:
<https://www.ofgem.gov.uk/publications/list-all-electricity-licensees-including-suppliers>

Annex 2: Licence Modifications

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~~ incursincurred by the licensee in complying with a Last Resort Supply Direction;

LRSP Permitted Assignee means a person to whom the Authority has consented to the licensee has assigned ~~ed~~ or otherwise disposed ~~ed~~ of all or any of its rights in relation to or arising from a Last Resort Supply Payment pursuant to Condition 9 (Claims for Last Resort Supply Payment), with the Authority's consent.

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 nNotice 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 (including fees, costs and expenses incurred in arranging such financing) 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) that an amount other than the one calculated by the licensee is a more accurate calculation of the relevant amount. ; and
- (b) with the consent of the licensee, that 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 and arising from valid claims and/or relevant amounts

9.7A The licensee may assign or dispose of all or any of its rights under the licence or otherwise in relation to or arising from a valid claim and/or the relevant amount provided that the licensee has obtained the Authority's prior written consent to the proposed assignment or disposal, including ~~and~~ the identity of the person to whom the assignment is made (such consent to be consistent with any guidance or policy statement published for the purposes of this condition or the assignment or disposal of rights in relation to or arising from valid claims).

9.7B If the licensee proposes to assign or otherwise dispose of all or any of its rights in relation to or arising from 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 reasonably 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.

9.76C The licensee may include within any notice provided pursuant to paragraph 9.7B6A a revised ~~nN~~Notice (or revocation of a previous ~~nN~~Notice and provision of a new ~~nN~~Notice) in accordance with paragraph 9.3 for determination by the Authority, to exclude the licensee's interest on working capital (to the extent appropriate) and to include the costs of the financing arrangement, the costs of any financing arrangement (including fees, costs and expenses incurred in arranging such financing) entered into by the assignee in order to fund such assignment including anticipated interest to be charged in relation thereto ~~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 and confirmation of whether the licensee or any LRSP Permitted Assignee will be responsible for requesting payment by issuing invoices;

(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; and

(f) if payment is to be made to an LRSP Permitted Assignee, a statement from the licensee regarding any retained interest in and to, the valid claim and the related relevant amount..

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:

<p>“Closed Credit Balance”</p>	<p>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;</p>
<p>“Customer Credit Balances”</p>	<p>means Closed Credit Balances and Open Credit Balances;</p>
<p>“Credit”</p>	<p>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> <ul style="list-style-type: none"> 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; 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 c) the sum of any amounts equivalent to those described in (a) and (b), above, either that: <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>
<p>“Open Credit Balance”</p>	<p>means any Credit owed by the other supplier to a Customer on the date of the relevant Last Resort Supply Direction.</p>
<p><u>"valid claim"</u></p>	<p>means a claim for which a licensee has been given a consent by the Authority pursuant to standard condition 9 (Claims for Last Resort Supply Payment) of the standard conditions of the electricity supply licence.</p>

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).