

Andrew Ryan
Regulatory Finance, OFGEM
10 South Colonnade
Canary Wharf
London
E14 4PU

Sent via email to RegFinance@ofgem.gov.uk:
25th January 2022

Statutory Consultation on Licence Modifications regarding Last Resort Supply Payment Claims

Dear Andrew,

We are writing on behalf of each of the licensees set out in Annex 1 (the “Affected Licensees”). The defined terms in this letter have the meaning given to them in the electricity distribution licences unless otherwise specified.

The following response sets out the reasoning for our proposed amendments to the licence modifications as currently drafted. Alongside this response we have attached mark ups to the existing consultation licence conditions for ease of review (Annex 2). All licensees are submitting this response in advance of Ofgem’s required deadline in order to assist the Ofgem team given the time pressures faced in this process. Therefore, we reserve our right to provide any follow up revisions should these be brought to our attention in advance of the official deadline of the 27th January 2022

1. Avoiding Differing Payment Profiles Timing continuity between Claims and Regulatory Periods

As currently drafted, 38B.9A sets out that where a licensee receives a Valid Claim which will be paid over a period of more than “a single regulatory year”, the amounts for each regulatory year within that Valid Claim will be treated as Valid Claims themselves. Ofgem has layered an approach for payment over multiple regulatory years onto the existing clauses, which deal with Valid Claims that are both under and over the Materiality Threshold. Valid Claims that are under the Materiality Threshold are not processed on a regulatory year basis. Therefore, we propose that all Valid Claims that will be paid over a period longer than 12 months and which specify that 38B.9A applies are treated separately.

Further, the use of the term “Relevant Regulatory Year” in 38B.9A is inappropriate as it relates to a Valid Claim resulting in a breach of the Materiality Threshold only. It is our understanding of Ofgem’s policy intent to not restrict the applicability of 38B.9A in this way, and in any case, 38B.9A already sets out the need for a licensee to receive a

Registered office Energy Networks Association Limited, 4 More London Riverside, London SE1 2AU
t. +44 (0)20 7706 5100 e. info@energynetworks.org energynetworks.org

direction before 1 January in any given year. We propose to refer to a “particular Regulatory Year”, which will be as specified in the direction.

2. Automating the Relevant Derogation to Avoid unnecessary Administrative Burden on Ofgem and Licensees

Where the payment period exceeds a single regulatory year and Ofgem revises the amounts for future regulatory years in accordance with paragraph 38B.9A, a derogation will be required each time. Therefore, we believe it is important to automate the provision of this derogation as far as possible to avoid introducing any additional administrative burdens on both Ofgem and licensees.

3. Removing Reference to Financial Details (Interest Rates)

As discussed with Ofgem, the licence must not refer to any financing arrangements. Licensees can only process the relevant Valid Claim in total. If any financing arrangements are referred to within our licence, this may create new financing duties which licensees would not be able to agree to.

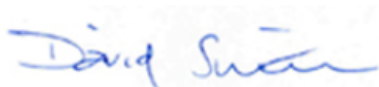
4. Differential Interest Rates - True up in Year 4

Should final claim amounts outturn differently to what was forecast by Ofgem, any true ups will require to be calculated prior to the final year of the arrangement, in order that they can be processed during that final year.

5. Limits on liability

In order to be clear about the limits of a licensee’s liability, particularly in the case of an assignment, we have suggested a number of minor amendments to the relevant defined terms and we have introduced a new paragraph 38B.11.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "David Smith", is positioned above the printed name.

David Smith
Chief Executive
Energy Networks Association

Annex 1: The Affected Licensees

1. Electricity North West Limited
2. Northern Powergrid (Northeast) plc
3. Northern Powergrid (Yorkshire) plc
4. SP Distribution plc
5. SP Manweb plc
6. Scottish Hydro Electric Power Distribution plc
7. Southern Electric Power Distribution plc
8. Eastern Power Networks plc
9. London Power Networks plc
10. South Eastern Power Networks plc
11. Western Power Distribution (East Midlands) plc
12. Western Power Distribution (West Midlands) plc
13. Western Power Distribution (South West) plc
14. Western Power Distribution (South Wales) plc