

National Grid Electricity System Operator Limited

Electricity transmission licence

Special Conditions

We have set out the proposed changes to a definition in Special Condition 1.1 that is relevant to Special Condition 2.3 (along with, for ease of reference, a copy of the main text of Special Condition 2.3, which will remain the same). Text proposed to be added is marked by double underscoring.

Part B: Definitions

.....In these special conditions the following defined terms have the meanings given in the table below.....

<u>Relevant Regulated Businesses</u>	<p>means National Grid Electricity Transmission plc (company number 2366977) (and its successors in title) and its affiliates or related undertakings participating in the transmission of electricity pursuant to a transmission licence treated as granted to National Grid Electricity Transmission plc under section 6(1)(b) of the Act; and National Grid Gas plc (company number 2006000) (and its successors in title) and its affiliates or related undertakings participating in gas transportation pursuant to a gas transporter licence treated as granted to National Grid Gas plc under section 7 of the Gas Act 1986;</p> <p><u>Western Power Distribution (South West) plc (company number 02366894) (and its successors in title) and its affiliates or related undertakings participating in the distribution of electricity pursuant to a distribution licence treated as granted to Western Power Distribution (South West) plc under section 6(1)(c) of the Act;</u></p> <p><u>Western Power Distribution (South Wales) plc (company number 02366985) (and its successors in title) and its affiliates or related undertakings participating in the distribution of electricity pursuant to a distribution licence treated as granted to Western Power Distribution (South Wales) plc under section 6(1)(c) of the Act;</u></p> <p><u>Western Power Distribution (West Midlands) plc (company number 03600574) (and its successors in title) and its affiliates or related undertakings participating in the distribution of electricity pursuant to a distribution licence treated as granted to Western Power Distribution (West Midlands) plc under section 6(1)(c) of the Act; and</u></p> <p><u>Western Power Distribution (East Midlands) plc (company number 02366923) (and its successors in title) and its affiliates or related undertakings participating in the distribution of electricity pursuant to a distribution licence treated as granted to Western Power Distribution (East Midlands) plc under section 6(1)(c) of the Act.</u></p>
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Special Condition 2.3 Business Separation requirements and compliance obligations

Introduction

- 2.3.1 The purpose of this condition is to set out the business separation requirements between the licensee and the Relevant Other Competitive Businesses and the Relevant Regulated Businesses, the licensee's obligations as to its conduct in performing its System Operator Functions, and the procedures the licensee must follow to comply with these obligations.
- 2.3.2 Part A sets out the objectives that the licensee must achieve when undertaking its System Operator Functions. Part B sets out the business separation requirements between the licensee and the Relevant Other Competitive Businesses and the Relevant Regulated Businesses. Part C sets out the obligations on the licensee to restrict the use of information that the licensee has access to through its System Operator Functions. Part D sets out the Compliance Statement the licensee must publish to describe how it is meeting its specified business separation duties, as defined in paragraph 2.3.20. Part E sets out requirements on the licensee to appoint an independent Compliance Officer and annually report on compliance against the licensee's duties.

Part A: Objectives

- 2.3.3 In performing its System Operator Functions, the licensee must act in a manner intended to secure that neither the licensee, nor any Associate of the licensee, obtains an unfair commercial advantage, including any advantage from a preferential or discriminatory arrangement as a result of the licensee carrying out its System Operator Functions.

Part B: Legal and functional separation of the licensee and the Relevant Other Competitive Businesses and the Relevant Regulated Businesses

- 2.3.4 The licensee must, in carrying out its licensed activities, put in place and at all times maintain such systems of control and other governance arrangements as are necessary to ensure that the licensee complies with the obligations contained in Standard Condition B5 (Prohibition of cross-subsidies), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing) and Special Condition 2.6 (Prohibited Activities and Conduct of the Transmission Business).
- 2.3.5 Without prejudice to the licensee's obligations under the conditions referred to in paragraph 2.3.4 and Special Condition 2.4 (Electricity Market Reform), the licensee must at all times conduct its licensed activities other than Dual Fuel Activities separately from the Relevant Other Competitive Businesses and the Relevant Regulated Businesses, provided that nothing in Part B of this condition prevents the licensee from complying with any Section E (Offshore Transmission Owner of Last Resort) Direction made pursuant to standard condition B18 (Offshore Transmission Owner of Last Resort).

- 2.3.6 The licensee must ensure that the Relevant Other Competitive Businesses and the Relevant Regulated Businesses are conducted entirely by corporate entities each of which is separate from the licensee and that the licensee does not, directly or indirectly, hold any shares or other investments:
- (a) in any corporate entity which conducts any of the Relevant Other Competitive Businesses or Relevant Regulated Businesses or which exercises or otherwise has control of any of the Relevant Other Competitive Businesses or Relevant Regulated Businesses or any of the assets used in or dedicated to any of the Relevant Other Competitive Businesses or Relevant Regulated Businesses; or
 - (b) which give the holder an entitlement to vote at the general meetings of any of the corporate entities which conduct the Relevant Other Competitive Businesses or Relevant Regulated Businesses or in any company which exercises or otherwise has control of any of the Relevant Other Competitive Businesses or Relevant Regulated Businesses.
- 2.3.7 The licensee must ensure that its accounts are maintained and to the extent required by law audited and reported separately from those of any corporate entity which conducts Relevant Other Competitive Business or Relevant Regulated Businesses.
- 2.3.8 The licensee must ensure that persons engaged in the management or operation of the licensee (up to and including the members of the licensee's Board) are not simultaneously engaged, either full or part time, in the management or operation:
- a) of any Relevant Other Competitive Business or any corporate entity which conducts Relevant Other Competitive Business; or
 - b) of any Relevant Regulated Business except for persons in Dual Fuel Roles engaged in Dual Fuel Activities,
- other than in the provision of Shared Services provided by the licensee to its Associates and the provision of services which constitute de minimis business to the extent that the provision of those services by the licensee complies with the requirements of standard conditions B5 (Prohibition of cross-subsidies), B6 (Restriction on Activity and Financial Ring Fencing) and B9 (Indebtedness).
- 2.3.9 The licensee must ensure that arrangements are in place which are effective in restricting access by persons engaged in the management or operation of any of the Relevant Other Competitive Businesses or the Relevant Regulated Businesses (except for persons in Dual Fuel Roles engaged in Dual Fuel Activities) to:
- (a) any part of any premises which is occupied by persons engaged in the management or operation of the licensee; and

- (b) any equipment, facilities or property employed for the management or operation of the licensee.
- 2.3.10 Subject to paragraph 2.3.11 the licensee must ensure that the systems for the recording, processing or storage of data (including System Operator Functions Information) to which persons engaged in the management or operation of the licensee have access cannot be accessed by persons engaged in the management or operation of the Relevant Other Competitive Businesses or by persons engaged in the management or operation of the Relevant Regulated Businesses.
- 2.3.11 Paragraph 2.3.10 shall not apply to the operational information systems accessed by persons engaged in the management or operation of the licensee and by persons engaged in the management or operation of the Relevant Regulated Businesses and that are specified in the Compliance Statement established under Part D.

Part C: Restrictions on the use of System Operator Functions Information

- 2.3.12 The licensee must establish and maintain a code of conduct governing the disclosure and use of System Operator Functions Information. The licensee must set out the code of conduct in the Compliance Statement, as provided for in paragraph 2.3.16.
- 2.3.13 The licensee must ensure that its employees, agents, contractors and advisers ensure that System Operator Functions Information is not directly or indirectly disclosed to, solicited, or used by any person who is not engaged in System Operator Functions (up to and including the members of the licensee's board of directors), other than as provided for in paragraph 2.3.14.
- 2.3.14 Paragraph 2.3.13 shall not apply to the disclosure of System Operator Functions Information:
 - (a) where the licensee is specifically required to do so as a condition of this licence;
 - (b) as required or permitted under the STC;
 - (c) to persons engaged in the provision of Shared Services, to the extent necessary to allow them to carry out their respective functions in support of the System Operator Functions;
 - (d) to persons in Dual Fuel Roles, to the extent necessary to allow them to carry out Dual Fuel Activities;
 - (e) which is required by any requirement of law or regulation, or the rules of any governmental or regulatory authority having jurisdiction over the licensee, or for the purposes of facilitating the performance of any functions of the Secretary of State or the Authority;

(f) where the licensee has obtained prior written consent for such disclosure of such System Operator Functions Information, provided that the extent of such disclosure is consistent with the consent obtained;

(g) to National Grid Gas plc (“NGG”) where such disclosure is required by NGG for purposes connected with the carrying on of NTS System Operation Activity, and so authorised by the gas transporter licence granted to NGG under the Gas Act 1986;

(h) to the shareholder of the licensee (being the ultimate controller of the licensee in accordance with paragraph (a) of the definition of ultimate controller) to the extent that such disclosure is reasonably required to ensure effective corporate governance through enabling the shareholder to:

(i) provide effective oversight of the licensee;

(ii) consider and decide on matters that are required to be referred to it for approval; and

(iii) comply with any reporting requirement prescribed by a requirement of law, regulation or the rules of any authority having jurisdiction over the shareholder.

provided always that the use of such information by the shareholder of the licensee is at all times in accordance with the terms of the ultimate controller undertaking provided by the shareholder pursuant to condition B8 (Undertaking from ultimate controller); or

(i) where authorised in advance in writing by the Authority.

2.3.15 The licensee must ensure that any System Operator Functions Information received, disclosure of which would in the view of the owner of the information affect their commercial interests, is treated as confidential and any disclosure of such information must comply with paragraphs 2.3.13 and 2.3.14.

Part D: Compliance statement and compliance documents

2.3.16 By the end of the period of 30 days beginning with the date on which this condition comes into effect, the licensee must submit to the Authority:

(a) the Compliance Statement, describing the practices, procedures and systems by which the licensee will secure compliance with the specified business separation duties, as defined in paragraph 2.3.21;

(b) the proposed form of the Compliance Report, as provided for in paragraph 2.3.28; and

(c) the proposed form of the Compliance Certificate, as provided for in paragraph 2.3.29(d).

- 2.3.17 On receipt of the documents provided for in paragraph 2.3.16, or any revisions of them, as provided for in paragraph 2.3.18(b), the Authority will:
- (a) approve each document and notify the licensee of approval; or
 - (b) give a direction to the licensee that one or more of the documents requires further development and the date by which the licensee is required to submit a revision to the Authority for approval.
- 2.3.18 Following the Authority's approval of the documents provided for in paragraph 2.3.16, the licensee must:
- (a) unless the Authority otherwise consents or directs, at all times comply with the terms of the approved Compliance Statement; and
 - (b) at least once in every 12 months, or at such other interval as the Authority may direct, review these documents and revise them as necessary, including when circumstances change such that the documents no longer secure compliance with the specified business separation duties as defined in paragraph 2.3.21, to ensure that they continue to be complete and accurate in all material respects and the licensee must submit any revisions made to these documents to the Authority and any revisions will only become effective once the Authority has approved them, in accordance with paragraph 2.3.17.
- 2.3.19 The licensee must publish a copy of the approved Compliance Statement and each revision on its website during the period of 15 Working Days beginning with the date of its approval by the Authority.
- 2.3.20 The Compliance Statement must in particular (but without prejudice to the generality of paragraph 2.3.16 set out how the licensee will meet:
- (a) the objectives in Part A;
 - (b) the business separation requirements provided for in Part B, with specific reference to:
 - (i) the arrangements for managerial and operational separation (including - but not limited to - arrangements to ensure the independence of the licensee's chief executive, directors, senior managers and staff), as required in paragraph 2.3.8;
 - (ii) the arrangements for access restrictions, including processes to partition and control access to and visibility of data within operational information systems, as required in paragraphs 2.3.9, 2.3.10 and 2.3.11;
 - (iii) the treatment of Shared Services across the licensee and the Relevant Other Competitive Businesses and the Relevant Regulated Businesses, together with a list of those services which fall under the definition of Shared Services, including providing for certain Shared Services to be provided to the licensee under a dedicated business

partner arrangement to ensure any real or perceived conflict of interests are addressed;

(iv) the arrangements to manage the transfer of employees between the licensee and the Relevant Other Competitive Businesses and the Relevant Regulated Businesses, including treating all such transfers as sensitive and accordingly subject to the review of the Compliance Officer appointed under Part E;

(v) the arrangements relating to the recruitment and employment of the licensee's employees and the incentivisation of the licensee's managers which, save for managers in Dual Fuel Roles engaged in Dual Fuel Activities, will be linked to the performance of the licensee only;

(vi) developing and maintaining a new visual and corporate identity for the licensee's Transmission Business that shall be distinct from those of the Relevant Other Competitive Businesses and the Relevant Regulated Businesses; and

(vii) a description of the Dual Fuel Activities and Dual Fuel Roles;

(c) the restrictions on the use of System Operator Functions Information and the exceptions to such restrictions provided for in Part C; and

(d) the appointment of a Compliance Officer and compliance reporting, provided for in Part E.

Part E: Appointment of a compliance officer and compliance reporting

2.3.21 The licensee must ensure, following consultation with the Authority, that a Compliance Officer is appointed for the purpose of facilitating compliance by the licensee with the obligations pursuant to the specified business separation duties. The person appointed as the Compliance Officer pursuant to this paragraph may also hold other Compliance Officer roles for the licensee.

2.3.22 The licensee must appoint a Single Appointed Director to the Board of the licensee in relation to the obligations set out in this condition.

2.3.23 The licensee must establish a Compliance Committee chaired by a sufficiently independent director appointed by the licensee in accordance with Condition B22 (Requirement for sufficiently independent directors), to report to the Board; the Committee must include among its members the Single Appointed Director and such persons in the licensee's business as are responsible for the management of regulatory issues relating to the licence.

2.3.24 The licensee must ensure that the Compliance Officer:

(a) is provided with such employees, premises, equipment, facilities and other resources; and

(b) has such access to the licensee's premises, systems, information and documentation,

as, in each case, the Compliance Officer might reasonably require for the fulfilment of the duties and tasks assigned pursuant to this condition.

- 2.3.25 Except to the extent provided for in paragraph 2.3.21, the licensee must ensure that the Compliance Officer is not engaged in the management or operation of the System Operator Functions, any Associate of the licensee or any Relevant Other Competitive Businesses.
- 2.3.26 The licensee must make available to the Compliance Officer details of any complaint or representation received by it from any person in respect of the conduct of the licensee in undertaking the specified business separation duties.
- 2.3.27 The duties and tasks of the Compliance Officer must include:
- (a) providing advice and information to the licensee (including individual directors of the licensee) and the Single Appointed Director for the purpose of ensuring the licensee's compliance with the specified business separation duties;
 - (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with the specified business separation duties and described in the Compliance Statement;
 - (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to secure the required co-operation;
 - (d) investigating any complaint or representation made available to the Compliance Officer in accordance with paragraph 2.3.26;
 - (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
 - (f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the Compliance Committee established under paragraph 2.3.23, for the purpose of ensuring its implementation of:
 - (i) the practices, procedures and systems adopted in accordance with the Compliance Statement; and
 - (ii) any remedial action recommended in accordance with sub-paragraph (e);
 - (g) reporting to the Compliance Committee any instances which come to the compliant officer's attention, relating to a member of any of the managerial boards of the licensee, taking into account the interests of a business other than that in respect of which the board of which that Board has been established; and

- (h) reporting annually to the Compliance Committee as to the Compliance Officer's activities in respect of the specified duties during the period covered by the annual report.
- 2.3.28 As soon as is reasonably practicable and in any event before the period of 90 days beginning with the date of issue of each annual report of the Compliance Officer, the licensee must produce, in a form approved by the Authority in accordance with paragraph 2.3.17, the Compliance Report:
- (a) as to its compliance with the specified business separation duties during the period since the last Compliance Report; and
 - (b) as to its implementation of the practices, procedures and systems adopted in accordance with the Compliance Statement.
- 2.3.29 The Compliance Report produced in accordance with paragraph 2.3.28 must in particular:
- (a) detail the activities of the Compliance Officer during the relevant period covered by the Compliance Report;
 - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems described in the Compliance Statement;
 - (c) set out the details of any investigations conducted by the compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations; and
 - (d) be accompanied by the Compliance Certificate, in a form approved by the Authority in accordance with paragraph 2.3.17, approved by a resolution of the Board of the licensee and signed in good faith by the sufficiently independent director chair of the Compliance Committee established under paragraph 2.3.23 pursuant to that resolution, on the licensee's compliance with the specified business separation duties.
- 2.3.30 The licensee must, as soon as reasonably practicable, following the approval of the Compliance Certificate by the Board of the licensee, and in any event before the end of the period of 120 beginning with the issue of each annual report of the Compliance Officer, submit to the Authority a copy of the Compliance Report and Compliance Certificate produced in accordance with paragraphs 2.3.28 and 2.3.29, and publish copies of each of them on its website.

- 2.3.31 The licensee must, if directed by the Authority, appoint an Independent Examiner for the purpose of providing a written report to the Authority:
- (a) reviewing the practices, procedures and systems which have been implemented to secure compliance with this condition;
 - (b) assessing the appropriateness of such practices, procedures and systems for securing compliance with the licensee's obligations under this condition; and
 - (c) reporting on the licensee's compliance with the requirements of this condition.
- 2.3.32 The Independent Examiner's report must be provided to the Authority during the period of 3 Working Days of the date on which the licensee receives it from the Independent Examiner.
- 2.3.33 The Independent Examiner's reports must be commissioned at such intervals as the Authority may direct.