

**To: All holders of an electricity supply licence**

**Electricity Act 1989  
Section 11A(2)**

**Notice of statutory consultation on a proposal to modify the standard conditions  
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 under section 6(1)(d) of the Electricity Act 1989 ("the Act").
2. The Gas and Electricity Markets Authority ("the Authority")<sup>1</sup> gives notice that it proposes to modify the standard licence conditions (SLC) of all electricity supply licences granted or treated as granted under section 6(1)(d) of the Act by introducing a new standard condition 30 in the manner set out in the schedule attached to this notice and described in the statutory consultation "Strengthening Financial Resilience" accompanying this notice.<sup>2</sup>
3. We are proposing these modifications alongside related modifications to SLC 4B (Financial Resilience Principle) and modifications which introduce a new SLC 4D (Protection of Domestic Customer Credit Balances) because recent events in the energy market have exposed that some retail businesses had insufficient capital to manage the business of supply and pursued unsustainable strategies with low downside risk to investors. Some suppliers have been overly reliant on customer credit balances (CCBs) and Renewables Obligations (RO) receipts for working capital and are generally insufficiently capitalised, despite strengthened guidance and regulations. These suppliers are more vulnerable to market shocks and therefore more likely to fail and exit the market due to insolvency. Where they do fail, that market exit results in Mutualised<sup>3</sup> costs which are ultimately passed on to consumers.
4. We are proposing to introduce a new SLC 30 which will require those suppliers providing domestic supply, on a quarterly basis, to either hold a certain level of Renewables Obligation Certificates (ROCs) or to protect a cash sum (using a range of approved protection mechanisms) where it does not hold sufficient ROCs. The licensee will be required to comply with the reporting requirements set out in the proposed condition, which require it to provide the Authority with details of the electricity it has supplied to domestic customers and to provide the Authority with details of the approved protection mechanism(s) that it has in place.
5. The effects of this proposed modification, together with the proposed modifications to SLC 4B (the Financial Resilience Principle) and the proposal to introduce a new SLC 4D (Protecting Domestic Customer Credit Balances) is to both reduce the risk of supplier failure, and, where suppliers do fail, to reduce the mutualised costs associated with these failures. Further detail as to the effects of the proposed modifications of SLC 4B and SLC 4D has been published by the Authority and are available on the website. The effect of this specific modification is to require licensees to protect ROCs or an equivalent sum such that if they fail before they

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1 The terms "Authority", "we" and "us" are used interchangeably in this document.

2 The accompanying consultation document can be found on the website.

3 As defined in SLC 1 of the electricity supply licence.

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discharge their RO liability, the outstanding liability is protected in a manner that is designed to survive supplier insolvency and prevent RO liabilities being mutualised.

6. A copy of the proposed modifications and other documents referred to in this Notice have been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Alternatively, they are available from [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk).
7. Any representations with respect to the proposed licence modification/modifications must be made on or before 3 January 2023 to: Retail Financial Resilience team, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to [RetailFinancialResilience@ofgem.gov.uk](mailto:RetailFinancialResilience@ofgem.gov.uk).
8. We normally publish all responses on our website. However, if you do not wish 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.
9. If we decide to make the proposed modification it will take effect not less than 56 days after the decision is published.

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**Cathryn Scott**  
**Regulatory Director – Enforcement and Emerging Issues**  
**Duly authorised on behalf of the**  
**Gas and Electricity Markets Authority**  
**25<sup>th</sup> November 2022**

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## **Schedule 1 – Draft of proposed modifications to the standard conditions (SLCs) of all electricity supply licences**

We have included the SLC30 below and the changes we propose to make. Deletions are shown in strike through and new text is double underlined.

***It is proposed these new conditions will sit under SLC 30 [currently unused]***

### **SLC 30 Protecting the Renewables Obligation**

30.1 By the date specified in the RO Timetable, the Designated Electricity Supplier must:

- hold the Quarterly Cumulative Obligation for the relevant quarter in the supplier account on the Register; and / or
- Protect the RO Credit Cover Amount

and continue to do so.

#### Monitoring and Reporting

30.2 By the date specified in the RO Timetable, the Designated Electricity Supplier must provide the Authority with:

- i) Confirmation of the amount of electricity in MWh it has supplied to domestic customers in each Quarter;
- ii) A copy of the RO Credit Cover Mechanism(s) established by the licensee which must be in the form provided for in the Guidance; and
- iii) The licensee's calculation, which must be accurate, of the RO Quarterly Amount (provided in the definitions) including:
  - a. supporting evidence for the calculation, including written confirmation from a Director that the RO Quarterly Amount has been accurately calculated and that the RO Credit Cover Mechanism(s) established by the licensee Fully Cover the RO Quarterly Amount;
  - b. evidence that the licensee's RO Credit Cover Mechanism(s) Fully Cover the most recently calculated RO Quarterly Amount, including (where applicable) the most recent bank statement in relation to any RO Credit Cover Trust Account or RO Escrow Account and copies of its RO Credit Cover Mechanism(s);

30.3 If the licensee establishes new or supplemental RO Credit Cover Mechanism(s) to replace or supplement the RO Credit Cover Mechanism(s) previously notified to the Authority, the licensee shall (a) not terminate or allow to expire any RO Credit Cover Mechanism(s) which is to be replaced until such time as the replacement RO Credit Cover Mechanism(s) is in full force and effect and the RO Quarterly Amount Fully Covered and (b) provide the following information, in a form approved by the Authority at least 28 days prior to such new or supplemental arrangements being put in place:

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- i) A copy of the RO Credit Cover Mechanism(s) established by the licensee which must be in the form provided for in the Guidance;
- ii) the portion of the RO Quarterly Amount covered by the new or supplemental RO Credit Cover Mechanism(s); and
- iii) confirmation that the remaining portion of the RO Quarterly Amount is covered by the licensee's existing RO Credit Cover Mechanism(s), previously notified to the Authority pursuant to paragraph 30.2; and any arrangements between the providers of the RO Credit Cover Mechanism as to the allocation of payment responsibility if the Authority takes action to enforce any such RO Credit Cover Mechanism(s).

30.4 The licensee must comply with any Guidance issued and from time-to-time revised, following consultation, in respect of standard condition 30.

30.5 For the purposes of this condition:

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| <b><u>Acceptable Bank</u></b>                 | <u>A bank or other regulated financial institution situated in the United Kingdom that has an Acceptable Credit Rating.</u>  |
| <b><u>Acceptable Credit Rating</u></b>        | <u>An Acceptable Credit Rating is an assessment by —<br/>Fitch Ratings as having a short term debt rating of "F1" or better,<br/>Moody's as having—<br/>a short term debt rating of "P-1", or<br/>a long term debt rating of "A3" or better, or<br/>Standard and Poor's as having a short term debt rating of "A-1" or better.</u>   |
| <b><u>Buy-out Price</u></b>                   | <u>As defined in the RO Order and the RO(S) Order respectively.</u>  |
| <b><u>Designated Electricity Supplier</u></b> | <u>As defined in the RO Order and the RO(S) Order respectively but only in respect of suppliers who supply to domestic customers.</u>  |
| <b><u>Director</u></b>                        | <u>A person legally responsible for running the company with knowledge and understanding of the licensee's finances.</u>   |
| <b><u>First Demand Guarantee</u></b>          | <u>An irrevocable, independent, primary, and autonomous (in all circumstances) guarantee in the form provided for in Guidance provided (or confirmed) by a person established within the United Kingdom with a credit rating of at least BBB on issuance and maintained throughout until the Designated Electricity Supplier has discharged its RO in full in accordance with the RO Order and RO(S) Order, and that meets the following requirements:</u> <ol style="list-style-type: none"> <li>1. <u>it does not contain any surety defence waivers or other drafting that is more characteristic of a suretyship guarantee than a primary and autonomous first demand instrument;</u></li> <li>2. <u>it is issued in favour of the Authority as beneficiary, or in favour of any other beneficiary that the Authority shall nominate;</u></li> <li>3. <u>it provides for drawing rights and their proceeds expressly to be freely assignable by the Authority or the Authority's nominee;</u></li> </ol> |

4. it is available for drawing on demand until the Designated Electricity Supplier has discharged its RO in full in accordance with the RO Order and RO(S) Order;
5. it provides for a compliant demand to state that, by reason of the insolvency of the Designated Electricity Supplier or revocation of the Designated Electricity Supplier's licence [or a failure by the Designated Electricity Supplier to pay the RO Discharge Payment in accordance with the RO Order and / or RO(S) Order] the Authority is entitled to demand, and does demand, payment of an amount equal to, or less than, the RO Credit Cover Amount prevailing on the date of the demand and provides a form of compliant demand in an annex to the guarantee;
6. it provides for all demands to be full, final and conclusive proof for all purposes of the guarantee of their contents, including (without limitation) that the entity issuing such a guarantee may not dispute any demand on these matters;
7. it permits partial and multiple demands that, in aggregate, do not exceed the then-current RO Credit Cover Amount;
8. [it provides for the RO Credit Cover Amount to be available for drawing throughout until the Designated Electricity Supplier has discharged its RO in accordance with the RO Order and RO(S) Order and for that amount automatically to be topped up quarterly to the full amount required to be available for drawing under this Condition];
9. it provides for all payments under the guarantee to be made in full, on demand and without any deduction for or on account of any type of set-off or counterclaim; and
10. it is expressly governed by UCP 600 (excluding article 32) or ISP 98, governed by English law, with an exclusive jurisdiction clause in favour of the English courts;
11. the guarantee is in the form set out in the Guidance; and
12. the guarantee has been executed and delivered as a deed by the guaranteeing party.

**Fully Cover**

The amount payable on demand by the Authority (in aggregate) under all instruments comprising the RO Credit Cover Mechanism(s) is at least equal to the RO Quarterly Amount.

**Obligation**

As defined in the RO Order and the RO(S) Order respectively.

**Period**

**Protect**

To put in place and maintain in effect an RO Credit Cover Mechanism in respect of the RO Credit Cover Amount that protects that sum of money (such that that sum of money is available to meet the Designated Electricity Supplier's RO) in the event of the Designated Electricity Supplier's insolvency or licence revocation or its failure to pay the RO Discharge Payment in accordance with the RO Order and / or RO(S) Order. "Protecting" and "Protection" shall be construed accordingly.

**Register**

As defined in article 59(1) RO(S) Order and article 93(1) of the RO Order 2015.

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| <b><u>Renewables<br/>Obligation<br/>(RO)<br/>RO Discharge<br/>Payment</u></b>      | <u>As defined in the RO Order and the RO(S) Order respectively.</u>   |
| <b><u>RO Credit<br/>Cover<br/>Amount<br/>RO Credit<br/>Cover<br/>Mechanism</u></b> | <p><u>The Quarterly Cumulative Obligation for which the Designated Electricity Supplier does not hold ROCs multiplied by the Buy-out Price.</u></p> <p><u>One or more of the following:</u></p> <ul style="list-style-type: none"> <li><u>Standby Letter of Credit;</u></li> <li><u>First Demand Guarantee;</u></li> <li><u>Cash deposited in an RO Credit Cover Trust Account;</u></li> <li><u>Cash deposited in an Escrow Account.</u></li> </ul>   |
| <b><u>RO Credit<br/>Cover Trust<br/>Account</u></b>                                | <u>A dedicated and segregated bank account in the name of the Designated Electricity Supplier: (i) with a bank branch in England or Wales; (ii) over which the Designated Electricity Supplier has declared a trust in favour of the Authority and complying with the RO Credit Cover Trust Account Requirements.</u>   |
| <b><u>RO Credit<br/>Cover Trust<br/>Account<br/>Requirements</u></b>               | <p><u>A trust in the form provided for in Guidance declared by a Designated Electricity Supplier in favour of the Authority over a dedicated and segregated bank account of the Designated Electricity Supplier that meets the following requirements:</u></p> <ul style="list-style-type: none"> <li>a) <u>the trust account provides for the Designated Electricity Supplier to hold the entire benefit of the RO Credit Cover Trust Account, and all funds from time to time standing to the credit of the RO Credit Cover Trust Account, on trust for the RO Credit Cover Trust Beneficiaries as the only beneficiaries;</u></li> <li>b) <u>the trust allows funds standing to the credit of the RO Credit Cover Trust Account in excess of the then applicable RO Credit Cover Amount to be released from the RO Credit Cover Trust Account to a general operations account of the Designated Electricity Supplier;</u></li> <li>c) <u>the RO Credit Cover Trust Account shall be payable to the Authority or any nominee of the Authority on demand upon the insolvency of the Designated Electricity Supplier or revocation of the Designated Electricity Supplier's licence [or failure by the Designated Electricity Supplier to pay the RO Discharge Payment in accordance with the RO Order and / or RO(S) Order];</u></li> <li>d) <u>the trust prohibits: (i) any security being created over the RO Credit Cover Trust Account by the Designated Electricity Supplier; (ii) the RO Credit Cover Trust Account being overdrawn; (iii) withdrawals of the RO Credit Cover Amount from the RO Credit Cover Trust Account (other than (A) in excess of the then</u></li> </ul> |

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applicable RO Credit Cover Amount or (B) in accordance with directions by the Authority);

e) notice of such trust has been given to the relevant account bank.

**RO Escrow Account**

A designated and segregated bank account maintained by a third party escrow agent for the Designated Electricity Supplier in the form provided for in Guidance where:

- a) the Escrow Account will be held in the name of the escrow agent with a UK bank and that the escrow agent will be a reputable, independent third party with experience of operating escrow accounts;
- b) in the event of licensee licence revocation or failure to pay RO following receipt of a demand from the Authority the funds would be payable to the Authority or the Authority's nominee(s) (for example, the Supplier of Last Resort) on demand;
- c) the RO Quarterly Amount shall be payable to the Authority or any nominee of the Authority on demand;
- d) the Escrow Account arrangements must prohibit:
  - e) any security being created by the licensee over the Escrow Account;
  - f) the Escrow Account being overdrawn;
  - g) withdrawals of the RO Quarterly Amount from the Escrow Account (other than: (A) in excess of the then applicable RO Quarterly Amount; (B) in accordance with directions by the Authority.)

**Quarterly Cumulative Obligation**

The RO Quarterly Amount for that Quarter, plus any RO Quarterly Amount for any preceding Quarter or Quarters in that Obligation Period and, (except in respect of the Obligation Period immediately following the RO Effective Date) for the Quarters in the Obligation Period immediately preceding the current Obligation Period where the Designated Electricity Supplier has not yet discharged its RO in full in accordance with the RO Order and / or the RO(S) Order.

**ROC(s)**

Renewables Obligation Certificates as defined in the RO Order, Scottish ROCs as defined in the RO(S) Order and Northern Irish ROCs as defined in the Northern Ireland Renewables Obligation Order 2009.

**RO Effective Date**

Is the date on which standard condition [30] comes into effect.

**RO Order**

The Renewables Obligation Order 2015 (including any amendments to that Order).

**RO(S) Order**

The Renewables Obligation (Scotland) Order 2009 (including any amendments to that Order).

**RO Timetable**

A notice published by the Authority in advance of each [scheme year].

**RO Quarterly Amount**

The number of ROCs that a supplier must hold for that Obligation Period and is calculated as follows:

$$\underline{\underline{QA = RES \times LO}}$$

Where:

RES means relevant electricity supplied which has the meaning given to it by the RO Order and the RO(S) Order respectively, but only insofar as that electricity is supplied to domestic customers;

LO means level of obligation which is the number of ROCs that suppliers must redeem for each MWh of RES supplied as published in advance of the RO Obligation Period on the Ofgem website.

The Authority will notify Designated Electricity Suppliers of the RO Quarterly Amount in accordance with the RO Timetable.

#### RO Quarter

The four periods of three months of Obligation Period so that the first Quarter is the first three months of the Obligation Period, the second Quarter is the next period of three months and so on.

#### Standby Letter of Credit or SBLC

An irrevocable, independent, primary and autonomous letter of credit in the form provided for in Guidance issued (or confirmed) by an Acceptable Bank in favour of the Authority or any other beneficiary that the Authority may nominate, that meets the following requirements:

1. it contains express provision for the drawing rights and their proceeds under the SBLC to be freely assignable by the Authority or to any entity nominated by the Authority;
2. the SBLC must either be available for drawing on demand for the full duration of the Obligation Period or, during the full term of the Obligation Period, the SBLC shall automatically renew annually for 365 days, but with the final renewal expiring at the end of Obligation Period and an issuing bank (or confirming bank) may refuse to renew the SBLC on its expiry only if it gives written notice (a **Cancellation Notice**) to both the beneficiary and the Authority, such notice to be received by the beneficiary and the Authority not less than 120 calendar days before the date upon which the SBLC would otherwise renew;
3. a demand must either state that, by reason of (i) insolvency of the Designated Electricity Supplier or revocation of its licence, or (ii) receipt by the beneficiary of a Cancellation Notice relating to the SBLC, [or (iii) a failure by the Designated Electricity Supplier to pay the RO Discharge Payment in accordance with the RO Order and / or RO(S) Order], the beneficiary is entitled to demand, and does demand, payment of an amount equal to, or less than, the RO Credit Cover Amount prevailing on the date of the demand;
4. all demands to be full, final and conclusive proof for all purposes of the SBLC of their contents, including (without limitation) as to statements (i) or (ii) [or (iii)] in the previous bullet point and

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- neither the issuing bank nor any confirming bank may look behind any demand on these matters;
5. a form of a compliant demand shall be annexed to the SBLC;
  6. partial and multiple demands permitted in aggregate total amount up to the maximum amount of the SBLC;
  7. all payments under the SBLC shall be made in full, on demand and without any deduction for or on account of any type of set-off or counterclaim;
  8. the SBLC is in the form provided for in the Guidance; and
  9. The SBLC is expressed to be governed by UCP 600 (excluding article 32) or ISP 98, governed by English law, with an exclusive jurisdiction clause in favour of the English [or Scottish] courts.

**Supplier Account**

The account on the Register which the Designated Electricity Supplier uses to discharge the RO.

**UCP 600**

The International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits (2007 Revision).