

To: All holders of an electricity supply licence

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

Modification of the standard conditions of all electricity supply licences

1. Each of the licensees to whom this document is addressed has an electricity supply licence which has been granted or treated as granted under 6(1)(d) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 25 November 2022 ('the Notice') that we propose to introduce a new Standard Licence Condition (SLC) 30. We stated that any representations to the modification proposal must be made on or before 3 January 2023.
3. 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.
4. We received 24 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out at the accompanying Decision.
5. It is necessary to make a number of alterations to the modifications set out in the Notice. These alterations are shown in the attached Schedule 1. The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to address minor issues and corrections raised in consultation responses.
6. We are making this licence change 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 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 Mutualised² costs which are ultimately passed on to consumers.
7. The effect of this modification is to require licensees to protect RO certificates or an equivalent sum such that if they fail before they 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. To note, as explained in the Decision and RO Guidance, for the scheme year for 2023/24 only, suppliers must provide evidence of protection in line with the Quarter 2 timetable.

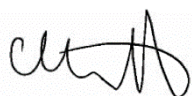
¹ The terms "the Authority", "we" and "us" are used interchangeably in this document.

² As defined at SLC 1 of the electricity supply licence.

8. 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 Rules³ 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 Schedule 2 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 licence conditions for all electricity supply licences in the manner specified in attached Schedule 1. This decision will take effect from 31 May 2023.

This document is notice of the reasons for the decision to modify the electricity supply licences as required by section 49A(2) of the Act.



Cathryn Scott
Regulatory Director – Enforcement and Emerging Issues
Duly authorised on behalf of the
Gas and Electricity Markets Authority

5 April 2023

³ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

Schedule 1 – Modifications to the standard conditions (SLCs) of all electricity supply licences

Proposals we originally consulted on are underlined. Deletions from what we consulted on are shown with underlines and strikethroughs. New modifications are shown with underlines and highlighted in yellow.

SLC 30 Ringfencing the Renewables Obligation

30.1 By the dates specified in the RO Timetable Ringfencing Schedule, a licensee who supplies electricity to domestic customers ("the licensee") ~~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 dates specified in the RO Timetable Ringfencing Schedule, the ~~Designated Electricity Supplier~~ licensee 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 any RO Credit Cover Mechanism(s) established by the licensee which must be in the form provided for in the Guidance published by the Authority on its website and which the Authority may from time-to-time revise, following consultation; and
- iii. If relevant, the most recent bank statement in relation to RO Credit Cover Trust Account.
- 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 Where 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/are in

full force and effect and the RO Quarterly Amount Fully Covered Cumulative Obligation Protected; 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:

- 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 on the Authority's website (and which the Authority may from time to time amend, following consultation);
- ii. the portion of the RO Quarterly Credit Cover Amount covered Protected by the new or supplemental RO Credit Cover Mechanism(s); and
- iii. confirmation that the remaining portion of the RO Quarterly Amount Cumulative Obligation is covered by the licensee's existing RO Credit Cover Mechanism(s) held in ROCs and the remaining RO Credit Cover Amount is Protected by RO Credit Cover Mechanisms previously notified to the Authority pursuant to paragraph 30.2; and any arrangements between the providers of the RO Credit Cover Mechanism(s) as to the allocation of payment responsibility if the Authority takes action to enforce any such RO Credit Cover Mechanism(s).

30.3A The licensee shall not transfer or complete a sale of some or all of the ROCs held on the Register that form part of the Quarterly Cumulative Obligation, until such time as it has confirmed to the Authority with evidence pursuant to paragraph 30.3 that it has Protected the increased RO Credit Cover Amount that will result from the transfer of the ROCs.

30.4 The licensee must ~~comply with~~ have regard to 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:

Phrase	Definition
Acceptable Bank	A bank or other regulated financial institution situated in the United Kingdom that has an Acceptable Credit Rating.
Acceptable Credit Rating	An Acceptable Credit Rating is an assessment by — <ol style="list-style-type: none"> i. Fitch Ratings as having a short term debt rating of "F1" or better a long-term debt rating of "A-" or better, ii. Moody's as having a short term debt rating of "P-1", or a long-term debt rating of "A3" or better, or; iii. Standard and Poor's as having a short term debt rating of "A-1" long-term debt rating of "A-" or better.
Buy-out Price	As defined in the RO Order and the RO(S) Order respectively.
Designated Electricity Supplier	As defined in the RO Order and the RO(S) Order respectively but only in respect of suppliers who supply domestic customers.
Director	A person legally responsible for running the company with knowledge and understanding of the licensee's finances.
First Demand Guarantee	An irrevocable, independent, primary, and autonomous (in all circumstances) guarantee in the form provided for in Guidance provided

~~(or confirmed)~~ published on the Authority website provided by a person established within the United Kingdom or in an EU member state, or European Economic Area member state, that is bound by the 2005 Hague Convention on Choice of Court Agreements and incorporated it into its law, with a credit rating of at least BBB- on issuance and maintained throughout until the Designated Electricity Supplier the licensee has discharged its RO in full in accordance with the RO Order and RO(S) Order, and that meets the following requirements:

1. 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;
2. it is issued in favour of the Authority as beneficiary, or in favour of any other beneficiary that the Authority shall nominate;
- ~~3. it provides for drawing rights and their proceeds expressly to be freely assignable by the authority or the Authorities nominee;~~
3. it is available for drawing on demand until the Designated Electricity Supplier licensee has discharged its RO in full in accordance with the RO Order and RO(S) Order or unless supplemented or replaced in accordance with standard condition 30.3;
4. it provides for a compliant demand to state that, by reason of the insolvency of the Designated Electricity Supplier licensee or revocation of the it Designated Electricity Supplier's licence for a failure by the Designated Electricity Supplier licensee 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;
5. 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;
6. it permits partial and multiple demands that, in aggregate, do not exceed the then-current RO Credit Cover Amount;
7. ~~it provides for the RO Credit Cover Amount to be available for drawing throughout until the Designated Electricity Supplier licensee 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}~~ that amount can be amended by supplementing or replacing the First Demand Guarantee on no more than a quarterly basis in accordance with standard condition 30.3;
8. 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;~~
9. 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.~~

<u>Fully Cover</u>	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.
<u>Obligation Period</u>	As defined in the RO Order and the RO(S) Order respectively.
<u>Protect</u>	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 licensee's RO) in the event of the Designated Electricity Supplier's licensee'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", "Protected" and "Protection" shall be construed accordingly.
<u>Quarter</u>	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.
<u>Quarterly Cumulative Obligation</u>	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 immediately preceding Obligation Period where the licensee has not yet discharged its RO in respect of that preceding Obligation in full in accordance with the RO Order and / or the RO(S) Order.
<u>Register</u>	As defined in article 59(1) RO(S) Order and article 93(1) of the RO Order 2015.
<u>Renewables Obligation (RO)</u>	As defined in the RO Order and the RO(S) Order respectively.
<u>RO Discharge Payment</u>	The sum that a Designated Electricity Supplier licensee would be required to pay where it chooses to discharge its Renewables Obligation (in whole or in part) pursuant to Article 67 of the RO Order and Article 43 of the RO(S) Order including any interest payable pursuant to Article 68 of the RO Order and Article 48 of the RO(S) Order.
<u>RO Credit Cover Amount</u>	Any part of the Quarterly Cumulative Obligation for which the Designated Electricity Supplier licensee does not hold ROCs multiplied by the Buy-out Price.
<u>RO Credit Cover Mechanism</u>	One or more of the following: <ol style="list-style-type: none"> 1. Standby Letter of Credit; 2. First Demand Guarantee; 3. Cash deposited in an RO Credit Cover Trust Account. 4. Cash deposited in an Escrow Account
<u>RO Credit Cover Trust Account</u>	A dedicated and segregated bank account in the name of the Designated Electricity Supplier licensee: (i) with a bank branch in England or Wales; (ii) over which the Designated Electricity Supplier licensee has declared a trust in favour of the Authority and complying with the RO Credit Cover Trust Account Requirements.

<u>RO Credit Cover Trust Account Requirements</u>	<p>A trust in the form provided for in Guidance declared by a Designated Electricity Supplier licensee in favour of the Authority over a dedicated and segregated bank account of the Designated Electricity Supplier licensee that meets the following requirements:</p> <ol style="list-style-type: none"> the trust account provides for the Designated Electricity Supplier licensee 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; 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 licensee; 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 licensee, or revocation of their licence, for failure by the Designated Electricity Supplier licensee to pay the RO Discharge Payment in accordance with the RO Order and / or RO(S) Order}; the trust prohibits: (i) any security being created over the RO Credit Cover Trust Account by the Designated Electricity Supplier licensee; (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 applicable RO Credit Cover Amount or (B) in accordance with directions by the Authority); notice of such trust has been given to the relevant account bank.
<u>RO Escrow Account</u>	<p>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:</p> <ol style="list-style-type: none"> 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; 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; the RO Quarterly Amount shall be payable to the Authority or any nominee of the Authority on demand; the Escrow Account arrangements must prohibit: <ol style="list-style-type: none"> any security being created by the licensee over the Escrow Account; the Escrow Account being overdrawn; 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.)
<u>Quarterly Cumulative Obligation</u>	<p>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</p>

	the RO Effective Date) for the Quarters in the immediately preceding 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.
<u>ROC(s)</u>	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.
<u>RO Effective Date</u>	Is the date on which standard condition 30 comes into effect.
<u>RO Order</u>	The Renewables Obligation Order 2015 (including any amendments to that Order).
<u>RO(S) Order</u>	The Renewables Obligation (Scotland) Order 2009 (including any amendments to that Order).
<u>RO Timetable</u> <u>Ringfencing</u> <u>Schedule</u>	A notice published by the Authority in advance of each scheme year.
<u>RO Quarterly Amount</u>	<p>The number of ROCs that a supplier must hold for that Obligation Period in respect of relevant electricity supplied to Domestic Customers in a Quarter, and is calculated as follows:</p> $\mathbf{ROA = RDES \times LO}$ <p>Where:</p> <p>RDES means relevant electricity supplied to Domestic Customers in a Quarter, where 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;</p> <p>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.</p> <p>The Authority will notify Designated Electricity Suppliers licensees of the RO Quarterly Amount in accordance with the RO Ringfencing Schedule Timetable.</p>
<u>RO Quarter</u>	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.
<u>Standby Letter of Credit or SBLC</u>	<p>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:</p> <p>— 1. it contains express provision for the drawing rights and their proceeds under the SBLC to be freely assignable by the Authority or</p>

	<p>to any entity nominated by the Authority;</p> <p>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;</p> <p>1. 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] (i) certain insolvency events occurring with respect to the licensee or any of its assets; or (ii) revocation of its licence or insolvency of the licensee or revocation of its licence, or (iii) a failure by the licensee to pay the RO Discharge Payment in accordance with Article 67 of the RO Order and / or Article 43 of the 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;</p> <p>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 neither the issuing bank nor any confirming bank may look behind any demand on these matters;</p> <p>2. a form of a compliant demand shall be annexed to the SBLC;</p> <p>3. partial and multiple demands permitted in aggregate total amount up to the maximum amount of the SBLC;</p> <p>4. 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;</p> <p>5. the SBLC is in the form provided for in the Guidance; and</p> <p>6. 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 [for Scottish] courts.</p>
<u>Supplier Account</u>	The account on the Register which the Designated Electricity Supplier licensee uses to discharge the RO.
<u>UCP 600</u>	The International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits (2007 Revision).