

Erratum Notice – Electricity Supply Licence Condition 4B, Condition 4D and Condition 30 and Gas Supply Licence Condition 4B and Condition 4D.

On 26 July 2023¹ the Authority² issued a decision to modify Standard Licence Condition (“SLC”) 4B and SLC 4D of the electricity and gas supply licences: ‘Decision on introducing a minimum capital requirement and Ringfencing customer credit balances by direction.’

On 5 April 2023³ the Authority issued a decision to modify SLC 30 of the electricity supply licence ‘Decision on Strengthening Financial Resilience’.

We have subsequently identified some minor errors in the Schedule to the modification decisions as follows:

- Seven capitalisation amendments in SLC 4B (electricity supply licence and gas supply licence).
- One inadvertent omission and capitalisation correction in the definition of “Quality” in SLC 4B (electricity supply licence and gas supply licence).
- Three full stops added in SLC 4B (electricity supply licence and gas supply licence).
- One correction of Credit Cover Support Arrangement to Credit Balance Support Arrangement in SLC 4B (electricity supply licence and gas supply licence).
- One inadvertent omission and full stop added to the definition of “Quarterly Progress Milestones” in SLC 4B (electricity supply licence and gas supply licence).
- One inadvertent omission of a defined term added in SLC 4B (electricity supply licence and gas supply licence).
- One comma added in SLC 4D (electricity supply licence and gas supply licence).
- Twelve capitalisation amendments in SLC 4D (electricity supply licence and gas supply Licence).
- One removal of an apostrophe in SLC 4D (electricity supply licence and gas supply licence).
- One spelling error in SLC 4B (electricity supply licence).
- One inadvertent omission in SLC 4B (electricity supply licence).
- One capitalisation amendment in SLC 4B (electricity supply licence).
- One removal of a duplicated word in SLC 4D (electricity supply licence).
- One removal of a full stop in SLC 4D (electricity supply licence).
- Two capitalisations of defined terms in SLC 30 (electricity supply licence).

¹ [Decision on introducing a minimum capital requirement and ringfencing customer credit balances by direction | Ofgem](#)

² The terms ‘we’, and ‘the Authority’ refer to the Gas and Electricity Markets Authority.

³ [Decision on Strengthening Financial Resilience | Ofgem](#)

- One inadvertent omission of the equivalent credit rating and credit rating agencies in SLC 30 (electricity supply licence) to align with the Decision on Strengthening Financial Resilience and Control, published April 2023 (see paragraph 3.11).⁴
- Two erroneous references to requirements being published in the form provided for in the guidance in SLC 30 (electricity supply licence) have been corrected to clarify that the requirements will be in the form published on the Authority's website.
- Two deletions of duplicate defined terms in SLC 4B (gas supply licence).
- One spelling error in SLC 4B (gas supply licence).
- Four full stops added in SLC 4B (gas supply licence).

The annex to this letter sets out these errors which we will now amend in the electricity and gas supply licences.

If you have any questions regarding this letter, please contact RetailFinancialResilience@ofgem.gov.uk.



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David Hall, Deputy Director – Financial Resilience and Controls
Duly authorised on behalf of the Gas and Electricity Markets Authority
17 July 2024

⁴Paragraph 3.11 of the Decision on Strengthening Financial Resilience: For FDGs, we propose to align with the requirements for the GGL, recognising that this approach is established and familiar to suppliers and Ofgem. For RO ringfencing requirements, we have expanded the definition of BBB to include BBB- (S&P and Fitch) and Baa3 (Moody's). BBB-/Baa3 is an internationally recognised benchmark of investment grade rating, and we consider that BBB- /Baa3 is represents an attainable and reasonable standard. The reason for divergence in minimum requirements between FDGs and SBLCs accounts for the credit status of parent companies with subsidiaries in the energy retail market. We are aware that it is usual for corporates, like parent companies, to have lower credit ratings than banks. We also note that it would not be possible for a supplier to source a compliant SBLC as we require it to be lodged with an Acceptable Bank, and no eligible banks have a credit rating lower than A.

Annex 1

Deleted text is ~~struck through~~. New Text is double underlined.

Electricity and Gas licences and conditions:

Condition 4B:

4B.13 The licensee must, within 28 days of this standard condition taking effect, notify the Authority of the date on which it will submit the Annual Adequacy Self-Assessment (the “~~submission date~~ Submission Date”) for the purpose of standard condition 4B.10.

4B.14 The licensee may notify the Authority of a revised ~~submission date~~ Submission Date for the purpose of standard condition 4B.10 provided that the revised ~~submission date~~ Submission Date will not result in the licensee submitting information relating to a period of more than 12 consecutive months.

4B.28 Definitions:

“**Adjusted Net Assets**” means Net Assets without intangible assets, as measured according to suppliers’ internal accounting standards (e.g. IFRS or UK GAAP) and reported in suppliers’ ~~Financial Statements~~ financial statements plus any Alternative Source of Capital that has been approved by the Authority.

“Alternative Sources of Capital”

- The full value of a ~~Parent~~ parent / group company committed, unsecured, documented loan facility from a parent / group company to the licensee (drawn or undrawn), which satisfies the following conditions: (i) the parent/ group company providing such commitment maintains a minimum long-term credit rating of at least two of the following: BBB- by Standard and Poor’s, BBB- by Fitch or Baa3 by Moody’s; (ii) the commitment is fully committed under a legally binding commitment letter or facility agreement for at least the next 12 months, and is not subject to any conditions to drawing or payment, and (iii) the parent/ group company has no right to cancel its commitment.

“**Quality**” ~~Characteristics~~ means characteristics that make a source of funding best suited to allow a firm to absorb losses unambiguously on an ongoing basis, including under adverse circumstances.

“**Resilience**” means the proportion of the ~~Market at Risk of Failure~~ market at risk of failure and the likely Mutualised cost that would result in the event of that failure occurring.

“**Trigger Points**” ~~Are~~ are indicators linked to supplier financial resilience in the four situations described in paragraphs a) to d) of standard condition 4B.8.

“**Adjustment Percentage**”, “**Net Assets**” and “**Quality and Standards**”. Full stops have been added to the definitions.

“**Protect**” means to put in place and maintain in effect a Credit ~~Cover~~ Balance Support Arrangement in respect of the Protected Amount that protects that sum of money in the event of

the licensee's insolvency or licence revocation. "Protecting" and "Protection" shall be construed accordingly.

“Quarterly Progress Milestone” means the agreed quarterly deadline for the licensee to report to the Authority on: (i) the progress made towards achieving the Approved Capitalisation Plan; and (ii) in circumstances where the Capital Target Trigger has occurred and the Authority has not issued a direction under standard condition 4B.23 whether and why Protecting Domestic Customer Credit Balances in accordance with SLC 4D is or is not in the Consumer Interest.

“Credit Balance Support Arrangements” One or more of the following: (i) Standby Letter of Credit; (ii) First Demand Guarantee; or (iii) Cash deposited in a Credit Balance Trust Account.

4D.8

b) submit the calculation of the funds to be protected including any information, data or analysis used to make the final calculation;

4D.10 Methodology and Definitions:

Credit Event Means

a) any of the following shall occur with respect to the Licensee (excluding a winding-up petition which the ~~Beneficiary~~ beneficiary considers to be frivolous or vexatious, or to have no real prospect of success, and which is discharged, stayed or dismissed within ten days of its presentation and, in any event, before it is advertised):

(i) the ~~Licensee~~ licensee is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts; or

(ii) a moratorium is declared in respect of any indebtedness of the ~~Licensee~~ licensee;

(iii) any corporate action, legal proceedings or other procedure or step is taken in relation to:

(A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the ~~Licensee~~ licensee;

(B) a composition, compromise, assignment or arrangement with any creditor of the ~~Licensee~~ licensee; or

(C) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect the ~~Licensee~~ licensee or any of its assets; or

(b) any analogous procedure or step is taken in any jurisdiction.

Licence Event Means:

(a) the Authority has revoked the ~~Licensee's Licence~~ licensee's licence; or

(b) the ~~Licensee~~ licensee has surrendered its ~~Licence~~ licence.

Standby Letter of Credit or SBLC

- f) ~~Partial~~ partial and multiple demands permitted in aggregate total amount up to the maximum amount of the SBLC;
- g) ~~All~~ 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 to such entity and account as the beneficiary shall specify in a demand under the SBLC; and
- h) ~~The~~ 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 courts.

Protect

To put in place, and continuously maintain in effect, a Credit Balance Support Arrangement in respect of the Protected Amount that protects that sum of money in the event of the ~~licensee's~~ licensee being subject to specified insolvency events, licence revocation or licence surrender. "Protecting" and "Protection" shall be construed accordingly and shall extend to requiring that SBLCs or First Demand Guarantees be available for drawing if a Non-Extension Notice (as defined above or, as applicable, below) is served under the instrument in question on the beneficiary of that instrument.

Electricity licences and conditions:

4B.2 The licensee must ensure that, were it to exit the supply market (due to insolvency, licence revocation or in any other circumstances), its operational and financial arrangements are such that any Supplier of Last Resort or special ~~administrator~~ administrator appointed would be able to efficiently and effectively serve its customers and that the exit would result in minimised Mutualised costs.

4B.28 Definitions:

For the purpose of condition 4A and 4B:

Alternative Sources of Capital Means means one of the following which has been approved by the Authority:

4D.3 The licensee's Credit Balance Support Arrangements must be notified to the Authority in the form published on the ~~the~~ Authority's website and which the Authority may from time-to-time revise following consultation.

4D.4 The Protected Amount for the Initial Period and each subsequent calendar month:(each being a "Relevant Period") shall be: the Gross Credit Balance minus the Unbilled Consumption multiplied by the Adjustment Percentage.

Condition 30:

30.1 By the dates specified in the RO Ringfencing Schedule, a licensee who supplies electricity to ~~domestic customers~~ Domestic Customers (“the licensee”) must:

30.2 By the dates specified in the RO Ringfencing Schedule, the licensee must provide the Authority with:

(i). Confirmation of the amount of electricity in MWh it has supplied to ~~domestic customers~~ Domestic Customers in each Quarter;

Condition 30.5 Definitions

First Demand Guarantee

An irrevocable, independent, primary, and autonomous (in all circumstances) guarantee in the form 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- by Standard and Poor’s, BBB- by Fitch or Baa3 by Moody’s on issuance and maintained throughout until the licensee has discharged its RO in full in accordance with the RO Order and RO(S) Order, and that meets the following requirements:

RO Credit Cover Trust Account Requirements

A trust in the form ~~provided for in Guidance~~ published on the Authority’s website declared by a licensee in favour of the Authority over a dedicated and segregated bank account of the licensee that meets the following requirements:

Standby Letter of Credit or SBLC

An irrevocable, independent, primary and autonomous letter of credit in the form ~~provided for in Guidance issued~~ published on the Authority’s website (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:

Gas licences and conditions:

Condition 4B

4B.28 Definitions:

“Adjustment Percentage” means the % the Authority directs in accordance with standard condition 4B.25

“Alternative Sources of Capital” means ~~Net Assets without intangible assets, as measured according to suppliers’ internal accounting standards (e.g. IFRS or UK GAAP) and reported in suppliers’ Financial Statements plus any Alternative Source of Capital that has been approved by the Authority:~~

“Quarterly Quarterly Progress Milestones” means the agreed quarterly deadline for the licensee to report to the Authority on: (i) the progress made towards achieving the Approved Capitalisation Plan; and (ii) in circumstances where the Capital Target Trigger has occurred and the Authority has not issued a direction under standard condition 4B.23, whether and why Protecting Domestic Customer Credit Balances in accordance with SLC 4D is or is not in the Consumer Interest.

“Consumer Interest”, “Prices”, “Protected Amount”, and “Resilience” Full stops have been added to the definitions.