Response by Northern Powergrid (Northeast) plc and Northern Powergrid (Yorkshire) plc to the Energy Networks Ring-fence Review Statutory Consultation (August 2026)

KEY POINTS

- Northern Powergrid has significant concerns that despite the considerable efforts made by both the licensees and Ofgem to reach a sensible position on policy and on the consequent licence modifications, a material number of the proposed measures do not support Ofgem's stated policy intent.

- The proposals:
  - impose new measures that are unrelated to financial resilience;
  - place unnecessary and inappropriate restrictions on a licensee's ability to operate its business effectively;
  - duplicate the effect of or contradictory existing regulatory requirements; and
  - are disproportionate.

- In particular:
  - The role of the SIDs has been expanded inappropriately.
  - Confirmation of compliance with licence obligations that are not related to financial resilience is now required before a dividend can be paid.
  - Where a licensee has three credit ratings, the notification, financial reporting obligations and dividend lock-up can be triggered by the status of one rating, even if the licensee still has two, stable investment grade credit ratings.
  - Ofgem consent is required for a licensee to alter its capital structure (to make non-distributable reserves distributable) to facilitate a dividend or other distribution.

1. Executive Summary

Response to Proposed Licence Modifications

1. This response is submitted by Northern Powergrid (Northeast) plc and Northern Powergrid (Yorkshire) plc (together, "Northern Powergrid").

2. We focus here on our most significant concerns. In addition, the draft licence modifications which are attached to this response at Appendix 1, address the other concerns or issues arising from Ofgem's proposals (these have been raised throughout the consultation process).

Sufficiently Independent Director (SIDs) Duties (SLC43A)

3. Ofgem's proposal to expand the role and responsibilities of SIDs through the introduction of requirements for SID signature on certain submissions and notifications to Ofgem, as well as a requirement for SIDs to make verbal representations on executive remuneration where remuneration committee meetings are held by a parent company or other entity in the licensee's group structure, is both unnecessary and inappropriate and has no obvious impact on financial resilience.

4. There is already a raft of existing and established corporate governance requirements which licensees must comply with, and which are designed to enhance financial resilience by ensuring accountability, strengthening internal controls and encouraging transparent risk management, and which also govern determination of executive pay. These render Ofgem's proposals unnecessary, and the benefit of the proposed measures is not apparent.

5. In addition, Ofgem's proposal to require a SID signature on the sale, disposal or transfer of distribution assets to a company or entity operating within the same group structure (excluding to a subsidiary of the licensee) risks creating conflict with the terms of the General Consent, which allows the disposal or relinquishment of operational control of a Relevant Asset without prior notification to Ofgem in specified circumstances. It is our understanding that it is not Ofgem's intention to undermine the provisions of the General Consent, and we regard this is an unintended consequence of the proposed drafting.

6. There is inconsistency between notification requirements. For example, SLC40.3 requires notification and the submission of Published Rating Reports when a Negative Rating Action occurs, whereas SLC43A.10 in Ofgem's proposed mark-up requires SID signature on notifications in circumstances where "any change in credit rating and/or outlook which would trigger a negative rating action, to a rating of BBB- or one notch above the minimum covenant requirement and is on negative watch". SID approval should not be required circumstances that are different to those envisaged by SLC40.

7. Additionally, Ofgem's proposed drafting risks creating additional obligations by requiring SID signature on a number of submissions, including on a Financial Resilience Report. The proposed modifications suggest that a Financial Resilience Report requires approval by Board resolution, which it currently does not. Whilst the circumstances leading to the requirement for a Financial Resilience Report may well be the subject of Board discussion, and there would be oversight of the Financial Resilience Report itself at a high level, a requirement for Board approval within the

60 days that Ofgem allows for this process could be impracticable. Ofgem should amend the proposed licence modification to remove any requirement for Board resolution.

8. Ofgem has not provided any reasonable justification for these proposals, simply stating that the SIDs' oversight and independence provide Ofgem with reassurance. However, Ofgem's proposals do not increase financial resilience but simply create a further layer of bureaucracy limit the shareholders' proper control over its business and will raise the cost of capital and increase costs.

Addition of Further Licence Conditions to the Dividend Certificate (SLC30)

9. Ofgem's proposal to add further licence obligations to the dividend certificate, such that a dividend cannot be paid unless at the time of giving the certificate the licensee is also in compliance with those additional licence conditions is inappropriate.

10. Whilst non-compliance with those further conditions is not anticipated, licensees could find themselves in a position where they are unable to declare a dividend because, for example, a SID resigns unexpectedly just prior to the issuing of a dividend. This would render the licensee unable to declare a dividend despite the fact that this temporary non-compliance does not raise financial resilience concerns and therefore ought not to obstruct the dividend process.

11. A dividend lock-up is a significant measure and should only ever be implemented as a means to ensure *financial* resilience and not as a tool to enforce compliance with broader conditions.

12. We understood this had been effectively addressed within the policy consultation process, during which Ofgem agreed that it would be inappropriate for a dividend lock-up to be triggered by a breach of those additional licence conditions and indicated that that proposal had been withdrawn. No explanation has been given for Ofgem's decision to revert to its original position.

Investment Grade Credit Ratings (SLC40)

13. The implementation of Ofgem's proposed obligation that licensees maintain more than one Investment Grade Issuer Credit Rating ("IGCR") penalises licensees that have elected to hold more than two IGCRs, and which therefore have the strongest resilience measures in place.

14. The notification requirements include a requirement for provision to Ofgem of a Financial Resilience Report if *any* of the licensee's ratings held for an Issuer Credit Rating or Significant Instrument Credit Rating fall to the specified levels. Therefore, licensees with more than two IGCRs, will find that the notification and financial reporting obligations will be triggered even where two IGCRs are maintained and the licensee therefore remains in compliance with the overall resilience requirements.

15. More significantly, however, downgrade of a third IGCR could also trigger a dividend lock-up. Improperly restricting shareholder's ability to realise profits will ultimately raise the cost of capital and deter new investment.

16. Where a licensee maintains two, stable investment grade credit ratings, it is financially resilient, and the proposed reporting requirements are both onerous and unnecessary and potentially operate as a disincentive to increasing financial resilience, which is contrary to Ofgem's stated objective. Ofgem should amend the wording of the requirement so that the restrictions are only triggered when the requirement to hold more than one IGCR is at risk.

Ofgem Consent Required to Alter Capital Structures (SLC30)

17. Ofgem's proposal that consent be required for a licensee to alter its capital structure to make non distributable reserves distributable to facilitate payment of a dividend or other distribution, represents a U-turn in Ofgem's previously articulated policy that it is for a company to determine its capital structure and is contrary to the existing corporate governance framework.

18. The rules that determine when a company may make its non-distributable reserves distributable are embodied in the Companies Act, which should remain the appropriate governance framework. There is no need for a further layer of governance and Ofgem is at risk of cutting across existing provisions as well as introducing extra layers of bureaucracy which will create inefficiencies, increase cost, and potentially disincentivise investment. Where licensees are meeting the financial resilience requirements, Ofgem should not interfere with their financing decisions. Restricting the licensee's ability to optimise their capital structures will raise financing costs over time.

19. The restriction also freezes in time the status quo for licensees, which will all be in different positions because of their differing corporate histories, which is not rational. The 75% regulatory gearing requirement, which is being introduced through these licence modifications at SLC41.12 of Ofgem's proposed mark-up is the appropriate tool for maintaining financial resilience and represent an objective standard that is applied consistently to all licensees.

Appendix 1

[Electricity Distribution licence]

ofgem
Making a positive difference
for energy consumers

ofgem
Making a positive difference
for energy consumers

Proposed modifications to the Electricity Distribution Standard Licence Conditions

Publication date: 01 July 2026

This document contains the proposed modifications to the Electricity Distribution Standard Licence Conditions. Any additions are shown as black double-underlined and any deletions are shown as black single strikethrough.

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Gas and Electricity Markets Authority

ELECTRICITY ACT 1989

Standard conditions of the Electricity Distribution Licence

SECTION A: STANDARD CONDITIONS FOR ALL ELECTRICITY DISTRIBUTORS

Chapter 1 Standard conditions 1 to 3: Interpretation and application

Condition 1. Definitions for the standard conditions

Introduction

1.1 This condition sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the standard conditions of both Section A and Section B of this licence, and gives their definitions next to them.

1.2 But where defined words and expressions are used only in a particular standard condition, their definitions are included in that condition.

Definitions in alphabetical order

1.3 In the standard conditions of this licence, unless the context otherwise requires**:**

Instrument Credit Rating	means: (a) a "Long-Term Issue Credit Rating" by Standard & Poor's Ratings Group or any of its subsidiaries; (b) a "Long-Term Obligation Rating" by Moody's Investors Services Inc. or any of its subsidiaries; (c) a rating on the "Structured, Project & Public Finance Obligations Long Term Ratings Scale" by Fitch Ratings Ltd or any of its subsidiaries; (d) a rating which, the Authority directs, is equivalent to those referred to in sub-paragraphs (a), (b), or (c) and issued by: (i) any of the credit rating agencies as referred to in sub-paragraphs (a), (b), or (c); or (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Negative Rating Action	~~means a rating agency placing a rating on Negative Watch or a rating agency downgrading a rating to a lower rating.~~ Means a rating agency placing a rating on Negative Watch for potential downgrade to a rating lower than BBB+/Baa1/BBB (high).
Negative Watch	means the mechanism or mechanisms used by the relevant credit rating agency to identify an issuer that is at risk of a credit rating downgrade in the short or long term, including but not limited to negative designations of S&P CreditWatch, S&P Outlook, Fitch Rating Watch, Fitch Outlook, Moody's Watchlist, or Moody's Rating Outlook, as defined on the relevant rating agencies' websites from time to time.
~~Significant Instrument Credit Rating~~	~~means an Instrument Credit Rating relating to debt issued by the licensee or a funding vehicle of the licensee which represents more than 10% of the licensee's total debt.~~
Ultimate Controller	means any of the following: (a) a Holding Company of the licensee that is not itself a Subsidiary of another company or entity; and (b) subject to notes 1 and 2 below, any person or entity (including a general partner of a limited partnership, whether an individual or corporate body) who (whether alone or with a person or persons connected with him ~~himthem~~) is in a position to control, or exercise significant influence over, the policy of the licensee or the policy of any Holding Company of the licensee by virtue of: (i) rights under contractual arrangements to which he is ~~they arehe is~~ a party or of which he is ~~they arehe is~~ a beneficiary, or (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him ~~him them~~ or of which he is ~~he they are is~~ a beneficiary. **note 1:** for the purposes of sub-paragraph (b), a person is connected with another person if he is ~~he~~

Commented [NP1]: The definition for negative rating action is too broad, it makes no reference to grades. We do not believe the intent of this condition should be to worry about licensees moving down to BBB+ from A- or similar downgrades. We therefore suggest:

Negative Rating Action means a rating agency placing a rating on Negative Watch for potential downgrade to a rating lower than BBB+/Baa1/BBB (high) or downgrading a rating to a rating lower than BBB+/Baa1/BBB (high).'

~~is~~they are a party to any arrangement regarding the exercise of any such rights as are described or referred to in that sub-paragraph.
note 2: sub-paragraph (b) does not include any director or employee of a corporate body in his ~~his~~ their ~~their~~ capacity as such.

Chapter 6 Standard conditions 24 to 28: Integrity and development of the network

Condition 26A. Disposal of Relevant Assets and restrictions on charges over Receivables

General prohibition

This condition applies to the licensee if the licensee is not a Distribution Services Provider.

26A.1 The licensee must not take any action that is or would be a Disposal of, or a Relinquishment of Operational Control over, any Relevant Asset except in accordance with the provisions of this condition.

26A.2 Subject to paragraph 26A.3, the licensee must not, on or after 1 April 2023, grant any mortgage, charge, or other form of security over any Receivable except in accordance with the provisions of this condition.

26A.3 The licensee may permit any mortgage, charge, or other form of security over any Receivable in effect at the date mentioned in paragraph 26A.2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's Receivables.

Arrangements for specific cases

26A.4 Except where paragraph 26A.6, 26A.7 or 26A.9 applies, the licensee:

(a) .

(i) must give the Authority not less than two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions in regard to those matters of the person who proposes to acquire the asset or operational control over it; and

Commented [NP2]: We will not comment upon this or any licence conditions that are relevant to IDNOs but will assume that these conditions will mirror the licence conditions applicable to DNOs.

Commented [NP3]: See note on SLC26 equivalent re paragraph numbering

(ii) may dispose of or relinquish operational control over that Relevant Asset if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (a)(i);

and

(b) .

(i) must give the Authority not less than two months' Notice of its intention to grant any mortgage, charge, or other form of security over any Receivable or class or classes of Receivables together with such further information as the Authority may request relating to that Receivable, class or classes of Receivables or to the circumstances of the intended grant of the mortgage, charge, or other form of security; and

(ii) may grant a mortgage, charge, or other form of security over that Receivable or class or classes of Receivables if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (b)(i).

26A.5 A consent by the Authority under paragraph 26A.4(a)(ii) or 26A.4(b)(ii) may be given subject to the acceptance by the licensee, or by any third party to the transaction in question, of such conditions as may be specified in that consent.

Arrangements for other cases

26A.6 The licensee may dispose of or relinquish operational control over any Relevant Asset where:

(a) the transaction in question or the asset in question is of a class or description to which the provisions of the General Consent set out at Appendix 1 (which is part of this condition) apply; and

(b) (b) the transaction in question satisfies and is in accordance with all such conditions and requirements as may apply to it under those provisions in relation to that asset.

26A.7 The licensee may grant a mortgage, charge, or other form of security over a Receivable or class or classes of Receivables where:

(a) the indebtedness of the licensee that is to be secured represents the novation or rollover of existing indebtedness; and

(b) the proceeds of the indebtedness of the licensee that is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

26A.8 For the purposes of paragraph 26A.7, what is meant in any particular case by:

(a) "existing indebtedness" and

(b) "proceeds of the indebtedness"

is to be treated as a question of fact.

Statutory requirement

26A.9 The licensee may:

(a) dispose of or relinquish operational control over any Relevant Asset; or

(b) grant a mortgage, charge, or other form of security over any Receivable or class or classes of Receivables,

where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation of the Council or Commission of the European Union that forms part of Retained EU Law.

Interpretation

26A.10 In this condition, in relation to a Relevant Asset or, as applicable, a Receivable:

Disposal means (whether under the law of England and Wales or under the law of Scotland) any of the following**:**

(a) a transfer of that asset (whether or not for value) to a person other than the licensee; or

(b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or

(c) the grant of any mortgage, charge, or other form of security over that asset; or

(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land,

and references to "dispose" are to be read accordingly.

Obsolete means that the asset no longer performs its required function either in an efficient manner or at all (whether through wear and tear, obsolescence, damage, failure, unsafe operation, or advances in technology) and includes equipment that the licensee has decided to render obsolete as a result of inspection.

Prior Notice means Notice given to the Authority under paragraph 26A.2(a) of the licensee's intention in relation to the asset.

Receivable means a contractual right to receive any sum or sums or any other financial asset from another person.

Redundant means that the asset is no longer required or necessary to enable the licensee to comply with its obligations under the Act or this licence in relation to its Distribution System (but a Relevant Asset may not be regarded as being Redundant solely because it is in the ownership or control of a third party).

Relinquishment of Operational Control includes entering into any agreement or arrangement under which operational control of the asset is not or ceases to be under the sole management of the licensee, and "relinquish" and any related expressions in this context are to be read accordingly.

Retail Prices Index means, in relation to a valuation of the asset under paragraph A5 of Appendix 1, the general index of retail prices published by the Office for National Statistics (or any other successor body) each month in respect of all items.

Value means the estimated price that could be expected to be received in the market at the time of the Disposal of the asset.

Appendix 1: General Consent

A1. As provided for under paragraph 26A.6, the licensee may dispose of or relinquish operational control over any Relevant Asset without Prior Notice**:**

(a) in accordance with the provisions of Part A below, for the Disposal of a Relevant Asset; and

(b) in accordance with the provisions of Part B below, for the Relinquishment of Operational Control over a Relevant Asset.

PART A: CATEGORIES OF DISPOSAL

Disposal Category 1

A2. The licensee may dispose of a Relevant Asset without giving Prior Notice if:

(a) the asset is Obsolete or Redundant; or

(b) the Disposal will not constitute the Disposal of a legal (rather than an equitable) interest until the asset is Obsolete or Redundant; or

(c) where the asset comprises only land above or below which an electric line (but not electrical plant) of the licensee is situated, the Disposal complies with paragraph A3.

A3. For the purposes of paragraph A2(c), the Disposal must be on terms that will permit the electric line (including any replacement of it) to remain in position for as long as it forms part of the licensee's Distribution System under a wayleave, easement, or other legal estate which in any such case includes sufficient rights of access in favour of the licensee for the purposes of inspection, maintenance, replacement, or repair as may reasonably be necessary to enable that line to remain in operation as part of the licensee's Distribution System.

A4. The consent in paragraph A2 does not apply in any of the following cases.

A5. It does not apply in respect of a Relevant Asset if the Value:

(a) of that asset; or

(b) of that asset and other related Relevant Assets that are being or are intended to be disposed of at the same time; or

(c) of that asset and other Relevant Assets which together formed part of the licensee's Distribution System and are being declared Obsolete or Redundant at the same time or as part of the same operation,

exceeds, in the Regulatory Year beginning on 1 April 2022, £298,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2022.

A6. It does not apply in respect of a Relevant Asset that is Obsolete, unless an appropriate replacement or alternative arrangement has been installed in the licensee's Distribution System, or is being or is

Commented [NP4]: It is unclear as to why the 'Disposal of Relevant Assets and restrictions on charges' condition is so different for both ET & ED and specifically, why a materiality threshold is not applied in the transmission licence.

intended to be installed in such a manner that continuity of the function of that system is achieved.

A7. It does not apply if the Disposal of the Relevant Asset constitutes a sale and leaseback arrangement.

A8. It does not apply if the Relevant Asset is intended to remain in operational use but not under the operational control of the licensee and its Value exceeds, in the Regulatory Year beginning on 1 April 2022, £29,800 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2022.

Disposal Category 2

A9. The licensee may without giving Prior Notice dispose of any Relevant Asset to a wholly owned Subsidiary if before the Disposal it has given the Authority a document duly executed by the Subsidiary and the licensee (in a form capable of being enforced by the Authority) that undertakes to the Authority that:

(a) the Subsidiary, in respect of the Relevant Asset, will comply with the provisions of this condition and standard condition 6 (Provision of Information to the Authority) as if it were the licensee; and

(b) the licensee will not cause or permit the Subsidiary to cease to be its wholly owned Subsidiary without the Authority's consent to the Disposal of the Relevant Asset owned by the Subsidiary.

Disposal Category 3

A10. The licensee may without giving Prior Notice grant to a third party an easement, wayleave, licence, or similar right over any land or property in which the licensee has a legal or beneficial interest and which is a Relevant Asset, except where the grant of such a right would have a material adverse effect on the licensee's ability to use or develop the land for the purposes of its Distribution Business.

Disposal Category 4

A11. The licensee may without giving Prior Notice dispose of any Relevant Asset to another Electricity Distributor so long as:

(a) that Electricity Distributor is subject to the provisions of this condition and standard condition 6 (Provision of Information to the Authority); and

(b) the licensee will remain able to fulfil the duties imposed on it by or under this licence after the Disposal of the asset.

PART B: RELINQUISHMENT OF OPERATIONAL CONTROL

Ending of licensee's sole management of operational control

B1. The licensee may, without giving Prior Notice, enter into an agreement or arrangement whereby operational control of a Relevant Asset (which, for the avoidance of doubt, may comprise the whole of the licensee's Distribution System) ceases to be under the licensee's sole management in any case where the agreement or arrangement ("the transaction") complies in every respect with all of the requirements set out in this Part B.

Primary characteristics of the transaction

B2. The transaction must be consistent with all applicable conditions of this licence.

B3. Any other consent or clearance required under statute or under this licence in respect of the transaction must have been obtained.

B4. The transaction must be one that provides for the supply of a service or the provision of a resource in relation to a Relevant Asset by a counter-party ("the resource provider") on behalf of the licensee.

B5. The resource provider must be and remain an Affiliate of the licensee but must not be a Holding Company of the licensee.

B6. The transaction must be effected by contract made between the licensee and the resource provider.

B7. That contract must be binding and enforceable both in Great Britain and in any other jurisdiction in which the resource provider has its principal place of business and must conform to the requirement of paragraph B8.

Mandatory provisions of the relevant contract

B8. The requirement of this paragraph is that the contract in question must contain provisions to the effect set out as follows.

B9. The contract must ensure that no force majeure or equivalent provision in the contract is permitted to excuse any failure by the licensee, or by the resource provider acting on its behalf, to comply with the licensee's statutory or licence obligations unless (and to the extent that) the event or circumstance in question would have excused the licensee under this licence if it had itself performed the service or provided the resource.

B10. The contract must ensure that the responsibility for the performance of all the obligations to which the contract relates is clearly specified, subject to the overriding requirement that the licensee remains ultimately responsible for all statutory and licence obligations applicable to the licensee's business.

B11. The contract must ensure that the resource provider covenants with the licensee to refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations.

B12. The contract must ensure that the resource provider

(i) discloses to the licensee the basis or bases of all charges for services provided or supplies made under the contract, together with sufficient information and analysis to support the basis for the calculation of the total sum payable by the licensee, and

(ii) may not raise any objection to, or seek to prevent, disclosure of such information to the Authority.

B13. The contract must ensure that the licensee will be free, at any time after the fifth anniversary of the commencement of the contract, without penalty and on reasonable Notice, to resource any service or supply from an alternative source of its own choice if more favourable terms become available.

B14. The contract must ensure, finally, that the resource provider is under an obligation to give the licensee any information within its possession or control that the licensee may from time to time require in order to enable it to:

(a) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority);

(b) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee; or

(c) monitor adherence by the resource provider to the terms and conditions of the contract.

Undertakings from Ultimate Holding Company

B15. The licensee must procure:

(a) from that company or other corporate body that is from time to time the Ultimate Holding Company of the licensee and the resource provider; or

(b) from such other corporate body as the Authority may from time to time designate,

acknowledgements and legally enforceable undertakings in favour of the licensee on the terms set out in the Model Form below (which is part of this condition).

B16. Those acknowledgements and undertakings:

(a) must have been obtained before the end of seven days after the date on which the company or other corporate body in question ("the covenantor") becomes the licensee's Ultimate Holding Company; and

(b) must remain in force for as long as the covenantor remains the Ultimate Holding Company.

B17. For the purposes of paragraphs B15 and B16, "Ultimate Holding Company" means the company or other corporate body that is the Holding Company of both the licensee and the resource provider and is not itself a Subsidiary of another company or corporate body.

Evidence of compliance and duty to enforce

B18. Whenever the licensee obtains the acknowledgements and undertakings in accordance with paragraph B15, it must:

(a) give the Authority evidence of its compliance without delay (including a copy of the acknowledgements and undertakings in question); and

(b) at all times comply with any direction from the Authority to enforce any of those undertakings.

Reporting obligation in respect of breach

B19. The licensee must inform the Authority immediately in Writing if the licensee's directors become aware that any undertaking procured

under the provisions of this Part B has ceased to be legally enforceable or that its terms have been breached.

Restriction of arrangements with resource provider

B20. Except with the Authority's consent, the licensee must not obtain or continue to obtain the service or resource in question from the resource provider at any time when:

(a) the acknowledgements and undertakings specified at paragraph B15 are not in place; or

(b) there is an unremedied breach of any undertaking that is in place; or

(c) the licensee is in breach of the terms of any direction given by the Authority under paragraph B18(b).

B21. The Model Form mentioned in paragraph B15 follows immediately below.

MODEL FORM: ACKNOWLEDGEMENTS AND UNDERTAKINGS

Acknowledgements

MF1. That it is in the best interests of the covenantor that the licensee complies with its statutory and licence obligations.

MF2. That all matters relating to the enforcement of the licensee's rights under the relevant contract are to be reserved to the licensee's directors without regard to other interests.

Undertakings

MF3. To procure that the resource provider will:

(a) refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations;

(b) provide the licensee with any information within its possession or control that the licensee may from time to time require in order to enable the licensee to:

(i) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority), or

(ii) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee, or

(iii) monitor adherence by the resource provider to the terms and conditions of the contract;

(c) not show undue preference to, or unduly discriminate against, the licensee in the provision to it of supplies or services; and

(d) not take any action that would constitute a Disposal of, or Relinquishment of Operational Control over, any Relevant Asset (other than to the licensee upon the ending or termination of any relevant contract in accordance with its terms) except in accordance with the requirements of this condition and of any consent given by the Authority under it.

MF4. To procure that any contract between the licensee and the resource provider will comply with the requirements set out in Part B of this General Consent and will not be amended so as to cease in any way to be compliant with those requirements.

To procure that the resource provider has and maintains resources and operating capacity at a level sufficient to ensure efficient performance of the contract and the efficient discharge of the licensee's relevant obligations.

Condition 26. Disposal of Relevant Assets and restrictions on charges ~~over Receivables~~

General prohibition

This condition applies to the licensee if the licensee is a Distribution Services Provider.

Commented [NP5]: This paragraph needs a number with consequential changes to all subsequent numbers and cross references to them throughout the whole licence

26.1 The licensee must not take any action that is or would be a Disposal of, or a Relinquishment of Operational Control over, any Relevant Asset except in accordance with the provisions of this condition.

26.2 Subject to paragraph 26.3, the licensee must not, on or after ~~1 April 2023~~ 6 November 2026, grant any mortgage, charge, or other form of security over any ~~Receivable or other~~ Financial Asset except in accordance with the provisions of this condition.

Commented [NP6]: As Receivable is defined as a sub-set of Financial Asset, this can be simplified to just "Financial Asset"

26.3 The licensee may permit any mortgage, charge, or other form of security over any ~~Receivable or other~~ Financial Asset in effect at the date mentioned in paragraph 26.2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of

security insofar as it applies to the licensee's ~~Receivables or other~~ Financial Asset.~~.~~

Arrangements for specific cases

26.4 Except where paragraph 26.6, 26.7 or 26.9 applies, the licensee**:**

(a) ~~:~~

(i) must give the Authority not less than two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions in regard to those matters of the person who proposes to acquire the asset or operational control over it; and

(ii) may dispose of or relinquish operational control over that Relevant Asset if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (a)(i);

and

(b) ~~:~~

(i) must give the Authority not less than two months' Notice of its intention to grant any mortgage, charge, or other form of security over any ~~Receivable or~~ class or classes of ~~Receivables, or other~~ Financial Asset, together with such further information as the Authority may request relating to that ~~Receivable,~~ class or classes of ~~Receivables, or other~~ Financial Asset or to the circumstances of the intended grant of the mortgage, charge, or other form of security; and

(ii) may grant a mortgage, charge, or other form of security over that Financial Asset ~~Receivable~~ or class or classes of ~~Receivables, or other~~ Financial Asset, if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (b)(i).

26.5 A consent by the Authority under paragraph 26.4(a)(ii) or 26.4(b)(ii) may be given subject to the acceptance by the licensee, or by any third party to the transaction in question, of such conditions as may be specified in that consent.

Arrangements for other cases

26.6 The licensee may dispose of or relinquish operational control over any Relevant Asset where**:**

(a) the transaction in question or the asset in question is of a class or description to which the provisions of the General Consent set out at Appendix 1 (which is part of this condition) apply; and

(b) (b) the transaction in question satisfies and is in accordance with all such conditions and requirements as may apply to it under those provisions in relation to that asset.

26.7 The licensee may grant a mortgage, charge, or other form of security over a Financial Asset ~~Receivable~~ or class or classes of Financial Assets ~~Receivables~~ where:

(a) the indebtedness of the licensee that is to be secured represents the novation or rollover of existing indebtedness; and

(b) the proceeds of the indebtedness of the licensee that is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

26.8 For the purposes of paragraph 26.7, what is meant in any particular case by:

(a) “existing indebtedness” and

(b) “proceeds of the indebtedness”

is to be treated as a question of fact.

Statutory requirement

26.9 The licensee may:

(a) dispose of or relinquish operational control over any Relevant Asset; or

(b) grant a mortgage, charge, or other form of security over any Financial Asset ~~Receivable~~ or class or classes of Financial Asset ~~Receivables~~,

where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation of the Council or Commission of the European Union that forms part of Retained EU Law.

26.10 In respect of a ~~sale, disposal or transferd~~ Disposal or R~~r~~elinquishment of O~~o~~perational ~~c~~Control of a ~~distribution asset~~Relevant Asset to ~~a company or other entity operating within the same group structure as~~an Affiliate of the licensee, excluding to a subsidiary of the licensee, ~~the licensee is required to meet the requirement of paragraph 43A.10(c) A43A (Requirement for sufficiently independent directors)~~any Notification required under paragraph 26.4 of this condition must be signed by a sufficiently independent director and at least one other director ~~of the licensee and by a sufficiently independent director~~ of the licensee.

Commented [NP7]: Aligned with scope of SLC26

Commented [NP8]: This wording introduces a much broader scope of required Notification than the remainder of SLC26 and is inconsistent with the wording in 43A.10(c). We do not believe that it is Ofgem's intent to vary the scope of notification requirements when the transaction is with an Affiliate.

Interpretation

~~26.10~~26.11 In this condition, in relation to a Relevant Asset or, as applicable, a Financial Asset ~~Receivable~~**:**

Disposal means (whether under the law of England and Wales or under the law of Scotland) any of the following**:**

(a) a transfer of that asset (whether or not for value) to a person other than the licensee; or

(b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or

(c) the grant of any mortgage, charge, or other form of security over that asset; or

(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land,

and references to "dispose" are to be read accordingly.

Financial Asset means ~~is~~ any asset that is:

(a) cash;

(b) an equity instrument of another entity;

(c) a contractual right:

(i) to receive cash or another financial asset from another entity; or

(ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or

(d) a contract that will or may be settled in the entity's own equity instruments.

Obsolete means that the asset no longer performs its required function either in an efficient manner or at all (whether through wear and tear, obsolescence, damage, failure, unsafe operation, or advances in technology) and includes equipment that the licensee has decided to render obsolete as a result of inspection.

Prior Notice means Notice given to the Authority under paragraph 26.2(a) of the licensee's intention in relation to the asset.

~~**Receivable** means a contractual right to receive any sum or sums or any other financial asset from another person.~~

Redundant means that the asset is no longer required or necessary to enable the licensee to comply with its obligations under the Act or this licence in relation to its Distribution System (but a Relevant Asset may not be regarded as being Redundant solely because it is in the ownership or control of a third party).

Relinquishment of Operational Control includes entering into any agreement or arrangement under which operational control of the asset is not or ceases to be under the sole management of the licensee, and "relinquish" and any related expressions in this context are to be read accordingly.

Retail Prices Index means, in relation to a valuation of the asset under paragraph A5 of Appendix 1, the general index of retail prices published by the Office for National Statistics (or any other successor body) each month in respect of all items.

Value means the estimated price that could be expected to be received in the market at the time of the Disposal of the asset.

Appendix 1: General Consent

A1. As provided for under paragraph 26.6, the licensee may dispose of or relinquish operational control over any Relevant Asset without Prior Notice**:**

(a) in accordance with the provisions of Part A below, for the Disposal of a Relevant Asset; and

(b) in accordance with the provisions of Part B below, for the Relinquishment of Operational Control over a Relevant Asset.

PART A: CATEGORIES OF DISPOSAL

Disposal Category 1

A2. The licensee may dispose of a Relevant Asset without giving Prior Notice if**:**

(a) the asset is Obsolete or Redundant; or

(b) the Disposal will not constitute the Disposal of a legal (rather than an equitable) interest until the asset is Obsolete or Redundant; or

(c) where the asset comprises only land above or below which an electric line (but not electrical plant) of the licensee is situated, the Disposal complies with paragraph A3.

A3. For the purposes of paragraph A2(c), the Disposal must be on terms that will permit the electric line (including any replacement of it) to remain in position for as long as it forms part of the licensee's Distribution System under a wayleave, easement, or other legal estate which in any such case includes sufficient rights of access in favour of the licensee for the purposes of inspection, maintenance, replacement, or repair as may reasonably be necessary to enable that line to remain in operation as part of the licensee's Distribution System.

A4. The consent in paragraph A2 does not apply in any of the following cases.

A5. It does not apply in respect of a Relevant Asset if the Value**:**

(a) of that asset; or

(b) of that asset and other related Relevant Assets that are being or are intended to be disposed of at the same time; or

(c) of that asset and other Relevant Assets which together formed part of the licensee's Distribution System and are being declared Obsolete or Redundant at the same time or as part of the same operation,

exceeds, in the Regulatory Year beginning on 1 April 2022, £298,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2022.

A6. It does not apply in respect of a Relevant Asset that is Obsolete, unless an appropriate replacement or alternative arrangement has been installed in the licensee's Distribution System, or is being or is intended to be installed in such a manner that continuity of the function of that system is achieved.

A7. It does not apply if the Disposal of the Relevant Asset constitutes a sale and leaseback arrangement.

A8. It does not apply if the Relevant Asset is intended to remain in operational use but not under the operational control of the licensee and its Value exceeds, in the Regulatory Year beginning on 1 April 2022, £29,800 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2022.

Disposal Category 2

A9. The licensee may without giving Prior Notice dispose of any Relevant Asset to a wholly owned Subsidiary if before the Disposal it has given the Authority a document duly executed by the Subsidiary and the licensee (in a form capable of being enforced by the Authority) that undertakes to the Authority that**:**

(a) the Subsidiary, in respect of the Relevant Asset, will comply with the provisions of this condition and standard condition 6 (Provision of Information to the Authority) as if it were the licensee; and

(b) the licensee will not cause or permit the Subsidiary to cease to be its wholly owned Subsidiary without the Authority's consent to the Disposal of the Relevant Asset owned by the Subsidiary.

Disposal Category 3

A10. The licensee may without giving Prior Notice grant to a third party an easement, wayleave, licence, or similar right over any land or property in which the licensee has a legal or beneficial interest and which is a Relevant Asset, except where the grant of such a right would have a material adverse effect on the licensee's ability to use or develop the land for the purposes of its Distribution Business.

Disposal Category 4

A11. The licensee may without giving Prior Notice dispose of any Relevant Asset to another Electricity Distributor so long as**:**

(a) that Electricity Distributor is subject to the provisions of this condition and standard condition 6 (Provision of Information to the Authority); and

(b) the licensee will remain able to fulfil the duties imposed on it by or under this licence after the Disposal of the asset.

PART B: RELINQUISHMENT OF OPERATIONAL CONTROL

Ending of licensee's sole management of operational control

B1. The licensee may, without giving Prior Notice, enter into an agreement or arrangement whereby operational control of a Relevant Asset (which, for the avoidance of doubt, may comprise the whole of the licensee's Distribution System) ceases to be under the licensee's sole management in any case where the agreement or arrangement ("the transaction") complies in every respect with all of the requirements set out in this Part B.

Primary characteristics of the transaction

B2. The transaction must be consistent with all applicable conditions of this licence.

B3. Any other consent or clearance required under statute or under this licence in respect of the transaction must have been obtained.

B4. The transaction must be one that provides for the supply of a service or the provision of a resource in relation to a Relevant Asset by a counter-party ("the resource provider") on behalf of the licensee.

B5. The resource provider must be and remain an Affiliate of the licensee but must not be a Holding Company of the licensee.

B6. The transaction must be effected by contract made between the licensee and the resource provider.

B7. That contract must be binding and enforceable both in Great Britain and in any other jurisdiction in which the resource provider has its principal place of business and must conform to the requirement of paragraph B8.

Mandatory provisions of the relevant contract

B8. The requirement of this paragraph is that the contract in question must contain provisions to the effect set out as follows.

B9. The contract must ensure that no force majeure or equivalent provision in the contract is permitted to excuse any failure by the licensee, or by the resource provider acting on its behalf, to comply with the licensee's statutory or licence obligations unless (and to the extent that) the event or circumstance in question would have excused the licensee under this licence if it had itself performed the service or provided the resource.

B10. The contract must ensure that the responsibility for the performance of all the obligations to which the contract relates is clearly specified, subject to the overriding requirement that the licensee remains ultimately responsible for all statutory and licence obligations applicable to the licensee's business.

B11. The contract must ensure that the resource provider covenants with the licensee to refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations.

B12. The contract must ensure that the resource provider

(i) discloses to the licensee the basis or bases of all charges for services provided or supplies made under the contract, together with sufficient information and analysis to support the basis for the calculation of the total sum payable by the licensee, and

(ii) may not raise any objection to, or seek to prevent, disclosure of such information to the Authority.

B13. The contract must ensure that the licensee will be free, at any time after the fifth anniversary of the commencement of the contract, without penalty and on reasonable Notice, to resource any service or supply from an alternative source of its own choice if more favourable terms become available.

B14. The contract must ensure, finally, that the resource provider is under an obligation to give the licensee any information within its possession or control that the licensee may from time to time require in order to enable it to**:**

(a) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority);

(b) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee; or

(c) monitor adherence by the resource provider to the terms and conditions of the contract.

Undertakings from Ultimate Holding Company

B15. The licensee must procure**:**

(a) from that company or other corporate body that is from time to time the Ultimate Holding Company of the licensee and the resource provider; or

(b) from such other corporate body as the Authority may from time to time designate,

acknowledgements and legally enforceable undertakings in favour of the licensee on the terms set out in the Model Form below (which is part of this condition).

B16. Those acknowledgements and undertakings**:**

(a) must have been obtained before the end of seven days after the date on which the company or other corporate body in question ("the covenantor") becomes the licensee's Ultimate Holding Company; and

(b) must remain in force for as long as the covenantor remains the Ultimate Holding Company.

B17. For the purposes of paragraphs B15 and B16, "Ultimate Holding Company" means the company or other corporate body that is the Holding Company of both the licensee and the resource provider and is not itself a Subsidiary of another company or corporate body.

Evidence of compliance and duty to enforce

B18. Whenever the licensee obtains the acknowledgements and undertakings in accordance with paragraph B15, it must**:**

(a) give the Authority evidence of its compliance without delay (including a copy of the acknowledgements and undertakings in question); and

(b) at all times comply with any direction from the Authority to enforce any of those undertakings.

Reporting obligation in respect of breach

B19. The licensee must inform the Authority immediately in Writing if the licensee's directors become aware that any undertaking procured under the provisions of this Part B has ceased to be legally enforceable or that its terms have been breached.

Restriction of arrangements with resource provider

B20. Except with the Authority's consent, the licensee must not obtain or continue to obtain the service or resource in question from the resource provider at any time when**:**

(a) the acknowledgements and undertakings specified at paragraph B15 are not in place; or

(b) there is an unremedied breach of any undertaking that is in place; or

(c) the licensee is in breach of the terms of any direction given by the Authority under paragraph B18(b).

B21. The Model Form mentioned in paragraph B15 follows immediately below.

MODEL FORM: ACKNOWLEDGEMENTS AND UNDERTAKINGS

Acknowledgements

MF1. That it is in the best interests of the covenantor that the licensee complies with its statutory and licence obligations.

MF2. That all matters relating to the enforcement of the licensee's rights under the relevant contract are to be reserved to the licensee's directors without regard to other interests.

Undertakings

MF3. To procure that the resource provider will**:**

(a) refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations;

(b) provide the licensee with any information within its possession or control that the licensee may from time to time require in order to enable the licensee to**:**

(i) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority), or

(ii) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee, or

(iii) monitor adherence by the resource provider to the terms and conditions of the contract;

(c) not show undue preference to, or unduly discriminate against, the licensee in the provision to it of supplies or services; and

(d) not take any action that would constitute a Disposal of, or Relinquishment of Operational Control over, any Relevant Asset (other than to the licensee upon the ending or termination of any relevant contract in accordance with its terms) except in accordance with the requirements of this condition and of any consent given by the Authority under it.

MF4. To procure that any contract between the licensee and the resource provider will comply with the requirements set out in Part B of this General Consent and will not be amended so as to cease in any way to be compliant with those requirements.

MF5. To procure that the resource provider has and maintains resources and operating capacity at a level sufficient to ensure efficient performance of the contract and the efficient discharge of the licensee's relevant obligations.

Chapter 7 Standard conditions 29 to 31: Financial and ring-fencing arrangements

Condition 30A. Availability of resources
General obligation

This condition applies to the licensee if the licensee is not a Distribution Services Provider.

30A.1 The licensee must at all times act in a manner designed to ensure that it has available to itself such resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as will enable it to:

(a) properly and efficiently carry on its Distribution Business; and

(b) comply in all respects with its obligations under this licence and such obligations under the Act as apply to the Distribution Business, including its duty to develop and maintain an efficient, co-ordinated, and economical system of electricity distribution.

Certificates for the Authority in relation to financial resources

30A.2 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2F**

"After making enquiries, and subject to what is explained below, having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.

However, the directors of the licensee would like to draw attention to the following factors, which may cast doubt on the licensee's ability to carry on the Distribution Business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3F**

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

Statement of factors and report by auditors in relation to financial resources certificate

30A.3 The licensee must ensure that the certificate given to the Authority under paragraph 30A.2 is accompanied by:

(a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:

(i) the main financial resources and financial facilities available to the licensee;

(ii) the most recent cash flow statement prepared for the licensee; and

(b) a report prepared by its auditors and addressed to the Authority that states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under standard condition 44 (Regulatory Accounts) on the licensee's Regulatory Accounts.

Certificates for the Authority in relation to operational resources

30A.4 With effect from 1 August 2013, the licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1R**

"After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2R**

"After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.

However, the directors of the licensee would like to draw attention to the following factors, which may cast doubt on the licensee's ability to carry on the Distribution Business [followed by a description of the factors concerned].

or

(c) **Certificate 3R**

"In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

Statement of factors in relation to operational resources certificate

30A.5 The licensee must ensure that the certificate given to the Authority under paragraph 30A.4 is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

30A.6 With effect from 1 August 2013, the licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

"After making enquiries the licensee's directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31

(Undertaking from Ultimate Controller), amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)."

or

(b) **Certificate 2C**

"In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)."

Obligation to report any adverse circumstance

30A.7 The licensee must inform the Authority in Writing immediately if:

(a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 30A.2(a), 30A.2(b), 30A.4(a) or 30A.4(b); or

(b) the directors of the licensee consider that any adverse circumstance that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 30A.2(c) or Certificate 3R under paragraph 30A.4(c) has materially worsened.

Certificates for the Authority in relation to dividends

30A.8 Subject to paragraph 30A.11, the directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out in paragraphs 30A.9 and 30A.10 below.

30A.9 The first requirement is that the certificate must be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

(a) that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness); and

(b) that the making of a distribution, redemption, or repurchase of [value] on [date] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future."

30A.10 The second and third requirements are that the certificate:

(a) must have been approved by a resolution of the licensee's board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and

(b) must be signed by a director of the licensee.

30A.11 The licensee need not give the Authority a certificate of the type referred to in paragraph 30A.8 in circumstances where:

(a) during the three months preceding the declaration or recommendation of a dividend, the making of any other form of distribution or the redemption or repurchase of share capital, it has given the Authority a certificate in the form of Certificate 1C under the requirement set out in paragraph 30A.6 of this condition; and

(b) that certificate includes an appropriate addendum using the wording given at paragraph 30A.9(b) of this condition.

30A.12 Where the certificate given under paragraph 30A.8, or relied upon under paragraph 30A.11, relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

30A.13 The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever

is the later, and thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 30A.16 below.

30A.14 The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of intervention plan in paragraph 30A.16 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Variation of provision for certain licensees

30A.15 If the licensee is not a Distribution Services Provider, paragraph 30A.3(b) has effect as if, for the reference to "audit work under standard condition 44 (Regulatory Accounts) on the licensee's Regulatory Accounts" there were substituted a reference to "audit work on the licensee's most recent annual accounts as referred to in standard condition 31A (Accounts)".

Interpretation

30A.16 In this condition:

Associate means:

(a) an Affiliate or Related undertaking of the licensee;

(b) an Ultimate Controller of the licensee;

(c) a Participating Owner of the licensee; or

(d) a Common Control Company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

(e) the financial assets, resources, and facilities of the licensee;

(f) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;

(g) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;

(h) the tax affairs of the licensee;

(i) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;

(j) any mortgages, charges, or other forms of security over the licensee's assets;

(k) the systems and processes by which the licensee carries on the Distribution Business with information on any significant contractual arrangements, including those that impose obligations on the licensee;

(l) any arrangements under which the licensee has relinquished operation control over Relevant Assets to an Associate of the licensee;

(m) any contractual rights to receive cash or other financial assets from any Associate of the licensee;

(n) any contractual obligations to deliver cash or other financial assets to any Associate of the licensee; and

(o) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

Participating Owner – For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

(p) that other person holds a Participating Interest in the person; or

(q) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Condition 30. Availability of resources
General obligation

This condition applies to the licensee if the licensee is a Distribution Services Provider.

Commented [NP9]: This needs consequential numbering and cross reference updating.

30.1 The licensee must at all times act in a manner designed to ensure that it has available to itself such resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as will enable it to:

(a) properly and efficiently carry on its Distribution Business; and

(b) comply in all respects with its obligations under this licence and such obligations under the Act as apply to the Distribution Business, including its duty to develop and maintain an efficient, co-ordinated, and economical system of electricity distribution.

Certificates for the Authority in relation to financial resources

30.2 The licensee must by 31 July each year, give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a sufficiently independent director and at least one other director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries including reviewing the results of stress tests that the licensee ~~has~~ considers~~ed~~ to be appropriate, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2F**

"After making enquiries, including reviewing the results of stress tests that the licensee considers to be appropriate and subject to what is explained below, having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to

carry on the Distribution Business for a period of 12 months from the date of this certificate.

However, the directors of the licensee would like to draw attention to the following factors, which may cast doubt on the licensee's ability to carry on the Distribution Business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3F**

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

30.3 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a sufficiently independent director and at least one other director of the licensee pursuant to that resolution and which is in one of the following forms:

(a) Certificate 1F – Extended

"After making enquiries, including reviewing the results of stress tests that the licensee considersed to be appropriate, and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Ddistribution Bbusiness for the longer of: (i) a period of 36 months from the date of this certificate or (ii) the remainder of the Price Control Period."

or

(b) Certificate 2F – Extended

"After making enquiries, including reviewing the results of stress tests that the licensee considersed to be appropriate, and subject to what is explained below, having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the licensee's directors

have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Ddistribution Bbusiness for the longer of (i) a period of 36 months from the date of this certificate or (ii) the remainder of the Price Control Period.

However, the directors of the licensee would like to draw attention to the following factors, which may cast doubt on the licensee's ability to carry on the Distribution Bbusiness [followed by a description of the factors concerned]."

or

(c) Certificate 3F- Extended

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the distribution business for the longer of (i) a period of 36 months from the date of this certificate or (ii) the remainder of the Price Control Period."

Statement of factors and report by auditors in relation to financial resources certificate

30.330.4 The licensee must ensure that the certificate given to the Authority under paragraph 30.2 is accompanied by:

(a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:

(i) the main financial resources and financial facilities available to the licensee;

(ii) the most recent cash flow statement prepared for the licensee; and

(b) a report prepared by its auditors and addressed to the Authority that states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under standard condition 44 (Regulatory Accounts) on the licensee's most recent audited historical cost accounting statements Regulatory Accounts.

30.5 The licensee must ensure that the certificate given to the Authority under paragraph 30.3 is accompanied by a statement of the main factors that the licensee's directors have considered ~~taken into account~~ in giving that certificate including reference to:

(a) results of any stress tests that the licensee deemed to be appropriate;

(b) financial projections of key financial metrics;

(c) as~~s~~sumptions made in relation to the availability of financial markets for any financing or refinancing requirements, including assumptions around equity injections;

(d) credit facilities, including drawn and undrawn, and compliance with covenants associated with debt facilities; and

(e) cash flow forecasts;

Certificates for the Authority in relation to operational resources

30.4~~30~~.6 ~~With effect from 1 August 2013,~~ T~~t~~he licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a sufficiently independent director and at least one other director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1R**

"After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2R**

"After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities

available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.

However, the directors of the licensee would like to draw attention to the following factors, which may cast doubt on the licensee's ability to carry on the Distribution Business [followed by a description of the factors concerned].

or

(c) **Certificate 3R**

"In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate."

Statement of factors in relation to operational resources certificate

30.530.7 The licensee must ensure that the certificate given to the Authority under paragraph 30.46 is accompanied by a statement of the main factors that the licensee's directors have considered ~~taken into account~~ in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

30.630.8 ~~With effect from 1 August 2013, the~~The licensee must by 31 July each year, give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a sufficiently independent director and at least one other director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

"After making enquiries the licensee's directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition 4.9 (Prohibition of cross-subsidyies), standard condition 6 (Provision of Information to the Authority), standard condition 26 (Disposal of Rrelevant Aassets and restriction on charges), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard

condition 40 (Credit rating of the licensee), ~~and~~ standard condition 41 (Restriction of Indebtedness and transfers of funds), standard condition 42 (Independence of the Distribution Business and restricted use of Confidential Information ~~network~~) and standard condition 43A (Requirement for sufficiently independent directors)~~]~~ ~~[amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]~~."

or

(b) **Certificate 2C**

"In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by standard condition 4.9 (Prohibition of cross-subsidy~~ies~~), standard condition 6 (Provision of Information to the Authority), standard condition 26 (Disposal of R~~r~~elevant A~~a~~ssets and restriction on charges), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), ~~[~~standard condition 40 (Credit rating of the licensee), ~~and~~ standard condition 41 (Restriction of Indebtedness and transfers of funds, standard condition 42 (Independence of the Distribution Business and Restricted use of Confidential Information~~network~~) and standard condition 43A (Requirement for sufficiently independent directors)~~]~~ ~~[amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]~~."

Obligation to report any adverse circumstance

~~30.7~~30.9 The licensee must inform the Authority in Writing immediately if:

(a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 30.2(a), 30.2(b), 30.4~~5~~6(a), ~~or~~ 30.4~~5~~6(b), 30.8(a), 30.10, or relied upon under 30.13; or

(b) the directors of the licensee consider that any adverse circumstance that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 30.2(c) or Certificate 3R under paragraph 30.4~~5~~6(c) has materially worsened.

Certificates for the Authority in relation to dividends or other distributions

~~30.8~~30.10 Subject to paragraph 30.13~~11~~, the directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out in paragraphs 30.11~~9~~ and 30.~~10~~12 below.

~~30.9~~30.11 The first requirement is that the certificate must be in the following form:

"After making enquiries, the directors of the licensee are satisfied**:**

(a) that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all the obligations imposed on it by ~~standard condition 4 (Prohibition of cross-subsidies),~~ standard condition 6 (Provision of Information to the Authority), ~~standard condition 26 (Disposal of relevant assets and restriction on charges),~~ standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), ~~[~~standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds) ~~, standard condition 42 (Independence of the network) and standard condition 43A (Requirement for sufficiently independent directors)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]~~; and

(b) that the making of a distribution, redemption, or repurchase of [value] on [date] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future."

~~30.10~~30.12 The second and third requirements are that the certificate:

(a) must have been approved by a resolution of the licensee's board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and

Commented [NP10]: The inclusion of these extra conditions into the dividend certificate introduces a disproportionate penalty (prevention of dividends) that is potentially imposed before non-compliance is even established.

Ofgem has failed to explain its recent reversal of its proposed policy to add these conditions.

(b) must be signed by a sufficiently independent director and at least one other director of the licensee.

30.1130.13 The licensee need not give the Authority a certificate of the type referred to in paragraph 30.810 in circumstances where:

(a) during the three months preceding the declaration or recommendation of a dividend, the making of any other form of distribution or the redemption or repurchase of share capital, it has given the Authority a certificate in the form of Certificate 1C under the requirement set out in paragraph 30.68 of this condition; and

(b) that certificate includes an appropriate addendum using the wording given at paragraph 30.911(b) of this condition.

30.14 Where the certificate given under paragraph 30.108, or relied upon under paragraph 30.1113, relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

~~Except with the Authority's consent, the licensee shall not make alterations to a capital or reserve category, which are usually non-distributable by nature, to facilitate a dividend payment or other distribution. The licensee mustshould provide reasoning and justification for any proposed alteration of the type described in this paragraph to the Authority.~~

Commented [NP11]: This policy represents a very significant change to Ofgem's policy. It is unjustified and irrational.

Requirement to maintain an Intervention Plan

30.1230.15 The licensee must ~~prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and thereafter,~~ maintain an Intervention Plan. The Intervention Plan must be submitted to the Authority within 3 months of the start of each price control period. The Authority may request a copy of the Intervention Plan on an ad-hoc basis, which the licensee is required to submit ~~would require to be submitted~~ within 10 working days of such a request. The Intervention Plan must fulfil ~~fulfilling~~ the criteria described in the definition of Intervention Plan in Paragraph 30.1869 below.

Commented [NP12]: To align with ET licence this text shas been deleted.

30.1330.16 The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of ~~i~~Intervention P~~p~~lan in paragraph 30.1769 below to be included in the Intervention Plan will

be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

~~**Variation of provision for certain licensees**~~

~~30.14 If the licensee is not a Distribution Services Provider, paragraph 30.3(b) has effect as if, for the reference to "audit work under standard condition 44 (Regulatory Accounts) on the licensee's Regulatory Accounts" there were substituted a reference to "audit work on the licensee's most recent annual accounts as referred to in standard condition 31A (Accounts)".~~

Commented [NP13]: This is not required as non DSPs now have 30A.

Interpretation

~~30.15~~30.17 In this condition:

Associate means:

(a) an Affiliate or Related undertaking of the licensee;

(b) an Ultimate Controller of the licensee;

(c) a Participating Owner of the licensee; or

(d) a Common Control Company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

(a) the financial assets, resources, and facilities of the licensee;

(b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;

(c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;

(d) the tax affairs of the licensee;

(e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;

(f) any mortgages, charges, or other forms of security over the licensee's assets;

(g) the systems and processes by which the licensee carries on the Distribution Business with information on any significant contractual arrangements, including those that impose obligations on the licensee;

(h) any arrangements under which the licensee has relinquished operation control over Relevant Assets to an Associate of the licensee;

(i) any contractual rights to receive cash or other financial assets from any Associate of the licensee;

(j) any contractual obligations to deliver cash or other financial assets to any Associate of the licensee; and

(k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

Participating Owner – For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

(a) that other person holds a Participating Interest in the person; or

(b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

SECTION B: ADDITIONAL STANDARD CONDITIONS FOR ELECTRICITY DISTRIBUTORS WHO ARE DISTRIBUTION SERVICES PROVIDERS

Chapter 10 Standard conditions 40 and 41: Credit Rating and Restriction of Indebtedness

Condition 40. Credit rating of the licensee

Introduction

40.1 The purpose of this condition is to place obligations on the licensee in respect of credit ratings, Published Rating Reports, Negative Rating Actions and Financial Resilience Report.

Commented [NP14]: Financial Resilience Report hasn't actually been defined. We have therefore re-worded the relevant provision and moved it to the definitions section of this licence condition.

Part A: ~~Licensee's o~~Obligation to maintain an Investment Grade Issuer Credit Rating

40.2 The licensee must ~~take all appropriate steps within its power to ensure that at all times it~~ maintain~~s~~ ~~an~~more than one Investment Grade Issuer Credit Rating at all times (which is to be interpreted in accordance with the provisions of paragraphs 40.8.~~27~~ to 40.9~~410~~) and 40.13.

Part B: Obligation to provide Published Rating Reports

40.3 Where a Negative Rating Action occurs in respect of the licensee or any of the licensee's credit ratings is withdrawn it must within a period of ten W~~w~~orking D~~d~~ays beginning with the date of the relevant Published Rating Report:

(a) notify the Authority in writing; and

(b) if permitted by the relevant rating agency, provide the Authority with a copy of the Published Rating Report, or where the Published Rating Report relates to the wider group provide such parts as are relevant to the licensee.

40.4 The notification under paragraph 40.3(a) must be signed by a director of the licensee and by a sufficiently independent director of the licensee.

Commented [NP15]: This has been added so that the requirement for SID signature is clear.

We have proposed drafting on the assumption that all Published Rating Report submissions require director signature. However, if Ofgem proposes that it is only notifications that signal potential downgrade to BBB- that need to be submitted (as suggested in 43A.10(b)) this wording will need to be amended

Part C: Obligation to provide Financial Resilience Report

40.5 The licensee must provide the Authority with a Financial Resilience Report within 60 days of the date of a Negative Rating Action relating to the licensee, if:

(a) any of the licensee's ratings held for an Issuer Credit Rating or highest rating held for a Significant Instrument Credit Rating is one notch higher than the lowest Investment Grade and that Issuer Credit Rating or Significant Instrument Credit Rating is on Negative Watch;

(b) any of the licensee's Issuer Credit Rating or Significant Instrument Credit Rating is at the lowest Investment Grade or lower; or

(c) the licensee has a debt covenant linked to a specific Issuer Credit Rating or Significant Instrument Credit Rating that would, if breached by the licensee, trigger an event of default under the relevant debt documents and that rating is either;

(i) one notch above the minimum covenant requirement and is on Negative Watch; or

(ii) lower than one notch above the minimum rating specified within the covenant requirement

~~The Financial Resilience Report must include:~~

~~an assessment of the licensee's current and forecast financial standing, including an assessment of resilience to downside scenarios relating to:~~

~~operational performance; and / or~~

~~macro-economic events,~~

~~in each case as applicable;~~

~~financial projections for the next three Regulatory Years (including the remainder of the current year) or the remainder of the Price Control Period, whichever is longer; and~~

~~details of Potential Mitigating Actions the licensee could take to improve its financial resilience and an indication of whether such actions are planned.~~

40.6 The financial projections required by paragraph 40.12(b) ~~5(b)~~ of this condition for inclusion in the Financial Resilience Report must include:

(a) a balance sheet;

(b) income statements;

(c) cashflow statements;

(d) key financial metrics; and

(e) results of any stress tests that the licensee considers to be appropriate

40.7 The Financial Resilience Report required under paragraph 40.5 must be:

~~approved by a resolution of the licensee's board of directors; and~~

signed by a director of the licensee and by a sufficiently independent director of the licensee.

Commented [NP16]: The requirement for a resolution of the board in respect of Financial Resilience Report exceeds Ofgem's stated policy.

~~Where a licensee is required to provide the Authority with a Financial Resilience Report pursuant to Part C of this condition, the licensee is also required to comply with paragraph 43A.9(b) of SC43A (Requirement for sufficiently independent directors).~~

~~Where a licensee is required to notify the Authority in accordance with paragraph 40.3(a) of this condition, the licensee is also required to comply with paragraphs 43A.10(a) and/or 43A.10(b) of SC43A (Requirement for sufficiently independent directors).~~

Meaning of Issuer Credit Rating

~~40.1~~40.8 For the purposes of paragraph 40.5~~0.1,~~ an Issuer Credit Rating is any of the following:

(a) an issuer credit rating by Standard & Poor's Ratings Group or any of its subsidiaries;

(b) an issuer credit rating by Moody's Investors Services Inc or any of its subsidiaries;

(c) an issuer credit rating by Fitch Ratings Ltd or any of its subsidiaries;

(d) an issuer credit rating by DBRS Ratings Limited or any of its affiliates; or

(e) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b), (c) or (d) and is issued by:

(i) any of the credit rating agencies referred to in those sub-paragraphs, or

(ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Meaning of Investment Grade

~~40.2~~40.9 Subject to paragraph 40.13~~11~~, an Investment Grade, in relation to any Issuer Credit Rating within the meaning of paragraph 40.2~~2~~8, is any of the following:

(a) an issuer credit rating of not less than BBB– by Standard & Poor's Ratings Group or any of its subsidiaries; or

(b) an issuer credit rating of not less than Baa3 by Moody's Investors Service Inc or any of its subsidiaries; or

(c) an issuer credit rating of not less than BBB– by Fitch Ratings Ltd or any of its subsidiaries;

(d) an issuer credit rating of not less than BBB (low) by DBRS Rating Limited or any of its affiliates; or

(e) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b), (c) or (d) and is issued by**:**

(i) any of the credit rating agencies referred to in those sub-paragraphs, or

(ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Meaning of Significant Instrument Credit Rating

40.10 Significant Instrument Credit Rating means an Instrument Credit Rating relating to debt issued by the licensee or a funding vehicle of the licensee which represents more than 10% of the licensee's total debt.

Meaning of Published Rating Report

40.11 Published Rating Report means a rating action announcement, credit opinion report, rating report, ~~research update or transaction update~~ which:

(a) specifically relates to the licensee; and

(b) is published by any rating agency that is paid by the licensee (or a company in the licensee's group) to provide either an Issuer Credit Rating or a Significant Instrument Credit Rating.

Commented [NP17]: This wording is too broad - much broader than the definition of Negative Rating Action.

Meaning of Financial Resilience Report

40.12 Financial Resilience Report means a report which must include:

(a) an assessment of the licensee's current and forecast financial standing, including an assessment of resilience to downside scenarios relating to:

(i) operational performance; and

(ii) macro-economic events,

in each case as applicable;

(b) financial projections for the next three Regulatory Years (including the remainder of the current year) or the remainder of the Price Control Period, whichever is longer; and

~~(a)~~(c) details of potential mitigating actions the licensee could take to improve its financial resilience and an indication of whether such actions are planned.

Variation of rating by agency

40.13 If a rating higher than a particular rating set out in paragraph 40.10~~3~~ is at any time specified by the credit rating agency in question as its lowest investment grade issuer credit rating, that higher rating is to be taken as the relevant Investment Grade for the purposes of that paragraph.

Condition 41. Restriction of Indebtedness and transfers of funds

General prohibition

41.1 In addition to complying with the requirements of standard condition 26 (Disposal of Relevant Assets and restrictions on charges ~~over Receivables~~)~~and standard condition 30 (AvailbilityAvailability of resources),~~ the licensee ~~must~~shall ~~not~~, without the prior consent of the Authority ~~written consent~~ of the Authority in writing following the licensee's disclosure of all material facts, enter into any transaction or commitment of a type described or referred to in this condition that does not comply with the restrictions applicable to it under this condition.

Part A: Restricted Category 1

41.2 The licensee must not create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance, ~~or~~ undertake any Indebtedness to any other person, or

enter into any guarantee or any obligation, except in accordance with all of the following requirements:

(a) the transaction in question must be on an arm's length basis;

(b) it must be on normal commercial terms;

(c) it must be for a Permitted Purpose; and

(d) if it is within the ambit of standard condition 26 (Disposal of Relevant Assets and restrictions on charges ~~over Receivables~~), it must comply with the requirements of that condition.

Part B: Restricted Category 2

41.3 The licensee must not transfer, lease, license, or lend any sum or sums, asset, right, or benefit to any Associate of the licensee except by way of any of the following transactions:

(a) a dividend or other distribution out of distributable reserves; or

(b) a repayment of capital; or

(c) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or

(d) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis, on normal commercial terms, and is made in compliance with the payment condition described in paragraph 41.4 or

(e) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 41.2; or

(f) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received; or

(g) an acquisition of shares or other investments that is in conformity with paragraphs 29.2 and 29.3 of standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business) and is made on an arm's length basis and on normal commercial terms.

41.4 The payment condition referred to in paragraph 41.3(d) is that the consideration ~~-~~due in respect of the transaction in question must be paid in full when the transaction is entered into unless either:

(a) the counter-party to the transaction has and maintains until payment is made in full an Investment Grade Issuer Credit Rating; or

(b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor that has and maintains an Investment Grade Issuer Credit Rating.

41.5 The provisions of this Part B are subject to the provisions of Part C below.

Part C: Circumstances that trigger the provisions of Part D

41.6 The following paragraphs of this Part C set out each of the circumstances in which the licensee must not, except with the Authority's consent, enter into or complete any transaction of a type described or referred to in Part B except in accordance with the provisions of Part D below.

41.7 The circumstance described by this paragraph is that the licensee does not hold more than one ~~an~~ Investment Grade Issuer Credit Rating.

~~41.8 The circumstance described by this paragraph is that the licensee holds more than one Issuer Credit Rating and one or more of the ratings so held is not Investment Grade.~~

~~41.9~~41.8 The circumstance described by this paragraph is that the licensee holds an issuer credit rating that it is relying on to satisfy the requirement in standard condition 40.2 and that issuer credit rating is BBB– by Standard & Poor's Ratings Group or Fitch Ratings Ltd, or is Baa3 by Moody's Investors Service Inc, or BBB (low) by DBRS Ratings Ltd or any of its affiliates, or is such higher issuer credit rating as may be specified by any of those credit rating agencies from time to time as the lowest investment grade issuer credit rating, or is an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of standard condition 40 (Credit rating of the licensee), and:

(a) the rating in question is under review for possible downgrade; or

(b) the licensee is on Credit Watch or Rating Watch with a negative designation;

(c) or, where neither sub-paragraph (a) nor (b) applies:

Commented [NP18]: Ofgem's drafting discourages licensees from having three ratings and so reduces the resilience information potentially available to Ofgem. The requirement is to have more than 1 investment grade rating. A licensee should not be prohibited from a distribution if it has to strong investment grade ratings and a third that is not. The logical advice to any licensee would be to remove the third rating to mitigate this risk.

We have proposed an alternative to address this issue.

(d) the licensee's rating outlook, as specified by any credit rating agency referred to in this paragraph 41.9 which at the relevant time has assigned the lower or lowest Investment Grade Issuer Credit Rating held by the licensee, has been changed from stable or positive to negative.

~~41.10~~41.9 The circumstances described by this paragraph is that the licensee has:

(a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 30.2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition;

(b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 30.~~4~~6 of standard condition 30 (Availability of resources) and:

(i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an Associate of the licensee, and

(ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

(c) informed the Authority of any circumstance of the type referred to at paragraph 30.9~~7~~ of standard condition 30 (Availability of resources) and:

(i) the circumstances giving rise to the licensee's report related to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or

(ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:

(a) relate in whole or in part to circumstances affecting an Associate of the licensee; and

(b) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

~~41.11~~41.10 The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant contained in any loan agreement, commercial paper, bond issue or committed facility that it has entered into with a counterparty, unless one of the following applies:

(a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;

(b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in Writing to the Authority;

or

(c) in response to a written request from the licensee, either the Authority has confirmed in Writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

41.11 The circumstance described by this paragraph is that the licensee has an Actual Regulatory Gearing ratio of 75% or higher and, based on its reasonable projections, will exceed this ratio at the end of the current Regulatory Year.

Part D: Restricted Category 3

41.12 Where any of the circumstances described or referred to under Part C applies, the licensee may not, without the prior consent of the Authority following the licensee's disclosure of all material facts, transfer~~s,~~ lease, licen~~c~~se, or lend any sum or sums, asset, right, or benefit to any Associate of the licensee except by way of any of the following transactions:

(a) a payment properly due for any goods, services, or assets in relation to commitments entered into before the date on which the relevant circumstance under Part C arose, and which are provided on an arm's length basis and on normal commercial terms; or

(b) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit on an arm's length basis, on normal commercial terms, and where the value of the consideration due in respect

of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into; or

(c) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 41.2 and which was contracted before the date on which the relevant circumstance under Part C arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or

(d) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received, so long as the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

Part E: Restricted Category 4

41.13 Subject to paragraph 41.~~14~~145~~5~~, the licensee must not enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation.

41.14 Nothing in paragraph 41.~~13~~134~~4~~ prevents the licensee from giving any guarantee that is permitted by and compliant with the requirements of Part A.

Part F: Interpretation

41.15 In this condition:

Actual Regulatory Gearing means the ratio of Net Debt to regulatory asset value, as reported at the closing of the previous Regulatory Year and calculated in accordance with the Regulatory Instructions and Guidance published by the Authority under Standard Condition 46.

Associate means:

(a) an Affiliate or Related undertaking of the licensee;

(b) an Ultimate Controller of the licensee;

(c) a Participating Owner of the licensee; or

(d) a Common Control company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) by substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Cross-Default Obligation means a term of any agreement or arrangement under which the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated, or is capable of arising or increasing or of being accelerated, because of a default (however it may be described or defined) by any person other than the licensee, unless**:**

(a) that liability can arise only as the result of a default by a Subsidiary of the licensee;

(b) the licensee holds a majority of the voting shares in that Subsidiary and has the right to appoint or remove a majority of its board of directors; and

(c) that Subsidiary carries on business only for a purpose within sub-paragraph (a) or (b) of the definition of Permitted Purpose set out in standard condition 1 (Definitions for the standard conditions).

Investment Grade has the meaning given in standard condition 40 (Credit rating of the Licensee).

Issuer Credit Rating has the meaning given in standard condition 40 (Credit rating of the Licensee).

Net Debt means the value of the licensee's net debt as reported at the closing of the previous Regulatory Year and defined by the Regulatory Instructions and Guidance published by the Authority under Standard Condition 46.

Participating Owner – For the purposes of the definition of Associate above, a person is subject to a Participating interest by another person (a **Participating Owner**) if:

(a) that other person holds a Participating Interest in the person; or

(b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Chapter 11 Standard conditions 42 and 43: Independence of

the Distribution Business

Condition 43A. Requirement for sufficiently independent directors

43A.1 Subject to paragraph 43A.1021, except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times it has at least two non-executive directors who meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5 below. In this condition such directors are referred to as "sufficiently independent directors".

43A.2

(a) A sufficiently independent director must:

(i) be a natural person; and

(ii) in the reasonable opinion of the licensee, have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee; and

(iii) not have any executive duties within the Distribution Business or any Associate of the Ddistribution Bbusiness; and.

in the reasonable opinion of the licensee, be able to meet the duties of a director as specified in Companies Act 2006.

(b) The licensee must, by 31 July each year, submit to the Authority a completed checklist and completed template confirming each sufficiently independent director meets the requirements in 43A.2 (a)(i), 43A.2 (a)(ii), and 43A.2 (a)(iii) and 43A.2 (a)(iv) and state the skills, knowledge, experience and personal qualities each sufficiently independent director holds which are appropriate to perform his their duties as an independent non-executive director of the licensee with reasonable care, skill and diligence.

43A.243A.3 Except and to the extent that the Authority consents otherwise, and subject to paragraph 43A.4, a sufficiently independent director must not be, and must not have been during the 12 months before his his their appointment as a director of the licensee or the coming into force of this condition (whichever is the later):

Commented [NP19]: This is not required as it simply duplicates the requirements of the Companies Act

Commented [NP20]: Ofgem's process for issuing the proposed SID checklist and template is inadequate.

If Ofgem proposes that these documents will be issued as a new RIG, Ofgem needs to:

- incorporate the standard wording "in accordance with the Regulatory Instructions & Guidance (RIGs) document issued under [standard condition 46 (Regulatory Instructions and Guidance)]" in the relevant licence condition (i.e. SLC43A for DNOs);
- restrict the scope of the template and checklist to the permitted scope of a RIG (which could not, for example, add additional responsibilities on SIDs or restrictions upon their appointment); and
- consult on the proposed form of the template and checklist in accordance with the process set out for new a RIG and take account of feedback provided in response to that feedback before issuing the RIG.

If Ofgem proposes that the checklist and template will be a separate, new guidance document, Ofgem will need to:

- set out the scope and purpose of that guidance document in the relevant licence condition (i.e. SLC43A for DNOs); and
- set out the process via which the guidance will be issued and modified in the licence. Depending on the permitted scope of that guidance, it may be appropriate for the guidance to be modified under section 11A of the Act.

(a) an employee of the licensee; or

(b) a director or employee of an Associate of the licensee.

~~43A.3~~43A.4 The reference to 'director' in sub-paragraph 43A.3(b) does not include appointment as a non-executive director of:

(a) an Associate of the licensee that is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;

(b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a Permitted Purpose (as that term is defined in Standard condition 1 (Definitions for the standard conditions)); or

(c) a Qualifying Group Company.

~~43A.4~~43A.5 A sufficiently independent director must not:

(a) have, or have had during the 12 months before his ~~his their~~ appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the licensee or any Associate of the licensee;

(b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any Associate of the licensee; or

(c) receive remuneration from the licensee or any Associate of the licensee apart from a director's fee and reasonable expenses.

~~43A.5~~43A.6 For the purposes of sub-paragraphs 43A.5(a) and 43A.5(c) respectively:

(a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and

(b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any Associate of the licensee shall not be considered to be remuneration.

~~43A.6~~43A.7 The licensee must ~~notify the Authority of the names of its sufficiently independent directors within 14 days of the later of the two dates referred to in paragraph 43A.1 and must~~ notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 43A.11 of this condition.

Commented [NP21]: This text needs to be removed as there are no dates in 43A.1 (the dates were removed in the 2025 housekeeping changes but it looks like this consequential change was missed)
The residual obligation should simply be to notify Ofgem of new SIDs

The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his ~~his~~their term of office, having particular regard to the criteria set out in paragraphs 43A.2(a), 43A.3 and 43A.5.~~.~~

~~A sufficiently independent director, alongside at least one other director of the licensee, must be a signatory in respect of the following submissions, which require approval by board resolution, on behalf of the board::~~

~~availability of resources certificates, dividend certificate and statement of factors; and~~

~~Financial Resilience Report.~~

~~At least one sufficiently independent director must be~~~~is a signatory alongside at least one other director of the licensee in respect of the following notifications:~~

~~issuer credit rating withdrawal;~~

~~any change in credit rating and / or outlook which would trigger a negative rating action, to a rating of BBB- or one notch above the minimum covenant requirement and is on negative watch; and~~

~~proposed asset disposals to an affiliated party, excluding to a subsidiary of the licensee.~~

~~43A.7~~43A.8 A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he ~~he~~ they continue~~s~~ to meet the criteria set out in paragraphs 43A.2(a), 43A.3, and 43A.5.

~~43A.8~~43A.9 The licensee must notify the Authority in Writing within 14 days if any sufficiently independent director is removed from office or resigns, giving reasons for the removal or (to the extent that they are known to the licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if appropriate, be stated to be personal reasons.

43A.10 If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or incapacity), the licensee must use its reasonable endeavours to ensure that a new director is, or new directors are,

Commented [NP22]: It is unclear how the proposed obligations on SIDs in SLC43A are meant to interact with obligations in respect of the credit rating of the licensee in SLC40. The drafting in SLC43A appears to create an obligation for a board resolution (in the case of Financial Resilience Report submission) and double director signature (in the case of Financial Resilience Report and Published Rating Reports). However, as Ofgem does not use those defined terms within SLC43A (and instead uses different words to the associated definitions) and also has not incorporated the requirements for signature into SLC40, we are not clear what Ofgem intends that the obligation should be. Ofgem needs to confirm its policy. If the policy intent is to require board resolution for Financial Resilience Reports and director signatures for submission of Published Rating Reports and Financial Resilience Reports, this would be better achieved by incorporating those requirements directly into SLC40 and removing the erroneous ones from SLC43A. We note, however, that the requirement for Published Rating Reports to be submitted within ten working days would necessarily incur additional costs given that SID contracts may not currently make them available to the licensee in such a short window of time.

These paras should be deleted. We have provided clearer drafting in SLC40.

Commented [NP23]: This is worded in a manner that is much broader than the scope of required notifications of disposals in SLC26:

- Firstly, it is not clear that the general consents in SLC26 continue to not require notification
- Secondly, it refers to "asset" rather than "Relevant Asset" which is a defined sub-set of the licensee's assets

This subparagraph should be deleted. We have provided clearer drafting in SLC26 aligned to our understanding of Ofgem's policy intent.

appointed to fulfil the obligation in paragraph 43A.1 as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.

43A.11 At least one sufficiently independent director must have the opportunity to make representations each year in respect of the licensee's executive directors' remuneration to those who determine such remuneration ~~be in attendance at the licensee remuneration committee, or equivalent meeting, where remuneration of executives of the licensee is discussed for ratification or approval. If a remuneration committee is held by a parent or other entity in the licensee's group structure, the sufficiently independent director must make verbal representations on the licensee recommendation for remuneration to the committee.~~

Commented [NP24]: As per our consultation document, the proposed licence modification prescribes input from SIDs into remuneration discussions in a manner that exceeds the scope of Ofgem's stated policy, does not reflect established governance practice and inappropriately imposes different requirements depending on corporate structure.

Interpretation

~~43A.9~~43A.12 In this condition:

Associate means:

(a) an Affiliate or Related undertaking of the licensee;

(b) an Ultimate Controller of the licensee;

(c) a Participating Owner of the licensee; or

(d) a Common Control Company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensees) is also an Ultimate Controller of the licensee.

Participating Owner – For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

(a) that other person holds a Participating Interest in the person; or

(b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Qualifying Group Company means:

(a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;

(b) the parent company of a group whose other members may only include :

(i) a company meeting the criteria set out in sub-paragraph (a) or a subsidiary of such a company, of the type referred to in that sub-paragraph; and

(ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (b)(i) provided that such intermediate holding companies:

(a) have no shareholders other than the parent company concerned or another intermediate holding company; and

(b) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company; and

(c) intermediate holding companies meeting the criteria set out in sub-paragraph (b)(ii).