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Wales & West Utilities Limited ("WWU") response to Ofgem's Energy Networks Ring-fence Review statutory consultation

Dear Andrew,

Thank you for the opportunity to respond to the above statutory consultation, which has a response deadline of 12 August 2026. Our response is non-confidential.

Following engagement with Ofgem throughout the first half of 2026 we note that most of the concerns raised in WWU's response to the original consultation, submitted on 15 January 2026, no longer persist.

However, some fundamental concerns remain. We address each of those under separate sections below using the headings in Ofgem's consultation document. We have included at Appendix 1 our licence drafting comments using the relevant licence condition headings.

Before we address those concerns, we note, for context, from the Executive Summary to the consultation the following concluding statements by Ofgem:

"Taken together, these measures are intended to provide earlier insight into financial risks, strengthen internal governance, and ensure that licensees maintain adequate financial resources. This will reduce the likelihood of financial distress and, where issues do arise, improve the ability to respond effectively.

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We recognise the importance of maintaining an investable regulatory framework. The measures proposed are designed to be proportionate and to build on existing practices, minimising unnecessary regulatory burden while strengthening consumer protection.

As the energy transition progresses, the ring-fence framework must remain adaptable. These changes represent an important step in ensuring that regulatory protections evolve in line with the changing risk profile of the sector, while continuing to support stable investment and reliable delivery of essential network services."

Section 3: Requirement for sufficiently independent directors (SIDs)

Sufficiently independent directors – Completion of a checklist and template

As a general comment, WWU has no objection to an appropriately drafted relevant checklist, however this should not be an express annual obligation as the position may remain unchanged year on year - the licence should not require updates if there has been no change.

In relation to Standard Special Condition A42: Requirement for sufficiently independent directors (SSC A42) para 2(a) WWU responses are as follows:

The reference to limb 2(a)(iv) should be deleted as the addition of this limb to SSC A42 2(a) is not a suitable criterion to form part of the definition of a SID - it is superfluous and does not improve or enhance the force of the current definition. All directors have to comply with the Company Act duties. The new limb is not something which can be assessed at the time of appointing a SID and should not form part of the definition. The new limb should be deleted.

In relation to SSC A42 para 2(b) WWU responses are as follows:

(a) the reference to limb 2(a)(i) should be deleted from the periodic checklist requirement at 2(b) because the inclusion of this limb does not make sense, a SID will not cease to be a natural person after meeting the definition of a SID when first appointed.

(b) the reference to limb 2(a)(iv) should be deleted from the periodic checklist requirement at 2(b) for the reasons set out above referencing the Companies Act.

Even though a SID in WWU's opinion will not become less knowledgeable or skilful over time we can accept that 2(b) and any checklist also references 2(a)(ii). Therefore, if contrary to WWU's submissions to this consultation Ofgem does not alter its proposal for SSC A42 para 2(a), then WWU propose that the references in 2(b)/the checklist should be limited to limbs 2(a)(ii) and 2(a)(iii).

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Sufficiently independent directors – Signatory on ring-fence submissions and notifications

SSC A42 incorrectly lists the Financial Resilience Report as a submission to the Authority which is subject to approval via Board resolution in paragraph 9, which it is not pursuant to Part C of Standard Special Condition A38: Credit Rating of the Licensee and related obligations (SSC A38) - and therefore SSC A42 is incorrectly drafted in this respect. To assist Ofgem, proposed revised drafting has been included to this effect in Appendix 1.

Section 5: Availability of resources

Dividend certificate to be expanded in scope to reference all ring-fence licence conditions: paragraphs 5.21-5.25 (relevant draft licence paragraph is 11(a) of Standard Special Condition A37: Availability of Resources (SSC A37))

Ofgem's policy decision is to include in the dividend certificate references to all ten additional ring-fence licence conditions being proposed for inclusion in the 1C and 2C compliance certificates. To achieve this, it proposes to add the following conditions to the scope of the existing certificate:

- Requirement for sufficiently independent directors;
- Independence of the network;
- Disposal of relevant assets and restriction on charges; and
- Prohibition of cross-subsidies.

Although the consultation initiated in November 2025 did suggest inclusion of all ring fence conditions, Ofgem subsequently changed its position during engagement with licensees, and it agreed that it would be inappropriate for a dividend lock-up to be triggered in the event of potential breach of those licence conditions (as acknowledged in cell H39 of its policy feedback shared on 27 April). Ofgem then reverted to its original position very late in its engagement with licensees.

Ofgem's policy rationale appears to be in paragraph 5.23, where it suggests that it is appropriate to include these additional conditions, and references SIDs (SSC A42) "*to provide scrutiny on appropriateness of proposed dividends payments by a licensee*". This is redundant because the revised licence drafting already requires a SID to sign the dividend certificate. No other explanation is provided by Ofgem. Merely stating that it is "appropriate" is not a policy rationale.[1]

As noted in our original consultation response of 15 January 2026 we consider that this proposal is disproportionate. The certificate, in relation to dividends, should reference only the

[1] For completeness, we note that Ofgem provides narrative on each of the four licence conditions to be added in paragraphs 5.17-5.20 in the context of its policy decision relating to compliance certificates. To the extent any of that narrative is considered by Ofgem to be relevant to its policy decision rationale for the dividend certificate, we do not see any rationale evident in the narrative relevant to a dividend certificate.

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ring-fence licence conditions that are relevant to the making of, or restrictions on, dividends by licensees. The licence conditions proposed to be added do not relate to financial resilience concerns that are relevant to considering whether a dividend could be made. For example, failure to notify the Authority of the relinquishment of operational control of a transportation asset with negligible value is unlikely to create circumstances where a dividend should be prevented.

As noted at the outset in this letter, Ofgem contends: "*The measures proposed are designed to be proportionate and to build on existing practices, minimising unnecessary regulatory burden while strengthening consumer protection."* Ofgem's policy decision does not meet any of its contentions.

More importantly, Ofgem's policy decision to add conditions to payment of dividends, without any substantive rationale, is as a matter of principle, inimical to the interests of equity investors. Following the significant additional financial resilience obligations added to the licence from 1 April 2026, including a new absolute obligation to maintain at least two investment grade issuer credit ratings at all times, regardless of circumstances, it is not evident that Ofgem's policy decision is proportionate from an equity investor perspective. These concerns may therefore be harmful to consumer interests.

Section 6: Indebtedness (paragraph 15 in SSC A37)

Authority prior consent for proposed alterations to licensee capital and reserves

In paragraph 6.7, Ofgem outlines its policy decision: prior consent should be provided by the Authority for proposed alterations to licensee existing capital and reserves, which are usually non-distributable in nature, to a distributable category which are being made to facilitate a dividend payment or other distribution. Licensees would be required to provide reasoning and justification for the alteration, prior to consent being granted or rejected and in advance of directors of limited companies proceeding with Companies House requirements of submitting a solvency statement and completing the relevant forms.

With regard to its policy rationale, Ofgem makes various statements, which individually or collectively might represent its position, i.e.

- Purpose statement: "*By protecting licensee capital, a buffer is available to the licensee to absorb future financial shocks, maintaining financial sustainability. By introducing this measure, we safeguard transparency regarding such potential future alterations to protect the consumer from harm*."

- Paragraph 6.2: "*The effect of the additional measure for Indebtedness is intended to safeguard capital and reserves, of a non-distributable nature, held by the licensee*."

- Paragraph 6.8: "*The policy decision is to maintain long-term financial sustainability, protect creditors and encourage responsible distributions with stable predictable*

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returns on investment being provided to shareholders, which ultimately protects the consumer from harm."

- Paragraph 6.11: "*This measure is intended to safeguard capital and reserves, of a non-distributable nature, held by the licensee. Our rationale is this safeguards transparency and risk management. The current licence explicitly states dividends, or other distributions, should be made out of distributable reserves. If a licensee has insufficient existing distributable reserves available to make a dividend payment or other distribution, it is vital the Authority has transparency regarding any potential alterations to capital and reserves in order to facilitate a potential future dividend or other distribution, which otherwise, would not be possible for the licensee to make. This measure protects the consumer from excessive dividend payments or other distributions being made by the licensee. We encourage responsible, stable and reliable dividend payments, being made out of retained earnings, to safeguard sustainability and support long-term investment*."

There are many concepts referred to in the above statements. A more concise and coherent policy rationale should have been presented, for clarity. Nonetheless, we respond specifically as follows:

- Ofgem seems to consider an intention by a licensee to transform non-distributable reserves to distributable reserves as a prelude to "excessive dividend payments". Ofgem has not pointed to any past practice by any licensee which might support its position. Nor has it explained what is meant by "excessive". Finally, Ofgem does not offer any explanation in support of its view on this matter.

- Ofgem considers it "vital" to have transparency regarding any potential alterations to capital and reserves to facilitate future dividend payments, where a licensee has insufficient distributable reserves. However, as Ofgem is aware, a licensee's annual audited financial statements will report its retained profits, which usually approximate to its distributable reserves, because significant differences between the two measures are rare. Therefore, transparency is already invariably in the public domain. Further, if Ofgem considers a licensee's retained profits to be relatively low compared to its distribution levels, it can already utilise Standard Special Condition A26: Provision of Information to the Authority (SSC A26) to seek further information on this position and ask the licensee to explain its position in the context of the expanded dividend reporting requirements introduced by Ofgem in 2024 via the annual Regulatory Financial Performance Reporting (RFPR) submissions.

- Ofgem has not noted that in considering any dividend payment, Directors must act prudently, as required by UK common law. [2] We would expect Ofgem to weight this requirement, at least in considering proportionality.

[2] Re Exchange Banking Co (1882) 21 Ch D 519)

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- Ofgem has not stated how, if at all, it has weighed the licence prohibition in paragraph 11(b) of SSC A37 on making any distribution, i.e.: "*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*." To the extent that it is correct to interpret Ofgem's policy decision to be motivated to protect the consumer from excessive dividend payments (re paragraph 6.11) then the licence directly achieves this already through this prohibition in paragraph 11. Clearly, a dividend would be excessive if it triggered the circumstances in that paragraph.

- There is no evidence from Ofgem as to how it has weighed the risk of excessive dividends when considered in the context of the significant new licence obligations relating to financial resilience in force since 1 April 2026 for GDNs and therefore it is not evident from the statutory consultation as to how it came to a proportionate position for consumers and investors.

- Over and above existing licence obligations, which have been significantly increased since 1 April 2026 in terms of financial resilience, it is not evident from a practical standpoint how Ofgem can protect the consumer by requiring prior consent.

More generally, we are concerned with how this policy decision would be viewed by equity investors. This policy decision would, if implemented, represent a further extension of Ofgem's control over the discretion on the part of equity investors to realise a return on, and return of, their equity capital and thus undermine their reasonable expectations in that regard. This issue is particularly relevant to the GDN sector, where Ofgem has modified the licence to accelerate the return of RAV in RIIO-GD3, to allow the return of equity capital, subject to notional gearing. This concern is heightened by the absence of any minimum threshold below which consent would not be required, and by the lack of any explicit obligation on Ofgem to act reasonably or to determine applications within a defined timeframe. This creates additional uncertainty for investors.

Existing licence obligations, financial reporting in audited financial statements, and UK law, collectively impose extensive reporting requirements and limitations, direct and indirect, on equity distributions. The degree of discretion remaining to equity investors should not be restrained any further following the significant new licence obligations on financial resilience introduced from 1 April 2026. As it stands, Ofgem's policy decision is not justified to any extent, and therefore we do not agree to it.

An alternative, and proportionate proposal, would be for licensees to notify Ofgem of intended alterations (e.g. within 10 business days of Board approval) to a capital or reserve category above a defined threshold, and which are non-distributable by nature. Ofgem could decide

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then to utilise SSC A26 to seek further information. However, any such request for information under SSC A26 should not impede the licensee's decision making and actions.

Section 8: Disposal of relevant assets and restriction on charges

Disposal of relevant assets and restriction on charges – SID signatory of relevant asset sale, disposal or transfer to group company or entity

Ofgem's policy decision in the statutory consultation is that a notification must be submitted to the Authority to support the relevant asset sale, disposal or transfer to another company or entity within the same group as the licensee, should be signed by a SID and at least one other director. This applies regardless of the value of any such sale.

These provisions have been included in paragraph 11 of Standard Special Condition A27: Disposal of Assets and restrictions on charges (SSC A27) and cross referenced in paragraph 10(c) of SSC A42.

We do not agree that a notification requirement with a SID signature improves transparency and safeguards liquidity as Ofgem contends in paragraph 8.2. Ofgem has not explained in the statutory consultation why this would be so. Further, we consider that requiring SID's to sign the disposal notifications is not proportionate – it would be an ineffective use of their time and SIDs do not usually become involved in operational decisions of this nature. In addition, in the absence of any rationale from Ofgem, we disagree with the extension of this policy to gas networks yet not to ED. This inconsistency runs counter to one of Ofgem's aims, i.e. to achieve consistency of reporting across sectors[3].

Furthermore, in the current environment we do not consider introducing these policy measures in gas distribution to be appropriate at this time. Particularly given the potential future implications on repurposing which has not been considered in Ofgem's statutory consultation and uncertainty as to how any potential repurposing transaction may be governed and structured.

Section 10: Restriction on activity and financial ring-fencing

Restriction of activity – De minimis accounts reference and reconciliation

Licensees currently have Authority consent not to prepare regulatory accounts, since the introduction of the RFPR. Therefore, Ofgem's policy position in the statutory consultation for the de minimis business 2.5% Turnover limitation and the 2.5% Capital and Reserves limitation has been to align the RIIO-3 sector licences with ED, to reference audited 'historical

[3] See Executive Summary : "We are improving consistency across sectors by aligning reporting requirements and extending key licence conditions where appropriate".

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cost accounting statements'. However, there is no concept or definition of 'historical cost accounting statements' in GD and therefore this is an inappropriate position to adopt. To assist Ofgem revised and appropriate licence drafting has been included in Appendix 1 for Standard Special Condition A36: Restriction on Activity and Financial Ring Fencing (SSC A36) paragraphs 4.(b)(i) and 4.(b)(ii).

Section 12: Impact assessment

We refer to Ofgem's comments in section 12 as to its legal duty to carry out a statutory impact assessment under 5A of the Utilities Act 2000, noting its reasoning for not carrying out a full impact assessment, its assertion that it has "considered the impacts in a proportionate way" and in particular its conclusion: "*Overall we consider that the decisions strike an appropriate balance between enhancing protections for consumers and maintaining a stable, proportionate and investable regulatory framework*."

We noted above that it is not evident from the statutory consultation document how Ofgem has reached proportionate conclusions relating to SSC A37, specifically with regard to its proposals to add conditions to dividend certificate and require prior consent to alter reserves and capital. As Ofgem has asserted that it has considered proportionality, we ask it to act transparently and share those considerations in detail. Only then can we assess if Ofgem has carried out a proper qualitative assessment and discharged its legal duty in 5A. Finally, there is little justification evident for Ofgem's conclusion, as stated.

Yours sincerely



Neil Henson
CFO
Wales & West Utilities Limited

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APPENDIX 1

Licence drafting comments

Comments are included where relevant in respect of each licence condition and suggested text changes proposed in red text.

Standard Special Condition A27: Disposal of Assets and restrictions on charges (SSC A27)

"Transportation asset" is a defined term in SSC A27 and therefore should appear as a capitalised term throughout the condition.

There is a sub-paragraph 14 included randomly within the definitions in paragraph 13 which should be removed.

Standard Special Condition A33: Restriction on Use of Certain Information and Independence of the Transportation Business (SSC A33)

The definition of "meter-related services business" is unhelpful as it refers to documents that are over 20 years old that are not easily available. We see no reason why it cannot be deleted and licensees instead rely on the definition in in Standard Special Condition A3: Definitions and Interpretation (SSC A3) of metering business which "means the provision, installation, commissioning, inspection, repairing, alteration, repositioning, removal, renewal and maintenance of metering equipment".

More generally the definitions relating to metering throughout the gas transporter licence need review as there are too many of them and with the removal of the tariff caps and obligation to provide meters, they can be significantly simplified.

In paragraph 3, the list of licensees to which the obligation to manage and operate the transportation business in a way calculated to ensure that it does not restrict, prevent or distort competition seems incomplete. Should it also include electricity and gas transmission and distribution?

Standard Special Condition A36: Restriction on Activity and Financial Ring Fencing (SSC A36)

Paragraphs 4.(b)(i) and 4.(b)(ii) reference 'historical cost accounting statements of the licensee' which is not a defined concept in gas distribution and is therefore not prepared and not audited. The drafting must be amended to statutory financial statements as per the below, otherwise it will not be possible for gas distribution licensees to comply with the condition:

"(i) the aggregate turnover of all the de minimis business carried on by the licensee and the equity share of the aggregate turnover of all the de minimis business carried on by all its relevant associates does not in any period of twelve months commencing on 1 April of any

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year exceed 2.5 per cent of the aggregate turnover of the transportation business, the metering business and the meter reading business (excluding the turnover on transactions which each of those businesses make with each other) as shown by the most recent audited statutory financial statements ~~historical cost accounting statements~~ of the licensee; and

(ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee in de minimis business, carried on by the licensee and all relevant associates, does not at any time after the date at which this condition takes effect in this licence exceed 2.5 per cent of the sum of the share capital in issue, the share premium and the consolidated reserves(including retained earnings) of the licensee as shown by the most recent audited statutory financial statements ~~historical cost accounting statements~~ of the licensee."

Standard Special Condition A37: Availability of Resources (SSC A37)

In the context of the auditor's report in relation to the financial resources certificate, paragraph 4.(b) references audited regulatory accounts prepared under SSC A40 which is no longer the case:

"(b) a report prepared by its auditors and addressed to the Authority which 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 statutory audit work ~~under Standard Special Condition A30 (Regulatory Accounts) on the licensee's regulatory accounts~~."

The cross-reference numbering in numerous paragraphs is incorrect in this latest draft of the licence drafting, specifically:

"7. The licensee must ensure that the certificate given to the Authority under paragraph 6~~4~~ is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate."

"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 2(a), 2(b), 6(a) ~~4(a)~~ or 6(b) ~~4(b)~~; or

(b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 6(c) ~~4(c)~~ have materially worsened."

"10. Subject to paragraph 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

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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 11 ~~9~~ and 12 ~~10~~ below."

"13. The licensee need not give the Authority a certificate of the type referred to in paragraph 10 ~~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 8 ~~6~~ of this condition; and

(b) that certificate includes an appropriate addendum using the form of the wording given at paragraph 11(b) ~~9(b)~~ of this condition."

"14. Where the certificate given under paragraph 10 ~~8~~, or relied upon under paragraph 13 ~~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."

Paragraph 12(b) to make it clear that signing of certificates is pursuant to board resolution as follows, and to be consistent throughout SSC A37:

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

The penultimate sentence of paragraph 16 is not clear, and we suggest this is reworded as follows:

"The Authority may request a copy of the Intervention Plan on an ad-hoc basis, ~~which would require to~~ which must be submitted to the Authority within 10 working days of the request."

Standard Special Condition A39: Indebtedness (SSC A39)

In paragraph 7(c), the cross reference to paragraph 6 is incorrect and should be to paragraph 7:

"(c) the rating outlook of the licensee as specified by any credit rating agency referred to in this paragraph 7 ~~6~~ 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"

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In new paragraph 8 of SSC A39, the cross reference to the certificate 3R under SSC A37 should reference paragraph 6 not 4:

"(b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 6 ~~4~~ of Standard Special Condition A37 (Availability of Resources) and:"

Further, in paragraph 9(c), we consider that the cross reference to paragraph 10 should be to paragraph 11:

"(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 paragraphs 3 and 11 ~~10~~, or the Authority has not provided a substantive response to such a written request within seven days of receiving it."

Standard Special Condition A42: Requirement for sufficiently independent directors (SSC A42)

Paragraph 1 includes an effective date which is the later of (a) 1 April 2014; and (b) 12 months after the condition comes into effect in respect of the licensee – limb (a) will never be the later date and therefore the 1 April 2014 can be removed and the paragraph reworded. Consequential changes will be required to paragraph 7: "within 14 days of the later of the two dates referred to in paragraph 1".

In addition, paragraph 1 references criteria set out in paragraphs 2, 3 and 5; although only 2(a) includes criteria and should therefore be reworded as follows:

"it has at least two non-executive directors who meet the criteria set out in paragraphs 2(a), 3, and 5 below. In this condition such directors are referred to as "sufficiently independent directors"."

In paragraph 5(a), there is a misplaced line break before "director or the coming into force of this condition" and we suggest that "immediately" is added after "have had during the 12 months".

For clarity and completeness, we recommend that paragraphs 9 and 10, which are placing obligations on directors in respect of the submissions and notifications contained within other licence conditions, are clearly cross referenced. Also, for consistent language to be used throughout and between conditions. In addition, paragraph 9 incorrectly asserts that the financial resilience report pursuant to Part C of SSC A38 is subject to resolution of the Board which it is not:

"9. On submissions to the Authority which require approval by a resolution of the board, at least one sufficiently independent director is a signatory, alongside at least one other director of the licensee, on behalf of the board in respect of the following submissions:

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(a) availability of resources certificates, dividend certificate and statement of factors pursuant to paragraphs 2 to 8 and 10 of Standard Special Condition A37: Availability of Resources~~;~~
(b) ~~Financial Resilience Report~~."

"10. At least one sufficiently independent director is a signatory alongside at least one other director of the licensee in respect of the following submissions/notifications:

(a) issuer credit rating withdrawal pursuant to Part B of Standard Special Condition A38: Credit Rating of the Licensee and related obligations;

(b) 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 pursuant to Part B of Standard Special Condition A38: Credit Rating of the Licensee and related obligations;

(c) proposed sale, disposal or transfer of a transportation asset ~~disposals to another entity~~ to a company or other entity operating within the same group structure as the licensee pursuant to paragraph 11 of Standard Special Condition A27: Disposal of Assets and restrictions on charges;

(d) Financial Resilience Reports pursuant to Part C of Standard Special Condition A38: Credit Rating of the Licensee and related obligations"

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