

## NOTICE UNDER SECTION 11(2) OF THE ELECTRICITY ACT 1989

The Gas and Electricity Markets Authority (the "Authority") hereby gives notice pursuant to section 11(2) of the Electricity Act 1989 (the "Act") as follows:

1. The Authority proposes to modify the individual conditions of each of the electricity distribution licences granted under section 6(1)(c) of the Act (the "Licences") to each of the following electricity distributors:
  - a. Energetics Electricity Limited (Company Number: SC234694)
  - b. Independent Power Networks Limited (Company Number: 04935008)
  - c. ESP Electricity Limited (Company Number: 04718806)
  - d. The Electricity Network Company Limited (Company Number: 05581824)
2. The Authority proposes to remove amended standard conditions A1, BA2, BA3 and BA4 of the Licences in the manner contained in Schedule 1 to this Notice.
3. The effect of the proposed modifications is to ensure that the provisions currently contained within amended standard conditions A1, BA2, BA3 and BA4 do not duplicate or conflict with a modification under section 11A of the Act to implement the Distribution Licence Review which inserts the same provisions into Section A of the standard licence conditions. BA1, BA5 and BA6 of the current amended standard conditions will be renumbered to become BA2, BA3 and BA4 respectively.
4. Further reasons behind the consolidation of these provisions into the standard licence conditions can be found in Ofgem's open letter – "Electricity Distribution Licence Review: Conclusions and Statutory Consultation" (Ref 50/08).<sup>1</sup>
5. Any representations or objections to the proposed licence modifications must be made in writing (preferably in electronic form for ease of publication on the Ofgem website) before **29 May 2008** to Nicholas Rubin, Office of Gas and Electricity Markets, 9 Millbank, London SW1P 3GE or by email to: [distributionpolicy@ofgem.gov.uk](mailto:distributionpolicy@ofgem.gov.uk), and if a respondent does not wish its response to be made public, the response should be clearly marked as not for publication.



**Rachel Fletcher**  
Director, Distribution

**Date: 29 April 2008**

**Duly Authorised on behalf of the Authority**

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<sup>1</sup> <http://www.ofgem.gov.uk/Networks/ElecDist/Policy/Pages/Policy.aspx>

## Schedule 1

### **PART III. AMENDED STANDARD CONDITIONS PARTICULAR TO THIS LICENCE**

#### **SECTION BA. SPECIFIC**

##### **Standard Condition BA1. Definitions and Interpretation**

1. The words and expressions used in the standard conditions and the amended standard conditions of this licence in the form in which those conditions were in force at 31 May 2008 have the same meaning when used in these amended standard conditions of this Section BA.

## **Standard Condition BA2. Charging Arrangements**

1. The licensee shall make available and continue to make available charges for the provision of use of system to any authorised supplier using the licensee's network to supply domestic customers.
2. The licensee's distribution use of system charges to domestic customers may vary according to the distribution services area of the licensed distributor within which domestic premises are connected to the licensee's distribution system.
3. The licensee shall set these charges so that, except with the prior written consent of the Authority, the standing charge, unit rate and any other component of charges shall not exceed the distribution use of system charges to equivalent domestic customers.
4. For the purposes of this condition, distribution use of system charges to equivalent domestic customers are the distribution use of system charges made by the licensed distributor that has a Distribution Services Direction specifying the distribution services area where the domestic premises connected to the licensee's system are located.
5. The Authority may specify by direction which of the distribution use of system charges made by the licensed distributor with Distribution Services Obligations for the distribution services area are relevant for the purposes of determining distribution use of system charges to equivalent domestic customers.
6. These charging arrangements shall have effect within this licence until such time and in such circumstances as are described in paragraphs 7 to 12 of this standard condition.
7. This condition shall cease to have effect (in whole or in part as the case may be) if the licensee delivers to the Authority a disapplication request made in accordance with paragraph 8 of this standard condition or notice is given to the Authority by the licensee in accordance with either paragraph 11 or paragraph 12 of this standard condition.
8. A disapplication request shall:
  - (a) be in writing addressed to the Authority;
  - (b) specify the paragraph or paragraphs of this standard condition to which the request relates; and

- (c) state the date (being not earlier than the date specified in paragraph 10 of this standard condition) from which the licensee wishes the Authority to agree that the conditions shall cease to have effect (the disapplication date).
- 9. The licensee may withdraw a disapplication request at any time.
- 10. Save where the Authority otherwise consents in writing, no disapplication following delivery of a disapplication request pursuant to paragraph 8 of this standard condition shall have effect until a date being the later of:
  - (a) not less than 18 months after delivery of the disapplication request; and
  - (b) 31 March 2007.
- 11. If the Authority has not made a reference to the Competition Commission under section 12 of the Act relating to the modification of this standard condition or the part or parts thereof specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date and the licensee has not withdrawn this disapplication request, the licensee may deliver a written notice to the Authority terminating the application of this standard condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date or such earlier date to which the Authority has given its consent under paragraph 10.
- 12. If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this standard condition or the part or parts thereof specified in the disapplication request and such report does not include a conclusion that the cessation of such revenue restrictions in this standard condition, in whole or in part, operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 13 of the Act deliver to the Authority written notice terminating the application of this standard condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date.

### **Standard Condition BA3. Credit Rating of Licensee**

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.

2. In this condition:

“issuer credit rating” means:

- (a) an issuer rating by Standard & Poor’s Ratings Group or any of its subsidiaries;
- (b) an issuer rating by Moody’s Investors Service Inc. or any of its subsidiaries; or
- (c) an issuer senior unsecured debt rating by Fitch Ratings Ltd or any of its subsidiaries; or
- (d) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b) or (c) and issued by:
  - (i) any of the credit rating agencies 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 the United Kingdom and the United States of America.

In relation to any issuer credit rating, “investment grade” means:

- (a) unless sub-paragraph (b) below applies:
  - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries,
  - (ii) an issuer rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries,
  - (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries, or
  - (iv) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b) or (c) and issued by:

- aa) any of the credit rating agencies referred to in sub-paragraphs (a), (b) or (c), or
  - bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.

## **Standard Condition BA4. Indebtedness**

1. In addition to the requirements of standard condition 29 (Disposal of Relevant Assets) as in force at 31 May 2008, the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
  - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into or continue or permit to remain in effect any guarantee or any obligation otherwise than:
    - (i) on an arm's length basis,
    - (ii) on normal commercial terms,
    - (iii) for a permitted purpose, and
    - (iv) (if the transaction is within the ambit of standard condition 29 (Disposal of Relevant Assets)) in accordance with that condition;
  - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee otherwise than by way of:
    - (i) a dividend or other distribution out of distributable reserves,
    - (ii) repayment of capital,
    - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms,
    - (iv) 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 made in compliance with the payment condition referred to in paragraph 2,
    - (v) repayment of or payment of interest on a loan not prohibited by subparagraph (a),

- (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, or
- (vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition BA2 (Restriction on Activity and Financial Ring Fencing) as in force at 31 May 2008, made on an arm's length basis and on normal commercial terms,

provided, however, that the provisions of paragraph 3 or 4 below, as the case may be, shall prevail in any circumstances described or referred to therein;

- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (d) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting at date of this licence, save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous, provided, however, that the provisions of sub-paragraphs (c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

2. The payment condition referred to in paragraph 1(b)(iv) is that the consideration due in respect of the transaction in question is 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 which has and maintains an investment grade issuer credit rating.

3. Where the Authority has not granted permission for the use of alternative arrangements in accordance with paragraph 1 of BA3 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 5, if:
  - (a) the licensee does not hold an investment grade issuer credit rating;
  - (b) where the licensee holds more than one issuer credit rating, one or more of the ratings so held is not investment grade; or
  - (c) any issuer credit rating held by the licensee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. (or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade 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 BA3 (Credit Rating of Licensee) and:
    - (i) is on review for possible downgrade, or
    - (ii) is on Credit Watch or Rating Watch with a negative designation,or, where neither (i) nor (ii) applies:
    - (iii) the rating outlook of the licensee as specified by any credit rating agency referred to in sub-paragraph (c) 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.
4. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of BA3 (Credit Rating of the Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 5, if the alternative arrangements for which the Authority has granted

permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 1 of standard condition BA3 (Credit Rating of Licensee).

5. Where paragraph 3 or 4 applies, the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee as described or referred to in paragraph 1(b), otherwise than by way of:
  - (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in paragraph 3 or 4 arise, and which are provided on an arm's length basis and on normal commercial terms;
  - (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;
  - (c) repayment of, or payment of interest on, a loan not prohibited by paragraph 1(a) and which was contracted prior to the date on which the circumstances in paragraph 3 or 4 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
  - (d) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

6. In this condition:

“cross-default obligation”	means a term of any agreement or arrangement whereby the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or
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is capable of arising, increasing or of acceleration by reason of a default (howsoever such default 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 rights 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 paragraph (a) of the definition of permitted purpose set out in standard condition BA2 (Restriction on Activity and Financial Ring Fencing) as in force at 31 May 2008.

“indebtedness”

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

“investment grade”

has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee).

“issuer credit rating”

has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee).