

Change Proposal:	<b>Master Registration Agreement (MRA): Revised processes for Event of Default and Breaches of the MRA (MRA CP 185)</b>		
Decision:	The Authority <sup>1</sup> provides its consent that MRA Change Proposal MCP 185 be made <sup>2</sup>		
Target audience:	MRASCo, Parties to the MRA and other interested parties		
Date of publication:	21 July 2008	Implementation Date:	Date of Authority consent (i.e. 21 July 2008)

## Background to the Change Proposal

Holders of electricity distribution licences and electricity supply licences are obliged by those licences to be a Party to the MRA and to comply with its provisions. The MRA contains procedures that the MRA Executive Committee (MEC) should follow in the event that a Party to the MRA should be suspected of being in breach of the MRA and if a Party is subsequently found to be default of the agreement. Where a Party is found in default of the MRA, the Authority may consider that as a consequence, they are in breach of their licence and consequently consider taking enforcement action in respect of that breach.

The MRA provides for any Party to appeal any decision of the MEC, including one relating to an event of default, to the MRA Forum<sup>3</sup>. The MRA Forum can consider that appeal and decide to uphold the MEC's decision or overturn it. In either case, if a Party to the MRA is dissatisfied with the decision of the MRA Forum, then they may, subject to the terms of the MRA, appeal that decision to the Authority.

Such appeals are rare; and there has only been one case in which an appeal relating to a decision made by MEC in respect of a case of default has been appealed to Ofgem. This occurred in 2007<sup>4</sup>. The experience of exercising the arrangements set out in the MRA led a number MRA parties to conclude that the drafting in the MRA and the prescribed process for appealing a breach decision could be improved to achieve greater clarity and a quicker resolution of the matter.

## The Change Proposal

The Change Proposal seeks to give greater clarity to the process that MEC will follow in dealing with an allegation of breach, what constitutes an event of default and the communication of MEC decisions to other MRA parties. It introduces the concept of a "rectification plan" that a defaulting Party would need to put in place to rectify the situation. It also clarifies the arrangements for appointing alternative members of MEC to participate in an "Event of Default Meeting" where MEC members may otherwise be connected to the disputing parties.

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> The MRA Forum is a body constituted under the MRA (Clause 7) to represent the views of MRA parties and to carry out specific functions set out in the MRA.

<sup>4</sup> A copy of the document setting out Ofgem's decision "Authority decision in relation to the appeal raised by British Gas Trading Ltd (BGT) against the Master Registration Agreement (MRA) Forum decision upholding the MRA Executive Committee (MEC) determination dated 25 July 2006, that BGT is in breach of Clause 38.1 of the MRA" may be found on the Ofgem website:  
<http://www.ofgem.gov.uk/Licensing/ElecCodes/MRA/Documents1/MRA%20Appeal%20Authority%20Decision%20170407.pdf>

In addition, the Change Proposal also removes the right for any MRA Party who is dissatisfied with the MEC's decision (whether that decision is to find a suspected Party in default or not) to appeal that decision to the MRA Forum. Instead, the Change Proposal provides that the only remedy available to a dissatisfied Party would be to appeal MEC's decision directly to the Authority.

### **MRA Executive Committee (MEC)<sup>5</sup> recommendation**

The MEC, through its sub-committee the MRA Development Board considered the Change Proposal at its meeting on 29 May 2008. The MEC recommended implementation of the proposal. A request for Authority consent pursuant to MRA Clause 9.5 was sent to the Authority on 16 June 2008.

### **The Authority's decision**

The Authority has considered the issues raised by the MRA Change Proposal (MCP) 185. The Authority has considered and taken into account the responses to the MEC consultation on the Change Proposal which were submitted to the MRA Development Board<sup>6</sup>. The Authority has concluded that:

1. implementation of MRA Change Proposal MCP 185 will better facilitate the objectives of the MRA<sup>7</sup>; and
2. consenting that the change be made is consistent with the Authority's principal objective and statutory duties<sup>8</sup>.

### **Reasons for the Authority's decision**

We agree with the majority of respondents to the consultation that the proposed changes will make clearer the process that the MEC and parties to the MRA will employ to investigate and consider any allegation that a MRA Party may be in breach of the MRA. Although the circumstances surrounding an investigation will vary significantly between cases, we consider that the proposed changes will make the process clearer, fairer and easier to administer.

Furthermore, we recognise that the removal of the right for an MRA Party to appeal a MEC decision on default to the MRA Forum will streamline the resolution of disputes. We consider that the MRA Forum has played a valuable role in considering appeals related to MEC decisions dealing with Change Proposals to the MRA. The MRA Forum provides a valuable opportunity for parties to reflect on a proposed change and to further debate its merits. However, this step necessarily takes time; and in the event of an allegation of breach, it is our view that this should be resolved as swiftly as possible. We agree with those parties who viewed the appeal to the MRA Forum as being unlikely to add value to the consideration of a breach allegation, in particular where evidence discovered during an investigation was considered confidential and would not be able to be shared with all MRA Parties for consideration at the MRA Forum.

Therefore we welcome the change as an opportunity to achieve greater clarity as to how MEC will investigate and report on an allegation of breach and the arrangements for agreeing a "rectification plan" with the defaulting Party.

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<sup>5</sup> The MEC is established and constituted from time to time pursuant to and in accordance with the MRA.

<sup>6</sup> MRA change proposals, modification reports and representations can be viewed on the MRASCo website at [www.MRASCO.com](http://www.MRASCO.com).

<sup>7</sup> As set out in Standard Condition 23 of the Electricity Distribution Licence, see: <http://epr.ofgem.gov.uk/index.php?pk=doc169206>.

<sup>8</sup> The Authority's statutory duties are wider than matters which the MEC must take into consideration and are detailed mainly in the Electricity Act 1989.

We note that such cases are rare. To date, all the allegations of breach of the MRA that MEC has been asked to investigate have concerned suppliers' compliance with provisions in the MRA dealing with the use of objections. Now that these provisions have been removed from the MRA and transferred to the standard conditions of the supply licence<sup>9</sup>, we would expect the incidence of breach investigations to fall further. We therefore consider that the change is a proportionate and appropriate update of the MRA that better facilitates its requirements as set out in standard licence condition 23.3(f)<sup>10</sup> of the Electricity Distribution Licence.

### **Decision notice**

Pursuant to Clause 9.5 of the MRA, the Authority hereby consents to the implementation of MRA Change Proposal MCP 185: *"Revised processes for Event of Default and Breaches of the MRA"*.



**Mark Feather**  
**Director, Industry Codes and Licensing**

Signed on behalf of the Authority and authorised for that purpose.

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<sup>9</sup> Electricity Supply Licence: Standard Condition 14 (Customer Transfer Blocking).

<sup>10</sup> Under SLC 23.3(f) of the Electricity Distribution Licence the MRA must comprise "such other matters as are or may be appropriate for the development, maintenance, and operation of an efficient, co-ordinated, and economical system for the supply of electricity and for the purpose of facilitating competition in electricity supply."