

OFGEM CONSULTATION DOCUMENT 87/08

**DISTRIBUTED ENERGY – FURTHER PROPOSALS FOR MORE
FLEXIBLE MARKET AND LICENSING ARRANGEMENTS**

Appendix 2: Draft amendment for SLC 11 (Compliance with codes)

EDF Energy's Comments

1. The text presented by Ofgem in Appendix 2 purports to be a draft amendment for SLC 11.2 but is numbered incorrectly as paragraph 1.1.
2. In line with the principle of drafting for one thought at a time, it is better to impose the substantive obligation (i.e. retain existing paragraph 11.2) and then to incorporate new material immediately following that which empowers the Authority to exempt the licensee from that obligation: see our proposed new paragraph 11.3.
3. By virtue of paragraph 2.7 of SLC 2, any power of the Authority to give a direction under any provision of the licence is a power to give it to such extent, for such period of time, and subject to such conditions as the Authority thinks reasonable in all the circumstances of the case, and includes power to revoke the direction after consulting with the licensee. The drafting at paragraph 11.3 therefore does not need to refer, in terms, to an exemption from the requirements in whole or in part
4. However, the exemption in question will have the effect of relieving the licensee of some quite fundamental licence obligations, and it is possible that the alternative arrangements initially considered to be satisfactory in lieu of compliance with the 11.2 obligations may not remain fully or effectively in place. It would therefore be sensible to provide expressly, in the text of the licence condition itself, for the possibility of revocation: see our proposed new paragraph 11.4.
5. Ofgem's consultation document mentions the idea of publishing formal guidance on the requirements that the licensee would have to meet to be exempted from the 11.2 obligations. This is a good proposal, and clearly such guidance would be an important regulatory document. So, in the interests of certainty and transparency for all concerned, it would be desirable for the purpose, scope, and general content of the guidance to be properly referenced in the licence condition: see our proposed new paragraphs 11.5 and 11.6.
6. If the above recommendations are accepted, the text of supply SLC 11 would then be as set out in the attachment. This takes the existing SLC 11 as its baseline and shows all of the recommended amendments (including two new section headings and some consequential paragraph renumbering) in yellow highlighter for ease of reference. We hope that this is helpful.

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Condition 11. Compliance with codes

Industry Codes

11.1 The licensee must comply with:

- (a) the Distribution Code; and
- (b) the Grid Code,

unless, after consulting with the licensee and any other person or body likely to be affected, the Authority has given a direction to the licensee relieving it of its obligations (in whole or in part) under either code.

11.2 The licensee must be a party to and comply with:

- (a) the Master Registration Agreement;
- (b) the Distribution Connection and Use of System Agreement;
- (c) the Connection and Use of System Code; and
- (d) the Balancing and Settlement Code,

from the earlier of the date on which it offers to supply electricity or the date on which it begins to supply electricity to premises in Great Britain.

Power to direct exemption

11.3 The Authority, after consulting with the licensee and any other person or body likely to be affected, may give a direction to the licensee that paragraph 11.2 does not have effect in its licence from the date and for the duration specified in that direction.

11.4 The Authority's power to give a direction under paragraph 11.3 includes power to revoke that direction upon reasonable Notice to the licensee following consultation with it.

11.5 The Authority may issue, and may from time to time revise, guidance about the way in which it will exercise its powers under paragraphs 11.3 and 11.4.

11.6 The guidance may, in particular, set out:

- (a) the process that the Authority will follow in considering whether and to what extent to exercise those powers;
- (b) the type of information that is likely to be required by the Authority as part of that process; and
- (c) the kind of arrangements as between the licensee and another licensee that would be likely to provide a satisfactory alternative to direct compliance with paragraph 11.2.

Consequential Changes

11.7 If a Consequential Change is required, the licensee must take all reasonable steps to secure, and must not take any unreasonable steps to prevent or delay, the making or implementation of that Consequential Change.

11.8 Paragraph **11.7** is without prejudice to:

- (a) any rights of appeal that the licensee may have in relation to decisions made by the Authority under the Industry Codes; and
- (b) any rights of approval, veto, or direction that the Authority or the Secretary of State may have in relation to changes to the Industry Codes.

Fuel Security Code

11.9 The licensee must comply with the Fuel Security Code.

11.10 The Fuel Security Code has effect as a standard condition of this licence.