

ELECTRICITY ACT 1989
SECTION 11A

MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989.

NOTICE OF REASONS FOR THE DECISION TO MODIFY THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES UNDER SECTION 49A OF THE ELECTRICITY ACT 1989.

WHEREAS:

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 ("the Act").

2. In accordance with section 11A(3) and (4) of the Act, the Gas and Electricity Markets Authority ("the Authority") gave notice on 4 February 2010 ("the Notice") that it proposed to make modifications to the standard conditions of the electricity supply licences by:

- a. Amending standard condition 1 ("Definitions for standard conditions");
- b. Inserting new standard condition 7A ("Supply to micro business consumers");
- c. Inserting new standard condition 19A ("Financial information reporting");
- d. Amending standard condition 23 ("Notification of Domestic Supply Contract terms");
- e. Replacing standard condition 25 ("Marketing electricity to Domestic Customers"); and
- f. Inserting new standard condition 31A ("Information about electricity consumption").

The Notice required any objections or representations to the modification to be made on or before 18 March 2010 ("the relevant date").

3. In accordance with section 49A of the Act, the reasons for making the licence modifications are those stated in the following documents:

- a. Ofgem's covering letter for the Notice dated 4 February 2010;
- b. Implementation of the Energy Supply Probe Retail Market Remedies, 19 October 2009;
- c. Energy Supply Probe - Proposed Retail Market Remedies (99/09), 7 August 2009;
- d. Amendment to Energy Supply Probe proposals relating to automatic contract rollover for micro business consumers (68/09), 22 June 2009;

e. Energy Supply Probe – Proposed Retail Market Remedies (41/09), 15 April 2009;

f. Energy Supply Probe – Initial Findings Report (140/08), 6 October 2008.

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at www.ofgem.gov.uk.

4. The Authority did not receive a direction from the Secretary of State not to make the proposed licence modifications on or before the relevant date specified in the Notice.

5. On or before the relevant date specified in the Notice, the Authority received a response from ScottishPower which constituted a formal objection from one relevant licence holder. The objection was made in relation to paragraphs 9 and 11 of standard condition 25 of the electricity supply licence and was not withdrawn. However, the objection did not trigger either of the relevant minority thresholds (these being 20% of relevant licence holders by number and 20% of relevant licence holders weighted by market share). The objection amounted to less than 5% in terms of relevant licence holders by number and less than 15% of relevant licence holders weighted by market share.

6. Apart from the representations made by ScottishPower in relation to the objection to paragraphs 9 and 11 of standard condition 25 of the electricity supply licence, no other representations were received by the Authority. The Authority has carefully considered the representations made by ScottishPower, but has decided to proceed with all the modifications proposed in the Notice without further amendment.

7. All non-confidential representations made in relation to the proposed licence modifications are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE or from the Ofgem website at www.ofgem.gov.uk.

Now therefore

In accordance with the powers contained in section 11A of the Act, the Authority hereby modifies the standard conditions for all electricity supply licences in the manner specified in the attached schedules with effect on and from 00:00 hours on 4 May 2010.

This document constitutes a notice of reasons for the decision to modify the standard conditions of the electricity supply licences under section 49A of the Act.

The Official Seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of Emma Kelso

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Emma Kelso
Associate Partner, Retail and Market Processes
Duly Authorised on behalf of the Authority 28 April 2010



SCHEDULE

MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989.

1. Modification to standard condition 1

In paragraph 1.3, delete the definition of "Marketing Activities", that is the words starting with "Marketing" and ending with "conversation;".

2. Modifications to standard condition 19A

The text below which is highlighted by track changes constitutes the modifications to standard condition 19A (insertions are shown by underlined text and deletions are shown by strikethrough text):

Condition 19A. Financial information reporting

- 19A.1. The Relevant Licensee must prepare and publish on its Website a Consolidated Segmental Statement in respect of information relating to the revenues, costs and profits of ~~the licensee's~~ activities in the generation and supply of electricity and the supply of gas to any premises taking account of the Guidelines.
- 19A.2. Where applicable, the Relevant Licensee must prepare and publish the Consolidated Segmental Statement referred to in paragraph 19A.1 in conjunction with any Affiliates (the "Relevant Affiliates") which hold any or all of the following:
- (a) a supply licence granted or treated as granted under section 6(1)(d) of the Act;
 - (b) a generation licence granted or treated as granted under section 6(1)(a) of the Act;
 - (c) a supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986 ("the 1986 Act").
- 19A.3. The Relevant Licensee must in conjunction with the Relevant Affiliates prepare and publish a Consolidated Segmental Statement no later than six months after the end of the ~~Relevant Licensee's~~ financial year.
- 19A.4. The Relevant Licensee may for the purpose of preparing the statement referred to in paragraph 19A.3 prepare and compile the information according to ~~the licensee's~~ annual accounting procedures. The ~~Relevant Licensee~~ must include in every such statement an explanation:
- (a) of how ~~the licensee~~ defines the terms revenues, cost and profits;

(b) of how the revenues, costs, and profits can be reconciled with ~~the licensee's~~ UK statutory accounts ~~and where applicable~~ or the consolidated group accounts; and

(c) of ~~the licensee's~~ transfer pricing methodology and how this relates to the revenues, costs and profit information published.

19A.5. The Relevant Licensee must ensure that all the information prepared and made public pursuant to paragraph 19A.3 is in all material respects consistent with the information prepared pursuant to paragraph 19A.4 and the information is presented with a clear and full explanation.

19A.6. The Authority shall prepare Guidelines in relation to the requirements of this condition and may modify, in whole or in part, the Guidelines following consultation with the Relevant Licensees.

19A.7. For the purposes of this condition:

"Affiliate" ~~in relation to the licensee~~ means any holding company or subsidiary of a holding company of the Relevant Licensee~~licensee~~, in each case within the meaning of sections 1159 and 1160 ~~736, 736A and 736B~~ of the Companies Act ~~1985~~2006.

"Consolidated Segmental Statement" means a statement as described in the Guidelines.

"Guidelines" mean the document prepared by the Authority pursuant to ~~standard condition~~paragraph 19A.6 setting out the nature of the information required and the template for the presentation of the financial information.

"Relevant Licensee" means the holder of a supply licence granted or treated as granted under section 6(1)(d) of the Act if:

(a) any of ~~its the licensee's~~ Affiliates holds a generation licence granted or treated as granted under section 6(1)(a) of the Act; and

(b) ~~the licensee~~it, together with any of its Affiliates, jointly supplies electricity to more than 50,000 customers.

3. Modifications to paragraph 23.6(c)(ii) of standard condition 23

The text below which is highlighted by track changes constitutes the modifications to paragraph 23.6(c)(ii) of standard condition 23 (insertions are shown by underlined text and deletions are shown by strikethrough text):

the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives Notice that the licensee intends blocking to prevent the Domestic Customer's Proposed Supplier Transfer.

4. Modifications to standard condition 25

The text below which is highlighted by track changes constitutes the modifications to standard condition 25 (insertions are shown by underlined text):

Condition 25. Marketing electricity to Domestic Customers

Objective and obligation to achieve it

25.1 The objective of this licence condition (the "Objective") is to ensure that:

- (a) all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee's Marketing Activities and/or its Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); and
- (b) the licensee's Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee's Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.

25.2 The licensee shall take all reasonable steps:

- (a) to secure the achievement of the Objective; and
- (b) to avoid doing anything which jeopardises its ability to achieve the Objective.

25.3 The steps which the licensee shall take to secure the achievement of the Objective in respect of its Marketing Activities shall include, without limitation, the steps which are detailed at paragraphs 25.5 to 25.16 of this licence condition.

25.4 The licensee shall:

- (a) subject to sub-paragraph 25.4(b), comply with paragraph 25.2 with immediate effect; and
- (b) comply with paragraph 25.3 with effect on and from 18 January 2010.

Selection and training

25.5 The licensee shall:

- (a) put in place and follow procedures which are appropriate for the selection of staff or other Representatives who are employed or

engaged in roles which involve, might involve or will involve communication with Domestic Customers for the purpose of its Marketing Activities;

- (b) provide or procure appropriate training for all staff or other Representatives who communicate with Domestic Customers for the purposes of the licensee's Marketing Activities, which training should include, but not be limited to, training about the licensee's obligations insofar as they affect Domestic Customers, including its obligations under this licence condition;
- (c) take all reasonable steps to ensure that:
 - (i) a Domestic Customer may readily identify the licensee whenever that Domestic Customer is contacted by the licensee or a Representative;
 - (ii) if the Domestic Customer enters into a Domestic Supply Contract with the licensee, that Domestic Customer will readily understand that they have done so; and
 - (iii) any unsolicited contact made by the licensee or a Representative with any Domestic Customer takes place at a reasonable time.

Pre-contract obligations

25.6 Where the licensee or any Representative offers to enter into a Domestic Supply Contract with a Domestic Customer in the course of its Marketing Activities, the licensee or Representative must at the time it makes the offer and before entering into a Domestic Supply Contract with that Domestic Customer:

- (a) provide to that Domestic Customer, in Writing or by means of electronic display, an estimate of the total annual Charges for the Supply of Electricity which would be payable by that Domestic Customer under the Offered Domestic Supply Contract; and
- (b) where:
 - (i) the Domestic Customer is, at the time the offer is made, being supplied with electricity through a prepayment meter; or
 - (ii) the licensee or a Representative has indicated to a Domestic Customer that the Charges for the Supply of Electricity that would be payable under the Offered Domestic Supply Contract are lower than the Charges for the Supply of Electricity that are payable under the Domestic Supply Contract pursuant to which the relevant Domestic Customer receives its supply of electricity at the time the offer is made,

provide to that Domestic Customer, in Writing or by means of electronic display, a comparison of the Charges for the Supply of

Electricity that would be payable under the Offered Domestic Supply Contract and the Charges for the Supply of Electricity that are payable under the Domestic Supply Contract pursuant to which the relevant Domestic Customer receives their supply of electricity at the time the offer is made. Where a Domestic Customer who falls within the scope of sub-paragraph 25.6(b)(i) is unable or unwilling to provide details of the Charges for Supply of Electricity that are payable under their existing Domestic Supply Contract, the licensee or Representative shall base any comparison which it is required to provide in accordance with this sub-paragraph on its best estimate of those Charges for the Supply of Electricity having regard to any relevant information that is available to the licensee or Representative at the time the comparison is prepared.

25.7 Any estimate provided in accordance with sub-paragraph 25.6(a) must:

- (a) take account of the relevant Domestic Customer's annual consumption or, where the relevant Domestic Customer's annual consumption is not known to, and cannot reasonably be ascertained by, the licensee or Representative, be based on the licensee's or Representative's best estimate of the relevant Domestic Customer's annual consumption having regard to any relevant information that is available to the licensee or Representative at the time the estimate is prepared;
- (b) where it is based on an estimate of the relevant Domestic Customer's annual consumption, clearly set out, in Writing or by means of electronic display, the basis for any such estimated annual consumption; and
- (c) where the licensee or a Representative, when discussing an Offered Domestic Supply Contract with a Domestic Customer, makes any representation concerning the amount of any regular direct debit payment that is to be made in accordance with the Offered Domestic Supply Contract, include a clear explanation of how the proposed regular direct debit payment amounts have been calculated and how those amounts relate to the total annual Charges for the Supply of Electricity which the licensee or Representative estimates will be payable under the Offered Domestic Supply Contract.

25.8 Any comparison of Charges for the Supply of Electricity undertaken in accordance with sub-paragraph 25.6(b) must:

- (a) be undertaken (and explained to the relevant Domestic Customer) on a like for like basis. For these purposes, this will mean that the comparison of Charges for the Supply of Electricity must be based on the same time period (which will usually be one year) and the same consumption level (whether based on the relevant Domestic Customer's actual consumption or the

licensee's or Representative's best estimate of that consumption);
and

- (b) itemise clearly and explain any other relevant differences between the Offered Domestic Supply Contract and, subject to subparagraph 25.6(b), the relevant Domestic Customer's existing Domestic Supply Contract, including any discounts and/or differences in charges associated with different payment methods.

25.9 Where the licensee or a Representative provides to a Domestic Customer an estimate and/or a comparison in accordance with paragraph 25.6, the licensee or Representative must, either at the time that it provides the estimate and/or comparison or as soon as reasonably practicable thereafter, provide to the relevant Domestic Customer a Written copy of that estimate and/or comparison, as appropriate, which the Domestic Customer can retain for their records. This obligation does not apply where the Domestic Customer does not subsequently accept or enter into the Domestic Supply Contract to which the estimate and/or comparison relate(s).

25.10 Where a Domestic Customer to whom the licensee or any Representative has provided an estimate or a comparison in accordance with this licence condition enters into a Domestic Supply Contract with the licensee, the licensee must maintain a record of the information which it provided to that Domestic Customer concerning that Domestic Supply Contract in accordance with this licence condition for a period of 2 years.

Obligations at time of contract

25.11 Where the licensee enters into a Domestic Supply Contract with a Domestic Customer, the licensee or Representative shall, either at the time that the Domestic Supply Contract is entered into or as soon as reasonably practicable thereafter, provide to that Domestic Customer all the information which the licensee or Representative reasonably considers the Domestic Customer would need having regard to the Objective and the licensee's obligation to secure compliance with the same.

25.12 The information which the licensee or Representative shall provide in accordance with paragraph 25.11 shall include but not be limited to:

- (a) a copy of the Domestic Supply Contract (which shall be consistent in all respects with the Offered Domestic Supply Contract) which the licensee and that Domestic Customer have entered into;
- (b) an explanation of what happens next now that the Domestic Customer has entered into a Domestic Supply Contract;
- (c) a reminder to that Domestic Customer to check that the product they have signed up to is appropriate for them, including details of where to find impartial advice and information;

- (d) information about any right for the Domestic Customer to cancel the Domestic Supply Contract; and
- (e) information about what the Domestic Customer can do if they have any concerns, including details of how Consumer Direct can be contacted.

Contact with Domestic Customers after Contract

25.13 The licensee must comply with the requirements of paragraphs 25.14 and 25.15 where a Domestic Supply Contract has been entered into by a Domestic Customer in the course of:

- (a) a visit to that Domestic Customer's premises by a Representative; or
- (b) a conversation, in a place to which the public have access, between a Representative and a Domestic Customer.

25.14 Where a Domestic Supply Contract is entered into in the circumstances described in paragraph 25.13, the licensee must, within a period of 14 days after entering into the Domestic Supply Contract, take all reasonable steps to contact the Domestic Customer, through a Representative of the licensee who is not engaged in activities leading to the making of Domestic Supply Contracts between the licensee and Domestic Customers, by telephone or in Writing to seek confirmation that the Domestic Customer:

- (a) understands that he or she has entered into a Domestic Supply Contract;
- (b) understands the Principal Terms of that Domestic Supply Contract;
- (c) is content to have entered into that Domestic Supply Contract;
- (d) has received the estimate and, where appropriate, the comparison required by paragraph 25.6; and
- (e) is content with the information provided by the licensee and/or, as appropriate, a Representative and is otherwise content with the way in which the Marketing Activities of the licensee were conducted.

25.15 Where, in the course of contact as required by paragraph 25.14, the Domestic Customer indicates that he or she is not content to have entered into the Domestic Supply Contract and wishes to end it, the licensee must take all reasonable steps to ensure:

- (a) that the Domestic Supply Contract is ended; and
- (b) where reasonably practicable, that the licensee does not begin a supply of electricity to the relevant Domestic Customer.

Management arrangements

25.16 The licensee must take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under this condition, including, as appropriate, steps to ensure that any agents and subcontractors of the licensee establish equivalent arrangements.

Definitions for condition

25.17 For the purposes of this condition:

"Marketing Activities" means any activities of the licensee, that:

(a) take place with the simultaneous physical presence of the licensee or any Representative and a Domestic Customer; and

(b) are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the licensee's Domestic Supply Contracts to them and includes entering into such contracts with such customers.

"Objective" has the meaning given to it in paragraph 25.1 of this condition.

"Offered Domestic Supply Contract" means any offer to contract, including the terms of such offer, which the licensee or a Representative makes to a Domestic Customer concerning a supply of electricity to that Domestic Customer at Domestic Premises.

"Telesales Activities" means any activities of the licensee or any Representative that are:

(a) conducted by telephone; and

(b) directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the licensee's Domestic Supply Contracts to them and includes entering into such contracts with such customers.

5. Modifications to paragraph 31.A.1 of standard condition 31A

The text below which is highlighted by track changes constitutes the modifications to paragraph 31.A.1 of standard condition 31A (insertions are shown by underlined text and deletions are shown by strikethrough text):

The licensee must provide the information contained in ~~paragraph 31.A.2~~–

- (a) paragraph 31.A.2 on every Bill or statement of account sent to a Domestic Customer; and
- (b) sub-paragraph 31.A.2(b) and (c) where there is an increase to the Charges for the Supply of Electricity, to every Domestic Customer who does not receive a Bill or statement of account at least once in every three months, within 65 Working Days of the date of the Notice of each increase.