

NOTICE UNDER SECTION 8A(3) OF THE ELECTRICITY ACT 1989

The Gas and Electricity Markets Authority ('the Authority') hereby gives notice pursuant to section 8A(3) of the Electricity Act 1989 ('the Act') as follows:

1. An application for an electricity distribution licence (the 'Licence') granted under section 6(1)(c) of the Act has been received by the Authority from Utility Assets Limited, (Company number: 07255054) (the 'Applicant').
2. The Authority proposes to modify the standard conditions of the Licence that it is minded to grant the Applicant by inserting into the licence, a new Section BA which would include three amended standard conditions titled:
 - (i). BA1 Not used;
 - (ii). BA2 Regulation of charging arrangements;
 - (iii). BA3 Credit rating of the licensee; and
 - (iv). BA4 Indebtedness
3. The effect of the modifications which are annexed to this Notice is to –
 - (a) establish arrangements for regulating the Applicant's charges for the use of its distribution system;
 - (b) set out a requirement for the Applicant to maintain a credit rating or alternative arrangements approved by the Authority; and
 - (c) place restrictions relating to indebtedness and transfers of funds on the Applicant.
4. The reasons for proposing the modifications are to –
 - (a) protect the interests of consumers by regulating the Applicant's charges to domestic customers for the use of its distribution system; and
 - (b) protect the interests of consumers by imposing requirements on the Applicant in respect of its creditworthiness and indebtedness.
5. The proposed modifications can also be obtained (free of charge) from the Ofgem library, 9 Millbank, London, SW1P 3GE or from the Ofgem website and any representations or objections to the proposed modifications must be made in writing on or before 11 February 2011 to Chris Parish at the address above or emailed to regulatoryfinance@ofgem.gov.uk and if a respondent does not wish its response to be made public, it should be clearly marked as not for publication.

Rachel Fletcher
Partner, Distribution
Duly Authorised on behalf of the Gas and Electricity Markets Authority
14 January 2011

AMENDED STANDARD CONDITIONS PARTICULAR TO THIS LICENCE

SECTION BA. SPECIFIC

BA1 Not used

BA2 Regulation of charging arrangements

Introduction

1. The licensee must make, and continue to make, charges available, in accordance with the requirements of this condition, for the provision of Use of System to any Authorised supplier of electricity that uses or wishes to use the licensee's Distribution System to supply electricity to Domestic Customers.

Setting and restriction of charges

2. The licensee's Use of System Charges in relation to Domestic Customers may vary according to the Distribution Services Area of the Electricity Distributor within which Domestic Premises are connected to the licensee's Distribution System.
3. The licensee must set those Use of System Charges so that, except with the Authority's consent, the standing charge, unit rate, and any other component of the charges does not exceed the Use of System Charges to equivalent Domestic Customers ("the equivalent charges").
4. For the purposes of paragraph 3, equivalent charges are the Use of System Charges made by the Electricity Distributor which has a Distribution Services Direction that specifies the Distribution Services Area in which the Domestic Premises connected to the licensee's Distribution System are located.
5. The Authority may give the licensee a direction that specifies which of the Use of System Charges made by the Distribution Services Provider for the Distribution Services Area mentioned in paragraph 4 are relevant for the purposes of determining the equivalent charges.

Procedure for disapplying this condition

6. The charging arrangements set out above will remain in force until such time and in such circumstances as are described in paragraphs 7 to 13.

7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a disapplication request made in accordance with paragraph 8.
8. A disapplication request must:
 - (a) be in Writing addressed to the Authority;
 - (b) specify the paragraph or paragraphs of this condition to which the request relates; and
 - (c) state the date proposed by the licensee (which must not be earlier than the date specified in paragraph 9) on and after which the specified paragraph or paragraphs would no longer have effect (“the disapplication date”).
9. Except with the Authority’s consent, no disapplication of this condition following its receipt of a disapplication request under paragraph 7 may have effect until whichever is the later of:
 - (a) a date not less than 18 months after delivery of the disapplication request; and
 - (b) 31 March 2011.
10. The licensee may withdraw a disapplication request at any time.

Licensee’s right to disapply this condition

11. If the licensee has given the Authority a disapplication request under paragraph 7, it may subsequently give the Authority a Notice that terminates the application of this condition or the part or parts of it specified in the request:
 - (a) in the circumstances described in paragraph 12, with effect from either the disapplication date or such earlier date to which the Authority has given its consent under paragraph 9; or
 - (b) in the circumstances described in paragraph 13, with effect from the disapplication date, so long as the licensee gives Notice within 30 days after the publication of the report mentioned in that paragraph.
12. The circumstances described in this paragraph are these:
 - (a) the Authority has not made a reference to the Competition Commission under section 12 of the Act relating to the modification of this condition as specified in the disapplication request before the beginning of the period of 12 months which will end

with the disapplication date; and

(b) the licensee has not withdrawn its request.

13. The circumstances described in this paragraph are these:

(a) the Competition Commission has made a report on a reference made by the Authority relating to the modification of this condition as specified in the licensee's disapplication request; and

(b) the Commission's report does not find that the ending of the charging arrangements in this condition, in whole or in part, would operate or might be expected to operate against the public interest.

BA3 Credit rating of the licensee

Licensee's obligation

1. The licensee must take all appropriate steps within its power to ensure that at all times it maintains an Investment Grade Issuer Credit Rating (which is to be interpreted in accordance with the provisions of paragraphs 2 to 4) or such arrangements as the Authority considers appropriate and has approved.

Meaning of Issuer Credit Rating

2. For the purposes of paragraph 1, an Issuer Credit Rating is any of the following:
 - (a) an issuer rating by Standard & Poor's Ratings Group or any of its subsidiaries;
 - (b) an issuer rating by Moody's Investors Services Inc or any of its subsidiaries;
 - (c) an issuer senior unsecured debt rating by Fitch Ratings Ltd or any of its subsidiaries;
or
 - (d) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b) or (c) and is issued by:
 - (i) any of the credit rating agencies referred to in those sub-paragraphs, or
 - (ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Meaning of Investment Grade

3. An Investment Grade, in relation to any Issuer Credit Rating within the meaning of paragraph 2, is any of the following:
 - (a) an issuer rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries; or
 - (b) an issuer rating of not less than Baa3 by Moody's Investors Service Inc or any of its subsidiaries; or
 - (c) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (d) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b) or (c) and is issued by:
 - (i) any of the credit rating agencies referred to in those sub-paragraphs, or
 - (ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

BA4 Indebtedness

General prohibition

1. In addition to complying with the requirements of standard condition 26 (Disposal of Relevant Assets), the licensee must not, without the consent of the Authority following the licensee's disclosure of all material facts, enter into any transaction or commitment of a type described or referred to in this condition that does not comply with the restrictions applicable to it under this condition.

Part A: Restricted Category 1

2. The licensee must not create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance, or undertake any Indebtedness to any other person, or enter into any guarantee or any obligation, except in accordance with all of the following requirements:
 - (a) the transaction in question must be on an arm's length basis;
 - (b) it must be on normal commercial terms;
 - (c) it must be for a Permitted Purpose; and
 - (d) if it is within the ambit of standard condition 26 (Disposal of Relevant Assets), it must comply with the requirements of that condition.

Part B: Restricted Category 2

3. The licensee must not transfer, lease, license, or lend any sum or sums, asset, right, or benefit to any Affiliate or Related Undertaking of the licensee except by way of any of the following transactions:
 - (a) a dividend or other distribution out of distributable reserves; or
 - (b) a repayment of capital; or
 - (c) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
 - (d) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis, on normal commercial terms, and is made in compliance with the payment condition described in paragraph 4; or
 - (e) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 2; or
 - (f) 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

- (g) an acquisition of shares or other investments that is in conformity with paragraphs 2 and 3 of standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business) and is made on an arm's length basis and on normal commercial terms.
4. The payment condition referred to in paragraph 3(d) is that the consideration due in respect of the transaction in question must be 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.
5. The provisions of this Part B are subject to the provisions of Part C below.

Part C: Circumstances that trigger the provisions of Part D

6. The following paragraphs of this Part C set out each of the circumstances in which the licensee must not, except with the Authority's consent, enter into or complete any transaction of a type described or referred to in Part B except in accordance with the provisions of Part D below.
7. The circumstance described by this paragraph is that the licensee does not hold an Investment Grade Issuer Credit Rating.
8. The circumstance described by this paragraph is that the licensee holds more than one Issuer Credit Rating and one or more of the ratings so held is not Investment Grade.
9. The circumstance described by this paragraph is that the licensee holds an Issuer Credit Rating that is BBB by Standard & Poor's Ratings Group or Fitch Ratings Ltd, or is Baa3 by Moody's Investors Service Inc, or is such higher Issuer Credit Rating as may be specified by any of those 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 the licensee), and:

- (a) the rating in question is under review for possible downgrade; or
- (b) the licensee is on Credit Watch or Rating Watch with a negative designation; or, where neither sub-paragraph (a) nor (b) applies:
- (c) the licensee's rating outlook, as specified by any credit rating agency referred to in this paragraph 9 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.

Part D: Restricted Category 3

10. Where any of the circumstances described or referred to under Part C applies, the licensee may not, without the consent of the Authority following the licensee's 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 except by way of any of the following transactions:
- (a) a payment properly due for any goods, services, or assets in relation to commitments entered into before the date on which the relevant circumstance under Part C arose, and which are provided on an arm's length basis and on normal commercial terms; or
 - (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; or
 - (c) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 2 and which was contracted before the date on which the relevant circumstance under Part C arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or
 - (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, so long as the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

Part E: Restricted Category 4

11. Subject to paragraph 12, the licensee must not:
 - (a) enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation; or
 - (b) continue or permit to remain in effect any agreement or commitment that incorporates a Cross-Default Obligation subsisting at the date on which this condition takes effect in this licence.
12. The licensee may permit any Cross-Default Obligation in existence at the date mentioned in paragraph 11(b) to remain in effect for a period of not more than 12 months from that date, so long as:
 - (a) the Cross-Default Obligation is referable solely to an instrument that relates to the provision of a loan or other financial facilities granted before that date; and
 - (b) the terms on which those facilities have been made available as at that date are not varied or made more onerous.
13. Nothing in paragraph 11 or 12 prevents the licensee from giving any guarantee that is permitted by and compliant with the requirements of Part A.

Part F: Variation of provision

14. Where the licensee has obtained the Authority's consent to the use of alternative arrangements under paragraph 1 of BA3 (Credit rating of the licensee):
 - (a) the provisions of Part C will not apply to the licensee; but
 - (b) if those alternative arrangements are not maintained in accordance with any conditions imposed by the Authority when it gave its consent, the licensee must then not, without the Authority's consent, enter into or complete any transaction of a type described or referred to in paragraph 3 except in accordance with the provisions of Part D.

Part G: Interpretation

15. In this condition:

Cross-Default Obligation means a term of any agreement or arrangement under which the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated, or is capable of arising or increasing or of being accelerated, because of a default (however it 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 shares 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 sub-paragraph (a) or (b) of the definition of Permitted Purpose set out in standard condition 1 (Definitions for the standard conditions).

Investment Grade has the meaning given in standard condition BA3 (Credit rating of the Licensee).

Issuer Credit Rating has the meaning given in standard condition BA3 (Credit rating of the Licensee).