

## Proposed Modifications to the 'Ring Fence' Conditions in Network Operator Licences

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### Overview:

Energy networks form a vital part of our national infrastructure. Network operators are subject to licence conditions which protect the assets and resources funded by consumers and ensure that sufficient resources are available to the network business in all circumstances. These conditions are known collectively as the regulatory ring fence.

In March 2010 we published an impact assessment and initial consultation on possible changes to the ring fence to improve its effectiveness. Having considered the responses, we are ready to set out updated proposals.

We are now seeking the views of stakeholders on our detailed proposals and their applicability to different types of network operator. This will help us to decide on the changes we should seek to implement during 2011.

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## Context

Our principal objective is to protect the interests of existing and future consumers. The transmission and distribution networks which carry gas and electricity to domestic and commercial users are a vital part of our national infrastructure. It is in consumers' interests that we ensure that the companies which own and operate these networks always have the financial and operational resources necessary to meet their obligations under legislation and licence requirements. This does not mean we are seeking to eliminate the risk that financial distress could affect a network operator; this would neither be possible nor commercially desirable. Primary responsibility for the financial well being of each network operator lies with its managers and owners.

Consumers are to some extent insulated from financial problems which might affect a network operator because:

- their contractual relationships are generally with suppliers who deal with network companies on their behalf,
- they are unlikely to be creditors of a network company and so would not be at risk of losing money if a network operator became insolvent, and
- there are contingency arrangements in place to ensure continuity of energy supplies.

However, there are good reasons for having measures to reduce the risk of a network operator experiencing financial or operational distress or to mitigate the impact if it does. For example:

- if price controlled revenues were allowed to rise to address a financial distress episode the effect would flow through to higher bills for consumers,
- if finance providers incurred losses because of a restructuring or insolvency event the cost of capital for network operators could increase which could lead to increased charges for consumers,
- if there was a shortfall in funds needed to meet the costs of an administration process this would ultimately be borne by consumers, and
- if a network operator could not access sufficient financial or operational resources the development of its network and customer service levels could suffer in the short or longer term.

Ring fence conditions were added to network operator licences during the 1990s to support corporate governance arrangements. They have worked well, and none of the network operators has to date been seriously affected by the 'credit crunch' or the recent financial downturn. Nevertheless we need to update and improve the ring fence conditions to reflect changing risks and industry structures, so that it continues to be effective in the future. In drafting our updated proposals we have taken account of responses to our initial consultation (published in March 2010) and subsequent feedback. We will carefully consider all responses to this consultation before reaching any decisions. If appropriate we will arrange further industry meetings to refine the drafting of licence condition modifications before issuing statutory notices, subject to the consultation process.

## Associated documents

1. Proposed Modifications to the 'Ring Fence' Conditions in Network Operator Licences – Main Document (Ref 42/11)
  - a. [Review of the Ring Fence Conditions in Network Operator Licences – Impact Assessment and Consultation \(3 March 2010\) \(Ref 30/10\)](#)  
  
[http://www.ofgem.gov.uk/Networks/Policy/Documents1/IA\\_Ring\\_Fence\\_Review\\_3%20Mar%2010\\_final.pdf](http://www.ofgem.gov.uk/Networks/Policy/Documents1/IA_Ring_Fence_Review_3%20Mar%2010_final.pdf)
  - b. [Ofgem web page with CEPA report and responses to impact assessment and consultation](#)  
  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=268&refer=Networks/Policy>
  - c. [Standard Conditions of the Electricity Transmission Licence](#)  
  
<http://epr.ofgem.gov.uk/index.php?pk=folder380751>
  - d. [Standard Conditions of the Electricity Distribution Licence](#)  
  
<http://epr.ofgem.gov.uk/index.php?pk=folder499235>
  - e. [Standard Conditions of the Gas Transporter licence](#)  
  
<http://epr.ofgem.gov.uk/index.php?pk=folder414978>
  - f. [Standard Special Conditions of the Gas Transporter Licence](#)  
  
<http://epr.ofgem.gov.uk/index.php?pk=doc510952>
  - g. [Arrangements for responding in the event that a network company experiences deteriorating financial health – position paper](#)  
  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=245&refer=Networks/Policy>
  - h. [Arrangements for responding in the event that an energy network company experiences deteriorating financial health: Consultation Document](#)  
  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=248&refer=NetworkN/Policy>
  - i. [Arrangements for responding in the event that an energy network company experiences deteriorating financial health](#)  
  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=259&refer=Networks/Policy>

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## Appendix 10 – Proposed modifications to disposal of assets conditions

### Introduction

1.1. This appendix shows proposed changes to the ring fence conditions in licences covering the disposal of assets by:

- the gas transmission network operator and gas distribution network operators (Standard Special Condition A27),
- independent gas transporters (Standard Condition 29),
- the electricity transmission network operator (Standard Condition B3), and
- electricity distribution network operators and independent distribution network operators (Standard Condition 26).

1.2. The changes are shown marked up (with red font and struck through font as applicable) on the following pages for each type of network operator referred to above. Our reasons for proposing the changes are contained in chapter 3 of the main consultation document for which these are the appendices (see associated document 1).

1.3. We are not proposing changes to the disposal of assets condition for offshore transmission network operators (Standard Condition E4).

## The gas transmission network operator and gas distribution network operators

### Standard Special Condition A27. Disposal of Assets and Charges over Receivables

1. The licensee shall not dispose of or relinquish operational control over any transportation asset otherwise than in accordance with the provisions following paragraphs of this condition.
2. Subject to paragraph 3, the licensee shall not after [*effective date of modification*] grant any mortgage, charge, or other form of security over any receivable otherwise than in accordance with the provisions of this condition
3. The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not serve to extend materially the scope of the mortgage, charge, or other form of security in so far as it applies to the licensee's Receivables.
4. Save as provided in paragraph 3 6 or 7(c), the licensee shall give to the Authority not less than two months' prior written notice of:
  - (a) its intention to dispose of or relinquish operational control over any transportation asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; or
  - (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables or the circumstances of the intended grant of the mortgage, charge, or other form of security.
5. The following provisions of this paragraph shall apply where the transportation asset comprises a significant part of an independent system operated by the licensee on the appointed day which remains an independent system:
  - (a) Save where the Secretary of State otherwise agrees, the licensee shall neither agree to dispose of, nor dispose of, its right to operate such a transportation asset unless it has put in place or procured, or will with effect from no later than the date of such disposal put in place or procure, a suitable alternative arrangement and any question arising under this sub-paragraph as to whether an alternative arrangement is or will be suitable shall be determined by the Secretary of State.

- (b) The licensee shall notify the Secretary of State no less than 60 days in advance of the proposed disposal and if the Secretary of State directs the licensee within 30 days of such notification, not to proceed with the disposal on grounds that it, and / or the person to whom the independent system will be disposed of, will not comply with such suitable alternative arrangement as the Secretary of State shall determine, the licensee shall comply with the direction.
  - (c) The licensee shall at all times comply with the alternative arrangements in respect of independent systems operated by the licensee.
- 6. Notwithstanding paragraphs 1 and 4, the licensee may dispose of or relinquish operational control over a transportation asset where –
  - (a) the Authority has issued directions for the purposes of this condition generally containing a general consent (whether or not subject to conditions) to:
    - (aa) transactions of a specified description; or
    - (bb) the disposal of or relinquishment of operational control over an asset of a specified description; and
  - (b) the transaction or the assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject. ~~or~~
  - ~~(b) where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.~~
- 7. Notwithstanding paragraph 1, the licensee may dispose of or relinquish operational control over any transportation asset, **or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables** as is specified in any notice given by the licensee under paragraph 4 where:
  - (a) the Authority confirms in writing that it consents to such disposal, ~~or~~ relinquishment **or grant** (which consent may be made subject to acceptance, by the licensee or any **other third party to the transaction in question** in favour of whom the asset is proposed to be disposed or operational control is proposed to be relinquished to, of such conditions as the Authority may specify); or
  - (b) the Authority does not inform the licensee in writing of any objection to such disposal, ~~or~~ relinquishment of control **or grant** within the notice period referred to in paragraph 4; **or**

- (c) the disposal, relinquishment of operational control or grant in question is required by or under any enactment or subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.
8. If ~~a~~ the transportation asset comprises a significant part of the gas conveyance system in Great Britain, notwithstanding that ~~a~~ the disposal of or relinquishment of operational control over the asset is permitted under paragraph 6 or 7, the licensee shall notify the Secretary of State at least 60 days in advance of ~~any~~ the proposed disposal of or relinquishment of operational control over the asset; and if the Secretary of State directs the licensee, within 30 days of such notification, not to proceed with the disposal of or the relinquishment of operational control over the asset, the licensee shall comply with the direction.

9. In this condition-

**“alternative arrangements”** means, in respect of relevant premises, arrangements for the conveyance of gas to protect the interests of consumers at such premises, as determined by the Secretary of State as suitable under sub-paragraph 2A(a) of this condition in this licence or the equivalent condition in the licence of any other relevant gas transporter

**“appointed day”** means 1 March 1996

**“disposal”** means:

- (a) in relation to disposal of a transportation asset situated in England and Wales includes, any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge, or the grant of any other encumbrance, or the permitting of any encumbrance to subsist or any other disposition to a third party
- (b) in relation to disposal of a transportation asset situated in Scotland, includes the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land and “dispose” and “cognate” expressions shall be construed accordingly;

**“receivable”** means a contractual right to receive cash or another financial asset from another entity.

**“relevant premises”** means

- (a) any premises connected to a system to which this licence relates which was an independent system on the appointed day and which remains an independent system; and
- (b) any premises of domestic customers subsequently connected, in pursuance of section 10 of the Act, to a system to which this licence



relates which was an independent system on the appointed day and which remains an independent system.

**“relinquishment of operational control”** includes, without limitation, entering into any agreement or arrangement whereby operational control of a transportation asset or transportation assets is not or ceases to be under the sole management of the licensee.

**“transportation asset”** means any part of the pipe-line system to which this licence relates or any part of any facility being one –

- (a) used by the licensee only for the diurnal storage of gas or for the storage of gas in connection with the operation of its independent systems; and
  - (b) required for the proper performance of its duty under section 9(1) of the Act,
- together with any estate or interest in land required for the utilisation of that system or of such a facility.

## Independent gas transporters

### Condition 29. Disposal of Assets and Charges over Receivables

1. The licensee ~~shall~~ **must** not dispose of or relinquish operational control over any transportation asset or storage asset otherwise than in accordance with the **provisions** ~~following paragraphs~~ of this condition.
2. **Subject to paragraph 3, the licensee must not after [effective date of modification] grant any mortgage, charge, or other form of security over any receivable otherwise than in accordance with the provisions of this condition.**
3. **The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not serve to extend materially the scope of the mortgage, charge, or other form of security in so far as it applies to the licensee’s receivables.**
4. Save as provided in paragraph 5, the licensee shall give to the Authority not less than two months’ prior written notice of:
  - (a) its intention to dispose of or relinquish operational control over any transportation asset or storage asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; **or**

- (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables or the circumstances of the intended grant of the mortgage, charge, or other form of security.
- 5. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over a transportation asset or storage asset –
  - (a) where:
    - (i) the Authority has issued directions for the purposes of this condition generally containing a general consent (whether or not subject to conditions) to:
      - (aa) transactions of a specified description; or
      - (bb) the disposal of or relinquishment of operational control over an asset of a specified description; and
    - (ii) the transaction or the assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject.
  - ~~(b) where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.~~
- 6. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any transportation asset or storage asset, or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables as is specified in any notice given by the licensee under paragraph 4 where:
  - (a) the Authority confirms in writing that it consents to such disposal or relinquishment or grant (which consent may be made subject to acceptance, by the licensee or any other party to the transaction in question of such conditions as the Authority may specify ~~third party in favour of whom the asset is proposed to be disposed or operational control is proposed to be relinquished to, of such conditions as the Authority may specify~~); or
  - (b) the Authority does not inform the licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 2; 4; or
  - (c) the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.

7. If **any** ~~the~~ transportation asset comprises a significant part of the gas conveyance system in Great Britain, notwithstanding that the disposal of or relinquishment of operational control over ~~the~~ **that** asset is permitted under paragraph 5 or 6, the licensee shall notify the Secretary of State at least 60 days in advance of the proposed disposal of or relinquishment of operational control over the asset; and if the Secretary of State directs the licensee, within 30 days of such notification, not to proceed with the disposal of or the relinquishment of operational control over the asset, the licensee shall comply with the direction.

8. In this condition –

**“disposal”** means:

- (a) in relation to disposal of a transportation asset or storage asset situated in England and Wales includes any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge, or grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition;
- (b) in relation to disposal of a transportation asset or storage asset situated in Scotland includes the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party, or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land

and “dispose” and cognate expressions shall be construed accordingly;

**“receivable”** means a contractual right to receive cash or another financial asset from another entity.

**“storage asset”** means –

- (a) an offshore gas storage installation;
  - (b) storage cavities in natural strata;
  - (c) containers for the storage of gas in a liquid state,
- or anything used in connection with the provision of such facilities;

**“transportation asset”** means any part of the licensee’s pipe-line system or any part of any facility being one –

- (i) used by the licensee only for the diurnal storage of gas or for the storage of gas in connection with the operation of its independent systems; and

- (ii) required for the proper performance of its duty under section 9(1) of the Act, together with any estate or interest in land required for the utilisation of that system or of such a facility.
- 9. If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons and to the extent to which there ~~is~~ **is** competition in relation to the storage of gas in particular categories of the facilities mentioned in sub-paragraph (a), (b) or (c) of the definition of "storage asset" in paragraph 8 ~~and its view on that question~~, considers it appropriate that that definition should be modified by the omission of sub-paragraph (a), (b) or (c), then the sub-paragraph in question shall be omitted with effect from a date specified in a notice relating thereto published by the Authority for the purposes of this condition generally.

## The electricity transmission network operator

### Condition B3: Disposal of relevant assets **and charges over receivables**

1. The licensee ~~shall~~ **must** not dispose of or relinquish operational control over any relevant asset otherwise than in accordance with the **provisions** following paragraphs of this condition.
2. **Subject to paragraph 3, the licensee must not after [effective date of modification] grant any mortgage, charge, or other form of security over any receivable otherwise than in accordance with the provisions of this condition.**
3. **The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not serve to extend materially the scope of the mortgage, charge, or other form of security in so far as it applies to the licensee's receivables.**
4. Save as provided in paragraph 5, the licensee shall give to the Authority not less than two months' prior written notice of:
  - (a) its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; **or**
  - (b) **its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables or the circumstances of the intended grant of the mortgage, charge, or other form of security.**

5. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any relevant asset **where:**
  - (a) ~~where~~ the Authority has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:
    - (i) transactions of a specified description; or
    - (ii) the disposal of or relinquishment of operational control over relevant assets of a specified description; andthe transaction or the relevant assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject;
  - or**
  - (b) **the relinquishment of operational control in question is to another transmission licensee and is required by or under standard condition B12 (System Operator – Transmission Owner Code).**
  - ~~(b) — where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation or where the relinquishment of operational control in question is to another transmission licensee and is required by or under standard condition B12 (System Operator – Transmission Owner Code).~~
6. Notwithstanding paragraphs **1 and 2**, the licensee may dispose of or relinquish operational control over any relevant asset **or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables** as is specified in any notice given under paragraph **4** ~~in circumstances~~ where:
  - (a) the Authority confirms in writing that it consents to such disposal or relinquishment **or grant** (which consent may be made subject to acceptance by the licensee or any **other party to the transaction in question of such conditions as the Authority may specify** ~~third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished to of such conditions as the Authority may specify~~); or
  - (b) the Authority does not inform the licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph **4**; **or**
  - (c) **the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.**

7. In this condition:

**"disposal"** includes:

- (a) in relation to disposal of a relevant asset situated in England and Wales any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge or grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition;
- (b) in relation to disposal of a relevant asset situated in Scotland, the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land;

and "dispose" and cognate expressions shall be construed accordingly.

**"receivable"** means a contractual right to receive cash or another financial asset from another entity.

**"relevant asset"** means any asset for the time being forming part of the national electricity transmission system, any control centre for use in conjunction therewith and any legal or beneficial interest in (or right, title or interest in) land upon which either of the foregoing is situate (which for the purposes of property located in Scotland means any estate, interest, servitude or other heritable or leasehold right in or over land including any leasehold interests or other rights to occupy or use and any contractual or personal rights in favour of the licensee relating to the occupation, use or acquisition of such property).

**"relinquishment of operational control"** includes, without limitation, entering into any agreement or arrangement whereby operational control of a relevant asset or relevant assets is not or ceases to be under the sole management of the licensee.

## Electricity distribution network operators and independent distribution network operators

### Condition 26. Disposal of Relevant Assets and charges over Receivables

#### General prohibitions

- 26.1 The licensee must not take any action that is or would be a Disposal of or a Relinquishment of Operational Control over any Relevant Asset except in accordance with the provisions of this condition.

- 26.2 Subject to paragraph 26.3, the licensee must not, after [*effective date of modification*], grant any mortgage, charge, or other form of security over any Receivable except in accordance with the provisions of this condition.
- 26.3 The licensee may permit any mortgage, charge, or other form of security over any Receivable in effect at the date mentioned in paragraph 26.2 to remain in effect and may vary its terms so long as the variation does not serve to extend materially the scope of the mortgage, charge, or other form of security in so far as it applies to the licensee's Receivables.

### Arrangements for specific cases

- 26.4 Except where paragraph 26.6 or 26.7 applies, the licensee:
- (a) (i) must give the Authority not less than two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions in regard to those matters of the person who proposes to acquire the asset or operational control over it; and
  - ~~(b)~~ (ii) may dispose of or relinquish operational control over that Relevant Asset if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in writing of any objection to it within the Notice period specified in sub-paragraph (a)(i);~~and~~
  - (b) (i) must give the Authority not less than two months' Notice of its intention to grant any mortgage, charge, or other form of security over any Receivable or class or classes of Receivables together with such further information as the Authority may request relating to that Receivable, class or classes of Receivables or to the circumstances of the intended grant of the mortgage, charge, or other form of security; and
  - (ii) may grant a mortgage, charge or other form of security over that Receivable or class or classes of Receivables if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (b)(i).
- 26.5 A consent by the Authority under paragraph ~~26.2(b)~~ 26.4 (a)(ii) or 26.4(b)(ii) may be given subject to the acceptance by the licensee, or by any ~~other third party to the transaction in question in favour of whom the Relevant Asset is proposed to be disposed or operational control is proposed to be relinquished,~~ of such conditions as may be specified in that consent.

## Arrangements for other cases

- 26.6 The licensee may dispose of or relinquish operational control over any Relevant Asset where:
- (a) the transaction in question or the asset in question is of a class or description to which the provisions of the General Consent set out at Appendix 1 (which is part of this condition) apply; and
  - (b) the transaction in question satisfies and is in accordance with all such conditions and requirements as may apply to it under those provisions in relation to that asset.

## Statutory requirement

- 26.7 The licensee may:
- (a) dispose of or relinquish operational control over any Relevant Asset; or
  - (b) grant a mortgage, charge, or other form of security over any Receivable or class or classes of Receivables

where the ~~transaction~~ Disposal or Relinquishment of Operational Control in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.

## Interpretation

- 26.8 In this condition, in relation to a Relevant Asset or, as applicable, a Receivable:

**Disposal** means (whether under the law of England and Wales or under the law of Scotland) any of the following:

- (a) a transfer of that asset (whether or not for value) to a person other than the licensee; or
- (b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or
- (c) the grant of any mortgage, charge, or other form of security over that asset; or
- (d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land,

and references to “dispose” are to be read accordingly.

**Obsolete** means that the asset no longer performs its required function either in an efficient manner or at all (whether through wear and tear, obsolescence, damage, failure, unsafe operation, or advances in technology) and includes equipment that the licensee has decided to render obsolete as a result of inspection.



**Prior Notice** means Notice given to the Authority under paragraph 26.4(a) or 26.4(b) of the licensee's intention in relation to the asset.

**Receivable** means a contractual right to receive cash or another financial asset from another entity.

**Redundant** means that the asset is no longer required or necessary to enable the licensee to comply with its obligations under the Act or this licence in relation to its Distribution System (but a Relevant Asset may not be regarded as being Redundant solely because it is in the ownership or control of a third party).

**Relinquishment of Operational Control** includes entering into any agreement or arrangement under which operational control of the asset is not or ceases to be under the sole management of the licensee, and "relinquish" and any related expressions in this context are to be read accordingly.

**Retail Price Index** means, in relation to a valuation of the asset under paragraph A5 of Appendix 1, the general index of retail prices published by the ~~Statistics Board~~ Office for National Statistics (or any other successor body) each month in respect of all items.

**Value** means the estimated price that could be expected to be received in the market at the time of the Disposal of the asset.

26.9 Appendix 1 follows immediately below.

### Appendix 1: General Consent

A1. As provided for under paragraph 26.6, the licensee may dispose of or relinquish operational control over any Relevant Asset without Prior Notice:

[.....no further proposed changes]

## Appendix 11 – proposed modifications to availability of resources conditions

### Introduction

1.1. This appendix shows proposed changes to the ring fence conditions in licences covering the availability of resources for:

- the gas transmission network operator and gas distribution network operators (Standard Special Condition A37),
- independent gas transporters (Standard Condition 44),
- the electricity transmission network operator (Standard Condition B7),
- electricity distribution network operators and independent distribution network operators (Standard Condition 30), and
- offshore transmission network operators (Standard Condition E8).

1.2. The changes are shown marked up (with red font and struck through font as applicable) on the following pages for each type of network operator referred to above. Our reasons for proposing the changes are contained in chapter 3 of the main consultation document for which these are the appendices (see associated document 1).

## The gas transmission network operator and gas distribution network operators

### Standard Special Condition A37. Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:
  - (a) to properly and efficiently carry on the transportation business of the licensee; and
  - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.
2. The licensee shall by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
  - (a) **Certificate 1**

"After making enquiries: ~~and~~

    - (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligations under the Act and such licence(s) for a period of 12 months from the date of this certificate; ~~and~~
    - (ii) the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; and
    - (iii) the directors of the licensee consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard

Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness) of its licence."

or

(b) **Certificate 2**

"After making enquiries and subject to what is explained below:

- (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligations under the Act and such licence(s) for a period of 12 months from the date of this certificate; and
- (ii) the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; and
- (iii) the directors of the licensee consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness) of its licence.

However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligation under the Act and such licence(s) *[followed by a description of the factors concerned]*."

or

(c) **Certificate 3**

"In the opinion of the directors of the licensee, the licensee [as applicable]:

- (i) will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligation under the Act and such licence(s) for a period of 12 months from the date of this certificate; [and/or]
- (ii) will not have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; [and/or]
- (iii) is not at the time of approving this certificate in compliance in all material respects with one or more of the obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness) of its licence."

3. The licensee shall submit to the Authority with that certificate:

- (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate in respect of the availability of financial and other resources referred to at paragraph 2(a)(i) and (ii) or, as applicable, 2(b)(i) and (ii) or 2(c)(i) and (ii), together with a summary confirmation of the availability of financial facilities available to the licensee; and
- (b) a cashflow forecast, a statement of movement in net debt and an analysis of net debt.

4. The statement submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.

5. The licensee shall inform the Authority in writing immediately if:

- (a) the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 2(a) or 2(b); or.

- (b) the directors of the licensee consider that any adverse circumstances which caused them to give the Authority a certificate in the form of **Certificate 3** under paragraph 2 have materially worsened.
- 6. The licensee shall require that each certificate provided for in paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, the statement included in that certificate under paragraph 2(a)(i) or, as applicable, 2(b)(i) or 2(c)(i) together with and the statement and the supporting documents required pursuant to paragraph 3 of this condition submitted with it and, on the other hand, any information which they obtained during their audit work on the regulatory accounts of the licensee prepared pursuant to Standard Special Condition A30 (Regulatory Accounts).
- 7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:
  - (a) The certificate shall be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

    - (i) that the licensee is in compliance in all material respects with all obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness) of its licence; and
    - (ii) that the making of a distribution of [ ] on [ ] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future."
  - (b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.
  - (c) Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

## 8. ~~NOT USED~~

8. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to "licensee" shall mean this legal entity.
- ~~10. Any reference in this condition to the provisions of the Companies Act 2006 shall before 6 April 2008 be construed as a reference to the corresponding provisions of the Companies Act 1985 or the Companies Act 1989 where applicable in force on 31 March 2008.~~

## Requirement to maintain an Intervention Plan

9. The licensee must at all times maintain an Intervention Plan fulfilling the criteria described in the definition of intervention Plan below.

**Intervention Plan** means a document or set of documents (which may be in a suitably secure electronic format) containing information which would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources and facilities of the licensee;
- (b) the non-financial assets, rights and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counter-party and maturity information;
- (d) the tax affairs of the licensee;
- (e) the staff and personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee's assets;
- (g) the systems and processes by which the licensee carries on its transportation business with information on any significant contractual arrangements, including those which impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over transportation assets to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;

- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
  - (k) the licensee's systems for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.
10. However, the requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of Intervention Plan in paragraph 9 above to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

## Independent gas transporters

### Condition 44. Availability of Resources

1. The licensee ~~shall~~ **must** at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:
  - (a) to properly and efficiently carry on the transportation business of the licensee; and
  - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.
2. The licensee ~~shall~~ **must** by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
  - (a) **Certificate 1**

"After making enquiries:

    - (i) ~~and~~ having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial



facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate; and

- (ii) the licensee's directors have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; and
- (iii) the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of Licensee) and Standard Condition 47 (Indebtedness) of its licence."

or

(b) **Certificate 2**

"After making enquiries, and subject to what is explained below:

- (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence; and
- (ii) the licensee's directors have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; and

- (iii) the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of Licensee) and Standard Condition 47 (Indebtedness) of its licence.

However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence *[followed by a description of the factors concerned]*."

or

(c) **Certificate 3**

"In the opinion of the directors of the licensee, the licensee *[as applicable]*:"

- (i) will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate; *[and/or]*
- (ii) will not have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate; *[and/or]*
- (iii) is not at the time of approving this certificate in compliance in all material respects with one or more obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of Licensee) and Standard Condition 47 (Indebtedness) of its licence."

3. The licensee shall submit to the Authority with that certificate:

- (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate *in respect of the availability of financial and other resources referred to at paragraph 2(a)(i) and (ii) or, as applicable, 2(b)(i) and (ii) or 2(c)(i) and (ii),*

- together with a **summary** ~~confirmation~~ of the availability of financial facilities **available to the licensee**; and
- (b) a cashflow forecast, **a statement of** movement in net debt and **an** analysis of net debt.
4. The statement submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.
5. The licensee shall inform the Authority in writing immediately if:
- (a) the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 2(a) or 2(b); or
- (b) **the directors of the licensee consider that any adverse circumstances which caused them to give the Authority a certificate in the form of Certificate 3 under paragraph 2 have materially worsened.**
6. The licensee shall require that each certificate provided for in paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, **the statement included in that the certificate under paragraph 2(a)(i) or, as applicable, 2(b)(i) or 2(c)(i), together with** ~~and~~ the statements **and supporting documents** submitted with it and, on the other hand, any information which they obtained during their audit work on the most recent audited accounting statements of the licensee.
7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee unless prior to the declaration, recommendation or making of the distribution redemption or repurchase (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:
- (a) The certificate shall be in the following form:
- “After making enquiries, the directors of the licensee are satisfied:
- (i) that the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of Licensee) and Standard Condition 47 (Indebtedness) of its licence; and
- (ii) that the making of a distribution redemption or repurchase of [ ] on [ ] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this

certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future”.

- (b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.
- (c) Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

~~8. Any reference in this condition to the provisions of the Companies Act 2006 shall before 6 April 2008 be construed as a reference to the corresponding provisions of the Companies Act 1985 or the Companies Act 1989 where applicable in force on 31 March 2008.~~

### **Requirement to maintain an Intervention Plan**

- 9. Subject to paragraph 10, the licensee must at all times maintain an Intervention Plan fulfilling the criteria described in the definition below.

**“Intervention Plan”** means a document or set of documents (which may be in a suitably secure electronic format) containing information which would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources and facilities of the licensee;
- (b) the non-financial assets, rights and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counter-party and maturity information;
- (d) the tax affairs of the licensee;
- (e) the staff and personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges or other forms of security over the licensee’s assets;
- (g) the systems and processes by which the licensee carries on its transportation business with information on any significant contractual arrangements, including those which impose obligations on the licensee;

- (h) any arrangements under which the licensee has relinquished operational control over transportation assets to an affiliate or related undertaking;
  - (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
  - (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
  - (k) the licensee's systems for ensuring compliance with legislative requirements and with its obligations under this licence.
10. The requirements for the information described in any of the sub-paragraphs (a) to (k) in the definition of Intervention Plan in paragraph 9 to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

## The electricity transmission network operator

### Condition B7: Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:
  - (a) to properly and efficiently carry on the transmission business; and
  - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to the transmission business including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.
2. The licensee shall by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
  - (a) **Certificate 1**

"After making enquiries: ~~and~~

    - (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of

the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 12 months from the date of this certificate; and

- (ii) the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate; and
- (iii) the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition B4 (Provision of information to the Authority), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing), Standard Condition B7 (Availability of Resources), Standard Condition B8 (Undertaking from ultimate controller), Standard Condition B10 (Credit Rating) and Standard Condition B9 (Indebtedness) of its licence."

or

(b) **Certificate 2**

"After making enquiries and subject to what is explained below:

- (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transmission business; and
- (ii) the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate; and

- (iii) the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition B4 (Provision of information to the Authority), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing), Standard Condition B7 (Availability of Resources), Standard Condition B8 (Undertaking from ultimate controller), Standard Condition B10 (Credit Rating) and Standard Condition B9 (Indebtedness) of its licence.

However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transmission business *[followed by a description of the factors concerned]*."

or

(c) **Certificate 3**

"In the opinion of the directors of the licensee, the licensee *[as applicable]*:

- (i) will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 12 months from the date of this certificate; *[and/or]*
- (ii) will not have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate; *[and/or]*
- (iii) is not at the time of approving this certificate in compliance in all material respects with one or more obligations imposed on it by Standard Condition B4 (Provision of information to the Authority), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing), Standard Condition B7 (Availability of Resources), Standard Condition B8 (Undertaking from ultimate controller), Standard Condition B10 (Credit Rating) and Standard Condition B9 (Indebtedness) of its licence."

3. The licensee shall submit to the Authority with that certificate:

- (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate *in respect of the availability of financial and other resources referred to at paragraph 2(a)(i) and (ii) or, as applicable, 2(b)(i) and (ii) or 2(c)(i) and (ii), together with a summary of the financial facilities available to the licensee* ~~confirmation of the availability of financial facilities;~~ and

- (b) a cashflow forecast, **a statement of** movement in net debt and **an** analysis of net debt.
4. The documents submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.
5. The licensee shall inform the Authority in writing immediately if:
  - (a) the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph **2a or 2(b); or**
  - (b) **the directors of the licensee consider that any adverse circumstances which caused them to give the Authority a certificate in the form of Certificate 3 under paragraph 2 have materially worsened.**
6. The licensee shall require that each certificate provided in accordance with paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, **the statement included in the that certificate under paragraph 2(a)(i) or, as applicable, 2(b)(i) or 2(c)(i) together with and the statement of main factors taken into account, and** cashflow forecast, **statement of and** movement in net debt and analysis of net debt submitted with it and, on the other hand, any information which they obtained during their audit work on the regulatory accounts of the licensee prepared pursuant to standard condition B1 (Regulatory Accounts).
7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of sections **829, 830, 849 and 850 263** of the Companies Act **2006 1985**, or redeem or repurchase any share capital of the licensee (and for the purposes of sub paragraph (a) (ii) of this condition the term distribution shall include any such dividend, other distribution, redemption or repurchase) unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:
  - (a) The certificate shall be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

    - (i) that the licensee is in compliance in all material respects with all obligations imposed on it by standard condition B4 (Provision of Information to the Authority), standard condition B6 (Restriction on Activity and Financial Ring Fencing), standard condition B7 (Availability of Resources), standard condition B8 (Undertaking from Ultimate Controller), standard condition B10 (Credit Rating) and standard condition B9 (Indebtedness) of its licence; and



- (ii) that the making of a distribution of [ ] on [ ] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future.”
- (b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.

Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate

### Requirement to maintain an Intervention Plan

- 8. Subject to paragraph 9, the licensee must at all times maintain an Intervention Plan fulfilling the criteria described in the definition below.

**“Intervention Plan”** means a document or set of documents (which may be in a suitably secure electronic format) containing information which would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources and facilities of the licensee;
- (b) the non-financial assets, rights and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counter-party and maturity information;
- (d) the tax affairs of the licensee;
- (e) the staff and personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges or other forms of security over the licensee’s assets;
- (g) the systems and processes by which the licensee carries on the transmission business with information on any significant contractual arrangements, including those which impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over relevant assets to an affiliate or related undertaking;

- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
  - (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
  - (k) the licensee's systems for ensuring compliance with legislative requirements and with its obligations under this licence.
9. The requirements for the information described in any of the sub-paragraphs (a) to (k) in the definition of Intervention Plan in paragraph 8 to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

## Electricity distribution network operators and independent distribution network operators

### Condition 30. Availability of resources

#### General obligation

- 30.1 The licensee must at all times act in a manner designed to ensure that it has available to itself such resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as will enable it to:
- (a) properly and efficiently carry on its Distribution Business; and
  - (b) comply in all respects with its obligations under this licence and such obligations under the Act as apply to the Distribution Business, including its duty to develop and maintain an efficient, co-ordinated, and economical system of electricity distribution.

#### Certificates for the Authority in relation to resources

- 30.2 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1**

"After making enquiries:

- (i) ~~and~~ having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the licensee's directors have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the

Distribution Business for a period of 12 months from the date of this certificate: ~~“or; and~~

- (ii) the licensee’s directors have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate; and
- (iii) the licensee’s directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]”.

or

**(b) Certificate 2**

“After making enquiries and ~~subject to what is explained below:~~

- (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the licensee’s directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate:  ~~; and~~
- (ii) the licensee’s directors have a reasonable expectation that the licensee will have available to itself, or available under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate; and
- (iii) the licensee’s directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate

Controller), [standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)].

However, the directors of the licensee would like to draw attention to the following factors which may cast doubt on the licensee's ability to carry on the Distribution Business *[followed by a description of the factors concerned]*."

or

(c) **Certificate 3**

"In the opinion of the licensee's directors, the licensee *[as applicable]*:

- (i) will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate; *[and/or]*
- (ii) will not have available to itself, or available under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate; *[and/or]*
- (iii) is not, at the time of approving this certificate, in compliance in all material respects with one or more of the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]".

**Statement of factors and report by auditors**

30.3 The licensee must ensure that the certificate given to the Authority under Paragraph 30.2 is accompanied by:

- (a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate, *in respect of the availability of financial and other resources referred to at paragraph 30.2(a)(i) and (ii) or, as applicable 30.2(b)(i) and (ii) or 30.2(c)(i) and (ii); together with a confirmation of the availability of financial facilities and*

- (b) a working capital statement in the format from time to time required by the UK listing authority (or a successor body) for listed companies in the United Kingdom; and
- (c) a report prepared by its auditors and addressed to the Authority that states whether or not the auditors are aware of any inconsistencies between, on the one hand, ~~that certificate and the statement submitted with it~~ **the statement included in the certificate under paragraph 30.2(a)(i) or, as applicable, 30.2(b)(i) or 30.2(c)(i)** and, on the other hand, any information which they obtained during their audit work under standard condition 44 (Regulatory Accounts) on the licensee's Regulatory Accounts.

### **Obligation to report any adverse circumstance**

30.4 The licensee must inform the Authority in Writing immediately if:

- (a) the directors of the licensee become aware of any circumstance which causes them no longer to have ~~a~~ **the** reasonable expectations expressed in the most recent certificate given under paragraph 30.2(a) or (b); or
- (b) **the directors of the licensee consider that any adverse circumstances which caused them to give the Authority a certificate in the form of Certificate 3 under paragraph 30.2(c) have materially worsened.**

### **Certificates for the Authority in relation to dividends**

30.5 The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections **829, 830, 849 and 850 of the Companies Act 2006** ~~263 of the Companies Act 1985~~, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.

30.6 The first requirement is that the certificate must be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

- (a) that the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]; and

- (b) that the making of a distribution, redemption, or repurchase of [value] on [date] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future.”
- 30.7 The second and third requirements are that the certificate:
- (a) must have been approved by a resolution of the licensee’s board of Directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
  - (b) must be signed by a director of the licensee.
- 30.8 Where the certificate given under paragraph 30.5 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

### Requirement to maintain an Intervention Plan

- 30.9 The licensee must at all times maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in paragraph 30.12 below.
- 30.10 The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of Intervention Plan in paragraph 30.12 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

### Variation of provision for certain licensees

- 30.11 If the licensee is not a Distribution Services Provider, paragraph 30.3(b) has effect as if, for the reference to the licensee’s Regulatory Accounts, there were substituted a reference to the licensee’s most recent audited accounting statements.

~~The following variations of this condition apply in relation to the licensee if it is not a Distribution Services Provider:~~

- ~~(a) paragraph 30.3(a) has effect as if all of the words following “facilities” in that paragraph were omitted; and~~
- ~~(b) paragraph 30.3(b) has effect as if for the reference to the licensee’s Regulatory Accounts there were substituted a reference to the licensee’s most recent audited accounting statements.~~

## Interpretation

30.12 In this condition:

**Intervention Plan** means a document or set of documents (which may be in a suitably secure electronic format) containing information which would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources and facilities of the licensee;
- (b) the non-financial assets, rights and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counter-party and maturity information;
- (d) the tax affairs of the licensee;
- (e) the staff and personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee's assets;
- (g) the systems and processes by which the licensee carries on the Distribution Business with information on any significant contractual arrangements, including those which impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over Relevant Assets to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's systems for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

## Offshore transmission network operators

### Condition E8: Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

- (a) to properly and efficiently carry on the transmission business; and
  - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to the transmission business including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.
2. Unless otherwise directed by the Authority as a condition of a consent granted pursuant to paragraph 3 of standard condition E11, the licensee shall, on the date that this condition comes into force and then by 31 July of each year, submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
- (a) **Certificate 1**

"After making enquiries:

    - (i) ~~and~~ having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts; ~~and~~
    - (ii) the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts; and
    - (iii) the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition E5 (Provision of information to the Authority), Standard Condition E7 (Restriction on Activity and Financial Ring Fencing), Standard Condition E8 (Availability of Resources), Standard Condition E9 (Undertaking from ultimate controller), Standard Condition E11 (Credit Rating) and Standard Condition E10 (Indebtedness) of its licence";

or



(b) **Certificate 2**

"After making enquiries, and **subject to what is explained below**:

- (i) having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation, ~~subject to what is explained below~~, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts. ~~However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transmission business; and~~
- (ii) ~~the directors of the licensee have a reasonable expectation that the licensee will have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts; and~~
- (iii) ~~the licensee's directors consider that at the time of approving this certificate the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition E5 (Provision of information to the Authority), Standard Condition E7 (Restriction on Activity and Financial Ring Fencing), Standard Condition E8 (Availability of Resources), Standard Condition E9 (Undertaking from ultimate controller), Standard Condition E11 (Credit Rating) and Standard Condition E10 (Indebtedness) of its licence.~~

~~However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transmission business: [followed by a description of the factors concerned]";~~

or

(c) **Certificate 3**

"In the opinion of the directors of the licensee, the licensee **[as applicable]**:

- (i) will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business and activities authorised by the licence

held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts; [and/or]

- (ii) will not have available to itself, or under appropriate contractual arrangements, sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable the licensee to carry on the transmission business and activities authorised by the licence held in accordance with its obligations under the Act for a period of 24 months (as two distinct 12 month periods) from the date of the last published accounts; [and/or]
- (iii) is not at the time of approving this certificate in compliance in all material respects with one or more of the obligations imposed on it by Standard Condition E5 (Provision of information to the Authority), Standard Condition E7 (Restriction on Activity and Financial Ring Fencing), Standard Condition E8 (Availability of Resources), Standard Condition E9 (Undertaking from ultimate controller), Standard Condition E11 (Credit Rating) and Standard Condition E10 (Indebtedness) of its licence."

3. The licensee shall submit to the Authority with that certificate:

- (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate in respect of the availability of financial and other resources referred to at paragraph 2(a)(i) and (ii) or, as applicable, 2(b)(i) and (ii) or 2(c)(i) and (ii), together with a summary of the financial facilities available to the licensee ~~confirmation of the availability of financial facilities;~~ and
- (b) a cashflow forecast, a statement of movement in net debt and an analysis of net debt.

4. The documents submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.

5. The licensee shall inform the Authority in writing immediately if:

- (a) the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a) or 2(b); or.
- (b) the directors of the licensee consider that any adverse circumstances which caused them to give the Authority a certificate in the form of Certificate 3 under paragraph 2 have materially worsened.

6. The licensee shall require that each certificate provided in accordance with paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, the statement included in the ~~that~~

certificate **under paragraph 2(a)(i) or, as applicable, 2(b)(i) or 2(c)(i) together with** ~~and~~ the statement **of main factors taken into account,** ~~and~~ cashflow forecast, ~~and~~ statement of movement in net debt and analysis of net debt submitted with it and, on the other hand, any information which they obtained during their audit work on the regulatory accounts of the licensee prepared pursuant to standard condition E2 (Regulatory Accounts).

7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of sections ~~263~~ **829, 830, 849 and 850** of the Companies Act ~~1985~~ **2006**, or redeem or repurchase any share capital of the licensee (and for the purposes of sub paragraph (a) (ii) of this condition the term distribution shall include any such dividend, other distribution, redemption or repurchase) unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:

- (a) The certificate shall be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

- (i) that the licensee is in compliance in all material respects with all obligations imposed on it by standard condition E5 (Provision of Information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from Ultimate Controller), standard condition E11 (Credit Rating) and standard condition E10 (Indebtedness) of its licence; and
- (ii) that the making of a distribution of [ ] on [ ] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future."

- (b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.

8. Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

### **Requirement to maintain an Intervention Plan**

9. **Subject to paragraph 10, the licensee must at all times maintain an Intervention Plan fulfilling the criteria shown in the definition below.**

**“Intervention Plan”** means a document or set of documents (which may be in a suitably secure electronic format) containing information which would be sufficient to allow an energy administrator (within the meaning of section 154 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources and facilities of the licensee;
  - (b) the non-financial assets, rights and resources of the licensee including information on key management and operational personnel and information technology systems;
  - (c) the liabilities of the licensee, including contingent and contractual liabilities, with counter-party and maturity information;
  - (d) the tax affairs of the licensee;
  - (e) the human resources of the licensee and any pension schemes sponsored or administered by the licensee;
  - (f) any mortgages, charges or other forms of security over the licensee’s assets;
  - (g) the systems and processes by which the licensee carries on the transmission business with information on any significant contractual arrangements, including those which impose obligations on the licensee;
  - (h) any arrangements under which the licensee has relinquished operational control over Relevant Assets to an affiliate or related undertaking;
  - (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
  - (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
  - (k) the licensee’s systems for ensuring compliance with legislative requirements and with its obligations under this licence.
10. The requirements for the information described in any of the sub-paragraphs (a) to (k) in the definition of Intervention Plan in paragraph 8 to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

## Appendix 12 – Proposed modifications to ultimate controller undertaking conditions

### Introduction

1.1. This appendix shows proposed changes to the ring fence conditions in licences covering ultimate controller undertakings for:

- the gas transmission network operator, gas distribution network operators and independent gas transporters (Standard Condition 45),
- the electricity transmission network operator (Standard Condition B8),
- electricity distribution network operators and independent distribution network operators (Standard Condition 31), and
- offshore transmission network operators (Standard Condition E9).

1.2. The changes are shown marked up (with red font and struck through font as applicable) on the following pages for each type of network operator referred to above. Our reasons for proposing the changes are contained in chapter 3 of the main consultation document for which these are the appendices (see associated document 1).

## The gas transmission network operator, gas distribution network operators and independent gas transporters

### Condition 45. Undertaking from Ultimate Controller

1. The licensee shall procure from each company or other person which is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenantor") will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is a subsidiary of or controlled by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.
2. The licensee shall:
  - (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 1;
  - (b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking;and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when –
  - (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller; or
  - (ii) there is an unremedied breach of such undertaking; or
  - (iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 2 of this condition.
3. The licensee shall, on or before 31 July in each relevant year, provide the Authority with a schedule of extant undertakings obtained in accordance with paragraph 1 together with a confirmation that the licensee has sent each of the ultimate controllers concerned a letter, within the preceding 12 months, re-apprising that ultimate controller of the terms of the undertaking which it has given.

4. For the purposes of this condition:

**relevant year** means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.

## The electricity transmission network operator

### Condition B8: Undertaking from ultimate controller

1. The licensee shall procure from each company or other person which the licensee knows or reasonably should know is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenantor") will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is subsidiary of, or is controlled, by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.
2. The licensee shall:
  - (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 1;
  - (b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or of any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when,

- (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller, or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under sub-paragraph (c).

3. The licensee must, on or before 31 July in each relevant year, provide the Authority with a schedule of extant undertakings obtained in accordance with paragraph 1, together with a confirmation that the licensee has sent each of the ultimate controllers concerned a letter, within the preceding 12 months, re-apprising that ultimate controller of the terms of the undertaking which it has given.
4. For the purposes of this condition:  
  
**relevant year** means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.

## Electricity distribution network operators and independent distribution network operators

### Condition 31. Undertaking from Ultimate Controller

#### Obligation to procure undertaking

- 31.1 The licensee must procure from each company or other person that it knows or reasonably should know is at any time an Ultimate Controller of the licensee a legally enforceable undertaking in favour of the licensee, in a form specified by the Authority in a direction issued for the purposes of this condition generally, and on the terms set out in paragraph 31.2.
- 31.2 Those terms are that the Ultimate Controller ("the covenantor"):
  - (a) will refrain from any action; and
  - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the covenantor (other than the licensee and any Subsidiary of the licensee) will refrain from any action, that would be likely to cause the licensee to breach any of its obligations under the Act or this licence.
- 31.3 The undertaking to be procured under paragraph 31.1:
  - (a) must have been obtained before the end of seven days after the date on which the company or person in question becomes an Ultimate Controller of the licensee; and
  - (b) must remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an Ultimate Controller of the licensee.



### **Evidence of compliance and duty to enforce**

31.4 Whenever the licensee obtains an undertaking in accordance with paragraph 31.3(a), it must:

- (a) give the Authority evidence of its compliance without delay, including a copy of the undertaking in question; and
- (b) at all times comply with any direction from the Authority to enforce that undertaking.

31.5 The licensee must, on or before 31 July in each Regulatory Year, provide the Authority with a schedule of extant undertakings obtained in accordance with paragraph 31.1 together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, re-apprising that Ultimate Controller of the terms of the undertaking which it has given.

### **Reporting obligation in respect of breach**

31.6 The licensee must inform the Authority immediately in Writing if the licensee's directors become aware that any undertaking procured under the provisions of this condition has ceased to be legally enforceable or that its terms have been breached.

### **Restriction of arrangements with Ultimate Controller**

- 31.7 Except with the Authority's consent, the licensee must not enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the licensee or, where the Ultimate Controller is a corporate body, with any of the subsidiaries of such a corporate Ultimate Controller (other than a Subsidiary of the licensee) at any time when:
- (a) an undertaking procured under paragraph 31.1 is not in place in relation to that Ultimate Controller; or
  - (b) there is an unremedied breach of any such undertaking that is in place in relation to that Ultimate Controller; or
  - (c) the licensee is in breach of the terms of any direction given by the Authority under paragraph 31.4(b).

## **Offshore transmission network operators**

### **Condition E9: Undertaking from ultimate controller**

1. The licensee shall procure from each company or other person which the licensee knows or reasonably should know is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenantor") confirms that the licence holder is both the owner and

operator of the transmission system and that the covenantor will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is subsidiary of, or is controlled, by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.

2. The licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 1;
- (b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or of any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when,

- (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller, or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under sub-paragraph (c).

3. The licensee must, on or before 31 July in each Regulatory Year, provide the Authority with a schedule of extant undertakings obtained in accordance with paragraph 31.1 together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, re-apprising that Ultimate Controller of the terms of the undertaking which it has given.

## Appendix 13 – Proposed modifications to restriction of indebtedness conditions

### Introduction

1.1. This appendix shows proposed changes to the ring fence conditions in licences covering restriction of indebtedness for:

- the gas transmission network operator and gas distribution network operators (Standard Special Condition A39),
- independent gas transporters (Standard Condition 47),
- the electricity transmission network operator (Standard Condition B9),
- electricity distribution network operators (Standard Condition 41),
- independent distribution network operators (Amended Standard Condition BA4 / 53), and
- offshore transmission network operators (Standard Condition E10).

1.2. The changes are shown marked up (with red font and struck through font as applicable) on the following pages for each type of network operator referred to above. Our reasons for proposing the changes are contained in chapter 3 of the main consultation document for which these are the appendices (see associated document 1).

1.3. The restriction of indebtedness condition in independent distribution network operator licences (only) is an *Amended* Standard Condition i.e. it is individual to the licensee concerned. This means that the form of the condition varies slightly in some cases. For this consultation, we have shown it in its typical form with our proposed modifications.

## The gas transmission network operator and gas distribution network operators

### Standard Special Condition A39. Indebtedness

1. In addition to the requirements of Standard Special Condition A27 (Disposal of Assets **and Charges over Receivables**), 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 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 Special Condition A27 (Disposal of 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 sub-paragraph (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 Special Condition A36 (Restriction on Activity and Financial Ring Fencing) made on an arm's length basis and on normal commercial terms,

provided, however, that the provisions of paragraph 3 below shall prevail in any of the 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 13 December 1999, ~~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. 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 4, if:
  - (a) the licensee does not hold an investment grade issuer credit rating;
  - (b) ~~where~~ the licensee holds more than one issuer credit rating, ~~and~~ 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 Special Condition A38 Credit Rating of the 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;

(d) the licensee has:

- (i) given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Special Condition A37 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
- (ii) informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Special Condition A37 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in paragraph 2 of the same condition;

or

(e) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:

- (i) the licensee has remedied the breach to the satisfaction of the counter party concerned; or
- (ii) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counter party concerned; and

in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority;

or

- (iii) in response to a written request from the licensee, the Authority has confirmed in writing before the breach occurs that the breach in question shall not cause the provisions of this paragraph to apply.

4. Where paragraph 3 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 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 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.

5. 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 is capable of arising, of increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the licensee;
- (ii) 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
- (iii) that subsidiary carries on business only for a purpose within paragraphs 1(a), 1(b), 1(c) or 1(d) of the definition of permitted purpose set out in Standard Special Condition A32 (Definition of Permitted Purpose).

**"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 Special Condition A38 (Credit Rating of the Licensee).

**“issuer credit rating”** has the meaning given in paragraph 2 of Standard Special Condition A38 (Credit Rating of the Licensee).

6. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean this legal entity.

## Independent gas transporters

### Condition 47. Indebtedness

1. In addition to the requirements of Standard Condition 29 (Disposal of Assets and Charges over Receivables), 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 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 sub-paragraph (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 43 (Restriction on Activity and Financial Ring fencing) 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 of the 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 the date in which this condition came into effect, 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 Standard Condition 46 (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 ~~and~~ 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 46 (Credit Rating of Licensee) and such rating:
  - (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.
- (d) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition 44 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition;
- (e) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Condition 44 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
- (f) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
  - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
  - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and  
 in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority; or
  - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any

restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).

4. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of Standard Condition 46 (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 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 46 (Credit Rating of Licensee);
  - (b) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition 44 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition;
  - (c) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Condition 44 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
  - (d) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
    - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
    - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and  
 in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority; or
    - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).
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 is capable of arising, of increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the licensee;
- (ii) 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
- (iii) that subsidiary carries on business only for a purpose within paragraph (a) of the definition of permitted purpose set out in Standard Condition 32 (Interpretation of Section C)

**"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 46 (Credit Rating of Licensee)

**“issuer credit rating”** has the meaning given in paragraph 2 of Standard Condition 46 (Credit Rating of Licensee)

## The electricity transmission network operator

### Condition B9: Indebtedness

1. In addition to the requirements of standard condition B3 (Disposal of relevant assets **and charges over receivables**), 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 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 B3 (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 sub-paragraph (a);
    - (vi) payments for group corporation tax relief or for the surrender

thereof 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 B6 (Restriction on Activity and Financial Ring Fencing) made on an arm's length basis and on normal commercial terms,

provided however, that the provisions of paragraph 3 below shall prevail in any of the 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 on the date this condition comes into effect in the licensee's transmission 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 1(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. Except with the prior consent of the Authority, the licensee shall not ~~after 1st April 2008~~ enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 4, if:
    - (a) the licensee does not hold an investment grade issuer credit rating;
    - (b) ~~where~~ the licensee holds more than one issuer credit rating, ~~and~~ 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 B10 (Credit Rating) 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;

- (d) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition B7 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition;
- (e) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Condition B7 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
- (f) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
  - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
  - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and

in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority; or

  - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).

4. Where paragraph 3 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 (as described

or referred to in paragraph 1(b)) to any affiliate or related undertaking of the licensee, 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 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 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 the surrender thereof 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.

## Electricity distribution network operators

### Condition 41. Restriction of Indebtedness and transfers of funds

#### General prohibition

- 41.1 In addition to complying with the requirements of standard condition 26 (Disposal of Relevant Assets **and charges over Receivables**), 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

- 41.2 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

41.3 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 41.4 or
- (e) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 41.2; 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.

41.4 The payment condition referred to in paragraph 41.3(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.

41.5 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

- 41.6 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.
- 41.7 The circumstance described by this paragraph is that the licensee does not hold an Investment Grade Issuer Credit Rating.
- 41.8 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.
- 41.9 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 40 (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 41.9 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.
- 41.10 The circumstance described by this paragraph is that the licensee has:
- (a) given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
  - (b) informed the Authority of any circumstance of the type referred to at paragraph 4 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition.
- 41.11 The circumstance described by this paragraph is that the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider, unless one of the following applies:
- (a) the licensee has remedied the breach to the satisfaction of the counter

party concerned; or

- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counter party concerned; and

in either case (a) or (b) the remedy or renegotiation has been notified in writing to the Authority;

or

- (c) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D.

### Part D: Restricted Category 3

41.12 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 41.2 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

41.13 Subject to paragraph 41.12, 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.
- 41.14 The licensee may permit any Cross-Default Obligation in existence at the date mentioned in paragraph 41.11(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.
- 41.15 Nothing in paragraph 41.11 or 41.12 prevents the licensee from giving any guarantee that is permitted by and compliant with the requirements of Part A.

## Part F: Interpretation

41.16 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 subparagraph (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 40 (Credit rating of the Licensee).

**Issuer Credit Rating** has the meaning given in standard condition 40 (Credit rating of the Licensee).

## Independent distribution network operators

### Standard Condition BA4. Indebtedness

1. In addition to the requirements of standard condition 26 (Disposal of Relevant Assets ~~and charges over Receivables~~) ~~as in force at 31 May 2008~~, the licensee ~~shall~~ **must** 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 sub-paragraph (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 **amended standard condition** 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, **and** 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;
- (d) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition;
  - (e) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 4 of Standard Condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
  - (f) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
    - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
    - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and

in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority and the Authority; or

    - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).
4. Where the Authority has 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 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);

- (b) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition;
- (c) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 4 of Standard Condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or Certificate 2 as set out in the same condition; or
- (d) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
  - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
  - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and

in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority and the Authority; or

  - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).

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 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).

## Offshore transmission network operators

### Condition E10: Indebtedness

1. In addition to the requirements of standard condition E4 (Disposal of relevant assets), 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 any guarantee or any obligation otherwise than:
    - (i) on an arm's length basis;
    - (ii) on normal commercial terms;
    - (ii) for a permitted purpose; and
    - (iv) (if the transaction is within the ambit of standard condition E4 (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; repayment of capital;
    - (ii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
    - (iii) 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;
    - (iv) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a);
    - (v) payments for group corporation tax relief or for the surrender thereof calculated on a basis not exceeding the value of the benefit received; or
    - (vi) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition E7 (Restriction on Activity and Financial Ring Fencing) made on an arm's length basis and on normal commercial terms,

provided however, that the provisions of paragraph 3 below shall prevail in any of the 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 on the date this condition comes into effect in the licensee's transmission 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 1(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 given consent to alternative arrangements under paragraph 2 of standard condition E11 (Credit Rating) 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; or
  - (b) ~~the Authority has not provided to consent under paragraph 2 of standard condition E11 (Credit Rating) for alternative financial arrangements proposed by the licensee; or~~ 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 E11 (Credit Rating) 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; or
  - (d) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition E8 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or certificate 2 as set out in the same condition; or
  - (e) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Condition E8 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1; or
  - (f) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider, or under any other contractual arrangement unless one of the following applies:
    - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
    - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and

in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority; or

    - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).
4. Where the Authority has given consent to alternative arrangements under paragraph 2 of standard condition E11 (Credit Rating) 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 alternative arrangements for which consent has been given are not maintained in accordance with the conditions imposed by the Authority

when giving the consent; or

- (b) the licensee has given the Authority a certificate in the form of Certificate 3 under the requirement at paragraph 2 of Standard Condition E8 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1 or certificate 2 as set out in the same condition; or
- (c) the licensee has informed the Authority of any circumstance of the type referred to at paragraph 5 of Standard Condition E8 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1; or
- (d) the licensee has after [effective date] materially breached any formal covenant pertaining to its financial affairs which it has entered into with a bank or finance provider unless one of the following applies:
  - (i) the licensee has remedied the breach to the satisfaction of the counter-party concerned; or
  - (ii) the licensee has renegotiated the covenant or contractual arrangement concerned in light of the breach, to the satisfaction of the counter-party concerned; and  
 in either case (i) or (ii) the remedy or renegotiation has been notified in writing to the Authority; or
  - (iii) in response to a written request from the licensee, the Authority has confirmed in writing, before the breach occurs, that the breach referred to in the request shall not trigger any restriction on entering into or completing transactions of a type referred to or described in paragraph 1(b).

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 (as described or referred to in paragraph 1(b)) to any affiliate or related undertaking of the licensee, 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 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 arise, provided that such payment is not

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made earlier than the original due date for payment in accordance with its terms; and

- (d) payments for group corporation tax relief or the surrender thereof 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.

## Appendix 14 – Proposed ring fence condition relating to sufficiently independent directors

### Introduction

1.1. This appendix shows the proposed text for a new ring fence licence condition requiring there to be at least two sufficiently independent directors on the boards of:

- the gas transmission network operator and gas distribution network operators, and
- the electricity transmission network operator and electricity distribution network operators

1.2. We propose that this new condition should not apply to the following types of network operator:

- independent gas transporters,
- independent distribution network operators, and
- offshore transmission network operators

1.3. The proposed condition in generic form is shown on the pages below. Our reasons for proposing that the condition be included in these types of licence are contained in chapter 4 of the main consultation document for which these are the appendices (see associated document 1).

## Requirement relating to board composition

1. Except and to the extent that the Authority consents otherwise, subject to paragraph 8, the licensee must at all times after [*effective date*] have appointed to its board at least two directors who are sufficiently independent from the distribution business and any of its affiliates or related undertakings.
2. Those directors, to be known as the licensee's 'sufficiently independent directors' must:
  - (a) be natural persons (i.e. not companies), and
  - (b) have the skills, knowledge, experience and personal qualities necessary for them to perform effectively as non-executive directors of the licensee.
3. A sufficiently independent director:
  - (a) must not be, and must not have been during the 12 months before appointment:
    - (i) a director or, employee of the licensee, or
    - (ii) a director or employee of any affiliate or related undertaking of the licensee.

However, the references to "director" in sub paragraphs (i) and (ii) above, do not apply to appointment as a sufficiently independent director of the licensee or of an affiliate or related undertaking of the licensee which is the holder of a gas transporters licence or electricity transmission or distribution licence.

- (b) must not, in any capacity have, or have had during the 12 months before appointment, any material business relationship with the licensee or any affiliate or related undertaking of the licensee (but the holding of a small number of shares or associated rights shall not of itself be considered a material business relationship),
- (c) must not represent the particular interests of any shareholder or group of shareholders of the licensee or the interests of any affiliate or related undertaking of the licensee, and
- (d) must not receive remuneration from the licensee or any affiliate or related undertaking of the licensee apart from a director's fee and reasonable expenses (but this shall not preclude the receipt or retention of any benefit accrued as a result of employment by or service with the licensee or any affiliate or related undertaking of the licensee before appointment as a sufficiently independent director).



4. The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of each appointment.
5. The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his/her term of service, having particular regard to the criteria listed at paragraph 3.
6. A term of appointment for a sufficiently independent director may not be for longer than 8 years, but an individual may be reappointed thereafter provided that they continue to meet the criteria listed at paragraph 3. A sufficiently independent director must not have any executive duties within the licensee's business.
7. The licensee must notify the Authority in writing within 14 days if any of its sufficiently independent directors is removed from office or resigns, giving reasons for the removal or (as far as they are known by the licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if appropriate, be stated to be 'personal reasons'.
8. If, at any time, the licensee has less than two sufficiently independent directors because of a removal, resignation or other reason (including death or incapacity), the licensee must use its best endeavours to ensure that new sufficiently independent directors are appointed as soon as reasonably possible to bring their number up to at least two.
9. *[Applicable to gas transporter licences only]*  
  
Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to "licensee" shall mean this legal entity.