

To the Company Secretary:

Northern Powergrid (Northeast) Limited
Company number 02906593

Northern Powergrid (Yorkshire) plc
Company number 04112320

London Power Networks plc
Company number 03929195

South Eastern Power Networks plc
Company number 03043097

Eastern Power Networks plc
Company number 02366906

Electricity North West Ltd
Company number 02366949

Scottish Hydro Electric Power Distribution plc
Company number SC213460

Southern Electric Power Distribution plc
Company number 04094290

SP Distribution Ltd
Company number SC189125

SP Manweb plc
Company number 02366937

Western Power Distribution (East Midlands) plc
Company number 02366923

Western Power Distribution (West Midlands) plc
Company number 03600574

Western Power Distribution (South West) plc
Company number 02366894

Western Power Distribution (South Wales) plc
Company number 02366985

Independent Power Networks Ltd
Company number 04935008

Energetics Electricity Ltd
Company number SC234694

The Electricity Network Company Ltd
Company number 05581824

ESP Electricity Ltd
Company number 04718806

UK Power Networks (IDNO) Ltd
Company number 06489447

Utility Assets Ltd
Company number 07255054

NOTICE UNDER SECTION 11A(2) OF THE ELECTRICITY ACT 1989

The Gas and Electricity Markets Authority ("the Authority") hereby gives notice pursuant to section 11A(2) of the Electricity Act 1989 ("the Act") as follows:

1. The Authority proposes to modify all electricity distribution licences granted or treated as granted under section 6(1)(c) of the Act by amending the following Standard Licence Conditions:

Section A - Applicable to all Electricity Distributors

- Condition 26. Disposal of Relevant Assets;
- Condition 30. Availability of resources;
- Condition 31. Undertaking from Ultimate Controller;

Section B - Applicable to Distribution Services Providers

- Condition 40. Credit rating of the licensee;
- Condition 41. Restriction of Indebtedness and transfers of funds.

2. The Authority also proposes to add the following new Standard Licence Condition to Section B which will be applicable only to Distribution Services Providers:

- Condition 43A. Requirement for Sufficiently Independent Directors.

3. The Authority's reasons for proposing to make these licence modifications are set out in the following documents published by the Authority:

- Review of the 'Ring Fence' Conditions in Network Operator Licences (Ref 30/10) published 3 March 2010;
- Proposed Modifications to the 'Ring Fence' Conditions in Network Operator Licences (Ref 42/11) published 25 March 2011;
- Changes to the Ring Fence Conditions in Network Operator Licences (Ref 85/2012) published 3 July 2012;
- Updated Proposals for Changes to Ring Fence Conditions (Ref 129/2012) published 11 October 2012; and
- Open letter dated 17 December 2012: Formal proposals to modify the ring fence conditions in network operator licences,

and in summary are to update and enhance the suite of 'Ring Fence' conditions in electricity distribution licences granted under section 6(1)(c) of the Act so that it continues to protect the interests of existing and future consumers by helping to control the risks associated with the financial distress of a distribution system operator.

4. The effects of the proposed modifications are in summary:

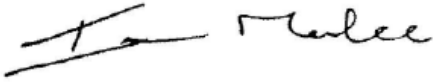
- a) to provide assurance that charges will only be granted over the receivables of an electricity distribution licence holder (a 'licensee') in appropriate circumstances;
- b) to extend the scope of the annual certification of resource availability by each licensee's board so that it covers operational as well as financial resources and compliance with certain licence conditions;
- c) to require each licensee to maintain an Intervention Plan containing important financial and operational information;
- d) to require each licensee to provide the Authority with a schedule of its ultimate controllers and to reappraise those ultimate controllers of the terms of undertakings which they have given to the licensee on an annual basis;

and, in respect of licensees who are Distribution Services Providers,

- e) to add DBRS Ratings Ltd and its affiliates to the list of credit rating agencies specified in Standard Licence Conditions 40 and 41;
- f) to expand the definition of parties specified in restrictions placed on the licensee in Standard Licence Condition 41 by the inclusion of a new defined term of "Associate";
- g) to specify additional circumstances in which a licensee could be subject to restrictions on the payments it can make to its Associates; and
- h) to require each licensee to have two sufficiently independent directors.

- 5. The proposed modifications are set out in Annexes 1 to 6 to this notice, with additions shown in red text and deletions in dark red text and struck through.
- 6. Copies of this notice and the documents referred to in paragraph 3 are available (free of charge) from the Ofgem Research and Information Centre (telephone 020 7901 7003) or on the Ofgem website (www.ofgem.gov.uk).
- 7. Any representations on the proposed licence modifications may be made on or before 22 January 2013 to: Paul Darby, Regulatory Finance Team, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to paul.darby@ofgem.gov.uk.

8. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.
9. If the Authority decides to make the proposed modifications they will take effect not less than 56 days after the decision is published.



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Ian Marlee

Senior Partner, Smarter Grids and Governance (Transmission)

**Duly authorised on behalf of the
Gas and Electricity Markets Authority**

17 December 2012

Condition 26. Disposal of Relevant Assets and restrictions on charges over Receivables

General prohibition

- 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 1 April 2013, 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 have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's Receivables.

Arrangements for specific cases

- 26.42 Except where paragraph 26.46, 26.7 or 26.59 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).

26.35 A consent by the Authority under paragraph 26.2(b)4(a)(ii) or 26.4(b)(ii) may be given subject to the acceptance by the licensee, or by any 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

26.46 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.

26.7 The licensee may grant a mortgage, charge, or other form of security over a Receivable or class or classes of Receivables where:

- (a) the indebtedness of the licensee that is to be secured represents the novation or rollover of existing indebtedness; and
- (b) the proceeds of the indebtedness of the licensee that is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

26.8 For the purposes of paragraph 26.7, what is meant in any particular case by:

- (a) “existing indebtedness”; and
- (b) “proceeds of the indebtedness”

is to be treated as a question of fact.

Statutory requirement

26.59 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 Disposal or Relinquishment of Operational Control 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.

Interpretation

26.106 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 26.24(a)(i) of the licensee’s intention in relation to the asset.

Receivable means a contractual right to receive any sum or sums or any other financial asset from another person.

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 Prices 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 Office for National Statistics (or any other successor body) Board 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.

26.117 Appendix 1 follows immediately below.

Appendix 1: General Consent

- A1. As provided for under paragraph 26.64, the licensee may dispose of or relinquish operational control over any Relevant Asset without Prior Notice:
- (a) in accordance with the provisions of Part A below, for the Disposal of a Relevant Asset; and
 - (b) in accordance with the provisions of Part B below, for the Relinquishment of Operational Control over a Relevant Asset.

PART A: CATEGORIES OF DISPOSAL

Disposal Category 1

- A2. The licensee may dispose of a Relevant Asset without giving Prior Notice if:
- (a) the asset is Obsolete or Redundant; or
 - (b) the Disposal will not constitute the Disposal of a legal (rather than an equitable) interest until the asset is Obsolete or Redundant; or
 - (c) where the asset comprises only land above or below which an electric line (but not electrical plant) of the licensee is situated, the Disposal complies with paragraph A3.
- A3. For the purposes of paragraph A2(c), the Disposal must be on terms that will permit the electric line (including any replacement of it) to remain in position for as long as it forms part of the licensee's Distribution System under a wayleave, easement, or other legal estate which in any such case includes sufficient rights of access in favour of the licensee for the purposes of inspection, maintenance, replacement, or repair as may reasonably be necessary to enable that line to remain in operation as part of the licensee's Distribution System.
- A4. The consent in paragraph A2 does not apply in any of the following cases.
- A5. It does not apply in respect of a Relevant Asset if the Value:
- (a) of that asset; or
 - (b) of that asset and other related Relevant Assets that are being or are intended to be disposed of at the same time; or
 - (c) of that asset and other Relevant Assets which together formed part of the licensee's Distribution System and are being declared Obsolete or Redundant at the same time or as part of the same operation,
- exceeds, in the Regulatory Year beginning on 1 April 2008, £200,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2008.

- A6. It does not apply in respect of a Relevant Asset that is Obsolete, unless an appropriate replacement or alternative arrangement has been installed in the licensee's Distribution System, or is being or is intended to be installed in such a manner that continuity of the function of that system is achieved.
- A7. It does not apply if the Disposal of the Relevant Asset constitutes a sale and leaseback arrangement.
- A8. It does not apply if the Relevant Asset is intended to remain in operational use but not under the operational control of the licensee and its Value exceeds, in the Regulatory Year beginning on 1 April 2008, £20,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2008.

Disposal Category 2

- A9. The licensee may without giving Prior Notice dispose of any Relevant Asset to a wholly owned Subsidiary if before the Disposal it has given the Authority a document duly executed by the Subsidiary and the licensee (in a form capable of being enforced by the Authority) that undertakes to the Authority that:
- (a) the Subsidiary, in respect of the Relevant Asset, will comply with the provisions of this condition and standard condition 6 (Provision of Information to the Authority) as if it were the licensee; and
 - (b) the licensee will not cause or permit the Subsidiary to cease to be its wholly owned Subsidiary without the Authority's consent to the Disposal of the Relevant Asset owned by the Subsidiary.

Disposal Category 3

- A10. The licensee may without giving Prior Notice grant to a third party an easement, wayleave, licence, or similar right over any land or property in which the licensee has a legal or beneficial interest and which is a Relevant Asset, except where the grant of such a right would have a material adverse effect on the licensee's ability to use or develop the land for the purposes of its Distribution Business.

Disposal Category 4

- A11. The licensee may without giving Prior Notice dispose of any Relevant Asset to another Electricity Distributor so long as:
- (a) that Electricity Distributor is subject to the provisions of this condition and standard condition 6 (Provision of Information to the Authority); and
 - (b) the licensee will remain able to fulfil the duties imposed on it by or under this licence after the Disposal of the asset.

PART B: RELINQUISHMENT OF OPERATIONAL CONTROL

Ending of licensee's sole management of operational control

- B1. The licensee may, without giving Prior Notice, enter into an agreement or arrangement whereby operational control of a Relevant Asset (which, for the avoidance of doubt, may comprise the whole of the licensee's Distribution System) ceases to be under the licensee's sole management in any case where the agreement or arrangement ("the transaction") complies in every respect with all of the requirements set out in this Part B.

Primary characteristics of the transaction

- B2. The transaction must be consistent with all applicable conditions of this licence.
- B3. Any other consent or clearance required under statute or under this licence in respect of the transaction must have been obtained.
- B4. The transaction must be one that provides for the supply of a service or the provision of a resource in relation to a Relevant Asset by a counter-party ("the resource provider") on behalf of the licensee.
- B5. The resource provider must be and remain an Affiliate of the licensee but must not be a Holding Company of the licensee.
- B6. The transaction must be effected by contract made between the licensee and the resource provider.
- B7. That contract must be binding and enforceable both in Great Britain and in any other jurisdiction in which the resource provider has its principal place of business and must conform to the requirement of paragraph B8.

Mandatory provisions of the relevant contract

- B8. The requirement of this paragraph is that the contract in question must contain provisions to the effect set out as follows.
- B9. The contract must ensure that no force majeure or equivalent provision in the contract is permitted to excuse any failure by the licensee, or by the resource provider acting on its behalf, to comply with the licensee's statutory or licence obligations unless (and to the extent that) the event or circumstance in question would have excused the licensee under this licence if it had itself performed the service or provided the resource.
- B10. The contract must ensure that the responsibility for the performance of all the obligations to which the contract relates is clearly specified, subject to the overriding requirement that the licensee remains ultimately responsible for all statutory and licence obligations applicable to the licensee's business.
- B11. The contract must ensure that the resource provider covenants with the licensee to refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations.

- B12. The contract must ensure that the resource provider (i) discloses to the licensee the basis or bases of all charges for services provided or supplies made under the contract, together with sufficient information and analysis to support the basis for the calculation of the total sum payable by the licensee, and (ii) may not raise any objection to, or seek to prevent, disclosure of such information to the Authority.
- B13. The contract must ensure that the licensee will be free, at any time after the fifth anniversary of the commencement of the contract, without penalty and on reasonable Notice, to resource any service or supply from an alternative source of its own choice if more favourable terms become available.
- B14. The contract must ensure, finally, that the resource provider is under an obligation to give the licensee any information within its possession or control that the licensee may from time to time require in order to enable it to:
- (a) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority);
 - (b) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee; or
 - (c) monitor adherence by the resource provider to the terms and conditions of the contract.

Undertakings from Ultimate Holding Company

- B15. The licensee must procure:
- (a) from that company or other corporate body that is from time to time the Ultimate Holding Company of the licensee and the resource provider; or
 - (b) from such other corporate body as the Authority may from time to time designate,
- acknowledgements and legally enforceable undertakings in favour of the licensee on the terms set out in the Model Form below (which is part of this condition).
- B16. Those acknowledgements and undertakings:
- (a) must have been obtained before the end of seven days after the date on which the company or other corporate body in question (“the covenantor”) becomes the licensee’s Ultimate Holding Company; and
 - (b) must remain in force for as long as the covenantor remains the Ultimate Holding Company.
- B17. For the purposes of paragraphs B15 and B16, “Ultimate Holding Company” means the company or other corporate body that is the Holding Company of both the licensee and the resource provider and is not itself a Subsidiary of another company or corporate body.

Evidence of compliance and duty to enforce

- B18. Whenever the licensee obtains the acknowledgements and undertakings in accordance with paragraph B15, it must:
- (a) give the Authority evidence of its compliance without delay (including a copy of the acknowledgements and undertakings in question); and
 - (b) at all times comply with any direction from the Authority to enforce any of those undertakings.

Reporting obligation in respect of breach

- B19. 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 Part B has ceased to be legally enforceable or that its terms have been breached.

Restriction of arrangements with resource provider

- B20. Except with the Authority's consent, the licensee must not obtain or continue to obtain the service or resource in question from the resource provider at any time when:
- (a) the acknowledgements and undertakings specified at paragraph B15 are not in place; or
 - (b) there is an unremedied breach of any undertaking that is in place; or
 - (c) the licensee is in breach of the terms of any direction given by the Authority under paragraph B18(b).
- B21. The Model Form mentioned in paragraph B15 follows immediately below.

MODEL FORM: ACKNOWLEDGEMENTS AND UNDERTAKINGS

Acknowledgements

- MF1. That it is in the best interests of the covenantor that the licensee complies with its statutory and licence obligations.
- MF2. That all matters relating to the enforcement of the licensee's rights under the relevant contract are to be reserved to the licensee's directors without regard to other interests.

Undertakings

- MF3. To procure that the resource provider will:
- (a) refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations;
 - (b) provide the licensee with any information within its possession or control that the licensee may from time to time require in order to enable the licensee to:
 - (i) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority), or
 - (ii) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee, or
 - (iii) monitor adherence by the resource provider to the terms and conditions of the contract;
 - (c) not show undue preference to, or unduly discriminate against, the licensee in the provision to it of supplies or services; and
 - (d) not take any action that would constitute a Disposal of, or Relinquishment of Operational Control over, any Relevant Asset (other than to the licensee upon the ending or termination of any relevant contract in accordance with its terms) except in accordance with the requirements of this condition and of any consent given by the Authority under it.
- MF4. To procure that any contract between the licensee and the resource provider will comply with the requirements set out in Part B of this General Consent and will not be amended so as to cease in any way to be compliant with those requirements.
- MF5. To procure that the resource provider has and maintains resources and operating capacity at a level sufficient to ensure efficient performance of the contract and the efficient discharge of the licensee's relevant obligations.

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.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial 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 1F**

“After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that 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

(b) **Certificate 2F**

“After making enquiries, and subject to what is explained below, having taken into account in particular (but without limitation) any dividend or other distribution that 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.

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 3F**

“In the opinion of the licensee’s directors, the licensee 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.”

Statement of factors and report by auditors in relation to financial resources certificate

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 including reference to:
 - (i) the main financial resources and financial facilities available to the licensee;
 - (ii) the most recent cash flow statement prepared for the licensee;

and

- (b) 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 under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under standard condition 44 (Regulatory Accounts) on the licensee’s Regulatory Accounts.

Certificates for the Authority in relation to operational resources

30.4 With effect from 1 August 2013, 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 1R**

“After making enquiries the licensee’s directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and 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

(b) **Certificate 2R**

“After making enquiries, and subject to what is explained below, the licensee’s directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and 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.

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 3R**

“In the opinion of the licensee’s directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and 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.”

Statement of factors in relation to operational resources certificate

30.5 The licensee must ensure that the certificate given to the Authority under paragraph 30.4 is accompanied by a statement of the main factors that the licensee’s directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

30.6 With effect from 1 August 2013, 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 1C**

“After making enquiries the licensee’s directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all 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)].”

or

(b) **Certificate 2C**

“In the opinion of the licensee’s directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all 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)].”

Obligation to report any adverse circumstances

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

- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 30.2(a), 30.2(b), 30.4(a) or 30.4(b); or
- (b) the directors of the licensee consider that any adverse circumstance that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 30.2(c) or Certificate 3R under paragraph 30.4(c) has materially worsened.

Certificates for the Authority in relation to dividends

30.8 Subject to paragraph 30.11, 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, 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 in paragraphs 30.9 and 30.10 below.

30.9 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, at the time of their approval of 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)]; 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.”

30.10 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.

30.11 The licensee need not give the Authority a certificate of the type referred to in paragraph 30.8 in circumstances where:

- (a) during the three months preceding the declaration or recommendation of a dividend, the making of any other form of distribution or the redemption or repurchase of share capital, it has given the Authority a certificate in the form of Certificate 1C under the requirement set out in paragraph 30.6 of this condition; and
- (b) that certificate includes an appropriate addendum using the wording given at paragraph 30.9(b) of this condition.

30.12 Where the certificate given under paragraph 30.8, or relied upon under paragraph 30.11, 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

30.13 The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 30.16 below.

30.14 The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 30.16 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

30.15 If the licensee is not a Distribution Services Provider, paragraph 30.3(b) has effect as if, for the reference to “audit work under standard condition 44 (Regulatory Accounts) on the licensee’s Regulatory Accounts” there were substituted a reference to “audit work on the licensee’s most recent annual accounts as referred to in standard condition 31A (Accounts)”.

Interpretation

30.16 In this condition:

Associate means:

- (a) an Affiliate or Related undertaking of the licensee;
- (b) an Ultimate Controller of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control Company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that 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 counterparty and maturity information;
- (d) the tax affairs of the licensee;
- (e) the 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 that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over Relevant Assets to an Associate of the licensee;
- (i) any contractual rights to receive cash or other financial assets from any Associate of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any Associate of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

Participating Owner - For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

- (a) that other person holds a Participating Interest in the person; or
- (b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

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 With effect from 1 August 2013, the licensee must, on or before 31 July in each Regulatory Year, provide the Authority with a schedule of the undertakings obtained in accordance with paragraph 31.1 that are in force at the time, together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, reapprising that Ultimate Controller of the terms of the undertaking that it has given.

Reporting obligation in respect of breach

- 31.65 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

- 31.76 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).

Condition 40. Credit rating of the licensee

Licensee's obligation

40.1 The licensee must take all appropriate steps within its power to ensure that at all times it maintains an Investment Grade Issuer Credit Rating (which is to be interpreted in accordance with the provisions of paragraphs 40.2 to 40.4).

Meaning of Issuer Credit Rating

40.2 For the purposes of paragraph 40.1, an Issuer Credit Rating is any of the following:

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

Meaning of Investment Grade

40.3 Subject to paragraph 40.4, an **Investment Grade**, in relation to any Issuer Credit Rating within the meaning of paragraph 40.2, is any of the following:

- (a) an issuer **credit** rating of not less than BBB– by Standard & Poor's Ratings Group or any of its subsidiaries; or
- (b) an issuer **credit** rating of not less than Baa3 by Moody's Investors Service Inc or any of its subsidiaries; or
- (c) an issuer **credit senior unsecured debt** rating of not less than BBB– by Fitch Ratings Ltd or any of its subsidiaries
- (d) **an issuer credit rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or**

~~(ed)~~ a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b), ~~(c)~~ or ~~(ed)~~ and is issued by:

- (i) any of the credit rating agencies referred to in those sub-paragraphs, or
- (ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Variation of rating by agency

40.4 If a rating higher than a particular rating set out in paragraph 40.3 is at any time specified by the credit rating agency in question as its lowest investment grade ~~issuer~~ credit rating, that higher rating is to be taken as the relevant Investment Grade for the purposes of that paragraph.

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 restrictions on 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 **and restrictions on charges over Receivables**), 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~~ **Associate** 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 29.2 and 29.3 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~~ that 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 ~~I~~ssuer ~~C~~redit ~~R~~ating that is BBB– by Standard & Poor's Ratings Group or Fitch Ratings Ltd, or is Baa3 by Moody's Investors Service Inc, ~~or BBB (low) by DBRS Ratings Ltd or any of its affiliates~~, or is such higher ~~I~~ssuer ~~C~~redit ~~R~~ating as may be specified by any of those credit rating agencies from time to time as the lowest ~~I~~nvestment ~~G~~rade ~~iss~~uer 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 3F under the requirement set out in paragraph 30.2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition;
- (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 30.4 of standard condition 30 (Availability of resources) and:
 - (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an Associate of the licensee, and
 - (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

- (c) informed the Authority of any circumstance of the type referred to at paragraph 30.7 of standard condition 30 (Availability of resources) and:
 - (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
 - (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an Associate of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

41.11 The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant contained in any loan agreement, commercial paper, bond issue or committed facility that it has entered into with a counterparty, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty 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, either the Authority has confirmed in Writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

Part D: Restricted Category 3

41.120 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~~ Associate 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

41.123 Subject to paragraph 41.124, 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 licensee.~~

~~41.12 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.~~

41.1~~43~~ Nothing in paragraph 41.1~~43~~ ~~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

41.1~~54~~ In this condition:

Associate means:

- (a) an Affiliate or Related undertaking of the licensee;
- (b) an Ultimate Controller of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Cross-Default Obligation means a term of any agreement or arrangement under which the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated, or is capable of arising or increasing or of being accelerated, because of a default (however it may be described or defined) by any person other than the licensee, unless:

- (a) that liability can arise only as the result of a default by a Subsidiary of the licensee;
- (b) the licensee holds a majority of the voting shares in that Subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (c) that Subsidiary carries on business only for a purpose within sub-paragraph (a) or (b) of the definition of Permitted Purpose set out in standard condition 1 (Definitions for the standard conditions).

Investment Grade has the meaning given in standard condition 40 (Credit rating of the Licensee).

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

Participating Owner - For the purposes of the definition of Associate above, a person is subject to a Participating interest by another person (a **Participating Owner**) if:

- (a) that other person holds a Participating Interest in the person; or
- (b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Condition 43A. Requirement for sufficiently independent directors

43A.1 Subject to paragraph 43A.11, except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times after a date which is the later of:

- (a) 1 April 2014; and
- (b) 12 months after this condition comes into effect in respect of the licensee,

it has at least two non-executive directors who meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5 below. In this condition such directors are referred to as “sufficiently independent directors”.

43A.2 A sufficiently independent director must:

- (a) be a natural person; and
- (b) in the reasonable opinion of the licensee, have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee; and
- (c) not have any executive duties within the Distribution Business.

43A.3 Except and to the extent that the Authority consents otherwise, and subject to paragraph 43A.4, a sufficiently independent director must not be, and must not have been during the 12 months before his appointment as a director of the licensee or the coming into force of this condition (whichever is the later):

- (a) an employee of the licensee; or
- (b) a director or employee of an Associate of the licensee.

43A.4 The reference to ‘director’ in sub-paragraph 43A.3(b) does not include appointment as a non-executive director of:

- (a) an Associate of the licensee that is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
- (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a Permitted Purpose (as that term is defined in Standard Condition 1 (Definitions for the standard conditions)); or
- (c) a Qualifying Group Company.

43A.5 A sufficiently independent director must not:

- (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the licensee or any Associate of the licensee;
- (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any Associate of the licensee; or
- (c) receive remuneration from the licensee or any Associate of the licensee apart from a director's fee and reasonable expenses.

43A.6 For the purposes of sub-paragraphs 43A.5(a) and 43A.5(c) respectively:

- (a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and
- (b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any Associate of the licensee shall not be considered to be remuneration.

43A.7 The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of the later of the two dates referred to in paragraph 43A.1 and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 43A.11 of this condition.

43A.8 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 term of office, having particular regard to the criteria set out in paragraphs 43A.2, 43A.3 and 43A.5.

43A.9 A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he continues to meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5.

43A.10 The licensee must notify the Authority in Writing within 14 days if any sufficiently independent director is removed from office or resigns, giving reasons for the removal or (to the extent that they are known to the licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if appropriate, be stated to be personal reasons.

43A.11 If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or incapacity), the licensee must use its reasonable endeavours to ensure that a new director is, or new directors are, appointed to fulfil the obligation in paragraph 43A.1 as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.

Interpretation

43A.12 In this condition:

Associate means:

- (a) an Affiliate or Related undertaking of the licensee;
- (b) an Ultimate Controller of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control Company.

Common Control Company means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

Participating Owner - For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

- (a) that other person holds a Participating Interest in the person; or
- (b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

Participating Interest has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Qualifying Group Company means:

- (a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
- (b) the parent company of a group whose other members may only include :
 - (i) a company meeting the criteria set out in sub-paragraph (a) or a subsidiary of such a company, of the type referred to in that sub-paragraph; and
 - (ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (b)(i) provided that such intermediate holding companies:
 - (aa) have no shareholders other than the parent company concerned or another intermediate holding company; and
 - (bb) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company;

and

- (c) intermediate holding companies meeting the criteria set out in subparagraph (b)(ii).