

**To the Company Secretary:**

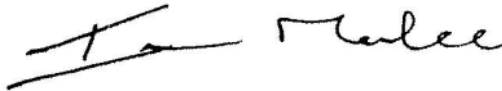
ESP Electricity Ltd  
Company number 04718806

**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 the electricity distribution licence held by ESP Electricity Ltd granted or treated as granted under section 6(1)(c) of the Act by amending the following Amended Standard Licence Conditions:
  - Standard Condition BA3. Credit Rating of Licensee; and
  - Standard Condition BA4. Indebtedness.
  
2. The Authority's reasons for proposing to make these licence modifications, in conjunction with the modification of certain Standard Licence Conditions in all electricity distribution licences, 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; and
  - 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 the 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.
  
3. The effects of the proposed modifications are:
  - a) to add DBRS Ratings Ltd to the list of credit rating agencies specified in Amended Standard Licence Condition BA3;
  - b) to expand the definition of parties specified in restrictions placed on the licensee in Standard Licence Condition BA4 by the inclusion of a new defined term of "associate"; and
  - c) to specify additional circumstances in which a licensee could be subject to restrictions on the payments it can make to its associates.

4. The proposed modifications are set out in Annexes 1 and 2 to this notice, with additions shown in red text and deletions in dark red text and struck through.
5. Copies of this notice and the documents referred to in paragraph 2 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](http://www.ofgem.gov.uk)).
6. 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](mailto:paul.darby@ofgem.gov.uk).
7. 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.
8. If the Authority decides to make the proposed modification it 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**

**Annex 1 to the Authority's Notice under section 11A(2) of the Electricity Act 1989 dated 17 December 2012**

**Standard Condition BA3. Credit Rating of Licensee**

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.

2. In this condition:

“issuer credit rating” means:

- (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 Service Inc. or any of its subsidiaries; or
- (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**
- (de)** a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b), ~~or~~ (c) **or (d)** and issued by:
  - (i) any of the credit rating agencies referred to in subparagraphs (a), (b) **or**, (c) **or (d); or**
  - (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.

In relation to any issuer credit rating, “investment grade” means:

(a) unless sub-paragraph (b) below applies:

- (i) an issuer **credit** rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries;
- (ii) an issuer **credit** rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
- (iii) an issuer **credit senior unsecured debt** rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries;
- (iv) an issuer credit rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or**
- (iv)** a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs **(ai)**, **(bii)**, **(iii)** or **(eiv)** and issued by:

- aa) any of the credit rating agencies referred to in subparagraphs ~~(ai)~~, ~~(bii)~~, (iii) or (eiv) or;
  - bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade **issuer** credit rating.

**Annex 2 to the Authority's Notice under section 11A(2) of the Electricity Act 1989 dated 17 December 2012**

**Standard Condition BA4. Indebtedness**

1. In addition to the requirements of standard condition 296 (Disposal of Relevant Assets ~~and restrictions on 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) ~~in accordance with standard condition 26 (Disposal of Relevant Assets and restrictions on charges over Receivables)~~, (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~~ **associate** 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 49 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 licensee, 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** 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 510, if: **any of the circumstances set out in paragraphs 4 to 8 applies.**
4. **The circumstance described by this paragraph is that ~~(a)~~ the licensee does not hold an investment grade issuer credit rating;**
5. **The circumstance described by this paragraph is that ~~(b) where~~ the licensee holds more than one issuer credit rating; and one or more of the ratings so held is not investment grade;**
6. **The circumstance described by this paragraph is that ~~or (e)~~ 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 BBB (low) by DBRS Ratings Ltd or any of its affiliates (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 issuer 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:**

- (~~ia~~) is on review for possible downgrade; or
- (~~ib~~) is on Credit Watch or Rating Watch with a negative designation; or, where neither (~~ia~~) nor (~~ib~~) applies:
- (~~ic~~) the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub~~-paragraph (~~e~~)6 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.

7. 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; or
- (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.

8. 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.

49. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of **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~~10, 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); or
- (b) either of the circumstances described in paragraphs 7 and 8 applies.

~~5~~10. Where, under the provisions of either paragraph 3 or paragraph 9, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b) ~~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 associate** 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 **prohibiting** circumstances ~~described in paragraph 3 or 4 arise~~ **arose**, 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 **prohibiting** circumstances ~~in paragraph 3 or 4 arise~~ **arose**, 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.

116. 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 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).
“participating owner”	<p>For the purposes of the definition of associate above, a person is subject to a participating interest by another person (a “participating owner”) if:</p> <ul style="list-style-type: none"> <li>a) that other person holds a Participating Interest in the person; or</li> <li>b) the person is subject to a participating interest by a person who is himself subject to a participating interest by that other person.</li> </ul>
“participating interest”	has the meaning given in section 421A of the Financial Services and Markets Act 2000.