

To the Company Secretary:

1. National Grid Gas plc
Company number 02006000
1-3 Strand, London, WC2N 5EH.
2. Northern Gas Networks Ltd
Company number 05167070
1100 Century Way, Thorpe Park Business Park, Colton, Leeds, LS15 8TU.
3. Scotland Gas Networks plc
Company number SC264065
Axis House, 5 Lonehead Drive, Newbridge, Edinburgh, EH28 8TG.
4. Southern Gas Networks plc
Company number 05167021
St Lawrence House, Station Approach, Horley, Surrey, RH6 9HJ.
5. Wales and West Utilities Ltd
Company number 05046791
Wales & West House, Spooner Close, Coedkernew, Newport, NP10 8FZ.

Gas Act 1986
Section 23(1)(b)

**MODIFICATION OF THE STANDARD SPECIAL CONDITIONS OF GAS
TRANSPORTER LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION
7 OF THE GAS ACT 1986.**

Whereas –

1. Each of the companies to whom this document is addressed (a “Relevant Licence Holder”) is the holder of a gas transporter licence (“a Licence”) granted or treated as granted under section 7 of the Gas Act 1986 (“the Act”) to transport gas for the term and subject to the conditions contained in its Licence and which contains Part A: Standard Special Conditions applicable to both NTS and DN licensees.

2. In accordance with section 23(2) of the Act the Gas and Electricity Markets Authority (“the Authority”) gave notice on 17 December 2012 (“the Notice”) that it proposed to make modifications to the following Standard Special Conditions of the Licence:

- Standard Special Condition A27: Disposal of Assets;
- Standard Special Condition A37: Availability of Resources;
- Standard Special Condition A38: Credit Rating of the Licensee; and
- Standard Special Condition A39: Indebtedness,

and that it proposed to add the following new Standard Special Condition which will be applicable to Relevant Licence Holders:

- Standard Special Condition A42: Requirement for Sufficiently Independent Directors.

3. The Notice required any representations on the modifications to be made on or before 22 January 2013. The Notice was issued in conjunction with similar notices that were issued to the holders of:

- electricity transmission licences; and
- electricity distribution licences.

4. In accordance with section 23(4)(b) of the Act, the Authority gave such notice of its intention to make the modifications to the Secretary of State and has not received a direction not to make the modifications.

5. Prior to the close of the consultation period in respect of the Notice, the Authority received four responses to the notices referred to in paragraph 3. All non-confidential responses have been placed on the Ofgem website.

6. The Authority has carefully considered in relation to the proposed modifications all representations received and a number of changes have been made to the modifications in light of the responses. The changes are set out at Appendix 2 to the Authority’s open letter (Modifications to the ring fence conditions in network operator licences) dated 1 February 2013.

7. The Authority had particular regard to representations made by two of the respondents that a requirement for Relevant Licence Holders to have two sufficiently independent directors would be unwarranted and/or disproportionate. However, the Authority considers that the modification concerned is necessary and proportionate in the context of the reason set out in paragraph 9 below, and because of the arguments 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.

8. In accordance with section 38A of the Act the Authority gives the reason set out in the next paragraph for making the licence modifications (in conjunction with the modification of certain Standard Conditions in gas transporter licences).

9. The reason for the modifications is to update and enhance the suite of Ring Fence conditions in gas transporter licences granted or treated as granted under section 7 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 gas transporter.

10. The effect of the modifications will be:

- to provide assurance that charges will only be granted over the receivables of a Relevant Licence Holder in appropriate circumstances;
- to extend the scope of the annual certification of resource availability by each Relevant Licence Holder's board so that it covers operational as well as financial resources and compliance with certain licence conditions;
- to require each Relevant Licence Holder to maintain an intervention plan containing important financial and operational information;
- to add DBRS Ratings Ltd and its affiliates to the list of credit rating agencies specified in Standard Special Condition A38;
- to expand the definition of parties specified in restrictions placed on Relevant Licence Holders in Standard Special Condition A39 by the inclusion of a new defined term of "associate";
- to specify additional circumstances in which a Relevant Licence Holder could be subject to restrictions on the payments it can make to its associates; and
- to require each Relevant Licence Holder to have two sufficiently independent directors.

10. In respect of any application to the Competition Commission under section 23B of the Act for permission to appeal the Authority's decision, Rule 5 of the Energy Licence Modification Appeals Rules sets out the requirements relating to notice of appeal. For the

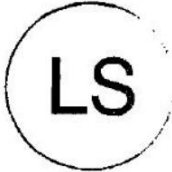
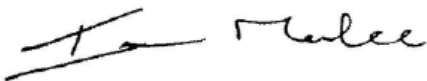
purposes of Rule 5.7, 'relevant licence holder' has the same meaning as in section 23(10) of the Act. A list of relevant licence holders in relation to this modification decision is set out in attached Schedule 1.

Now therefore

In accordance with the powers contained in section 23(1)(b) of the Act, the Authority hereby modifies the Standard Special Conditions of the Licence in the manner specified in attached Schedules 2 to 6, with additions shown in red text and deletions in dark red text and struck through. This decision will take effect on and from 1 April 2013.

This document constitutes notice of the reasons for the decision to modify the Licence as required by section 38A of the Act.

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



.....
Ian Marlee
Senior Partner, Smarter Grids and Governance (Transmission)
Duly authorised on behalf of the
Gas and Electricity Markets Authority

1 February 2013

Schedule 1 to the Authority's Notice under section 23(1)(b) of the Gas Act 1986 dated 1 February 2013

Relevant licence holders

Condition subject to modification	Relevant licence holders
Standard Special Condition A27 Disposal of Assets	Each of the licensees to whom this modification is addressed (numbered 1 to 5 on the addressee sheet)
Standard Special Condition A37 Availability of Resources	
Standard Special Condition A38 Credit Rating of the Licensee	
Standard Special Condition A39 Indebtedness	
Standard Special Condition A42 Requirement for Sufficiently Independent Directors	

Standard Special Condition A27: Disposal of Assets and restrictions on charges over Receivables

1. The licensee shall not dispose of or relinquish operational control over any transportation asset ~~except otherwise than~~ in accordance with the ~~provisions following paragraphs~~ of this condition.
2. Subject to paragraph 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.
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 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.
24. Save as provided in paragraphs ~~36, 7 or 9~~, 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.

~~2A5.~~ 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.

~~36.~~ Notwithstanding paragraphs 1 and ~~24(a)~~, the licensee may dispose of or relinquish operational control over a transportation asset – where:

- (a) ~~(i)~~ the Authority has issued directions for the purposes of this condition generally containing a general consent (whether or not subject to conditions) to:
 - ~~(i)(aa)~~ transactions of a specified description; or
 - ~~(ii)(bb)~~ the disposal of or relinquishment of operational control over an asset of a specified description; and
- (b) ~~(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. ~~;~~ ~~or~~
- ~~(b) — where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.~~

7. Notwithstanding paragraphs 2 and 4(b), 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 which is to be secured represents the novation or rollover of existing indebtedness; and
 - (b) the proceeds of the indebtedness of the licensee which is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

8. For the purposes of paragraph 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.

9. Notwithstanding paragraphs 1 and 2, 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 receivable where 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.

104. Notwithstanding paragraphs 1 and 2, 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 receivable as is specified in any notice given by the licensee under paragraph 24 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 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 or grant of control within the notice period referred to in paragraph 24.

115. If ~~the~~ a transportation asset comprises a significant part of the gas conveyance system in Great Britain, notwithstanding that ~~the~~ a disposal of or relinquishment of operational control over the asset is permitted under paragraphs ~~36~~, 9 or 410, 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.

126. 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~~ 5(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 any sum or sums or any other financial asset from another person.

“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.

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.

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

Certificates for the Authority in relation to financial resources

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 transportation 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 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 transportation 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 transportation 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 transportation 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

3. The licensee must ensure that the certificate given to the Authority under paragraph 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 which 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 subparagraph (a), and, on the other hand, any information that they obtained during their audit work under Standard Special Condition A30 (Regulatory Accounts) on the licensee's Regulatory Accounts.

Certificates for the Authority in relation to operational resources

- 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 transportation 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 transportation 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 transportation 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 transportation business for a period of 12 months from the date of this certificate.”

Statement of factors in relation to operational resources certificate

5. The licensee must ensure that the certificate given to the Authority under paragraph 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 Special Licence Conditions

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 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).”

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 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).”

Obligation to report any adverse circumstances

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 2(a), 2(b), 4(a) or 4(b); or
 - (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

Certificates for the Authority in relation to dividends

8. Subject to paragraph 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 9 and 10 below.

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 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); 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.”
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.
11. The licensee need not give the Authority a certificate of the type referred to in paragraph 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 6 of this condition; and
 - (b) that certificate includes an appropriate addendum using the form of the wording given at paragraph 9(b) of this condition.
12. Where the certificate given under paragraph 8, or relied upon under paragraph 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

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 16 below.
14. The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of intervention plan in paragraph 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.

Interpretation

15. 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.

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 Special Condition A3 (Definitions and Interpretation) 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 transportation 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 transportation assets (as that term is defined in Standard Special Condition A27 (Disposal of Assets and restrictions on charges over Receivables)) 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.

17. NOT USED.

Standard Special Condition A38: Credit Rating of the Licensee

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating.
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;
- (c) an issuer **credit default** 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), **(c)** or **(ed)** and issued by:
 - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b), **(c)** or **(ed)**; 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 both 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 default** 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 (i), (ii), (iii) and (iv) and issued by:
 - (aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii), (iii) or (iv); 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 both 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.

3. 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.

Standard Special Condition A39: Indebtedness

1. In addition to the requirements of Standard Special Condition A27 (Disposal of Assets **and restrictions on 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 **and restrictions on charges over Receivables**)) 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 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 49, 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.**~~;~~~~or~~
6. **The circumstance described by this paragraph is that ~~(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 Special Condition A38 (Credit Rating of the Licensee) and:
 - (a) ~~(i)~~ is on review for possible downgrade; or
 - (b) ~~(ii)~~ is on Credit Watch or Rating Watch with a negative designation; or, where neither ~~(ia)~~ nor ~~(ib)~~ applies:
 - (c) ~~(iii)~~ the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub-~~ this 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 2 of Standard Special Condition A37 (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 4 of Standard Special Condition A37 (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 set out in paragraph 7 of Standard Special Condition A37 (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 paragraphs 3 and 9, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

94. Where under the provisions of paragraph 3 applies, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b), 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 ~~arose 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 prohibiting circumstances ~~arose 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.

105. 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 Special Condition A3 (Definitions and Interpretation) 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, 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 sub-paragraphs 4(a),

~~1(b), 1(c) or 1(d)~~ of the definition of permitted purpose set out in Standard Special Condition A32 (~~Definitions and interpretation~~**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).

“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.

116. 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.

Standard Special Condition A42: ~~Not Used~~ Requirement for sufficiently independent directors

1. Subject to paragraph 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 2, 3, and 5 below. In this condition such directors are referred to as “sufficiently independent directors”.
2. A sufficiently independent director must:
 - (a) be a natural person;
 - (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 transportation business.
3. Except and to the extent that the Authority consents otherwise, and subject to paragraph 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 any associate of the licensee.
4. The reference to ‘director’ in sub-paragraph 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 Special Condition A3 (Definitions and Interpretation)); or
 - (c) a qualifying group company.

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.

6. For the purposes of sub-paragraphs 5(a) and 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.

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 1 and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 1 of this condition.

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 2, 3, and 5.

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 2, 3, and 5.

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.

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 1 as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.
12. 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 that single entity.

Interpretation

13. 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 Special Condition A3 (Definitions and Interpretation) 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 sub-paragraph (b)(ii).