

## **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 conditions of the individual electricity distribution licences granted or treated as granted under section 6(1)(c) of the Act to each of the following electricity distributors:
  - a. Eastern Power Networks plc, company number 2366906;
  - b. Electricity North West Limited, company number 2366949;
  - c. London Power Networks plc, company number 3929195;
  - d. Northern Powergrid (Northeast) Limited, company number 2906593;
  - e. Northern Powergrid (Yorkshire) plc, company number 4112320;
  - f. Scottish Hydro Electric Power Distribution plc, company number SC213460;
  - g. South Eastern Power Networks plc, company number 3043097;
  - h. Southern Electric Power Distribution plc, company number 4094290;
  - i. SP Distribution Limited, company number SC189125;
  - j. SP Manweb plc, company number 2366937;
  - k. Western Power Distribution (East Midlands) plc, company number 2366923;
  - l. Western Power Distribution (South Wales) plc, company number 2366985;
  - m. Western Power Distribution (South West) plc, company number 2366894; and
  - n. Western Power Distribution (West Midlands) plc, company number 3600574;

by amending Charge Restriction Condition 13 ‘Low Carbon Networks’ (CRC 13) and Charge Restriction Condition 15 ‘Excluded Services’ (CRC 15) in the manner set out by the schedule to this notice.

2. The reason why the Authority proposes to make these licence modifications is because the money to fund Second Tier Low Carbon Networks (LCN) Fund projects is raised from consumers and they are therefore entitled to a share of royalty revenue earned by distribution licensees as a result of undertaking a Second Tier LCN Fund project. The modifications to CRC 13 and CRC 15 put in place the mechanism to return to consumers a proportion of royalty revenue equal to the proportion of funding that consumers provided to the project.
3. The effect of the proposed modifications is to:
  - a. define the treatment of royalties income earned as a result of undertaking a Second Tier LCN Fund project;
  - b. allow distribution licensees to recover the costs relating to the maintenance and monitoring of intellectual property generated as a result of undertaking a Second Tier LCN Fund project;
  - c. allow the Authority to include royalty revenue earned as a result of undertaking a Second Tier LCN Fund project in the calculation of the funding direction. The funding direction sets out the amounts to be recovered by each distribution licensee and the transfer of funds to be made between each distribution licensee; and

- d. ensure that royalty revenue is treated as regulated revenue by explicitly stating that royalty revenue is not an excluded service.
4. A copy of the proposed modification(s) and other documents referred to in this notice are available on the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
5. Any representations on the proposed licence modifications may be made on or before 27 May 2013 to: Arun Pontin, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to [arun.pontin@ofgem.gov.uk](mailto:arun.pontin@ofgem.gov.uk).
6. All responses will normally be published on Ofgem's website. 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.
7. 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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**Andrew Burgess**  
**Associate Partner, Transmission and Distribution Policy**  
**For and on behalf of the Gas and Electricity Markets Authority**

## **Schedule to NOTICE UNDER SECTION 11A(2) OF THE ELECTRICITY ACT 1989**

### **CRC 13. Low Carbon Networks Fund**

#### **Introduction**

- 13.1 This condition establishes arrangements, to be known as the Low Carbon Networks Fund, for determining the amount of the LCN term that applies in CRC 3 (Restriction of Distribution Charges: Use of System Charges) for the purposes of incentivising the development of low carbon networks, and also establishes arrangements for addressing other matters relating to the Low Carbon Networks Fund.
- 13.2 This condition shall come into effect on the day on which a direction given by the Authority to all Distribution Services Providers (“DSPs”) confirms either that the CRC 13 Clearance has been received or that the Authority has determined that such clearance is not required.

#### **Part A: Funding mechanisms for Low Carbon Networks Fund functions**

- 13.3 The following functions are to be discharged by the Low Carbon Networks Fund:
- (a) the funding of Eligible LCN Fund Projects through revenues contributed through the licensee’s Use of System Charges (“the First Tier Funding Mechanism”) in accordance with Part B below and the LCN Fund Governance Document; and
  - (b) the funding of Eligible LCN Fund Projects and awards through revenues contributed through the Use of System Charges of all DSPs (“the Second Tier and Discretionary Funding Mechanism”) in accordance with Part C below and the LCN Fund Governance Document.
- 13.4 The amount of the LCN term that is to be incorporated into the Combined Allowed Distribution Network Revenue in accordance with the provisions of CRC 3 in respect of any Regulatory Year comprises the total of the allowed revenues of the licensee recovered from Use of System Charges under each particular funding mechanism in that year.
- 13.5 Accordingly, for the purposes of Part B of CRC 3, which provides for the calculation of the licensee’s Combined Allowed Distribution Network Revenue, the amount of the LCN adjustment in Regulatory Year  $t$  is derived from the following formula (in this condition, the “LCN $_t$  Formula”):

$$LCN_t = LCN1_t + LCN2_t - LCN3_t$$

where:

- (a) LCN1 $_t$  is an amount determined under the First Tier Funding Mechanism in accordance with Part B below and the LCN Fund Governance Document;
- (b) LCN2 $_t$  is an amount determined under the Second Tier and Discretionary Funding Mechanism in accordance with Part C below and the LCN Fund Governance Document; and
- (c) LCN3 $_t$  is an amount recovered by the licensee in relation to Regulatory Year  $t$  or a previous Regulatory Year under the First Tier Funding Mechanism that the Authority has determined, in accordance with the provisions set out in the LCN Fund Governance Document, to be unrecoverable.

## **Part B: The First Tier Funding Mechanism**

- 13.6 For the purposes of the LCN<sub>t</sub> Formula, the amount of LCN<sub>1t</sub> is the Allowable First Tier Expenditure incurred by the licensee in the Regulatory Year *t* in respect of Eligible LCN Fund Projects under the First Tier Funding Mechanism, as calculated by the licensee in accordance with the LCN Fund Governance Document and reported to the Authority in accordance with the LCN Fund RIGs established under standard condition 44C of this licence (Low Carbon Networks Fund reporting).
- 13.7 The Allowable First Tier Expenditure (in respect of LCN<sub>1t</sub>) incurred by the licensee in accordance with the LCN Fund Governance Document will be subject, in aggregate, to the overall limit determined for such projects by the licensee's First Tier LCN Allowance.
- 13.8 The licensee's First Tier LCN Allowance is the amount set against the name of the licensee in the table attached as Appendix 1 (which is part of this condition).
- 13.9 Eligibility, assessment, implementation, and other relevant matters relating to Eligible LCN Fund Projects under the First Tier Funding Mechanism are provided for in or pursuant to the LCN Fund Governance Document issued by the Authority under Parts E and F below.

## **Part C: The Second Tier and Discretionary Funding Mechanism**

- 13.10 The Second Tier and Discretionary Funding Mechanism relates to the recovery by, and apportionment between, the licensee and other DSPs of:
- (a) Second Tier Funding;
  - (b) Discretionary Funding;
  - (c) Halted Project Revenues; ~~and~~
  - (d) Disallowed Expenditure; and
  - (e) Returned LCN Fund Royalties
- 13.11 Second Tier Funding is the aggregate (for the licensee and all other DSPs) of all the Approved Amounts.
- 13.12 Discretionary Funding is the aggregate (for the licensee and all other DSPs) of the additional funding awarded by the Authority, on a discretionary basis in accordance with the LCN Fund Governance Document, in respect of Eligible LCN Fund Projects.
- 13.13 Halted Project Revenues are revenues received (whether by the licensee or another DSP) under the Second Tier and Discretionary Funding Mechanism in respect of an Eligible LCN Fund Project which have not yet been spent, or otherwise committed, at the time that the Authority requires that Eligible LCN Fund Project to be halted in accordance with the provisions of the LCN Fund Governance Document or those of the relevant Project Direction.
- 13.14 Disallowed Expenditure is revenue received (whether by the licensee or another DSP) under the Second Tier and Discretionary Funding Mechanism that the Authority determines not to have been spent in accordance with the provisions of the LCN Fund Governance Document or those of the relevant Project Direction.
- 13.15 Returned LCN Fund Royalties are the revenues earned from intellectual property generated through Second Tier LCN Fund projects (whether by the licensee or another DSP) less Directly Attributable Costs and payable to customers under the Second Tier and Discretionary Funding Mechanism they are calculated in accordance with the provisions of the LCN Fund Governance Document.

13.16 Directly Attributable Costs are those costs relating to the maintenance and management of intellectual property generated through Second Tier LCN Fund projects (whether by the licensee or another DSP) and must not have been remunerated through Use of System Charges, Metering Point Administration Services, Legacy Metering Equipment and Data Services or Excluded Services or the Second Tier and Discretionary Funding Mechanism.

~~13.175~~ For the purposes of the LCN<sub>t</sub> Formula, LCN<sub>2t</sub> is to be the amount specified for Regulatory Year t to be recovered by each DSP as determined by the Authority under paragraph 13.~~1846~~ in relation to:

- (a) the Second Tier Funding specified for Regulatory Year t;
- (b) any Discretionary Funding specified for Regulatory Year t;
- (c) any Halted Project Revenues specified for Regulatory Year t; ~~and~~
- (d) any Disallowed Expenditure specified for Regulatory Year t; and
- (e) any Returned LCN Fund Royalties specified for Regulatory Year t.

~~13.186~~ In each Regulatory Year t, as provided for by the LCN Fund Governance Document, the Authority must calculate and, by direction given to all of the DSPs, specify in accordance with the appropriate provisions set out in the LCN Fund Governance Document:

- (a) the value for LCN<sub>2t</sub> for each DSP (being the amount to be recovered by each DSP through Use of System Charges in order to contribute to its own or another DSP's Second Tier Funding and Discretionary Funding for that Regulatory Year); and
- (b) the net amounts to be transferred between DSPs in order to ensure that each DSP receives an amount (if any) equal to the proportion of the Second Tier Funding and Discretionary Funding for that Regulatory Year that is attributable to the licensee's Eligible LCN Fund Projects (adjusted to take into account any Halted Project Revenue, Returned LCN Fund Royalties and Disallowed Expenditure); and
- (c) the manner in which and the timescale over which the net amounts referred to in paragraph (b) above are to be transferred.

~~13.197~~ The licensee must comply with any direction issued by the Authority under paragraph 13.~~1846~~ above.

~~13.2048~~ Eligibility, assessment, implementation, and other relevant matters relating to Eligible LCN Fund Projects under the Second Tier and Discretionary Funding Mechanism are provided for in or pursuant to the LCN Fund Governance Document issued by the Authority under Parts E and F below.

#### **Part D: Unrecoverable expenditure**

~~13.2149~~ For the purposes of the LCN<sub>t</sub> Formula, the amount of LCN<sub>3t</sub> is an amount recovered by the licensee in relation to Regulatory Year t or a previous Regulatory Year under the First Tier Funding Mechanism that the Authority has determined, in accordance with the provisions set out in the LCN Fund Governance Document, to be unrecoverable.

~~13.220~~ In any Regulatory Year t, the Authority may set, by direction given to the licensee, an amount for LCN<sub>3t</sub> that will reduce the licensee's Combined Allowed Distribution Network Revenue by the amount that the Authority has determined to be unrecoverable.

#### **Part E: The LCN Fund Governance Document**

~~13.234~~ The Authority must issue, and may from time to time revise, a document, to be known as the LCN Fund Governance Document, for purposes connected with the regulation, governance, and administration of the Low Carbon Networks Fund.

13.242 The LCN Fund Governance Document may, without limitation, make appropriate provision about or impose requirements in respect of:

- (a) the eligibility criteria to be applied by and information to be provided to the Authority in relation to the assessment and approval of Eligible LCN Fund Projects;
- (b) the criteria against which the funding of such projects will be assessed and approved (where necessary);
- (c) the process and procedures that will be in place for the assessment, approval and financing of such projects' funding (where necessary);
- (d) the arrangements for ensuring that relevant matters learnt from the implementation of Eligible LCN Fund Projects can be captured and disseminated;
- (e) the nature of the reporting obligations in respect of such projects (which may include reporting in respect of the funding and the completion of such projects, as well as reporting on compliance with this condition and the LCN Fund Governance Document);
- (f) calculation of LCN1t and related values or amounts (including but not limited to Allowable First Tier Expenditure) as specified in this condition or the LCN Fund Governance Document;
- (g) arrangements relating to intellectual property rights, including Returned LCN Fund Royalties, in respect of Eligible LCN Fund Projects; and
- (h) any other matters related to the regulation, governance, or administration of the Low Carbon Networks Fund.

13.253 The licensee must comply with the applicable provisions of the LCN Fund Governance Document as if it formed part of this condition.

#### **Part F: Procedure for issuing the LCN Fund Governance Document**

13.264 Before issuing the LCN Fund Governance Document under this condition, the Authority, by Notice given to all Electricity Distributors, must:

- (a) state that it proposes to issue the document, and specify the date on which it proposes that this should take effect;
- (b) set out the text of the document and the Authority's reasons for proposing it; and
- (c) specify the date (which must not be less than a period of 28 days from the date of the Notice) within which representations or objections with respect to the proposal may be made.

13.275 The Authority must consider any representations or objections that are duly made (within 28 days of the date of the Notice) and not withdrawn.

13.286 The requirements of paragraphs 13.264 and 13.275 may be satisfied by action taken before, as well as by action taken after, the commencement of this condition.

13.297 In paragraph 13.264, "issuing the LCN Fund Governance Document" includes issuing any revision of it and the procedure provided for at paragraph 13.264 shall apply to any such revision.

#### **Part G: Interpretation**

13.3028 For the purposes of this condition:

**Allowable First Tier Expenditure** has the meaning given in Part B of this condition.

<b>Approved Amount</b>	means an amount approved by the Authority in relation to a claim submitted by a DSP to receive funding for an Eligible LCN Fund Project under the Second Tier and Discretionary Funding Mechanism, where such claim complies in all respects with such requirements as are imposed by the LCN Fund Governance Document in respect of such claims.
<b>CRC 13 Clearance</b>	means the State Aid clearance granted by the European Commission in relation to this condition.
<b><u>Directly Attributable Costs</u></b>	<u>has the meaning given in paragraph 13.16 of this condition.</u>
<b>Disallowed Expenditure</b>	has the meaning given in paragraph 13.14 of this condition.
<b>Discretionary Funding</b>	has the meaning given in paragraph 13.12 of this condition.
<b>DSPs</b>	has the meaning given in paragraph 13.2 of this condition.
<b>Eligible LCN Fund Project</b>	means a project undertaken by a DSP that appears to the Authority to satisfy such requirements of the LCN Fund Governance Document as are necessary to enable the project to be funded under (as the case may be) the First Tier Funding Mechanism or the Second Tier and Discretionary Funding Mechanism.
<b>First Tier Funding Mechanism</b>	has the meaning given in paragraph 13.3(a) of this condition.
<b>First Tier LCN Allowance</b>	has the meaning given in paragraph 13.8 of this condition.
<b>Halted Project Revenues</b>	has the meaning given in paragraph 13.13 of this condition.
<b>LCN Fund Governance Document</b>	means the document issued by the Authority under Part E of this condition relating to the Low Carbon Networks Fund, including matters relating to the First Tier Funding Mechanism, the Second Tier and Discretionary Funding Mechanism and related matters, subject to the requirements of Part F.
<b>LCNt Formula</b>	has the meaning given in paragraph 13.5 of this condition.
<b>Project Direction</b>	means a direction issued by the Authority pursuant to the LCN Fund Governance Document setting out the terms to be followed in relation to the Eligible LCN Fund Project as a condition of its being funded pursuant to the Second

Tier and Discretionary Funding Mechanism.

**Returned LCN Fund Royalties**

has the meaning set out in paragraph 13.15 of this condition

**Second Tier and Discretionary Funding Mechanism**

has the meaning given in paragraph 13.3(b) of this condition.

**Second Tier Funding**

has the meaning given in paragraph 13.11 of this condition.



## APPENDIX 1

### First Tier LCN Allowance

(see Part B of this condition)

<b>Licensee</b>	<b>Annual allowance (£m, nominal prices)</b>
Central Networks West plc	1.4
Central Networks East plc	1.4
Electricity North West Ltd	1.3
Northern Electric Distribution Ltd	0.9
Yorkshire Electricity Distribution plc	1.2
Western Power Distribution (South Wales) plc	0.6
Western Power Distribution (South West) plc	0.8
EDF Energy Networks (LPN) plc	1.2
EDF Energy Networks (SPN) plc	1.2
EDF Energy Networks (EPN) plc	1.9
SP Distribution Ltd	1.1
SP Manweb plc	0.8
Scottish Hydro Electric Power Distribution plc	0.4
Southern Electric Power Distribution plc	1.6

## **CRC 15. Services treated as Excluded Services**

### **Introduction**

- 15.1 The purposes of this condition are:
- (a) to set out the basis on which services provided by the licensee may be treated as Excluded Services for the purposes of the Charge Restriction Conditions; and
  - (b) to state how the charges for such services should be set.
- 15.2 Excluded Services are the services that comply with the General Principle set out at Part A below and include, without limitation, those services listed in Appendix 1.

### **Structure of this condition**

- 15.3 Part A of this condition sets out the General Principle that applies for the purpose of determining which of the services provided by the licensee are to be treated as Excluded Services.
- 15.4 Part B sets out particular examples of services that are to be treated as Excluded Services and states how charges for those services are to be set.
- 15.5 Part C provides for the Authority to give directions in respect of Excluded Services.

### **Part A: Statement of General Principle**

- 15.6 The General Principle is that a service provided by the licensee as part of the normal activities of its Distribution Business within the Distribution Services Area is to be treated as an Excluded Service if and to the extent that the service so provided is not already remunerated under any of the charges mentioned in paragraph 15.7;
- 15.7 The charges referred to in paragraph 15.6 are those charges that are levied by the licensee in respect of the provision of:
- (a) Use of System, in accordance with the relevant Charging Statement prepared and published by the licensee under standard condition 14 (Charges for Use of System and connection);
  - (b) Metering Point Administration Services, in accordance with the MPAS Charging Statement prepared and published by the licensee under standard condition 18 (Provision of and charges for Metering Point Administration Services); ~~and~~
  - (c) Legacy Metering Equipment and Data Services, in each case in accordance with the relevant statement prepared and published by the licensee under standard condition 36 (Charges for the provision of Legacy Metering Equipment and Data Services); and
  - (d) any activity carried out under Part C of CRC 13 (Low Carbon Networks Fund) which results in Returned LCN Fund Royalties defined in CRC 13 (Low Carbon Networks Fund).

### **Part B: Specific categories of Excluded Service**

- 15.8 Appendix 1 (which has effect as part of this condition), while not limiting the scope of the General Principle, sets out certain categories of service provided by the licensee that are to be treated as Excluded Services.
- 15.9 Charges levied in respect of Excluded Services provided within categories ES1 to ES4 of Appendix 1 are to be set at a level that will allow the licensee to recover:
- (a) its reasonable costs; and

(b) a reasonable rate of return on the capital outlay represented by any expenditure incurred by the licensee during the period before payment is received of any amounts due by the person requiring the service in question; and

(c) in respect of ES1, a margin where that is consistent with the provisions of CRC 12 (Licensee's Connection Activities: Margins and the development of competition).

15.10 Charges levied in respect of Excluded Services provided within categories ES5 and ES7 of Appendix 1 are to be set at a level that will allow the licensee to recover its reasonable costs and a reasonable margin in providing the service in question.

### **Part C: Authority's power to give directions**

15.11 Where the Authority (having particular regard to the General Principle) is satisfied:

(a) that any service treated by the licensee as an Excluded Service should not be so treated; or

(b) that any service not treated by the licensee as an Excluded Service should be so treated,

it may give the licensee a direction to that effect.

15.12 Where a direction is given under paragraph 15.11, the licensee must, as the case may be, either:

(a) stop treating the service or services specified in the direction as Excluded Services; or

(b) begin treating the service or services specified in the direction as Excluded Services,

from the date of the direction or such later date as may be specified in it.

### **Interpretation**

15.13 The descriptions of categories of Excluded Service set out in Appendix 1 are to be read and given effect subject to any further explanation or elaboration of any of those descriptions that might be set out in the Revenue Reporting RIGs or the Cost Reporting RIGs issued by the Authority under (respectively) standard condition 47 or 48 of this licence.

## **APPENDIX 1**

### **Specific categories of Excluded Service**

- ES1. **Connection services:** This category consists of the carrying out of works (including any necessary reinforcement works or diversionary works) for the purposes of providing, installing, operating, repairing, or maintaining electric lines or electrical plant (but only to the extent that the service is not already remunerated under one of the charges mentioned in paragraph 15.7).
- ES2. **Diversionary works under an obligation:** This category consists of the relocating of any electric line or electrical plant (including the carrying out of any associated works) pursuant to any statutory obligation other than one imposed on the licensee under section 9(1) (general duties of licence holders) or section 16 (duty to connect on request) of the Act.
- ES3. **Works required by any alteration of premises:** This category consists of the moving of any electric line, electrical plant, or Electricity Meter that forms part of the licensee's Distribution System to accommodate the extension, redesign, or redevelopment of any premises on which the asset in question is located or to which it is connected.
- ES4. **Top-up, standby, and enhanced system security:** This category consists of the provision of electric lines and electrical plant to the extent required by any user of the licensee's Distribution System:

- (a) for the specific purpose of enabling the delivery of top-up or standby supplies of electricity; or
- (b) to provide a higher degree of security than is required for the purposes of complying with paragraph 1 of standard condition 24 (Distribution System planning standard and quality of performance reporting).

ES5. **Revenue protection services:** This category consists of the provision, at the request of any third party (which could include an Affiliate or a Related Undertaking of the licensee), of services relating to the prevention of Electricity Meter interference and other forms of illegal abstraction of electricity.

ES6. **Metering Services:** This category consists of the provision of any Metering Service (other than the provision of Legacy Metering Equipment) that is not already remunerated under any other charge in respect of an Excluded Service.

ES7. **Miscellaneous:** This category consists of the provision of any other service (including electric lines or electrical plant) that:

- (a) is for the specific benefit of any third party who requests it;
- (b) is not made available by the licensee as a normal part of the activities of its Distribution Business within the Distribution Services Area; and
- (c) is not remunerated under one of the charges mentioned in paragraph 15.7 or under any other charge for an Excluded Service.