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for energy consumers

Gas and electricity licensees,
industry participants and other
interested parties

Email: licensing@ofgem.gov.uk

Date: 22 October 2013

Dear Colleague,

Decision to modify gas and electricity licence conditions following the implementation of the Third Package and other house-keeping changes

We are today issuing notices¹ to make a number of changes to the electricity transmission and distribution licences, and to the gas transporters and supply licences. This follows our July consultation on the changes, which are consequential licence changes relevant to the Third Package, as well as changes of a housekeeping nature.² The modifications will take effect from 17 December 2013.

Our July statutory consultation set out the background to the changes and provided our reasons for each of the proposed modifications. Our consultation closed on 28 August 2013. We received eight responses³ which are available on our website.⁴ There were mixed views in responses. Some respondents supported the changes, others commented on aspects of the drafting they found unclear and/or sought clarification about the intent of the changes. A summary of the responses is set out in the annex to this letter alongside our views.

In light of the responses received, we have made further minor amendments to the licence drafting we consulted on in July. These changes (which are explained in the annex to this letter) provide clarity and correct typographical and grammatical errors. They do not amount to substantive changes to the modifications proposed in the statutory consultation.

Yours faithfully,

Lesley Nugent
Head of Industry Codes and Licensing

¹ The notices can be found on our website: <https://www.ofgem.gov.uk/publications-and-updates/decision-modify-gas-and-electricity-licence-conditions-following-implementation-third-package-and-other-house-keeping-changes>

² <https://www.ofgem.gov.uk/publications-and-updates/notice-under-section-11a2-electricity-act-1989-and-section-232-gas-act-1986-consultation-further-proposed-changes-following-implementation-third-package-and-other-miscellaneous-changes>

³ Two respondents, though they provided comments, said they did not wish to make formal representations in respect of the licence modifications.

⁴ See footnote 3.

Annex – Responses to the statutory consultation and our further drafting changes

The issues raised in responses to our July consultation are summarised below, alongside our comments. A number of formatting, typographical, grammatical and cross-referencing errors and omissions in the licence drafting were highlighted. Where appropriate, we have updated the licence drafting accordingly.

Licence type and condition⁵	Response	Comments	Licence drafting amended?
Electricity Transmission - (Standard Licence Condition (SLC) B18	Title of the condition should be 'Offshore Transmission Owner of Last Resort' and not 'Functions of the Authority'.	The current title of the condition is 'Offshore Transmission Owner of Last Resort' and this was a typographical error in the statutory consultation drafting. We have corrected the drafting.	Yes
Electricity Transmission - SLC B18 (7)	The colon after 'and' in this paragraph should be deleted.	We have revised the drafting to delete the colon after the word 'and' to reflect that the words that follow are a continuation of the sentence.	Yes
Electricity Transmission - SLC B18 (7)	The reference to 'section 11A to section 11F of the Act' in the drafting should instead refer to 'section 11A to section 11H of the Act'.	We agree that the relevant provisions relating to licence modifications made by the Authority in accordance with section 11A of the Electricity Act 1989 runs from section 11A to section 11H. We have amended the drafting accordingly, and also made this change to Electricity Transmission SLC E21(7).	Yes
Electricity Transmission – SLC C3(4)(ad)	<p>One respondent said the proposed drafting is unnecessarily repetitive and is potentially confusing and suggested alternative drafting to clarify:</p> <ul style="list-style-type: none"> - the circumstances in which the Authority can raise changes; and - what must occur if the licensee is directed to raise the modification by the Authority instead. <p>The comments apply equally to the Connection and Use of System Code as the wording proposed in</p>	<p>We consider that our drafting is clear and do not agree that further detail is required within the licence regarding the process for the Authority to follow when raising changes in the circumstances described.</p> <p>We have retained the proposed drafting and corrected a minor typographical error by removing a bracket after the words 'and/or Agency'.</p>	Yes to correct a typographical error only

⁵ Standard Licence Condition (SLC).

	both sections is similar.		
Electricity Transmission – SLC C10(6)(ae)	<p>One respondent said the proposed drafting is repetitive and unnecessary. The respondent referred to their response to our November consultation stating that references to paragraph 6(aa) and 6(af) already deal with the Authority’s ability to raise European related modifications and is therefore not necessary in 6(ae).</p> <p>The respondent considered that there may also be some confusion with the reference to 6(aa) where it currently sits in the drafting relating to the ability to withdraw a modification made pursuant to a Significant Code Review (SCR).</p>	<p>We consider that the proposed drafting clarifies when the Authority’s consent would be required before a licensee can withdraw a code modification proposal that it has raised.</p> <p>The definition of ‘directions’ in SLC C10 provides that direction(s) issued following the publication of SCR conclusions include instructions to the licensee to make a modification proposal and not withdraw it without the Authority’s consent. The licensee would therefore require to seek the Authority’s consent before withdrawing any modification raised following a SCR.</p> <p>We have retained the proposed drafting.</p>	No
Electricity Distribution – SLC 22.5(e)	Proposed additional words in the drafting are unnecessary.	We consider that the proposed drafting clarifies when the Authority’s consent would be required before a licensee can withdraw a code modification proposal that it has raised. We have retained the proposed drafting.	No
Electricity Distribution – SLC 22.5(e)	Proposed drafting results in modifications previously catered for by 22.5(e) being excluded by the additional text.	The remainder of paragraph 22.5 and paragraph 22.7 clarifies the procedures that apply to modifications to DCUSA, including that they are brought to the attention of DCUSA parties. The proposed drafting does not affect this aspect of the licence condition when read alongside it. The proposed drafting does clarify when the Authority’s consent would be required before a licensee can withdraw a DCUSA modification proposal that it has raised. We have retained the proposed drafting.	No

<p>Gas Supplier – SLC 30.9 (previously 30.8)</p>	<p>Minor typographical errors identified:</p> <ul style="list-style-type: none"> – correction of formatting errors by: - removing the '(a)' after paragraph 30.9; - adding '(a)' after the colon and before the word 'for'; and - adding the word 'that' at the beginning of paragraphs 30.9(b) and 30.9(d). 	<p>The formatting error in 30.9(a) was a typographical error in our proposed drafting which is correct in the current version of the licence. The suggested addition to paragraph 30.9(d) aids clarity. We have therefore revised the drafting accordingly.</p>	<p>Yes</p>
<p>Electricity transmission licence - SLC C3</p>	<p>One respondent sought guidance on how the modifications would work in practice. The respondent commented that it understood that it is up to the relevant licence holder to bring forward appropriate code modifications to ensure that the code is in line with the licence condition. However, the respondent considered that the questions it asked in its response to our July consultation will still need to be discussed by a Modification Workgroup. The respondent sought Ofgem representation at the associated Modification Workgroup meetings.</p>	<p>We re-state our view that we would expect the relevant licence holder to bring forward appropriate code modifications to ensure that the code is in line with the licence condition. In accordance with our standard practice, we would engage as appropriate in Modification Workgroups.</p>	

Other minor typographical errors that we have corrected:

- Electricity Transmission – SLC B12(6): we have corrected a typographical error to reflect that the new paragraph (d) we have inserted requires the former paragraph (d) to become paragraph (e)
- Gas Transporter – SSC A11(9)(i): we have corrected a typographical error by removing a bracket after the words 'and/or Agency'.