

Independent Gas Transporters,
Independent Distribution Network
Operators and other interested
parties

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Consultation on amending the disapplication conditions of the Independent Gas Transporter (IGT) and Independent Distribution Network Operator (IDNO) licences

1. Introduction

In this consultation we¹ seek views on proposed amendments to the existing disapplication conditions set out in the licences of IGTs and IDNOs.

The disapplication conditions of the IGT and IDNO licences allow the relevant licensee to make a disapplication request to the Authority in relation to the regulation of charging arrangements under the licence. Disapplication conditions can be found in the licences of all gas and electricity transmission operators, gas and electricity distribution network operators and all independent gas and electricity network operators.

We are reviewing and proposing amendments to the current IGT and IDNO disapplication conditions in the licences following changes to legislation introduced by the Electricity and Gas (Internal Markets) Regulations 2011 (the 2011 Regulations).²

2. Scope of proposed changes and relevant sections of licences

Our proposed changes relate to the following licences:

- All IGT licences: Special Condition 1 – paragraphs 8 to 13
- All IDNO licences: Standard Condition BA2 – paragraphs 6 to 13

¹ The terms “the Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority is the Gas and Electricity Markets Authority (GEMA). Ofgem is the Office of the Authority.

² [The Electricity and Gas \(Internal Markets\) Regulations 2011](#)

3. Reasons for our proposed changes

The reason for the proposed licence amendment is to align the disapplication condition in the IGT and IDNO licences with the new licence modification appeals process set out in the Gas Act³ and in the Electricity Act⁴, which was introduced by the 2011 Regulations.

The 2011 Regulations had the effect of removing sections of the Gas Act and the Electricity Act which gave the Authority the power to refer a disapplication request to the CMA⁵. The 2011 Regulations replaced this power with a new licence modification appeals process.

We have already reviewed and amended the disapplication conditions in the gas and electricity transmission licences, and the gas and electricity distribution licences.⁶ For consistency and in order to ensure that the cross-references in the licences are to the current version of the Gas Act and of the Electricity Act, similar changes should also be made to the IGT and IDNO licences.

In May 2013, while consulting on proposed changes to the IGT's Relative Price Control (RPC) guidance document⁷, we also asked industry for views on whether we should remove paragraphs 12 and 13 of the IGT licence. We received feedback from two respondents noting that they were not in favour of simply deleting the paragraphs. They requested that there should be further consideration on what provisions would replace them. In light of this we set out in this consultation the reasons for the proposed change in the disapplication conditions. This consultation sets out why we think that the proposed change should also apply to the IDNO licences.

4. IGT Special Condition 1

The disapplication procedure for IGTs is currently set out in paragraphs 9-13 of Special Condition 1.

- Paragraphs 9-11 outline how a disapplication request is made and how it may be withdrawn.
- Paragraph 12 refers to the Authority's power to refer a disapplication request to the CMA under Section 24 of the Gas Act.
- Paragraph 13 outlines the power of the licensee to deliver a termination notice to the Authority, if the CMA does not find that the disapplication request operates against the public interest, under section 25 of the Gas Act.

Paragraphs 12 and 13 of the IGT Special Condition licence make reference to sections 24 and 25 of the Gas Act. Sections 41(1) and (9) of the 2011 Regulations had the effect of repealing sections 24 to 26(a) of the Gas Act. As a result paragraphs 12 and 13 of Special Condition 1 now refer to an Authority power that no longer exists. The licensee may still raise a disapplication request in accordance with paragraphs 9-11, but the Authority's power to refer this request to the CMA no longer exists.

The proposed changes to IGT Special Condition 1 are set out in Appendix 1.

5. IDNO Standard Condition BA2

The disapplication procedure for IDNOs is set out in paragraphs 7-13 of Standard Condition BA2.

- Paragraphs 7-11 outline how a disapplication request is made and how it may be withdrawn.

³ [Gas Act, 1986](#)

⁴ [Electricity Act, 1989](#)

⁵ Competition and Markets Authority

⁶ [Disapplication Conditions – Informal licence drafting consultation, October 2012](#)

⁷ [IGT Relative Price Control – Consultation on Revising the Guidance Document and potential changes to Special Condition 1 of the IGT Licence, May 2013](#)

- Paragraph 12 refers to the Authority's power to refer a disapplication request to the CMA under section 12 of the Electricity Act.
- Paragraph 13 outlines the licensee's right to deliver a termination notice to the Authority, if the CMA finds that the disapplication request does not operate against the public interest. This power is from the old section 13 of the Electricity Act.

Paragraphs 12 and 13 make reference to sections 12 and 13 of the Electricity Act. Sections 43(1) and (10) of the 2011 Regulations had the effect of repealing sections 12 and 13 of the Electricity Act. As a result paragraph 12 and 13 of Standard Condition BA2 refers to an Authority power that no longer exists. The licensee may still raise a disapplication request but the Authority's power to refer a disapplication request to the CMA no longer exists.

The proposed changes to IDNO Standard Condition BA2 are set out in Appendix 2.

6. New Procedure for making licence modifications

In addition to repealing specified provisions in the Gas Act and in the Electricity Act, the 2011 Regulations also introduced a revised procedure for making licence modifications by the Authority.⁸

Under the revised licence modification procedure the Authority is no longer able to make licence condition modification references to the CMA. Instead the Authority may modify the licence unilaterally, but relevant licensees and certain other specified parties have the right to appeal any decision to modify a licence condition to the CMA.

- Section 23B of the Gas Act allows a relevant licensee to make an appeal to the CMA if the Authority has proceeded with a licence modification under section 23 of the Gas Act provided certain conditions are satisfied.
- Section 11C of the Electricity Act allows a relevant licensee to make an appeal to the CMA if the Authority has proceeded with a licence modification under section 11A of the Electricity Act provided certain conditions are satisfied.

Following a consultation in 2012 on proposals for revising the disapplication conditions in the gas and electricity transmission and distribution licences⁹, we decided that appropriate amendments were required. The gas and electricity transmission licences and the gas and electricity distribution licences have now been amended to incorporate the revised disapplication conditions.

In summary the following decision was made regarding these licences:

1. The right of the licensee to raise a disapplication request remained the same.
2. In the circumstances where the Authority did not agree with a disapplication request, it could suspend the operation of the disapplication by modifying the disapplication condition itself to remove a licensee's right to dis-apply the provisions set out in the specific disapplication request in question. The licensee would then have the right to appeal that modification to the CMA.

⁸ [Part 9, the Electricity and Gas \(Internal Markets\) Regulations 2011](#)

⁹ [Disapplication Conditions – Informal licence drafting consultation, October 2012](#)

7. Proposed changes to IGT/IDNO Licences

We propose to:

1. amend the paragraphs which refer to sections of the Gas Act and of the Electricity Act which have been repealed by the 2011 Regulations.
2. ensure that the rights available to the licensees and the Authority remain as close as possible to the original procedure. We propose to introduce a new provision which outlines the current licence modification appeals process in the Gas Act and in the Electricity Act.

8. Responses

Responses to this consultation should be submitted by 16 April 2015. Please submit responses by email to Deirdre Bell at: deirdre.bell@ofgem.gov.uk. Unless clearly marked as confidential, all responses will be published on our website. Ofgem shall respect requests to keep a submission confidential, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

If you would like to discuss this consultation please contact deirdre.bell@ofgem.gov.uk

9. Next Steps

Following consideration of responses to this consultation we anticipate the next step to be:

- Statutory consultation – May 2015

Yours faithfully



James Veaney
Head of Distribution Policy

Appendix 1 – Proposed changes to IGT Licence – Special Condition 1

Special Condition 1. Charging of Gas Shippers – Relative Price Control

Subject to paragraph 2, where the licensee makes charges in accordance with paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers – General) after the 31 December 2003 and where,

- (a) the licensee provides transportation arrangements to a premises,
- (b) the premises are not defined as legacy sites as defined within paragraph 3 of this condition; and
- (c) charges, or revenues derived from them, are, in the main, not controlled or limited in pursuance of any condition of this licence other than standard condition 4 (Charging of Gas Shippers – General) or standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges).

then paragraph 5 of standard condition 4 (Charging of Gas Shippers – General) shall cease to have effect in relation to the premises.

2. For premises subject to paragraph 1 above or paragraph 3 (4) of this condition the licensee shall for all such premises, unless the Authority consents otherwise in writing, charge no more than TC_t :

(1)

- (a) Where RC_t is less than C_t and greater than F_t , then

$$TC_t = RC_t$$

- (b) Where RC_t is greater than or equal to C_t , then

$$TC_t = C_t$$

- (c) Where RC_t is less than or equal to F_t , then

$$TC_t = F_t$$

Subject to this condition at Entry-point, then RC_t shall be calculated as follows:

$$RC_t = SSP - CSEP$$

Where t is greater than 1, RC_t shall be calculated as follows:

$$RC_t = RC_{t-1} \times \left(1 + \frac{wSSP_r}{100} \right)$$

(2) The licensee shall adjust charges on 1 January each year in accordance with this condition. Where the Entry-point is in the immediately preceding period of 1 October to 31 December, the licensee shall not adjust charges in accordance with paragraph 2 above but shall modify the charges in accordance with this condition each 1 January thereafter.

- (3) To determine the level of charges the licensee shall apply Annual Quantity in relation to domestic premises in accordance with standard Annual Quantity as accepted by the Authority, and for other premises as reasonably estimated and agreed between the licensee and any relevant shipper, unless the Authority directs otherwise for those other premises. In this paragraph 2 (3) domestic premises excludes any domestic premises where a surcharge is made pursuant to paragraph 5 of this condition.
- (4) At Entry-point, C_t and F_t shall be calculated as follows:

$$C_t = TC_t \times (1 + 0.05)$$

$$F_t = TC_t \times (1 - 0.05)$$

Where t is greater than 1, C_t and F_t shall be calculated as follows:

$$C_t = C_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

$$F_t = F_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

- (5) Charges made or which fall to be made to premises under paragraph 1 of this condition shall be determined in accordance with this condition for a period of no less than 10 years from Entry-point.
- (6) Where the Authority reviews charges made, or which may be made, under this condition and implements any such review after 2014, the Authority shall, in the course of conducting its review, have regard to previous efficiently incurred capital expenditure made by the licensee in the course of carrying on activities required by or permitted under the Gas Act and the licence.

Definitions:

- Annual Quantity** means the annual quantity of gas off-taken, or which may be reasonably likely to be off-taken, by a single supply point or connected system exit point;
- Ct** means the charge ceiling as determined in accordance with paragraph 2 (4) of this condition;
- CSEP** means the relevant licenced gas transporter's connected system exit point charges calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;
- Entry-point** means the date at which t=1 and, with the exception of premises subject to paragraph 3 (4) of this condition, shall be determined as either the date of connection of a premises to the licensee's pipe-line system, and where gas has entered the premises' service pipe, or the date the licensee is contractually bound to provide a connection to the person requiring that connection. The licensee

shall select the entry-point date within 60 days of the contract to connect, unless the Authority otherwise directs the date of the Entry-point;

- Ft** means the charge floor as determined in accordance with paragraph 2 (4) of this condition;
- RPI** means the value published in October of each year by the Authority and calculated as the percentage change (whether of a positive or a negative value) in the arithmetic average of the retail price index determined in respect of April to September (both inclusive) of the current calendar year and the arithmetic average of the retail price index determined with respect to April to September of the previous calendar year;
- RC_t** means the relative charge for each premises in year ‘t’ as determined in paragraph 2 of this condition.
- RC_{t-1}** means the relative charge for each premises in the year preceding year ‘t’ as determined in paragraph 2 of this condition.
- SSP** means the relevant licenced gas transporter’s single supply point charges for premises calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at the Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;
- TC_t** means the maximum charge the licensee may charge for each premises subject to paragraph 2 of this condition in year ‘t’;
- wSSP_r** means the change in the average of the relevant licenced gas transporter’s single supply point charge from year t-1 to year t for each Network Region r. Networks Regions r comprise: r₁ Scotland, comprising LDZ exit zones SC; r₂ North and Yorkshire, comprising LDZ exit zones NO, NE; r₃ North West, comprising LDZ exit zones NW; r₄ East England, comprising LDZ exit zones EM, EA; r₅ West Midlands, comprising LDZ exist zones WM; r₆ Wales and South West, comprising LDZ exit zones WA, SW; r₇ North London, comprising LDZ exit zones NT; and r₈ South and South East, comprising LDZ exit zones SO, SE. The values for wSSP_r in respect of each region shall be determined and published in October of each year by the Authority; and
- Δ_r** means the annual percentage change in respect of the Network Region r in which the premises are located, and has a value according to the schedule below:

Region	Annual percentage change
r ₁ Scotland	0.42
r ₂ North and Yorkshire	1.13
r ₃ North West	1.40
r ₄ East England	1.64
r ₅ West Midlands	1.57
r ₆ Wales and South West	0.36
r ₇ North London	1.23

3. In respect of legacy sites the licensee shall, within 60 days of 1 January 2004, calculate and notify to the Authority a date by which all such premises shall be charged according to paragraph 2 above, and the Authority shall then direct a date (the “migration date”) as soon as reasonably practicable within six months of the notification.
- (1) In calculating the above date the licensee shall use its best endeavours to take into account the following factors:
 - (a) the migration date shall be calculated on a revenue neutral basis and the notification by the licensee shall include, or the licensee shall otherwise provide as required by the Authority, all necessary information for the Authority to determine the reasonableness of such calculation; and
 - (b) from the migration date, charges determined pursuant to paragraph 5 of standard condition 4 (Charging of Gas Shippers - General) or paragraph 4 of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges) shall cease to have effect for legacy sites.
 - (2) Where the Authority directs a migration date or conducts a review pursuant to paragraph 2 (6) of this condition, the Authority shall, in each case and where necessary, direct a migration date so as to achieve the objective of revenue neutrality.
 - (3) From the beginning of the calendar year immediately following the migration date, charges determined pursuant to paragraph 5 of standard condition 4 (Charging of Gas Shippers - General) or paragraph 4 of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges) shall cease to have effect for legacy sites.
 - (4) From the beginning of the calendar year immediately following the migration date, the charges to shippers in respect of legacy sites shall thereafter be made in conformity with paragraph 2 of this condition subject to charges calculated on the basis of an Entry-point of 1 January 2004, and inclusive of all relevant adjustments to charges specified in this condition since 1 January 2004 up to the migration date.

Definitions:

Legacy site(s) means existing or future premises in respect of which

- a) the licensee has had a methodology accepted by the Authority pursuant to paragraph 4 of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges); or
- b) the licensee makes, or shall make, charges to shippers under standard condition 4 (Charging of Gas Shippers – General) and at least one premises that forms part of the same clearly

identifiable site or project was connected to the licensee's pipe-line system and gas had entered the premises' service pipe before 1 January 2004.

4. The Authority may, on written application by the licensee within 60 days of this condition being implemented, consent to charging arrangements other than those required by paragraphs 1, 2 and 3 of this condition. The Authority's written consent may contain such terms and conditions as the Authority determines necessary.
5. Where charges are made in accordance with paragraph 2, they may include a surcharge subject to the following conditions,
 - (a) a maximum surcharge of 0.3412 pence per kWh of gas transported adjusted on 1 January of each year by a factor of $\left(1 + \frac{RPI}{100}\right)$ starting from 1 January 2004. RPI has the same meaning as given in paragraph 2 of this condition;
 - (b) the surcharge has a maximum duration of 20 years from the entry point (when the surcharge to the relevant shipper first falls due). For the avoidance of doubt, the surcharge period is not restarted in the event that another shipper takes control of the supply of gas to that premises.
 - (c) the surcharge may only apply to existing domestic premises which were in existence for not less than 6 months prior to the provision of the gas main extended specifically for connection of those premises, and which have not previously received a supply of natural gas;
 - (d) the licensee has, on request to provide a connection by the owner or occupier of the premises, extended a gas main to specifically connect the premises;
 - (e) the licensee must notify the Authority of the specified amount and specified duration as soon as reasonably practicable but in any event no later than 28 days prior to any such charge falling due; and
 - (f) the Authority may direct the licensee not to make the surcharge within 28 days of the notification in (e) above.
6. The licensee shall furnish the Authority with a statement of charges determined in respect of paragraph 2 in a form approved by the Authority. The licensee shall
 - (a) publish a statement, or revision or amendment of a statement, furnished, or notice given, under paragraph 2 in such manner as will, in its reasonable opinion, secure adequate publicity for it;
 - (b) send a copy of any such statement, revision, amendment or notice so published to any person who asks for one; and
 - (c) the licensee shall furnish the Authority with specified information in respect of its charges in a specified form as requested from time to time.
7. References in paragraphs 2 of special condition 1 (Charging of Gas Shippers - Relative Price Control) to charges do not include references to -

- (a) charges related to the acquisition or disposal of gas for purposes connected with the balancing of the licensee's pipe-line system;
 - (b) to the extent (if any) to which the Authority has accepted that they should, as respects certain matters, be so determined, to charges determined by reference to provisions in that behalf set out in the Network Code; or
 - (c) charges related to the provision of meters or reading of meters.
8. ~~The charging arrangements in paragraph 2 and paragraph 5 shall apply so long as this licence continues in force but shall cease to have effect in such circumstances and at such times as are described in paragraph 9.~~
9. ~~Pursuant to paragraph 8, a licensee, in whose licence this condition has effect, may make a disapplication request in writing to the Authority. The disapplication request shall specify the paragraphs of this condition (or any part or parts thereof) to which the request relates and shall state the date (the "disapplication date") from which the licensee wishes the Authority to consent that the specified paragraphs (or the specified parts or parts thereof) shall cease to have effect. The disapplication date is a date which is either:~~
- (a) ~~not less than 18 months after the date of delivery of the request or more than three years from 1 January 2004; or~~
 - (b) ~~not less than 10 years after 1 January 2004.~~
10. ~~The disapplication request may be withdrawn by the licensee at any time prior to the disapplication date.~~
11. ~~The condition (or any part or parts thereof) to which the disapplication request relates shall cease to have effect from the date specified in the disapplication request or such later date as may be agreed, if the Authority agrees in writing to the disapplication request.~~
12. ~~If the Authority has not made a reference to the Competition Commission under section 24 of the Act relating to the modification of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request~~

~~before the beginning of 12 months which will end with the disapplication date and the licensee has not withdrawn the disapplication request, the licensee may deliver a termination notice to the Authority. Following the service of a termination notice, with effect from the disapplication date or such later date as may be specified in the termination notice such of the paragraphs (or any part or parts thereof) as are specified in the disapplication request shall cease to have effect in this licence.~~

~~13. If the Competition Commission makes a report on a reference in respect of this licence made by the Authority relating to the modifications of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the removal of such paragraphs (or any part or parts thereof) operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 25 of the Act deliver to the Authority a termination notice. With effect from the disapplication date or such later date as may be specified in the termination notice such paragraphs (or any part or parts thereof) as are specified in the disapplication request and in respect of which the Competition Commission report does not include the aforementioned conclusion shall cease to have effect in this licence.~~

Conditions are to continue subject to disapplication

8. The charging arrangements in paragraph 2 and in paragraph 5 of this condition apply so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with paragraphs 9 and 11 of this condition and:

- (a) the Authority agrees in Writing to the Disapplication Request; or
- (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition.

Date from which a disapplication may take effect

9. Except with the Authority otherwise consents, a disapplication following the service of a Disapplication Request may not have effect until a date that is no earlier than 18 months after service on the Authority of the Disapplication Request.

Procedure for making a Disapplication Request

10. The licensee may ask the Authority to consent to the disapplication of paragraphs 2 and 5 of this condition (in whole or in part) by serving a Disapplication Request on the Authority.

11. A Disapplication Request must:

- (a) be in Writing and addressed to the Authority;
- (b) specify the paragraphs of this condition (or any part or parts thereof) to which the request relates;
- (c) provide a full statement of the licensee's reasons for making the Disapplication Request;
- (d) contain such other information or analysis as the licensee considers necessary to enable the Authority to fully assess the Disapplication Request; and
- (e) state the date that is proposed by the licensee (which must not be earlier than the appropriate date that is mentioned in paragraph 9) on and after which the specified paragraph (or part or parts thereof) would cease to have effect (the "Disapplication Date").

12. A Disapplication Request may be served in respect of a specified geographic area.

13. If, within 10 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:

- (a) specifying further information or analysis that it reasonably considers is required in order to fully assess the Disapplication Request, and
- (b) requesting the licensee to provide that information or analysis,

the Disapplication Request shall be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

14. The giving of Notice under paragraph 13 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the Disapplication Request.

15. The licensee may withdraw a Disapplication Request at any time.

Licensee's right to disapply under a Disapplication Request

16. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 9 and 11 of this condition, and the circumstances described in paragraphs 17 or 19 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all the provisions that are subject to the Disapplication Request.

Disapplication without involvement of the Competition and Markets Authority

17. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under section 23 of the Act to modify this condition in either of the ways described in paragraph 18.

18. The ways referred to in paragraph 17 are:

- (a) modify any of the provisions referred to in the Disapplication Request; or
- (b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

Disapplication after involvement of the Competition and Markets Authority

19. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 18 of this condition but:

- (a) the licensee has exercised its right to appeal to the Competition and Markets Authority against that decision of the Authority as provided for by Section 23B of the Act;
- (b) the Competition and Markets Authority has quashed the Authority's decision and directed the licensee to serve such a Disapplication Notice on the Authority; and
- (c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Market's Authority direction.

20. A Disapplication Notice under paragraph 17 and 19 must also comply with any terms and conditions specified in the Competition and Markets Authority's direction.

Interpretation

21. For the purposes of this condition:

- (a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 17 or 19 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.
- (b) **Disapplication Request** means a request made to the Authority in accordance with paragraph 10 of this condition to disapply some or all of the provisions of paragraphs 2 and 5 of this condition.
- (c) **Writing** includes writing that is sent or received by Electronic Communication.

Appendix 2 – Proposed changes to IDNO Licence –Standard Condition BA2

Standard Condition BA2. Regulation of charging arrangements

Introduction

1. The licensee must make, and continue to make, charges available, in accordance with the requirements of this condition, for the provision of Use of System to any Authorised supplier of electricity that uses or wishes to use the licensee's Distribution System to supply electricity to Domestic Customers.

Setting and restriction of charges

2. The licensee's Use of System Charges in relation to Domestic Customers may vary according to the Distribution Services Area of the Electricity Distributor within which Domestic Premises are connected to the licensee's Distribution System.
3. The licensee must set those Use of System Charges so that, except with the Authority's consent, the standing charge, unit rate, and any other component of the charges does not exceed the Use of System Charges to equivalent Domestic Customers ("the equivalent charges").
4. For the purposes of paragraph 3, equivalent charges are the Use of System Charges made by the Electricity Distributor which has a Distribution Services Direction that specifies the Distribution Services Area in which the Domestic Premises connected to the licensee's Distribution System are located.
5. The Authority may give the licensee a direction that specifies which of the Use of System Charges made by the Distribution Services Provider for the Distribution Services Area mentioned in paragraph 4 are relevant for the purposes of determining the equivalent charges.

Procedure for disapplying this condition

6. The charging arrangements set out above **apply for so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with ~~will remain in force until such time and in such circumstances as are described in~~ paragraphs 7 to ~~13~~ 18 of this condition and:**
 - (a) the Authority agrees in Writing to the Disapplication Request; or
 - (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition
7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a ~~d~~Disapplication ~~r~~Request made in accordance with paragraph 8.
8. A ~~d~~Disapplication ~~r~~Request **must shall:**

- (a) be in Writing addressed to the Authority;
 - (b) specify the paragraph ~~or paragraphs~~ of this condition (or any part or parts thereof) to which the request relates; ~~and~~
 - (c) provide a full statement of the licensee's reasons for making the Disapplication Request;
 - (d) contain such other information or analysis as the Licensee considers necessary to enable the Authority fully to assess the Disapplication Request; and
 - (e) state the ~~Disapplication Date~~ that is proposed by the licensee (which must not be earlier than the date specified in paragraph 9) on and after which the specified paragraph or paragraphs would no longer have effect ("the disapplication date").
9. Except with the Authority's consent, no disapplication of this condition following its receipt of a ~~Disapplication Request~~ under paragraph 7 may have effect until a date not less than 18 months after delivery of the ~~Disapplication Request~~.
10. A Disapplication Request may apply to a specified geographic area.

~~10. The licensee may withdraw a disapplication request at any time.~~

11. If, within 28 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:

- (a) specifying any further information or analysis that it reasonably considers is required in order to assess the Disapplication Request; and
- (b) requesting the licensee to provide that information or analysis,

the Disapplication Request will be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

12. The giving of notice under paragraph 11 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the proposal.

13. The licensee may withdraw a Disapplication Request at any time.

Licensee's right to disapply this condition under a Disapplication Request

~~11. If the licensee has given the Authority a disapplication request under paragraph 7, it may subsequently give the Authority a Notice that terminates the application of this condition or the part or parts of it specified in the request:~~

- ~~(a) in the circumstances described in paragraph 12, with effect from either the disapplication date or such earlier date to which the Authority has given its consent under paragraph 9; or~~
- ~~(b) in the circumstances described in paragraph 13, with effect from the disapplication date, so long as the licensee gives Notice within 30 days after the publication of the report mentioned in that paragraph.~~

~~12. The circumstances described in this paragraph are these:~~

- ~~(a) the Authority has not made a reference to the Competition and Markets Authority (CMA) under section 12 of the Act relating to the modification of this condition as specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date; and~~
- ~~(b) the licensee has not withdrawn its request.~~

~~13. The circumstances described in this paragraph are these:~~

- ~~(a) the CMA has made a report on a reference made by the Authority relating to the modification of this condition as specified in the licensee's disapplication request; and~~
- ~~(b) the CMA report does not find that the ending of the charging arrangements in this condition, in whole or in part, would operate or might be expected to operate against the public interest.~~

14. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 8 and 9 of this condition, and the circumstances described in paragraphs 15 or 17 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all of the provisions that are the subject of the Disapplication Request.

Disapplication without involvement of the Competition and Markets Authority

15. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under Section 11A of the Act to modify this condition in either of the ways described in paragraph 16.

16. The ways referred to in paragraphs 15 are:

- (a) modify any of the provisions referred to in the Disapplication Request; or
- (b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

Disapplication after involvement of the Competition and Markets Authority

17. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 16 of this condition but:

- (a) the licensee has exercised its right to appeal to the Competition and Markets Authority against the decision of the Authority as provided for by Section 11C of the Act;
- (b) the Competition and Markets Authority has quashed the Authority's decision and directed the licensee to serve such a Disapplication Notice on the Authority; and
- (c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Markets Authority's direction.

18. A Disapplication Notice under paragraphs 15 and 17 must also comply with any terms or conditions specified in the Competition and Markets Authority's direction.

19. For the purposes of this condition:

- (a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 15 and 17 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.
- (b) **Disapplication Request** means a request made to the Authority in accordance with paragraphs 8 and 9 of this condition to disapply some or all of the charging provisions of this condition.
- (c) **Writing** includes writing that is sent or received by Electronic Communication.