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Date: 29 July 2013

Dear Colleague

**Notice under section 11A(2) of the Electricity Act 1989 and section 23(2) of the Gas Act 1986: consultation on further proposed changes following the implementation of the Third Package and other miscellaneous changes.**

This letter sets out our decision to proceed with a statutory consultation on a number of changes to the electricity transmission and distribution licences, and to the gas transporters and supply licences. The proposed changes are consequential licence changes relevant to the Third package, as well as changes of a housekeeping nature.

Appendices 3 to 7 to this letter contain the statutory consultation notices and our proposed licence modifications are contained in the supporting Schedules.

Details of how to respond to this consultation are set out below. Any representations on the proposed licence modifications must be sent to us on or before **28 August 2013**.

**Background**

We issued an open letter consultation on 20 November 2012 (the November 2012 consultation)<sup>1</sup> seeking views on a number of proposed changes to the electricity transmission and distribution licences and to the gas transporters and supply licences. These are consequential changes relevant to the implementation of the Third Package<sup>2</sup> into domestic legislation by the Electricity and Gas (Internal Markets) Regulations 2011 (the Regulations).<sup>3</sup> Our November 2012 consultation also set out some housekeeping changes to remove provisions which are now redundant as a result of our first Code Governance Review (CGR) Final Proposals published in 2010.<sup>4</sup>

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<sup>1</sup> The open letter consultation and responses appear on our website here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=239&refer=LICENSING/WORK>

<sup>2</sup> The term 'Third Package' refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('Electricity Directive'); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ('Electricity Regulation'); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ('Gas Directive'); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Gas Regulation'); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

<sup>3</sup> SI 2011/2704 which can be found here: <http://www.legislation.gov.uk/ukSI/2011/2704/part/1/made>.

<sup>4</sup> Ofgem's CGR Final Proposals appear here:

[http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/CGR\\_Finalproposals\\_310310.pdf](http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/CGR_Finalproposals_310310.pdf)

We have set out in appendix 1 to this paper the proposed licence modifications, the reasons for the modifications and their effect.

We received six responses to our November 2012 consultation which are published on the Ofgem website.<sup>5</sup> 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. We have included in appendix 2 a high level summary of responses and our views.

## Way forward

We are grateful to stakeholders for their responses and have taken these into account in coming to our decision to now proceed with a statutory consultation on proposed licence modifications.

We continue to view the majority of our proposed modifications as appropriate. The table in appendix 1 sets out our reasons for proposing the changes. In addition, the table in appendix 2 sets out our views on responses to our November consultation and explains any changes to our view.

Stakeholders may be aware that a number of licence changes proposed under our CGR (Phase 2)<sup>6</sup> will come into effect on 5 August 2013. Whilst those changes are not yet in effect, to aid stakeholders in considering the proposed licence modifications for this consultation we have included the CGR2 changes in the relevant Schedules to our statutory consultation notices.<sup>7</sup>

Set out below is a key to the changes contained in the Schedules to each appendix containing a statutory consultation notice:

Black strike through	CGR2 deletion
Red	CGR2 addition
Green strike through	November 2012 consultation proposed deletion
Underline black	November 2012 consultation proposed addition
Blue	New proposed drafting, proposed changes to reflect CGR2 modifications or corrections to drafting errors in our November 2012 consultation

For the sake of brevity we have not included in each Schedule the full licence condition that we propose to modify.

## Next Steps

Attached to this letter are the following statutory consultation notices and supporting Schedules:

- Appendix 3 – Notice under section 11A(2) of the Electricity Act 1989 (the Electricity Act) proposing to modify Standard Conditions B12, B18, C3, C5, C6, C10 and E21 of the Electricity Transmission Licence.
- Appendix 4 – Notice under section 11A(2) of the Electricity Act proposing to modify Standard Conditions 1 and 22 of the Electricity Distribution Licence.

<sup>5</sup> The responses are available here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=239&refer=Licensing/Work>

<sup>6</sup> More information on CGR2 is available here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=442&refer=Licensing/IndCodes/CGR>

<sup>7</sup> This has also resulted in a number of changes to the proposed drafting that we consulted on in our November 2012 consultation. This includes renumbering of paragraphs and reflecting terminology set out in the CGR2 changes, for example “amendment” has been changed to “modification” where appropriate. Such changes have been highlighted in our proposed text.

- Appendix 5 – Notice under section 23(2) of the Gas Act 1986 (the Gas Act) proposing to modify Standard Condition 9 of the Gas Transporters Licence.
- Appendix 6 – Notice under section 23(2) of the Gas Act proposing to modify Standard Special Condition A11 of the Gas Transporters Licence.
- Appendix 7 - Notice under section 23(2) of the Gas Act proposing to modify Standard Condition 30 of the Gas Supply Licence.

Any representations on the proposed modifications must be made in writing on or before **28 August 2013** to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk).

All responses will be placed on our website as a matter of course unless marked confidential. Respondents may request that their response is kept confidential and we shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Subject to any representations that are made, we currently expect to publish directions to modify the relevant licence conditions in autumn 2013. If we decide to make the proposed modifications they will take effect 56 days after our decision is published.

If you wish to discuss our proposals, please contact [abid.sheikh@ofgem.gov.uk](mailto:abid.sheikh@ofgem.gov.uk), Manager Industry Codes and Licensing, in the first instance.

Yours faithfully,

**Lesley Nugent**  
**Head of Industry Codes and Licensing**

## Appendix 1

Proposed modifications	Reason for and effect of the proposed modifications
<p>Insertion of an additional code objective into the:</p> <ul style="list-style-type: none"> <li>Electricity transmission licence SLC B12(3) (System Operator-Transmission Owner Code (STC))</li> </ul> <p>Insertion of additional relevant objectives into the:</p> <ul style="list-style-type: none"> <li>Electricity transmission licence SLC C5 (5) (Use of system charging methodology)</li> <li>Gas supply licence SLC 30 (6) (Supply Point Administration Agreement)</li> </ul>	<p>To ensure that code modification proposals comply with the Electricity Regulation or the Gas Regulation as appropriate and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators.</p>
<p>Into the Electricity transmission licence SLC B12(6) and the Gas supply licence (SLC 30.9) the addition of:</p> <ul style="list-style-type: none"> <li>the Authority to those who may raise modification proposals (but only in relation to proposals which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators)</li> <li>the licensee to those who may raise modification proposals</li> <li>a requirement on the licensee and the panel to comply with any direction/s issued by the Authority, to the extent that they are relevant, (in relation to a modification proposal which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators</li> <li>an amendment requiring modification proposals which the Authority reasonably considers are necessary to comply with or</li> </ul>	<p>To allow the Authority to raise modification proposals (but only in relation to proposals which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators).</p> <p>Requires the licensee and (where applicable the panel) to comply with any direction issued by the Authority.</p> <p>Align these SLCs with the equivalent conditions for the other industry codes, for example, electricity transmission Standard Condition C3 (4)(a), (aa), (ad)</p>

<p>implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators to be accepted into the modification procedures by the panel.</p>	<p>and (ae) for the Balancing and Settlement Code.</p>
<p>Modifications proposed to:</p> <ul style="list-style-type: none"> <li>• Electricity transmission licence SLC B12(6)</li> <li>• Electricity transmission licence SLC C3 (4) (Balancing and Settlement Code)</li> <li>• Electricity transmission licence SLC C10(6) (Connection and Use of System Code)</li> <li>• Electricity distribution licence SLC 22 (5) (Distribution Connection and Use of System Agreement)</li> <li>• Gas transportation licence SLC 9(7) (Network Code and Uniform Network Code) and Standard Special Condition A11(9) (Network Code and Uniform Network Code)</li> <li>• Gas supply licence SLC 30.9 (previously 30.8)</li> </ul> <p>to ensure that modification proposals raised by the licensee that the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators cannot be withdrawn without the Authority's consent.</p>	<p>To clarify when the Authority's consent would be required before a licensee can withdraw a code modification proposal that it has raised.</p> <p>The modification will prevent a licensee from withdrawing a modification that it has raised, whether or not as a result of the Authority's direction, without the Authority's consent where the Authority, in its view, reasonably considers that that the code modification is necessary to comply with or implement the Electricity Regulation or the Gas Regulation as appropriate and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators.</p>
<p>The addition of the definition of 'Agency for the Cooperation of Energy Regulators' into SLC 1 (Definitions for standard conditions) of the Electricity distribution licence.</p>	<p>To define the term 'Agency for the Cooperation of Energy Regulators' which is referred to in the licence.</p>
<p>The correction of a minor typographical error in Electricity transmission licence SLC C3 (4) (a) (Balancing and Settlement Code) inserting a comma between 'the BSC parties' and 'the Authority'.</p>	<p>The addition of a comma to correct a minor typographical error was highlighted in a consultation response.</p>
<p>The removal of references to Section 11 and Section 12 of the Electricity Act 1989 and the word "special" from the first sentence of paragraph 7 in:</p> <ul style="list-style-type: none"> <li>• Electricity transmission licence</li> </ul>	<p>To remove references to repealed provisions in the licence.</p> <p>To allow a Section B or Section E (Offshore Transmission Owner of Last</p>

<p>SLCs B18 (7) (Functions of the Authority)</p> <ul style="list-style-type: none"> <li>• Electricity transmission licence E21 (7) (offshore Transmission Owner of Last Resort)</li> </ul>	<p>Resort) Direction to take effect following proposals to modify any of the conditions of the licence to which the Direction applies, rather than only the special conditions.</p>
<p>Removal and/or renumbering of provisions to reflect modifications introduced through the First CGR to:</p> <ul style="list-style-type: none"> <li>• Electricity transmission licence SLC C5</li> <li>• Electricity transmission licence SLC C6 (Connection Charging Methodology)</li> </ul>	<p>To reflect changes brought about by the First CGR.</p>
<p>Removal and renumbering of provisions and terminology to reflect modifications set out in the CGR2 changes:</p> <ul style="list-style-type: none"> <li>• Electricity transmission licence SLC B12(6)</li> <li>• Gas supply licence 30(6)</li> <li>• Gas supply licence 30(9)</li> </ul>	<p>To reflect our modifications set out in the CGR2 changes.</p>

## Appendix 2

The issues raised in respect of the licence drafting are summarised at a high level below alongside our comments.

<b>Licence type and condition</b>	<b>Response</b>	<b>Comment</b>	<b>Licence drafting amended?</b>
Electricity transmission – SLC C3 and SLC C10  Electricity distribution SLC – SLC 22	Drafting is unclear and repetitive on when Authority’s consent is required before a code modification raised by a licensee can be withdrawn	Our proposed drafting seeks to clarify that modifications raised by a licensee cannot be withdrawn without the Authority’s consent where the Authority, in its view, reasonably considers that that code modification is necessary to implement the Regulations and/or any relevant legally binding decisions of the European Commission and/or ACER.	No
Electricity distribution SLC – SLC 23	Drafting is unclear and repetitive on when Authority’s consent is required before a code modification raised by a licensee can be withdrawn	Agree that this change is not needed as licensee is unable to raise a modification proposal under SLC 23.5(a).	Yes
Electricity transmission – SLC C3	Questions on how the modifications raised by the Authority will be treated	We would expect the relevant licence holder to bring forward appropriate code modifications to ensure the code is in line with the licence condition. We note, for example, that National Grid Gas has proposed a change to the UNC <sup>8</sup> to reflect that the Authority may raise modifications it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators.	No
Electricity transmission – SLC C3 (4)(a)	Noted a minor typographical correction is required (the addition	Agree this change improves the current text.	Yes

<sup>8</sup> Further information on the relevant UNC modification proposal is available at: <http://www.gasgovernance.co.uk/0448>

	of a comma between 'the BSC parties' and 'the Authority')		
Electricity transmission – SLC C10	Confusion regarding the ability of the licensee to withdraw a modification made pursuant to an SCR	The definition of SCR direction under SLC C10 sets out that a direction(s) issued following the publication of SCR conclusions shall contain, amongst other things, instructions to the licensee to make a modification proposal and not to withdraw it without the Authority's consent. The licensee would therefore be required to seek Authority consent prior to withdrawing any modification raised pursuant to an SCR. The change we have proposed to paragraph 6(ae) of SLC C10 is to set out, for the avoidance of doubt, that the licensee cannot withdraw a modification that is raised following an SCR direction where the Authority, in its view, reasonably considers that code modification is necessary to implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or ACER without the Authority's consent.	No