

To: All holders of an electricity supply licence (“licensees”) who are relevant licence holders for the purposes of section 11A(10) of the Electricity Act 1989

MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989

NOTICE OF REASONS FOR THE DECISION TO MODIFY THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE UNDER SECTION 49A OF THE ELECTRICITY ACT 1989

WHEREAS:

1. Each of the companies to whom this modification notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the “Act”).
2. In accordance with section 11A(2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (“the Authority”)¹ gave notice (“Notice”) on 16 November 2017 that it proposed to modify the standard conditions of the electricity supply licence by introducing standard condition 21BA. The Notice required any representations with respect to the proposed modification to be made on or before 18 December 2017.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the modification should not be made.
4. We received a number of responses to this Notice, which we carefully considered. We have placed all non-confidential responses on our website.
5. The Authority has carefully considered the representations made and, subject to changes set out in Schedule 2 to this modification notice, has decided to proceed with the modification proposed in the Notice.
6. In accordance with section 49A of the Act, the reasons for making the licence modification are to implement the policy stated in the following documents:
 - a. Open letter – notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017²;
 - b. Protecting consumers who receive backbills: statutory consultation 16 November 2017³; and
 - c. Modification of the electricity and gas supply licences to introduce rules on backbilling to improve customer outcomes, 5 March 2018.

In summary, the Authority’s monitoring activities have revealed instances of suppliers issuing backbills to consumers for unbilled gas and electricity consumed over 12 months ago, when the consumer is not at fault. Since the Authority outlined a backbilling principle in 2007, the market has changed considerably and

¹ The terms “the Authority”, “we” and “Ofgem” are used interchangeably in this document.

² Open letter - notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017, https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

³ https://www.ofgem.gov.uk/system/files/docs/2017/11/protecting_consumers_who_receive_backbills_-_statutory_consultation.pdf

voluntary arrangements either do not cover or are not being applied consistently by all suppliers, resulting in poor outcomes for consumers.

7. The effects of this modification are described in the documents referred to in paragraph 6 of this modification notice. In summary, the effects of this modification include prohibiting suppliers from recovering charges from domestic and microbusiness consumers in respect of units of electricity reasonably considered to have been consumed over 12 months ago, regardless of payment type. The prohibition will not apply in certain circumstances, including where a charge recovery action cannot be taken due to the consumer's obstructive or manifestly unreasonable behaviour. In addition, the modification requires that terms and conditions of relevant contracts comply with and reflect the effect of the modification, and that licensees do not enforce or take advantage of any incompatible term.
8. Where an application for permission to appeal the Authority's decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the CMA's Energy Licence Modification Appeals Rules⁴ requires that the appellant send a non-sensitive notice to any relevant licence holders who are not parties to the appeal, setting out the matters required in Rule 5.2. Schedule 3 to this modification notice provides a list of the relevant licence holders in relation to the modification. Section 11A(10) of the Act sets out the meaning of "relevant licence holder".

Now therefore

In accordance with the powers contained in section 11A(1)(b) of the Act, the Authority hereby modifies the standard conditions for all electricity supply licences in the manner specified in Schedule 1 to this modification notice. The modification will take effect on and from 00.01 on 01 May 2018, a date which is not less than 56 days from the publication of this modification notice.

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

**Anthony Pygram, Partner
Consumers and Competition**



**Duly authorised on behalf of the
Gas and Electricity Markets Authority**

5 March 2018

⁴ CMA70 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

SCHEDULE 1

MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989

The text below constitutes the modification to introduce standard condition 21BA into the electricity supply licence:

Part A: application to Domestic Customers

Prohibition

21BA.1 Subject to paragraph 21BA.2, where the licensee or any Representative issues a Bill to a Domestic Customer or otherwise seeks to recover (including via a Prepayment Meter) Charges for the Supply of Electricity from that customer (hereafter a "charge recovery action"), they must only do so in respect of:

(a) units of electricity which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and

(b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.

Exceptions to prohibition

21BA.2 Paragraph 21BA.1 does not apply in the following circumstances:

(a) where any charge recovery action was taken prior to the date this condition took effect;

(b) the licensee or any Representative, has taken a charge recovery action following the date this condition took effect in a manner which complied with paragraph 21BA.1 and, due to non-payment are continuing to take steps to obtain payment for the same units of electricity and, where applicable, the same amounts in respect of a Standing Charge or other type of supply charge;

(c) the licensee has been unable to take a charge recovery action for the correct amount of electricity consumed due to obstructive or manifestly unreasonable behaviour of the Domestic Customer;

(d) any other circumstances, which following consultation, the Authority may specify by publishing a statement in writing.

Terms of contracts

21BA.3 The licensee must ensure that the terms and conditions of each Relevant Contract comply with the provisions of this condition.

21BA.4 The licensee must ensure that each Relevant Contract contains terms and conditions which reflect the effect of the provisions of this condition.

21BA.5 The licensee must not enforce or take advantage of any term of a Relevant Contract if:

- (a) the inclusion of that term is incompatible with this condition; or
- (b) the enforcement or taking advantage of that term would be so incompatible.

Definitions for Part A

21BA.6 In this condition Relevant Contract means any Domestic Supply Contract and Deemed Contract.

Part B: application to Micro Business Consumers

21BA.7 In respect of a Micro Business Consumer, the licensee must comply with Part A of this condition on the basis that:

- (a) any reference to Domestic Customer is to be read as a reference to Micro Business Consumer; and
- (b) any reference to a Relevant Contract is to be read as a reference to Micro Business Consumer Contract.

21BA.8 In this condition **Micro Business Consumer** and **Micro Business Consumer Contract** have the meanings given in standard condition 7A.

Compliance with Part A and Part B

21BA.9 The licensee must comply with:

- (a) paragraphs 21BA.1 to 21BA.6 with immediate effect; and
- (b) paragraphs 21BA.7 and 21BA.8 with effect on and from 01 November 2018.

SCHEDULE 2

CHANGES TO THE DRAFTING OF THE MODIFICATION FOLLOWING STATUTORY CONSULTATION

Condition	Change following statutory consultation	Reason for change
21BA.9	Insert new paragraph "Compliance with Part A and Part B 21BA.9 The licensee must comply with: (a) paragraphs 21BA.1 to 21BA.6 with immediate effect; and (a) paragraphs 21BA.7 and 21BA.8 with effect on and from 01 November 2018".	We have made this change to specify the time by which suppliers have to comply with the prohibition in relation to Domestic Customers and Micro Business Consumers.

SCHEDULE 3

RELEVANT LICENCE HOLDERS⁵

1 North Utilities Ltd
1st Direct Utilities Plc
Addito Supply Limited
Affect Energy Ltd
Albuquerque Energy Limited
Alfa Smart Energy Ltd
Ampoweruk Ltd
AMRECS LLC
Arruzzi Energy Supply Limited
Arto.Energy Limited
Avid Energy Limited
Avro Energy Limited
Axis Telecom Limited
AXPO UK Limited
Barbican Power Limited
BES Commercial Electricity Limited
Better Business Energy Limited
Better Energy Supply Limited
Bluebell Energy Supply Limited
Boltland Energy Limited
BP Energy Europe Limited
BP Gas Marketing Limited
Breeze Energy Supply Limited
Brilliant Energy Limited
Brilliant Energy Supply Limited
Bristol Energy Limited
British Gas Trading Limited
Brook Green Trading Limited
Bruntwood Energy Services Limited
Bryt Energy Limited
Bulb Energy Ltd
Business Power and Gas Limited
Cabra Energy Supply Limited
Callesti Energy Supply Limited
Camaro Energy Supply Limited
Cardiff Energy Supply Limited
Celesto Enterprises Limited
Cilleni Energy Supply Limited
CNG Electricity Limited
Colgano Energy Supply Limited
Co-Operative Energy Limited
Corona Energy Retail 4 Limited
Coulomb Energy Supply Limited
Crown Oil Limited
Daisy Energy Supply Limited
Danske Commodities A/S
Delta Gas and Power Limited
Dirac Energy Supply Limited
Donnington Energy Limited
Dual Energy Direct Limited
Dyce Energy Limited
E (Gas and Electricity) Limited
E.ON Energy Solutions Limited
E.ON UK Plc
E2M - Energy Trading Ltd.
Earl Power Supply Limited
Eco Green Management Limited
Economy Energy Supply Limited
Economy Energy Trading Limited
Eddington Energy Supply Limited
EDF Energy Customers Limited
Edgware Energy Limited
Effortless Energy Ltd
Electraphase Ltd
Electricity Direct (UK) Limited
Electricity Plus Supply Limited
ElectroRoute Supply Limited
Emexconsult Limited
Emzo Energy Supply Limited
Eneco Energy Trade BV
Energy COOP Limited
ENGIE Power Limited
ENSCO Energy Services Company (UK) Ltd
Enstroga Ltd
EPG Energy Limited
ESB Energy limited
ETUL Limited
Euston Energy Limited
Evenergi UK Ltd
Eversmart Energy Ltd
Exelon Generation Limited
Extra Energy Supply Limited
F & S Energy Limited
Farmoor Energy Limited
Farringdon Energy Limited
First Utility Limited
Flow Energy Limited
Foxglove Energy Supply Limited
Gas and Power Limited
Gazprom Marketing & Trading Retail Limited
GNERGY Limited
Good Energy Limited
Great Western Energy Ltd
Greater London Authority
Green Energy (UK) plc
Green Network Energy Ltd
Greengen Direct Limited
Hartlepower C.I.C.

⁵ Electricity licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/all-electricity-licensees-registered-addresses>

Hartree Partners Supply (UK) Limited
Haven Power Limited
Hawking Energy Supply Limited
Holborn Energy Limited
Home Counties Energy Plc
Hudson Energy Supply UK Limited
I Supply Electricity 3 Limited
I Supply Energy Limited
I.A.Z.F.S. Limited
ICS Energy Limited
Igloo Energy Supply Limited
IPM Energy Retail Limited
Iresa Limited
Jacob Developments Limited
KAL-Energy Limited
Kensington Power Limited
Labrador Ltd
LCC Group Limited
Limejump Energy Limited
Logicor Energy Limited
Lourdes Associates Limited
MA Energy Limited
Marble Power Limited
Mattina Limited
Mercuria Energy Europe Trading Limited
Mongoose Energy Supply Limited
MVV Environment Services Limited
MyLife Home Energy Limited
Nabuh Energy Ltd
National Gas and Power Limited
Nationwide Electricity Limited
Neas Energy Limited
Nevada Energy Limited
New Stream Renewables Limited
Nilo Developments Limited
Npower Direct Limited
Npower Limited
Npower Northern Limited
Npower Northern Supply Limited
Npower Yorkshire Limited
Npower Yorkshire Supply Limited
Octopus Energy Limited
One Wales Energy - Un Ynni Cymru Ltd
Oneselect Limited
Opal Gas Limited
Opus Energy (Corporate) Limited
Opus Energy Limited
Opus Energy Renewables Limited
Orbit Energy Limited
Oreba Energy Supply Limited
Oregon Energy Limited
Orsted Power Sales (UK) Limited
Orsted Sales (UK) Limited
Our Power Energy Supply Limited
OVO Electricity Limited
Paddington Power Limited
Palladium Energy Supply Limited

Pan-Utility Limited
People's Energy (Supply) Limited
PFP Energy Supplies Limited
Pirranello Energy Supply Limited
Planet 9 Energy Limited
Power4All Limited
Positive Energy Ltd
Pure Planet Limited
Putney Energy Limited
PX Supply Limited
Queensbury Energy Limited
Regent Power Limited
Robin Hood Energy Limited
Rockfire Energy Limited
Rutherford Energy Supply Limited
S. C. Isramart SRL
Santana Energy Limited
Saphir Energy Limited
Satus Energy Limited
Scottish Power Energy Retail Limited
Shell Energy Europe Limited
Shell Energy Supply UK Ltd.
Simple Electricity Ltd
Simplest Energy Ltd
Simplicity Energy Limited
Simply Electricity Limited
Simply Your Energy Limited
Sinq Power Limited
Skylane Energy Supply Limited
Smart Electricity Limited
Smarter Eco Energy Ltd
SmartestEnergy Limited
Snowdrop Energy Supply Limited
So Energy Trading Limited
Solarplicity Supply Limited
South Wales Electricity Limited
Spalt Energy Limited
Spark Energy Supply Limited
Squeaky Clean Energy Limited
SSE Energy Supply Limited
Statkraft Markets GmbH
Sunflower Energy Supply Limited
Switch Business Gas and Power Ltd
Symbio Energy Limited
Temple Energy Limited
Texas Energy Limited
The Energy Support Bureau Limited
The Nuclear Decommissioning Authority
The Renewable Energy Company Limited
Together Energy Supply Limited
Tonik Energy Limited
Total Gas & Power Limited
Toto Energy Ltd.
Tradelink Solutions Limited
Trio Utilities Ltd
Tru Energy Limited
UK Healthcare Corporation Limited

UK Power Reserve Limited
United Gas & Power Ltd
United Gas & Power Trading Ltd
Ure Energy Limited
Usio Energy Supply Limited
Utilita Energy Limited
Utility Point Limited
Uttily plc
Vanquist Energy Supply Limited
Vattenfall Energy Trading GmbH
Vavu Power Limited

Venga Energy Supply Limited
Verastar Limited
Victory Energy Supply Limited
Viper Energy Supply Limited
Wilton Energy Limited
World Fuel Commodities Services
(Ireland) Limited
XLN Energy Limited
Zebra Power Limited
ZOG Energy Ltd