

To: All holders of a gas supply licence (“licensees”) who are relevant licence holders for the purposes of section 23(10) of the Gas Act 1986

MODIFICATION PURSUANT TO SECTION 23 OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

NOTICE OF REASONS FOR THE DECISION TO MODIFY THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 38A OF THE GAS ACT 1986

WHEREAS:

1. Each of the companies to whom this modification notice is addressed holds a gas supply licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act 1986 (the “Act”).
2. In accordance with section 23(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 gas 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 23(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 38A 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 gas 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 23B 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 23(10) of the Act sets out the meaning of "relevant licence holder".

Now therefore

In accordance with the powers contained in section 23(1) of the Act, the Authority hereby modifies the standard conditions for all gas 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 23 OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

The text below constitutes the modification to introduce standard condition 21BA into the gas 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 Gas from that customer (hereafter a "charge recovery action"), they must only do so in respect of:

- (a) units of gas 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 gas 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 gas 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	Cowpow Limited
1st Direct Utilities Plc	Crown Gas and Power Limited
Addito Supply Limited	Crown Oil Limited
Adrian Francis Associates Limited	Daisy Energy Supply Limited
Affect Energy Ltd	Daligas Limited
Albuquerque Energy Limited	Data Energy Management Services Limited
Alfa Smart Energy Ltd	Delta Gas and Power Limited
Ampoweruk Ltd	Dirac Energy Supply Limited
AMRECS LLC	Donnington Energy Limited
Arruzzi Energy Supply Limited	Dual Energy Direct Limited
AvantiGas On Limited	Dyce Energy Limited
Avid Energy Limited	E (Gas and Electricity) Limited
Avro Energy Limited	E.ON Energy Gas (Eastern) Limited
Axis Telecom Limited	E.ON Energy Gas (North West) Limited
Axpo UK Limited	E.ON Energy Solutions Limited
Barbican Powert Limited	E.ON UK Plc
Barrow Shipping Limited	E2M - Energy Trading Ltd
Better Business Energy Limited	Eclipse Energy Supply Limited
Better Energy Supply Limited	Eco Green Management Limited
Bluebell Energy Supply Limited	Economy Energy Supply Ltd
Boltland Energy Limited	Economy Energy Trading Limited
BP Gas Marketing Limited	Economy Gas Limited
Breeze Energy Supply Limited	Economy Power Limited
Brilliant Energy Limited	Eddington Energy Supply Limited
Brilliant Energy Supply Limited	EDF Energy Customers Limited
Bristol Energy Limited	EDF Trading Limited
Britannia Gas Limited	Effortless Energy Ltd.
British Gas Trading Limited	Emzo Energy Supply Limited
Brook Green Trading Limited	ENGIE Gas Limited
Bruntwood Energy Services Limited	ENGIE Gas Shipper Limited
Bryt Energy Limited	ENGIE Power Limited
Bulb Energy Ltd	ENGIE Supply Holding UK Limited
Business Energy Solutions Limited	ENI Gas & Power SA
Business Power and Gas Limited	ENI Trading & Shipping S.P.A
Cabra Energy Supply Limited	Eni UK Limited
Callesti Energy Supply Limited	Enstroga Ltd
Camaro Energy Supply Limited	Entice Energy Supply Limited
Cardiff Energy Supply Limited	ESB Energy limited
Celesto Enterprises Limited	Euston Energy Limited
Ceres Energy Limited	Eversmart Energy Ltd
Chevron Products UK Limited	Exelon Generation Limited
Cilleni Energy Supply Limited	Extra Energy Supply Limited
Cofathec Heatsave Limited	Fairline Gas Ltd
Colgano Energy Supply Limited	Fidelity Energy Limited
Contract Natural Gas Limited	First Utility Limited
Co-operative Energy Limited	Flogas Britain Ltd
Corona Energy Retail 1 Limited	Flow Energy Limited
Corona Energy Retail 2 Limited	Foxglove Energy Supply Limited
Corona Energy Retail 3 Limited	Fylde Utilities UK Limited
Corona Energy Retail 4 Limited	Gas and Power Limited
Coulomb Energy Supply Limited	

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

Gas Plus Supply Limited
Gazprom Marketing & Trading Retail Limited
GEN4U Ltd
GnERGY Limited
Good Energy Gas Limited
Great Western Energy Ltd
Green Energy (UK) plc
Green Network Energy Ltd
Greengen Direct Limited
Hartlepower C.I.C.
Hartree Partners Power & Gas Company (UK) Limited
Hartree Partners Supply (UK) Limited
Hawking Energy Supply Limited
Holborn Energy Limited
Home Counties Energy Plc
Hudson Energy Supply UK Limited
I Supply Energy Limited
I.A.Z.F.S. Limited
ICD Gas Limited
Igloo Energy Supply Limited
International Power Fuel Company Limited
International Power Ltd.
Iresa Limited
Jacob Developments Limited
JP Morgan Securities plc
K O Brokers Limited
Kensington Power Limited
Labrador Ltd
Lourdes Associates Limited
Lovely Energy Limited
Macquarie Bank Limited
Macquarie Commodities Finance (UK) Limited
Macquarie Factoring (UK) Limited
Marble Power Limited
Mattina Limited
Mercuria Energy Europe Trading Limited
Mercuria Energy Trading SA
Mongoose Energy Supply Limited
MyLife Home Energy Limited
Nabuh Energy Ltd
National Gas and Power Limited
Nationwide Electricity Limited
Nationwide Gas Limited
Nevada Energy Limited
North Sea Gas Limited
Npower Commercial Gas Limited
Npower Direct Limited
Npower Gas Limited
Npower Northern Limited
Npower Yorkshire Limited
Octopus Energy Limited
One Wales Energy - Un Ynni Cymru Ltd
Oneselect Limited
Opal Gas Limited
Opus Energy Limited
Opus Gas Supply Limited
Orbit Energy Limited
Oreba Energy Supply Limited
Oregon Energy Limited
Orsted Sales (UK) Limited
Orsted Salg & Service A/S
Our Power Energy Supply Limited
Ovo Gas Limited
Palladium Energy Supply Limited
Pan-Utility Limited
People's Energy (Supply) Limited
Petronas Energy Trading Limited
PFP Energy Supplies Limited
Pirranello Energy Supply Limited
Planet 9 Energy Limited
Pozitive Energy Ltd
Pure Planet Limited
Putney Energy Limited
Queensbury Energy Limited
Regent Gas Limited
Retford Gas Limited
Rockfire Energy Limited
Rutherford Energy Supply Limited
RWE Generation UK Plc
RWE Supply and Trading GmbH
S. C. Isramart SRL
Santana Energy Limited
Saphir Energy Limited
Satus Energy Limited
Scottish Power Energy Retail Limited
Shale Gas UK Limited
Shell Energy Supply UK Ltd.
Simple Energy Scotland Limited
Simplicity Energy Limited
Sinq Power Limited
Skylane Energy Supply Limited
Smarter Eco Energy Limited
SmartestEnergy Limited
Snowdrop Energy Supply Limited
So Energy Trading Limited
Société Valmy Défense 17
Solarplicity Supply Limited
Southern Electric Gas Limited
Spalt Energy Limited
Spark Energy Supply Limited
Squeaky Clean Energy Limited
SSE Energy Supply Limited
Statoil (UK) Limited
Statoil Gas Trading Limited
Sunflower Energy Supply Limited
Swift Administration Limited
Switch Business Gas and Power Ltd
Symbio Energy Limited
Telecom Plus PLC
Temple Energy Limited

Texas Energy Limited
The Energy Support Bureau Limited
The Nuclear Decommissioning Authority
The Renewable Energy Company Limited
The Royal Bank of Scotland Public
Limited Company
Together Energy Supply Limited
Tonik Energy Limited
Total Energy Gas Supplies Limited
Total Gas & Power Limited
Toto Energy Ltd.
Tru Energy Limited
UK Healthcare Corporation Limited
UK National Gas Ltd
Unigas Limited
United Gas & Power Ltd
Ure Energy Limited
Usio Energy Supply Limited
Utilita Energy Limited
Utilita Gas Limited
Utility Point Limited
Uttily plc
Valero Energy UK Ltd
Vanquist Energy Supply Limited
Vavu Power Limited
Vayu Limited
Venga Energy Supply Limited
Victory Energy Supply Limited
Viper Energy Supply Limited
WINGAS GmbH
World Fuel Commodities Services
(Ireland) Limited
Xcel Power Limited
XLN Energy Limited
Zebra Power Limited
Zog Energy Limited