

To: All holders of an electricity distribution licence

**Electricity Act 1989
Section 11A(1)(b)**

Modification of Standard Condition 12 of all electricity distribution licences

1. Each of the licensees to whom this document is addressed has an electricity distribution licence which has been granted or treated as granted under section 6(1)(c) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 28 February 2018 ('the Notice') that we propose to modify Standard Condition 12: Requirement to offer terms for Use of System and connection. We stated that any representations to the modification proposal must be made on or before 28 March 2018.
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 change should not be made.
4. We received six responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website.
5. We are making this licence change to facilitate the implementation of the Electricity (Connection Offer Expenses) Regulations 2018 ('the Regulations') which are to be made under section 16(A)(4A) of the Act. The Regulations (set out in Schedule 3 to this letter, which came into effect on 6 April 2018) allow electricity distribution licensees to require payment of reasonable costs incurred in developing a connection offer, as a precondition for issuing the offer. We want to ensure that the necessary Licence changes are implemented as soon as possible after the Regulations come into force.
6. The effect of the modification will be to exempt the licensee from the obligation to offer terms for the making of a connection under section 16(1) of the Act where the requester has not paid the relevant connection offer expenses required by the licensee in accordance with 'the Regulations' within the reasonable timescales requested by the licensee.
7. It is up to the licensee to determine such 'reasonable timescales' for requesting payment, which would enable the applicant to make the payment in a fair and practicable manner. Where the timescales can be determined as unreasonable, the licensee would not be exempt from the obligation to offer terms within 65 days as per Standard Condition 12.6(c) of the Electricity Distribution Licence.
8. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules² requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard

¹ The terms "the Authority", "we" and "us" are used interchangeably in this document.

² CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

licence condition 12 for all electricity distribution licences in the manner specified in attached Schedule 1. This decision will take effect from 15 February 2019.

This document is notice of the reasons for the decision to modify the electricity distribution licences as required by section 49A(2) of the Act.

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

Andrew Burgess



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Deputy Director, Charging & Access
Duly authorised on behalf of the Gas and Electricity Markets Authority
20 December 2018

Schedule 1: Licence Drafting

Part F: Exceptions to the obligation to offer terms

12.7 The licensee is not obliged under paragraph 12.1 to offer to enter into an agreement for Use of System or under paragraph 12.2 to offer to enter into an agreement for connection if -

a) doing so would be likely to cause it to be in breach of:

- 1) its duties under section 9 of the Act;
- 2) any regulations made under section 29 of the Act, or any other enactment that relates to safety or standards applicable to the Distribution Business;
- 3) the Grid Code or the Distribution Code; or
- 4) any of the Conditions of this licence.

~~b) or if~~ the requester does not agree to be bound, to the extent applicable to him, by the terms of the Grid Code or the Distribution Code; or

c) the requester has not paid the relevant connection offer expenses required by the licensee in accordance with regulations made under section 16(A)(4A) of the Act within the reasonable timescales requested by the licensee.

Schedule 2: Relevant Licence Holders³

Eastern Power Networks Plc
Electricity North West Limited
London Power Networks Plc
Northern Powergrid (Northeast) Limited
Northern Powergrid (Yorkshire) Plc
Scottish Hydro Electric Power Distribution Plc
South Eastern Power Networks Plc
Southern Electric Power Distribution Plc
SP Distribution Plc
SP Manweb Plc
Western Power Distribution (East Midlands) Plc
Western Power Distribution (South Wales) Plc
Western Power Distribution (South West) Plc
Western Power Distribution (West Midlands) Plc
Energetics Electricity Limited
Energy Assets Networks Limited
Energy Assets Power Networks Limited
ESP Electricity Limited
Fulcrum Electricity Assets Limited
G2 Energy IDNO Limited
Harlaxton Energy Networks Limited
Independent Power Networks Limited
Leep Electricity Networks Limited
Murphy Power Distribution Limited
The Electricity Network Company Limited
UK Power Distribution Limited
Utility Assets Limited
Vattenfall Networks Limited

³ Electricity licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/all-electricity-licensees-registered-addresses>

2018 No.

ELECTRICITY

**The Electricity (Connection Offer Expenses) Regulations
2018**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	6th April 2018

The Secretary of State, in exercise of the powers conferred by sections 16A(4A) to (4C) and 60(3) of the Electricity Act 1989⁽⁴⁾, after consulting with the Gas and Electricity Markets Authority in accordance with section 16A(4A), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electricity (Connection Offer Expenses) Regulations 2018 and come into force on 6th April 2018.

(2) In these Regulations, “the Act” means the Electricity Act 1989.

Requirement to pay connection offer expenses

2.—(1) This regulation applies where on or after 6th April 2018 a person (the “applicant”) gives an electricity distributor a notice under section 16A(1) of the Act (the “application”) requiring the electricity distributor to offer terms for making a connection to a distribution system.

(2) Subject to paragraph (4), the electricity distributor may, by giving notice in writing to the applicant, require the applicant to pay expenses relating to the application that have been reasonably incurred by the electricity distributor in doing any of the following—

- (a) assessing the impacts of the connection on the distribution system;
- (b) assessing the impacts of the connection on a transmission system⁽⁵⁾;
- (c) designing the connection, including, in particular—
 - (i) designing any reinforcement works required to add capacity to the distribution system;
 - (ii) designing any reinforcement works required to add capacity to a transmission system;
 - (iii) designing any required extension of the distribution system;
 - (iv) designing any required extension of a transmission system;
- (d) processing the application including, but not limited to, preparing the information to be included in the notice under this paragraph and the notice given under section 16A(5) of the Act.

(3) A notice under paragraph (2) must—

- (a) specify the amount to be paid by the applicant;

⁽⁴⁾ 1989 c.29; section 16A was inserted by section 44 of the Utilities Act 2000 (c.27) and subsections (4A) to (4C) were added by section 98 of the Energy Act 2008 (c.32).

⁽⁵⁾ “Transmission system” is defined in section 4(4) of the Electricity Act 1989 for the purposes of Part 1 of that Act.

- (b) give sufficient information to enable the applicant to understand how the amount has been determined;
- (c) specify when payment must be made and how payment may be made; and
- (d) include a statement of the effect of section 23 of the Act⁽⁶⁾.

(4) The electricity distributor may not require the applicant to pay any expenses in relation to an activity referred to in paragraph (2)(a) to (d) unless before incurring those expenses, the electricity distributor has informed the applicant in writing that the applicant may be required to pay expenses of that kind.

Review

3.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2023.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015⁽⁷⁾ requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

	<i>Name</i>
	Minister of State
Date	Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for electricity distributors to charge for the cost of providing an electricity connection offer where a person (“the applicant”) who requires an electricity connection to be made has given notice under section 16A(1) of the Electricity Act 1989 requiring the electricity distributor to offer terms for making the connection under section 16A(5) of that Act.

The Regulations set out the kinds of expenses which may be charged by the electricity distributor. However, expenses cannot be charged unless the distributor has informed the applicant in writing that the applicant may be required to pay expenses of that kind before the expenses are incurred.

The Regulations require the electricity distributor to give notice to the applicant of the amount to be paid by the applicant and how the amount has been determined. The notice must also include a statement of the effect

⁽⁶⁾ Section 23 was amended by paragraph 26 of Schedule 6 to the Utilities Act 2000 (c. 27), by section 52(6) of the Infrastructure Act 2015 (c. 7), and The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014. Following the transfer of the functions of the Director General of Electricity Supply to the Gas and Electricity Markets Authority, section 3(2) of the Utilities Act 2000 provides that a reference to the Director in an enactment is to have effect as if it were a reference to the Authority.

⁽⁷⁾ 2015 c.26.

of section 23 of the Electricity Act 1989, which provides for the resolution of disputes between electricity distributors and persons requiring a connection.

The requirement to pay applies whether or not the applicant subsequently accepts the electricity connection offer.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.