

## Section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986

### Notice of statutory consultation on a proposal to modify licences held by Transmission Owners, Electricity System Operator, and Gas Distribution Networks in extraordinary circumstances due to COVID-19

The Gas and Electricity Markets Authority ('the Authority')<sup>1</sup> hereby gives notice pursuant to section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986 as follows:

1. The Authority proposes to modify
  - a) the electricity transmission licences held by Electricity Transmission Owners and the Electricity System Operator granted or treated as granted under section 6(1)(b) of the Electricity Act 1989 by amending licence conditions; and
  - b) the gas transporter licences held by the Gas Transmission Owner and the Gas Distribution Networks granted or treated as granted under section 7 of the Gas Act 1986as specified in Schedule 1 to this notice.
2. We are proposing these modifications for the reasons set out in the cover letter, which accompanies this notice. In summary, the purpose of these licence modifications is to establish a change control framework to accommodate a potential COVID-related delay of up to 3 months, whilst preserving the RIIO-2 1<sup>st</sup> April 2021 start date.
3. This notice follows on from our open letter of July 2020. Schedule 2 of this notice specifies how our proposals in the July open letter compare to the updated proposals in Schedule 1.
4. The effect of the proposed modification is to create a change control framework which would:
  - c) cause RIIO-1 Licence Conditions to cease to have effect; and
  - d) modify RIIO-1 Licence Conditions in such manner as appropriate to give effect to the RIIO-2 Final Determinations.
5. A copy of the proposed modification referred to in this notice has been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
6. Any representations with respect to the proposed licence modification must be made on or before 20 October 2020 to [RIIO2@ofgem.gov.uk](mailto:RIIO2@ofgem.gov.uk).
7. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication.

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<sup>1</sup> The terms 'the Authority', 'we' and 'us' are used interchangeably in this document.

8. If we decide to make the proposed modification, it will take effect not less than 56 days after the decision is published.

**Michael Wagner**  
**Deputy Director, RIIO Price Controls**  
**Duly authorised on behalf of the Gas and**  
**Electricity Markets Authority**

**23 September 2020**

## **SCHEDULE 1**

### **Standard Condition XX. Governance of RIIO-1 Licence Conditions in Extraordinary Circumstances due to COVID-19**

#### **Introduction**

**XX.1** The purpose of this condition is to establish a change control framework, which can be triggered by the Authority in extraordinary circumstances due to COVID-19 to:

- (a) cause RIIO-1 Licence Conditions to cease to have effect; and
- (b) modify RIIO-1 Licence Conditions in such manner as appropriate to give effect to the RIIO-2 Final Determinations.

**XX.2** Parts A and B are without prejudice to the powers of the Authority to make modifications under sections 11A of the Electricity Act 1989 / 23 of the Gas Act 1986.

**XX.3** This licence condition will cease to have effect in 31 December 2021. Thereafter, the Authority will make licence modifications under sections 11A of the Electricity Act 1989 / 23 Gas Act 1986 to give effect to the RIIO-2 Final Determinations, and the relevant notice will be published on the Authority's Website no later than 2 July 2021.

#### **Part A: When can modifications be initiated under Part B?**

**XX.4** The Authority may only make modifications under Part B where:

- (a) where the Authority considers that it is unlikely to be able to make licence modifications to implement RIIO-2 by 1 April 2021;
- (b) that delay arises from extraordinary circumstances due to COVID-19;
- (c) those extraordinary circumstances due to COVID-19 are outside of the Authority's and licensee's making;

(d) those extraordinary circumstances have had a significant impact on the Authority's or the licensee's normal activities; and

(e) this is despite reasonable endeavours to mitigate those extraordinary circumstances and their impact.

**XX.5** If paragraph XX.4 is fulfilled then the Authority will write to the licensee by no later than December 2020 setting out why it considers that to be the case, and informing it that it intends to proceed to issue a notice under Part B.

**XX.6** The Authority may only:

(a) give notice of proposed modifications on or before 8 March 2021; and

(b) direct modifications under Part B on or before **24 March 2021**.

#### **Part B: What process will the Authority follow in making a direction?**

**XX.7** This Part ceases to have effect after a direction has been made under XX.10.

**XX.8** If Part A applies then the Authority may make modifications, which are necessary to implement the RIIO 2 Final Determinations, in accordance with paragraph XX.9 to XX.11.

**XX.9** Before making any modifications under this Part, the Authority will publish on the Authority's Website:

(a) the text of the proposed direction;

(b) the reasons for the proposed modifications; and

(c) the time within which representations on the proposed modifications may be made, which will not be less than 7 days.

**XX.10** The direction will set out:

(a) the modifications; and

(b) the date from which those modifications are to have effect, or the mechanism by which that date is to be determined, but which will be the earlier of not less than 7 days following the date of the direction, or **no later than 1 April 2021**.

**XX.11** Any direction made under paragraph XX.10 and any modifications made by any such direction will cease to have effect following the earlier of:

(a) the coming into effect of the RIIO-2 licence modifications under sections 11A of the Electricity Act 1989 / section 23 of the Gas Act 1986 to give effect to the RIIO-2 Final Determinations; or

(b) 31 December 2021.

**XX.12** The Authority may by direction modify the dates set out in:

(a) XX.6;

(b) XX.10; and

(c) XX.11(b).

**XX.13** Before making a direction under paragraph XX.12, the Authority will publish on the Authority's Website:

(a) the text of the proposed direction;

(b) the reasons for the proposed direction; and

(c) the time within which representations on the proposed direction may be made, which will not be less than 7 days.

**XX.14** The direction will set out:

(a) the modified dates; and

(b) the date from which those modifications are to have effect.

**SpecialStandard Condition XX. Governance of RIIO-1 Licence Conditions in  
EmergencyExtraordinary Circumstances due to COVID-19**

**Introduction**

**XX.1** The purpose of this condition is to establish a change control framework, which can be triggered by the Authority in emergencyextraordinary circumstances due to COVID-19 to:

- (a) cause RIIO-1 Licence Conditions to cease to have effect; and
- (b) modify RIIO-1 Licence Conditions in such manner as appropriate to give effect to the RIIO-2 Final Determinations.

**XX.2** Parts A and B are without prejudice to the powers of the Authority to make modifications under sections ~~11A and 11B~~ of the Electricity Act 1989 (~~EA89~~) / 23 ~~and 23A~~ of the Gas Act 1986 (~~GA86~~).

**XX.3** This licence condition will cease to have effect ~~on 31 March~~December 2021. Thereafter, the Authority will make licence modifications under sections ~~11A and 11B~~ of the ~~EA89~~Electricity Act 1989 / 23 ~~and 23A~~ ~~GA86~~Gas Act 1986 to give effect to the RIIO-2 Final Determinations, ~~which~~and the relevant notice will be published on the Authority's ~~website~~Website no later than ~~2 July 2021~~.

**Part A: When can modifications be initiated under Part B?**

**XX.4** ~~Modifications under Part B~~The Authority may only ~~be initiated~~make modifications under Part B where:

- (a) where the Authority considers that it is unlikely to be able ~~meet its existing~~to make licence modifications to implement RIIO-2 ~~timetable, as set out on its~~ website by 1 April 2021;
- (b) that delay arises from extraordinary circumstances due to COVID-19;

(c) those extraordinary circumstances due to COVID-19 are ~~not outside~~ of the Authority's and licensee's making;

(d) those extraordinary circumstances have had a significant impact on the Authority's or the licensee's normal activities; and

(e) ~~the Authority could not make licence modifications under [sections 11A and 11B EA89 / sections 23 this is despite reasonable endeavours to mitigate those extraordinary circumstances and 23A GA86] such that would come into effect before 1 April 2021.~~ their impact.

**XX.5** If paragraph XX.4 is fulfilled then the Authority will write to the licensee ~~at the earliest opportunity~~ by no later than December 2020 setting out why it considers that to be the case, and informing it that it intends to proceed to issue a notice under Part B.

**XX.6** The Authority may only:

(a) give notice of proposed modifications ~~on or before 8 March 2021;~~ and

(b) direct modifications under Part B ~~no later than~~ on or before 24 March 2021.

### **Part B: What process will the Authority follow in making a direction?**

**XX.7** This Part ceases to have effect after a direction has been made under XX.10.

**XX.8** If Part A ~~is made out~~ applies then the Authority ~~can modify~~ may make modifications, which are necessary to implement the RIIO 2 Final Determinations, in accordance with paragraph ~~[XX.9] to [XX.11]~~ below.

**XX.9** Before making any modifications under this Part, the Authority will publish on ~~its website~~ the Authority's Website:

(a) the text of the proposed ~~modifications and the date from which the Authority proposes that it should have effect~~ direction;

(b) the reasons for the proposed modifications; and

(c) the time within which representations on the proposed modifications may be made, which will not be less than ~~{7 days}~~.

**XX.10** The direction will set out:

(a) the modifications; and

(b) the date from which those modifications are to have effect, or the mechanism by which that date is to be determined, but which will be the earlier of not ~~be~~ less than ~~{7 days}~~ following the date of the direction, ~~and in any event or~~ **no later than 1 April 2021.**

**XX.11** Any direction made under paragraph XX.10 and any ~~conditions added or modified~~ modifications made by any such direction will cease to have effect following the earlier of:

(a) the coming into effect of the RIIO-2 licence modifications ~~or~~ under sections 11A of the Electricity Act 1989 / section 23 of the Gas Act 1986 to give effect to the RIIO-2 Final Determinations; or

(b) 31 December 2021.

**XX.12** The Authority may by direction modify the dates set out in:

(a) ~~XX.3;~~

~~(b)~~ XX.6;

~~(e)(b)~~ XX.10; and

~~(d)(c)~~ XX.11(~~ba~~).

**XX.13** Before making a) direction under paragraph XX.12, the Authority will publish on the Authority's Website:

**The Office of Gas and Electricity Markets**

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

[www.ofgem.gov.uk](http://www.ofgem.gov.uk)



(a) the text of the proposed direction;

(b) the reasons for the proposed direction; and

(c) the time within which representations on the proposed direction may be made, which will not be less than 7 days.

**XX.14** The direction will set out:

(a) the modified dates; and

(b) the date from which those modifications are to have effect.