

To: All holders of an electricity supply licence who are relevant licence holders for the purpose 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 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 19 October 2016 that it proposed modifying the standard conditions of the electricity supply licence by inserting new standard condition 32A (Power to direct suppliers to test consumer engagement measures). The Notice required any representations with respect to the proposed modification to be made on or before 18 November 2016.
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 20 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. A copy of the non-confidential representations received by Ofgem are available free of charge from the Ofgem Knowledge Management Team, 9 Millbank, London, SW1P 3GE.
5. The Authority has carefully considered the representations made and, subject to changes explained in paragraph 6, has decided to proceed with the modification proposed in the Notice.
6. The Authority has decided to add a sunset provision to the version of SLC 32A contained in the Notice by inserting new paragraphs 32A.9 and 32A.10 (and a relevant subheading). This change is highlighted in yellow in the attached Schedule 1. The effect of this change is that all the substantive elements of SLC 32A will cease to have effect at 24:00 on 31 December 2022, unless the Authority decides to extend the duration (on one or more occasions). In order to extend the duration the Authority would first need to consult on its proposal to do this, and if it decided it was appropriate to do so after consideration of responses, publish a statement in writing. The main reason for making this change is to better reflect the Authority's stated policy intention in respect of acting proportionately and in line with better regulation duties. Further information on this change and the reasoning is set out in the decision document.
7. 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:

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

(a) Decision document: Implementation of Standard Licence Condition 32A: Power to direct suppliers to test consumer engagement measures – decision to make licence modifications (30 January 2017);

(b) Statutory Consultations on the introduction of SLC 32A: Power to direct suppliers to test consumer engagement measures (19 October 2016)

(c) The CMA’s Energy market investigation final report (24 June 2016).

In summary, the modification is being made because the Authority agrees with the Competition and Markets Authority’s recommendation on establishing an ongoing programme to test consumer engagement measures (including via randomised controlled trials (RCTs), where appropriate²) and considers that introducing Standard Licence Condition 32A for this purpose would promote the interests of existing and future energy consumers.

8. The effects of this modification are described in the documents referred to in paragraph 6 of this Notice. In summary, the main effect of this modification is to enable robust testing of measures to promote consumer engagement on a mandatory basis by suppliers.
9. 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 Rules³ requires that the appellant send a non-confidential notice to any relevant licence holders who are not parties to the appeal, setting out the matters required in Rule 5.2. Schedule 2 to this 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 attached Schedule 1. The modification will take effect on and from 27 March 2017, a date which is at least 56 days from the publication of this Notice.

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



.....
Neil Barnes
Duly authorised on behalf of the
Gas and Electricity Markets Authority

30 January 2017

² Or with quasi-experimental or other research methods, where not.

³ The rules were published by the Competition Commission in September 2012. On 1 April 2014, the Competition Commission was abolished and its functions transferred to the CMA.

SCHEDULE 1

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

The text below constitutes the modification to insert new standard condition 32A in the electricity supply licence:

Condition 32A. Power to direct suppliers to test consumer engagement measures

Power of direction

- 32A.1 For any purposes connected with the Authority's consideration of measures or behaviours which may impact on consumer engagement ('consumer engagement measures'), the licensee must comply with a direction issued by the Authority in respect of Relevant Matters for Standard Condition 32A.
- 32A.2 The licensee is not required to comply with a direction issued pursuant to 32A.1 unless the Authority has given the licensee at least 1 month's prior Notice.
- 32A.3 A direction issued under paragraph 32A.1 may include a requirement to comply with any instructions from the Authority or a third party agent appointed by the Authority for the purposes of conducting any test of consumer engagement measures.

Provision of information

- 32A.4 The licensee must provide the Authority (or such other person as specified by the Authority) with information specified by the Authority in relation to matters that it reasonably considers are relevant to:
- (a) the Authority's consideration of whether to issue a direction pursuant to paragraph 32A.1; and/or
 - (b) the licensee's compliance with any direction issued pursuant to paragraph 32A.1.
- 32A.5 The Authority may direct the licensee to comply with paragraph 32A.4 by providing to the Authority (or such other person as specified by the Authority) information:
- (a) in a particular form or medium by a particular date;
 - (b) in a particular form or medium at such reoccurring intervals of time as the Authority considers appropriate; and
 - (c) of any description specified by the Authority, including any documents, accounts, estimates, returns, records or reports and data of any kind, whether or not prepared specifically at the request of the Authority.

32A.6 The licensee is not required to comply with paragraph 32A.4 if it could not be compelled to produce or give the information in evidence in civil proceedings before a court.

Compliance with this condition

32A.7 The licensee is not required to comply with paragraph 32A.1 until the Authority has published criteria for the selection of one or more licensees to conduct testing (including through Randomised Controlled Trials) of any consumer engagement measures.

Definitions for condition

32A.8 For the purposes of this condition:

'Relevant Matters for Standard Condition 32A' means any or all of the following:

(a) a requirement to test or evaluate (including through a Randomised Controlled Trial, where the Authority considers it appropriate) any consumer engagement measures in a manner and time frame prescribed by the Authority (including on the basis of the Authority's Specification for Testing), and to provide information to Domestic Customers in a manner and time frame specified by the Authority;

(b) where appropriate, a requirement to submit an implementation plan to the Authority for approval;

(c) a requirement not to comply with any licence conditions which are relevant to the subject matter of this condition to such extent and subject to such conditions as the Authority may direct; and

(d) a requirement to provide the Authority (or such other person as specified by the Authority) with information relating to the results (and the underlying data) of the testing of any consumer engagement measures in the manner and time frame specified by the Authority.

'Randomised Controlled Trial' means a form of consumer research (which is statistically robust for measuring behavioural impact) for Domestic Customers which is for the purposes of testing one or more consumer engagement measures relevant to the subject matter of this licence condition and includes two or more randomly assigned customer groups from the pool of eligible participants (which may be determined and specified by the Authority) in circumstances where:

(a) at least one of those groups are not subject to the consumer engagement measure; and

(b) all of the customer groups are comparable (including on the basis of the randomised selection) but for the consumer engagement measure(s).

'Authority's Specification for Testing' includes detail on some or all of the following:

Design

- the objective(s) of the testing;
- the details of the consumer engagement measure(s) (and any variants) to be tested;
- the testing methodology (including, but not limited to, the approach to randomisation and maximising the equivalence of groups and the proposed sample size);
- the testing of outcomes and how they will be measured;
- the proposed timetable;
- any planned piloting activity; and/or
- any supplementary research or follow up analysis to gain a better understanding of the behavioural impact.

Implementation

- the identification of third parties who will be involved in delivering the proposed specification for testing and clarity around roles and responsibilities;
- the details of any proposed supplier-initiated activity that might have an impact on the testing;
- proposed approach for monitoring (including possible arrangements for independent moderation) and quality assurance; and/or
- the approach to dealing with ethics and consumer protection issues, including how any possible consumer detriment will be identified, monitored and addressed should any issue be identified.

Analysis and evaluation of the results

- criteria and approach to evaluate and analyse the results of the testing; and/or
- data to be shared, consideration of format, precise content, file types and data security.

Duration of condition

32A.9 Paragraphs 32A.1 to 32A.8 will cease to have effect at 24:00 on 31 December 2022 unless, following consultation, the Authority specifies a later date by publishing a statement in Writing.

32A.10 The power to specify a later date in paragraph 32A.9 may be exercised by the Authority on more than one occasion (before, on, or after the expiry of any later date specified by the Authority).

SCHEDULE 2

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

LIST OF RELEVANT LICENCE HOLDERS

1 North Utilities Ltd
1st Direct Utilities Plc
Addito Supply Limited
Affect Energy Ltd
Arto.Energy Limited
Avro Energy Limited
Axis Telecom Limited
AXPO UK Limited
Barbican Power Limited
Better Energy Supply Limited
Bluebell Energy Supply Limited
Bor Energy Limited
Breeze Energy Supply Limited
Brilliant Energy Supply Limited
Bristol Energy & Technology Services (Supply) Limited
British Gas Trading Limited
Brook Green Trading Limited
Bruntwood Energy Services Limited
Bryt Energy Limited
Bulb Energy Ltd
Business Power and Gas Limited
Cardiff Energy Supply Limited
Celesto Enterprises Limited
Cleanreturns Limited
CNG Electricity Limited
Co-Operative Energy Limited
Corona Energy Retail 4 Limited
Coulomb Energy Supply Limited
Crown Oil Limited
Daffodil Energy Supply Limited
Daisy Energy Supply Limited
Dirac Energy Supply Limited
Dong Energy Power Sales UK Limited
Donnington Energy Limited
Earl Power Supply Limited
Economy Energy Supply Limited
Economy Energy Trading Limited

EDF Energy Customers Plc
Edgware Energy Limited
Eddington Energy Supply Limited
Effortless Energy Ltd.
E (Gas and Electricity) Limited
Electraphase Ltd
Electricity Plus Supply Limited
ElectroRoute Supply Limited
Emexconsult Limited
Eneco Energy Trade BV
Energy COOP Limited
ENGIE Power Limited
Enstroga Ltd
E.ON Energy Solutions Limited
Euston Energy Limited
Eversmart Energy Ltd
Extra Energy Supply Limited
Faraday Energy Supply Limited
Farmoor Energy Limited
Farringdon Energy Limited
First Utility Limited
Flow Energy Limited
Foxglove Energy Supply Limited
Future Energy Utilities Ltd
GEN4U Ltd
GNERGY Limited
Golding Energy Limited
Good Energy Limited
Green Energy (UK) plc
Greengen Direct Limited
Green Network Energy Ltd
Hartree Partners Supply (UK) Limited
Haven Power Limited
Hawking Energy Supply Limited
Highclare Trading Limited
Holborn Energy Limited
Home Counties Energy Plc
Hudson Energy Supply UK Limited
Hyde Park Energy Limited
Igloo Energy Supply Limited
Inverno Limited
Iresa Limited
I Supply Electricity 2 Limited
I Supply Electricity Limited
I Supply Energy Limited
ICS Energy Limited
Jacob Developments Limited
KAL-Energy Limited
Kensington Power Limited

Labrador Ltd
Lavender Energy Supply Limited
Lily Energy Supply Limited
Limejump Energy Limited
Loco2 Energy Supply Ltd.
Marble Power Limited
Marigold Energy Supply Limited
Mattina Limited
Mint Energy Supply Limited
Mongoose Energy Supply Limited
Monument Energy Limited
MVV Environment Services Limited
MyLife Home Energy Limited
Nabuh Energy Ltd
Nationwide Electricity Limited
Neas Energy Limited
Newport Energy Limited
Nilo Energy Limited
Npower Direct Limited
Npower Limited
Npower Northern Limited
Npower Northern Supply Limited
Npower Yorkshire Limited
Npower Yorkshire Supply Limited
Octopus Energy Limited
Oneselect Limited
Opal Energy Limited
Opus Energy (Corporate) Limited
Opus Energy Limited
Opus Energy Renewables Limited
Our Power Energy Supply Limited
OVO Electricity Limited
Paddington Power Limited
Palladium Energy Supply Limited
Pan-Utility Limited
PFP Energy Supplies Limited
Planet 9 Energy Limited
Pozitive Energy Ltd
Prozana Limited
Putney Energy Limited
Queensbury Energy Limited
Rayleigh Energy Supply Limited
R Electrics Limited
Robin Hood Energy Limited
Rose Energy Supply Limited
Rutherford Energy Supply Limited
Saphir Energy Limited
Satus Energy Limited
Scottish Power Energy Retail Limited

Simple Energy Scotland Limited
Simply Electricity Limited
Singola Limited
Sinq Power Limited
Smart Electricity Limited
Smarter Eco Energy Ltd
Snowdrop Energy Supply Limited
So Energy Trading Limited
South Wales Electricity Limited
Spalt Energy Limited
Spark Energy Supply Limited
Squeaky Clean Energy Limited
SSE Energy Supply Limited
Sunflower Energy Supply Limited
Supply Energy Limited
Switch Business Gas and Power Ltd
Symbio Energy Limited
Temple Energy Limited
The Renewable Energy Company Limited
Thistle Energy Supply Limited
Together Energy Supply Limited
Tonik Energy Limited
Toto Energy Ltd.
Trio Utilities Ltd
Tulip Energy Supply Limited
UK Healthcare Corporation Limited
Utilita Energy Limited
Vavu Power Limited