

New Definitions

“Licensed Business” means the activities connected with the conveyance of gas pursuant to the conveyance licence granted under paragraph 1(a) of the Grant.

“ultimate controller” means, in respect of the Licensee:

(a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or

(b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:

(i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;

(ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person.

A person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or (ii) above.

“holding company” has the same meaning as given to it under Article 4 of the Companies (Northern Ireland) Order 1986;

Condition 1.18: Corporate Governance

1.18.1 Ring Fencing

The Licensee shall ensure that:

- (a) the Licensed Business is carried on by the Licensee (and not through any affiliate or related undertaking of the Licensee); and
- (b) (without prejudice to the ability of the ultimate controller, affiliates or related undertakings of the Licensee to carry on other businesses) no business other than the Licensed Business is carried on by and through the Licensee.

1.18.2 Board Independence

By no later than 31 March 2010, and at all times thereafter, the Licensee shall:

- (a) ensure that its board of directors comprises a majority of independent non-executive directors who are persons of standing who individually possess either:
 - (i) relevant experience and knowledge of the energy industry; or
 - (ii) relevant experience and knowledge of any other regulated industry,provided that at least one independent non-executive director must possess the required energy industry experience and knowledge; and
- (b) demonstrate to the satisfaction of the Authority, prior to any appointment from time to time of a board director, that the said appointment will not cause the Licensee to enter into any breach of the requirements contained in subparagraph (a),

where, “**independent non-executive director**” means a person who has not been employed by the Licensee, its ultimate controller or any affiliate or related undertaking of the Licensee within the last five years; and who does not have a material business relationship with the Licensee, its ultimate controllers or any affiliate or related undertaking of the Licensee.

1.18.3 Board Independence (Allowance for Events)

If at any time the Licensee, by virtue of any person being appointed as, or ceasing to be, a director of the Licensee (for the purposes of this Condition, an “**Event**”), is

unable to comply with the requirements of Condition 1.18.2, the Licensee shall take such steps as are necessary to ensure that compliance is achieved as soon as reasonably practicable after that Event and in any case within two months (or such longer period as may be agreed by the Authority).

1.18.4 Prohibition of cross-subsidies

The Licensee shall procure that it does not give any cross-subsidy to, or receive any cross-subsidy from, any other business of the ultimate controller or of an affiliate or related undertaking of the Licensee.

Condition 1.19: Indebtedness

1.19.1 General restriction

Without prejudice to the requirements of Condition 1.13, the Licensee shall not, without the prior written consent of the Authority (following disclosure by the Licensee to the Authority of all material facts):

(a) create or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance, undertake any indebtedness to any other person, or enter into or permit to remain in effect any guarantee otherwise (in each case) than:

- (i) on an arm's length basis;
- (ii) on normal commercial terms; and
- (iii) in the furtherance of the Licensed Business,

provided that nothing in this Condition shall prevent the Licensee guaranteeing any obligations owed by an affiliate or related undertaking of the Licensee which have been (or are to be) incurred in the furtherance of the Licensed Business;

(b) transfer, lease, license or lend any sum, asset, good, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:

- (i) a transfer, lease, licence or loan of any asset, good, right or benefit on an arm's length basis, on normal commercial terms, and in compliance with the payment requirement set out in Condition 1.19.2;
- (ii) a payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
- (iii) a repayment of a loan, or payment of any interest on a loan, which loan is not prohibited by sub-paragraph (a);
- (iv) a dividend or other distribution out of distributable reserves undertaken in accordance with Condition 1.20;
- (v) a repayment of capital;

- (vi) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received; or
- (vii) a loan to any affiliate or related undertaking of the Licensee, which is made in the furtherance of the Licensed Business,

provided, however, that Condition 1.22.7 shall prevail where that Condition applies;

- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (d) continue, or permit to remain in effect, any agreement or commitment incorporating a cross-default obligation subsisting at the date this Condition 1.19 takes effect, save that the Licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous.

1.19.2 Payment requirement

The payment requirement referred to Condition 1.19.1(b) is that the consideration due in respect of the transfer, lease, licence or loan of the asset, good, right or benefit in question is paid in full prior to or simultaneously with such transfer, lease, licence or loan unless:

- (a) the counter-party to the transaction has, and maintains until payment is made in full, an investment grade credit rating; or
- (b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade credit rating.

1.19.3 Additional definitions

In this Condition 1.19, unless the context otherwise requires:

“cross-default obligation” means a term of any agreement or arrangement whereby the Licensee’s liability to pay or repay any

debt or other sum arises or can be increased or accelerated by any person other than the Licensee;

“indebtedness”

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith;

“investment grade credit rating”

has the meaning given to that expression in Condition 1.22.

Condition 1.20: Resources and Dividend Payment

1.20.1 Availability of resources

The Licensee shall act at all times in a manner calculated to ensure that it has available to it sufficient resources (including, without limitation, management and financial resources, personnel, fixed and moveable assets, rights, consents and facilities) to enable it to carry on the Licensed Business in compliance with the Order, the Energy Order and the Licence.

1.20.2 Annual certificate

The Licensee shall, by 30 June of each year, submit to the Authority a certificate, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution, in one of the following forms:

- (a) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the Licensee, the directors of the Licensee have a reasonable expectation that the Licensee will have sufficient financial resources and financial facilities to enable the Licensee to carry on the Licensed Business in compliance with the Order, the Energy Order and the Licence for a period of 12 months from the date of this certificate.”
- (b) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the Licensee, the directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have sufficient financial resources and financial facilities to enable the Licensee to carry on the Licensed Business in compliance with the Order, the Energy Order and the Licence for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on those businesses.”
- (c) “In the opinion of the directors of the Licensee, the Licensee will not have sufficient financial resources and financial facilities available to enable the Licensee to carry on the Licensed Business in compliance with the Order, the Energy Order and the Licence for a period of 12 months from the date of this certificate.”

1.20.3 Supporting information

The Licensee shall submit to the Authority, with each certificate provided pursuant to Condition 1.20.2, a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.

1.20.4 Ongoing duty

The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstance that causes them no longer to have the reasonable expectation expressed in the most recent certificate submitted under Condition 1.20.2.

1.20.5 Auditors report

The Licensee shall use its best endeavours to obtain, and submit to the Authority with each certificate provided in accordance with Condition 1.20.2, a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between:

- (a) that certificate and the statement submitted with it; and
- (b) any information which the auditors obtained in the course of preparing their reports for the purposes of Condition 1.3.

1.20.6 Dividend payment

The directors of the Licensee shall not declare or recommend a dividend, and the Licensee shall not make any other form of distribution within the meaning of Article 271 of the Companies (Northern Ireland) Order 1986, or redeem or repurchase any share capital of the Licensee, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the Licensee has issued to the Authority a certificate in the following form:

“After making enquiries, the directors of the Licensee are satisfied:

- (a) that the Licensee is in compliance in all material respects with all the obligations imposed on it by Conditions 1.18, 1.19, 1.20, 1.21 and 1.22 of the Licence; and
- (b) that the making of a distribution of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”

1.20.7 Requirement for dividend certificate

The certificate given under Condition 1.20.6 must be signed by a director of the Licensee and must have been approved by a resolution of the board of directors of the Licensee passed not more than 14 days before the date on which the declaration, recommendation or distribution in question will be made.

1.20.8 Dividends

Where the certificate given under Condition 1.20.6 has been issued in respect of the declaration or recommendation of a dividend, the Licensee shall be under no obligation to issue a further certificate prior to payment or distribution of that dividend, provided that such payment or distribution is made within six months of the issuing of that certificate.

Condition 1.21: Undertaking of Controller

1.21.1 Obligation to procure undertaking

The Licensee shall, in accordance with Condition 1.21.2, procure from each person which is an ultimate controller of the Licensee, a legally enforceable undertaking in favour of the Licensee (in a form approved by the Authority) that the ultimate controller will:

- (a) give to the Licensee (and will procure that any company that is a subsidiary of, or controlled by, that ultimate controller (other than the Licensee and its subsidiaries) and will give to the Licensee) all such relevant information to the extent that such information is held as may be necessary to enable the Licensee to comply fully with the obligation imposed by Condition 1.4; and
- (b) refrain from (and will procure that any company that is a subsidiary of that person (other than the Licensee and its subsidiaries) will refrain from) any action that would then be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order or the Licence.

1.21.2 Timing

The Licensee shall procure the undertaking referred to in Condition 1.21.1 within 7 days of this Condition 1.21 becoming effective or the person in question becoming an ultimate controller of the Licensee (whichever is the later). The Licensee shall ensure that each undertaking procured in accordance with Condition 1.21.2 remains in force until the person in question ceases to be an ultimate controller of the Licensee or the Licence is revoked.

1.21.3 Evidence

The Licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with its obligations to procure undertakings pursuant to Condition 1.21.1;
- (b) on becoming aware that any such undertaking is not in full force and effect or is not legally enforceable or has been breached, inform the Authority immediately in writing; and
- (c) comply with any direction from the Authority to enforce any such undertaking.

1.21.4 Arrangements with ultimate controller

The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the Licensee or with any subsidiary of any such ultimate controller (other than the subsidiaries of the Licensee) at a time when:

- (a) an undertaking complying with Condition 1.21.1 is not in place in relation to that ultimate controller; or
- (b) there is an unremedied breach of such undertaking; or
- (c) the Licensee is in breach of the terms of any direction issued by the Authority under Condition 1.21.3(c).

Condition 1.22: Financial gearing and credit rating

1.22.1 Financial Gearing

The Licensee shall by 30 June of each year following the Formula Year, submit to the Authority a certificate, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution, showing the Financial Gearing as at the end of the preceding Formula Year. The Licensee shall provide the Authority with such information to support that certificate as the Authority may request.

1.22.2 Financial Gearing (Definition)

For the purposes of Condition 1.22.1:

“Financial Gearing” means Net Debt as a percentage of the Regulatory Asset Base;

“Net Debt” means the Licensee’s total borrowings (including, without limitation, bank loans, debt securities, finance leases, hire purchase contracts and non-equity shares) less the Licensee’s cash and cash equivalents;

“Regulatory Asset Base” means the Total Regulatory Value at the end of the formula year calculated in accordance with Condition 2.3.18

1.22.3 Credit Rating (Application)

The Licensee shall comply with Conditions 1.22.3 to 1.22.8 (inclusive) with effect from 31 March 2010 and shall only be released from any such obligation to comply upon a direction from the Authority stating that such obligation shall cease to apply from a date as specified in the direction.

1.22.4 Obligation to Obtain a Credit Rating

The Licensee shall take all appropriate steps to ensure that the Licensee obtains and thereafter maintains an investment grade credit rating.

1.22.5 Investment Grade Credit Rating

In this Condition, “**investment grade credit rating**” means, in respect of any person, that that person has:

- (a) unless sub-paragraph (b) applies:
 - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries; or
 - (ii) an issuer rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries; or
 - (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (iv) an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority (notified in writing to the Licensee), has comparable standing in both the United Kingdom and the United States of America; or
- (b) such higher rating as may (in each case) be specified by those agencies from time to time as the lowest investment grade credit rating.

1.22.6 Reporting on Credit Rating

The Licensee shall:

- (a) deliver to the Authority evidence that the Licensee has complied with its obligations to obtain a credit rating pursuant to Condition 1.22.4;
- (b) make regular enquiries to become aware, and if it becomes aware that an investment grade credit rating obtained under Condition 1.22.4 is downgraded or likely to be downgraded, inform the Authority immediately in writing;
- (c) in the event that the credit rating is below the level required for an investment grade credit rating or is under review for possible downgrade below an investment grade credit rating, inform the Authority immediately in writing detailing the measures taken to implement Condition 1.22.7 and the measures undertaken to retain, gain or regain the investment grade credit rating;

- (d) on 30 June of each year submit to the Authority a report on the present status and future outlook for the coming year of the credit rating and the present status and future outlook for the Financial Gearing.

1.22.7 Additional Restriction on Dealings

Notwithstanding Condition 1.19.1(b), where (in accordance with Condition 1.22.8) this Condition 1.22.7 applies, the Licensee may not, without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum, asset, good, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:

- (a) a transfer, lease, licence or loan of any asset, good, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
- (b) a payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in Condition 1.22.8 arise, and which are provided on an arm's length basis and on normal commercial terms;
- (c) a repayment of a loan, or payment of any interest on a loan, not prohibited by Condition 1.19.1(a) and which was contracted prior to the date on which the circumstances in Condition 1.22.8 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
- (d) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

1.22.8 Additional Restriction on Dealing with Assets (Application)

Condition 1.22.7 shall apply if at any time:

- (a) the Licensee does not hold an investment grade credit rating;
- (b) where the Licensee has a rating with more than one of the rating agencies referred to in Condition 1.22.5, one or more of the ratings held is below those referred to in Condition 1.22.5; or

- (c) the Licensee has one of the ratings referred to in Condition 1.22.5 and:
 - (i) is on review for possible downgrade; or
 - (ii) the rating outlook of the Licensee as specified by one or more of the credit rating agencies referred to in Condition 1.22.5 has been changed from stable or positive to negative.