



Making a positive difference  
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Independent Distribution Network Operators  
and other interested parties

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Date: 11 February 2022

## **Supplier of Last Resort – derogation for Independent Distribution Network Operators in respect of notice period for Use of System charges**

This letter relates to a direction for all electricity Independent Distribution Network Operators (IDNOs)<sup>1</sup> who are licensed by the Authority.<sup>2</sup>

### **Background**

Distribution Network Operators (DNOs) are required to give 15 months' notice to users before they can change their Use of System charges<sup>3</sup>. IDNOs are required to give 14 months' notice to users before they can change their Use of System charges.

To allow DNOs<sup>4</sup> to recover the costs associated with recent Last Resort Supply Payments (LRSPs)<sup>5</sup> more quickly through their Use of System charges, we published our decision on 23 December 2021 to grant a request from all DNOs for a derogation from their normal 15 month notice period to vary Use of System charges<sup>6</sup>. Subsequently, around 31 January 2022, the DNOs published their amended Use of System charges effective from 1 April 2022.

Under the equivalent DCUSA provisions<sup>7</sup>, the IDNOs are normally obliged to provide 14 months' notice before they can vary their Use of System tariffs. Under Clause 19.1B of DCUSA<sup>8</sup>, the Authority has the powers to disapply this notice period. Where the Authority directs that those periods of notice need not apply, the notice period shall be 40 days (without prejudice to any longer notice requirements prescribed by the Distribution Licence).

Paragraph 11 of Part F 'Amendment of Licensee's Use of System Charges' of SLC 14 'Charges for Use of System and connection' of the Electricity Distribution Licence provides that the Licensee must, not less than three months before the date on which it proposes to amend its Use of System Charges:

- (a) give the Authority a Notice setting out those proposals, together with an explanation of them; and
- (b) send a copy of such Notice to any person who has entered into an agreement for Use of System in accordance with the provisions of the licence.

<sup>1</sup> Independent Distribution Networks are those distribution networks who have Section B of the electricity licence switched off.

<sup>2</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

<sup>3</sup> Clause 19.1A of DCUSA

<sup>4</sup> DNOs are those distribution networks who have Section B of the electricity licence switched on.

<sup>5</sup> <https://www.ofgem.gov.uk/publications/decision-modifications-electricity-distribution-licence-recover-costs-associated-appointing-supplier-last-resort>

<sup>6</sup> <https://epr.ofgem.gov.uk/Content/Documents/Notice%20of%20direction%20to%20amend%20the%20Use%20of%20Systems%20Charges%20notice%20period%20to%20enable%20DNOs%20to%20recover%20LRSP%20payments.pdf>

<sup>7</sup> Clause 19.1A of DCUSA

<sup>8</sup> [https://www.dcusa.co.uk/dcusa-digital-document/DCUSA/DCUSA\\_Section\\_2A/DCUSA\\_Section\\_2A.htm](https://www.dcusa.co.uk/dcusa-digital-document/DCUSA/DCUSA_Section_2A/DCUSA_Section_2A.htm)

SLC 14.12 of the Electricity Distribution Licence allows the Authority to direct that Licensees are not required to fulfil the obligations provided in SLC 14.11(a) and (b) to give three months' Notice to the Authority of proposed amendments to the Use of System Charges.

As stated above, under clause 19.1A ('Use of System Charges') of the DCUSA, a Licensee is required to give 14 months' notice of a change to its Use of System Charges. This is a contractual requirement that applies in addition to the Electricity Distribution Licence obligation noted above. Clause 19.1B of the DCUSA provides that such a requirement shall not apply to Licensees where the Authority directs that this period of notice need not apply.

### **Reasons for a derogation**

Under the terms of the Relative Price Control, the IDNOs pay an upstream use of system (UoS) charge to the DNOs and charge an All the Way charge to the supplier, which is capped at the equivalent DNO UoS charge<sup>9</sup>. To allow the IDNOs to better reflect the updated upstream DNO UoS tariffs, the IDNOs themselves need to update their All the Way charges to reflect the revised DNO UoS charges from 1 April 2022.

### **Our decision and next steps**

We have considered this issue in accordance with our principal objective under section 3A of the Electricity Act 1989 and our wider statutory duties and decided that a derogation from SLC 14.11 of the electricity distribution licence and Clause 19.1A of DCUSA are necessary in this case.

Concerning the overall Supplier of Last Resort process, our view remains that all consumers benefit from these protections and that, in principle, the cost should be spread across all consumers..

We have worked with DNOs, IDNOs and other interested stakeholders over the last year to review the process for recovering the costs associated with an LRSP claim. We consider that in the current circumstances it is appropriate for the IDNOs to be able to revise their All The Way tariffs from 1 April 2022, with less than the normal 14 months' notice, but with the minimum 40 days' notice as set out in DCUSA.

If you have any questions regarding this letter, please contact Andrew Ryan ([andrew.ryan@ofgem.gov.uk](mailto:andrew.ryan@ofgem.gov.uk)) in the first instance.

### **Direction**

The formal direction to IDNOs is found in an annex to this letter.

Yours sincerely,



**Steve McMahon**  
**Deputy Director, Networks**  
**For and on behalf of the Authority**

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<sup>9</sup> <https://www.ofgem.gov.uk/publications/regulation-independent-electricity-distribution-network-operators>

## **Direction made by the Gas and Electricity Markets Authority**

### **To:**

1. Eclipse Power Networks Limited;
2. Energy Assets Networks Limited;
3. ESP Electricity Limited;
4. Fulcrum Electricity Assets Limited;
5. Harlaxton Energy Networks Limited;
6. Independent Power Networks Limited;
7. Indigo Power Limited;
8. Last Mile Electricity Limited;
9. Leep Electricity Networks Limited;
10. MUA Electricity Limited, formerly Murphy Power Distribution Limited;
11. Optimal Power Networks Limited;
12. The Electricity Network Company Limited;
13. UK Power Distribution Limited;
14. Utility Assets Limited;
15. Vattenfall Networks Limited.

### **WHEREAS:**

- A. Each of the companies to which this Direction is addressed (each an 'IDNO Licensee') holds a licence granted, or treated as granted, pursuant to section 6(1)(c) of the Electricity Act 1989 ('the Distribution Licence') and has a charging methodology approved under Standard Licence Conditions ('SLC') 13.1 of such licence as described further below.
- B. GEMA issued a Derogation to the normal notice period ('the DSP Derogation')<sup>10</sup> to all Distribution Services Providers<sup>11</sup> on 23 December 2021, in response to the recovery of the Last Resort Supply Payments associated with Suppliers of Last Resort appointed in 2021. The DSP Derogation was not addressed to the IDNO Licensees.
- C. Paragraph 11 of Part F 'Amendment of Licensee's Use of System Charges' of SLC 14 'Charges for Use of System and connection' of the Electricity Distribution Licence provides that the IDNO Licensee must, not less than three months before the date on which it proposes to amend its Use of System Charges, (a) give the Authority a Notice setting out those proposals, together with an explanation of them and 1 (b) send a copy of such Notice to any person who has entered into an agreement for Use of System in accordance with the provisions of the licence.
- D. SLC 14.12 of the Electricity Distribution Licence allows the Authority to direct that IDNO Licensees are not required to fulfil the obligations provided in SLC 14.11(a) and (b) to give three months' Notice to the Authority of proposed amendments to the Use of System Charges.
- E. Furthermore, under clause 19.1A ('Use of System Charges') of the DCUSA, an IDNO Licensee is required to give 14 months' notice of a change to its Use of System Charges. This is a contractual requirement that applies in addition to the Electricity Distribution Licence obligation noted above.

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<sup>10</sup> [https://www.ofgem.gov.uk/system/files/docs/2018/02/coop\\_solr\\_derogation\\_letter\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/02/coop_solr_derogation_letter_0.pdf)

<sup>11</sup> As defined in Condition 1 of the Distribution Licence.

- F. The IDNOs' notice period relating to publication of use of system tariffs is normally 14 months as set out by DCUSA, but under, clause 19.1B of DCUSA<sup>12</sup>, the Authority has the powers to disapply this notice period. Where the Authority directs that those periods of notice need not apply, the notice period shall be 40 days.
- G. SLC 14.12 gives GEMA the power to grant a derogation from the obligation to comply with the 3 months' notice for change to Use of System charges.
- H. Amended Standard Condition BA2.3 of each IDNO's Distribution Licence requires IDNOs to set Use of System Charges in relation to Domestic Customers that do not exceed the Use of System Charges to equivalent Domestic Customers in the Distribution Services Area.<sup>13</sup>
- I. In order to ensure compliance with the requirement described above, the approved Charging Methodology of each of the IDNOs replicates the equivalent use of system charges of the Distribution Services Provider of each Distribution Services Area.
- J. GEMA therefore considers it appropriate to make the Direction set out below, for the reasons set out in the accompanying letter dated 11 February 2022, which constitutes GEMA's notice of reasons pursuant to the Electricity Act 1989.

**NOW THEREFORE:-**

1. GEMA hereby directs pursuant to SLC 14.12 that each IDNO:

is not required to comply with its 3 months' (or 14 months' as required by the DCUSA) Notice Period, only insofar as it is necessary to revise its UoS tariffs from 1 April 2022. The revised tariffs need to be published with 40 days' notice before they become effective.

2. The direction shall have effect from the date stated below.

**Dated: 11 February 2022**



**Steve McMahon**

**Deputy Director, Networks  
For and on behalf of the Authority**

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<sup>12</sup> [https://www.dcusa.co.uk/dcusa-digital-document/DCUSA/DCUSA\\_Section\\_2A/DCUSA\\_Section\\_2A.htm](https://www.dcusa.co.uk/dcusa-digital-document/DCUSA/DCUSA_Section_2A/DCUSA_Section_2A.htm)

<sup>13</sup> As defined in Condition 1 of the Distribution Licence.