

SCHEDULE 4

Conditions to which the exemptions from Article 8(1)(bb) of the Electricity Order are subject

Third party access

1.—(1) This paragraph applies where—

- (a) a customer owns or occupies premises which are connected to an exempt distribution system;
- (b) the customer is taking a supply of electricity through that system from—
 - (i) the distribution exemption holder that operates or has control of the system; or
 - (ii) a person related to the distribution exemption holder; and
- (c) the customer—
 - (i) has served on the distribution exemption holder a notice expressing the customer’s interest in taking a supply of electricity from a third party supplier through that system; and
 - (ii) has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with electricity through that system, and has identified any such third party supplier in the notice.

(2) In this Schedule “expression of interest” means a notice served under sub-paragraph (1).

(3) Within 5 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must provide any person related to it that is currently supplying the customer with electricity with a copy of the expression of interest.

(4) Within 10 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must serve on the customer—

- (a) a notice informing the customer that it will take the steps in sub-paragraph (6) with a view to giving a third party supplier access to its distribution system; or
- (b) a notice informing the customer that the distribution exemption holder considers—
 - (i) that it would need to increase the capacity of its distribution system in order to give a third party supplier access to that distribution system; and
 - (ii) that one of the conditions in sub-paragraph (5) is met.

(5) Those conditions are—

- (a) that it is not technically feasible to provide the increase in capacity in question;
- (b) that providing that increase in capacity would have a significant and adverse economic impact on the distribution exemption holder or any other person.

(6) Where the distribution exemption holder has served on the customer a notice under sub-paragraph (4)(a), the distribution exemption holder must—

- (a) serve on any third party supplier identified in the expression of interest a notice specifying—
 - (i) any metering arrangements that the distribution exemption holder considers would be required to enable access to be given; and
 - (ii) whether it would be willing to give access through contractual arrangements which would not require a connection to be made or modified; and
- (b) provide each such third party supplier with any other documents or information that it may reasonably request.

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(7) The distribution exemption holder must serve the notice required by sub-paragraph (6)(a) within 20 working days beginning with the day on which it receives the expression of interest.

(8) The distribution exemption holder must provide any documents or information requested by a third party supplier under sub-paragraph (6)(b)—

- (a) within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest; or
- (b) if the request is made at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in paragraph (a) above, within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

2.—(1) This paragraph and paragraph 3 apply where a customer who has served an expression of interest relating to an exempt distribution system serves on the distribution exemption holder a notice—

- (a) confirming that the customer has entered into a contract with a third party supplier identified in the expression of interest for the supply of electricity to premises which are connected to the exempt distribution system; and
- (b) identifying that third party supplier.

(2) Within 5 working days beginning with the day on which it receives the notice served under sub-paragraph (1), the distribution exemption holder must provide any person related to it that is currently giving a supply of electricity to the customer with a copy of that notice.

(3) If the distribution exemption holder has not, by the end of the 10 working day period mentioned in paragraph 1(4), served on the customer a notice under paragraph 1(4)(b), the distribution exemption holder must give the third party supplier such access to the distribution system to which the expression of interest relates as is necessary to enable the third party supplier to give a supply of electricity to the customer.

(4) Access under sub-paragraph (2) must be given either—

- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notice served under sub-paragraph (1); or
- (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(5) Sub-paragraphs (6) to (11) apply if the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b) (whether before or after the service of the notice under sub-paragraph (1)).

(6) Subject to sub-paragraph (7), the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer, and must give that access—

- (a) as soon as is reasonably practicable after the end of the period of 28 working days beginning with the day on which the customer serves the notice under sub-paragraph (1); or
- (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(7) If, before the end of the period mentioned in sub-paragraph (6)(a), the distribution exemption holder takes the steps mentioned in sub-paragraph (8)—

- (a) the distribution exemption holder is not required to give access in accordance with sub-paragraph (6), and
- (b) sub-paragraph (9) applies.

(8) The steps mentioned in sub-paragraph (7) are—

- (a) providing the third party supplier with evidence to show—
 - (i) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to that distribution system; and
 - (ii) that one of the conditions in paragraph 1(5) is met; and
- (b) sending a copy of the evidence to the customer.

(9) If, within the period mentioned in sub-paragraph (10), the distribution exemption holder and the third party supplier enter into a contract for the provision to the third party supplier of such access as is necessary to enable it to give a supply of electricity to the customer through the distribution system, the distribution exemption holder must give access to the third party supplier in accordance with the terms of the contract.

(10) That period is—

- (a) the 10 working days immediately following the period mentioned in sub-paragraph (6)(a); or
- (b) any longer period that the distribution exemption holder, the third party supplier and the customer may agree in writing.

(11) If, before the end of the 28 day period mentioned in sub-paragraph (6)(a), the distribution exemption holder, the third party supplier and the customer agree in writing to the extension of that period, sub-paragraphs (6) to (10) have effect as if sub-paragraph (6)(a) referred to the extended period instead of to the period of 28 working days there mentioned.

3.—(1) The third party supplier referred to in paragraph 2(1) may make a complaint to the Authority under Article 31A of the Electricity Order if—

- (a) the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b); and
- (b) at the end of the period mentioned in paragraph 2(10), the distribution exemption holder is not under a duty (whether by virtue of sub-paragraph (6) or (9) of paragraph 2) to give access to the third party supplier.

(2) The third party supplier may not make a complaint under Article 31A of the Electricity Order unless it has, no later than the 10th working day before the day on which the complaint is made, served on the distribution exemption holder a notice—

- (a) informing the distribution exemption holder that it intends to make a complaint under Article 31A; and
- (b) inviting the distribution exemption holder to provide it with any further evidence it may wish to provide for the purpose mentioned in paragraph 2(8)(a).

(3) The complaint must include—

- (a) any evidence provided by the distribution exemption holder under paragraph 2(8)(a) or sub-paragraph (2)(b) above;
- (b) a description of the nature of the access required by the third party supplier (including any alternative forms of access that would be acceptable to it); and
- (c) any evidence the third party supplier may wish to include—
 - (i) to show that the capacity of the distribution system would not need to be increased in order to give a third party supplier access to it;
 - (ii) to show that a condition in paragraph 1(5) is not met; or
 - (iii) as to the benefits that would be brought by any increase in capacity that may be necessary.

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(4) The third party supplier must send a copy of the complaint to the distribution exemption holder and the customer.

(5) If the Authority determines under Article 31A of the Electricity Order that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity—

(a) the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer;

(b) paragraphs 1(6) to (8) shall apply as if the distribution exemption holder had served a notice under paragraph 1(4)(a) on the customer, and as if the references in paragraph 1(7) and paragraph 1(8)(a) to the “expression of interest” were to the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order; and

(c) paragraph 5 shall have effect as if the reference in paragraph 5(3) to the “expression of interest” were to the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order.

(6) Access under sub-paragraph (5)(a) must be given either—

(a) as soon as is reasonably practicable after the distribution exemption holder receives the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order; or

(b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

4.—(1) This paragraph applies where a distribution exemption holder is required under paragraph 2(3), (6) or (9) or 3(5)(a) to give a third party supplier access to its distribution system.

(2) The duty must be performed for so long as the access is required.

(3) In meeting the duty the distribution exemption holder must not—

(a) treat the third party supplier less favourably than any other supplier in respect of the terms and conditions for access to its distribution system, including those relating to any connection under paragraph 7(2);

(b) refuse to give access on the basis that the Authority has not yet approved its charging methodology; or

(c) act in a manner which unreasonably prevents, restricts or delays access to its distribution system by the third party supplier.

(4) the distribution exemption holder must grant the third party supplier such ancillary or incidental rights over its distribution system as are necessary to enable the third party supplier to meet its licence or statutory obligations, including any obligations of the third party supplier relating to metering functions.

(5) Where access has been given before a methodology for calculating a use of system charge has been given an approval that is required by virtue of paragraph 5(1), the distribution exemption holder may, within a reasonable period after receiving notification of the approval of the methodology, require the third party supplier to pay for that access an amount that is—

(a) equivalent to the charge that would have been payable for that access had the methodology been approved before the access was given; and

(b) payable within such period as the parties agree or, in the absence of such agreement, within such reasonable period after the distribution exemption holder demands the payment as may be specified by the distribution exemption holder.