

2005 No. 1646

ELECTRICITY

GAS

**The Electricity and Gas Appeals (Designation and Exclusion)
Order 2005**

<i>Made</i> - - - -	<i>18th June 2005</i>
<i>Laid before Parliament</i>	<i>22nd June 2005</i>
<i>Coming into force</i> - -	<i>14th July 2005</i>

The Secretary of State, in exercise of the powers conferred on him by section 173 of the Energy Act 2004(a), and having consulted the Gas and Electricity Markets Authority and such other persons as he considers appropriate, hereby makes the following Order:—

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Electricity and Gas Appeals (Designation and Exclusion) Order 2005 and shall come into force on 14th July 2005.
- (2) This Order does not extend to Northern Ireland.

Interpretation

2. In this Order—
- “the Act” means the Energy Act 2004;
- “transmission licence” has the same meaning as in section 6 of the Electricity Act 1989(b); and
- “transportation licence” means a licence granted under section 7(2) of the Gas Act 1986(c).

Designation of documents

3. For the purposes of section 173(2)(b) of the Act, the following documents are designated—
- (a) the Balancing and Settlement Code, being the document of that title required to be prepared pursuant to Standard Condition C3 of transmission licences;
- (b) the Connection and Use of System Code, being the document of that title required to be prepared pursuant to Standard Condition C10 of transmission licences;

(a) 2004 c.20.
(b) 1989 c.29; section 6 was substituted for the original by the Utilities Act 2000 (c.27), section 30.
(c) 1986 c.44; section 7(2) was amended by the Utilities Act 2000 (c.27), sections 3, 76 and 108, and Schedule 6, Part I, paragraphs 1 to 4.

- (c) a Network Code, being a document of that title required to be prepared pursuant to the conditions of a transportation licence to which Standard Special Condition A11 (Network and Uniform Network Code) applies;
- (d) the Supply Point Administration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 34A of supply licences granted under section 7A of the Gas Act 1986^(a);
- (e) the Master Registration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 37 of supply licences granted under section 6 of the Electricity Act 1989; and
- (f) the Uniform Network Code, being the document of that title required to be prepared pursuant to Standard Special Condition A11 of transportation licences.

Exclusion of decisions

4.—(1) No appeal shall lie to the Competition Commission under section 173 of the Act from a decision made by GEMA on or after the date on which this Order comes into force, which consists in the giving or refusal of a consent by virtue of which a document designated in article 3 has effect or would have had effect as mentioned in section 173(2)(c) of the Act, if the relevant condition is satisfied in respect of that decision.

(2) For the purpose of paragraph (1), the relevant condition is—

- (a) in the case of a decision in relation to the Balancing and Settlement Code, the condition in article 5(1);
- (b) in the case of a decision in relation to the Connection and Use of System Code, the condition in article 6(1);
- (c) in the case of a decision in relation to a Network Code, the condition in article 7(1);
- (d) in the case of a decision in relation to the Supply Point Administration Agreement, the condition in article 8(1);
- (e) in the case of a decision in relation to the Master Registration Agreement, the condition in article 9(1); and
- (f) in the case of a decision in relation to the Uniform Network Code, the condition in article 10(1).

5.—(1) The condition referred to in article 4(2)(a) is that the decision consists in the giving of a consent to a majority recommendation made by the Panel in the Modification Report.

(2) In this article, the words “Panel” and “Modification Report” have the same meanings as in the Balancing and Settlement Code.

6.—(1) The condition referred to in article 4(2)(b) is that the decision consists in the giving of a consent to a majority recommendation of Panel Members in the Amendment Report.

(2) In this article—

- (a) “majority recommendation” means a recommendation that is supported by the majority of those views of Panel Members which, in the reasonable opinion of GEMA, are clearly expressed in the Amendment Report; and
- (b) the words “Panel Members” and “Amendment Report” have the same meanings as in the Connection and Use of System Code.

7.—(1) The condition referred to in article 4(2)(c) is that the decision accords with a majority recommendation made by the Modification Panel in the Modification Report.

(2) In this article, the words “Modification Panel” and “Modification Report” have the same meanings as in the Uniform Network Code.

^(a) 1986 c.44. Section 7A was inserted by the Gas Act 1995 (c.45), section 6(1).

8.—(1) The condition referred to in article 4(2)(d) is that the decision consists in the giving of a consent to a Change Proposal.

(2) In this article, the expression “Change Proposal” has the same meaning as in the Supply Point Administration Agreement.

9.—(1) The condition referred to in article 4(2)(e) is that the decision consists in the giving of a consent to a resolution of the MEC arising from the Change Procedures.

(2) In this article, the words “MEC” and “Change Procedures” have the same meanings as in the Master Registration Agreement.

10.—(1) The condition referred to in article 4(2)(f) is that the decision consists in the giving of a consent to a majority recommendation made by the Modification Panel in the Modification Report.

(2) In this article, the words “Modification Panel” and “Modification Report” have the same meanings as in the Uniform Network Code.

11. When, on or after the date on which this Order comes into force, a decision in relation to a document designated in article 3 is made by GEMA, which—

- (a) is not excluded under article 4 from the right of appeal which would otherwise be conferred by section 173 of the Act; and
- (b) consists in the giving or refusal of a consent by virtue of which that document has effect or would have had effect as mentioned in section 173(2)(c) of the Act,

GEMA shall at the same time or as soon as reasonably practicable thereafter—

- (i) decide whether to exclude that decision under article 12; and
- (ii) give notice of the decision taken under paragraph (i) in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

12. GEMA may exclude a decision referred to in article 11(a) and (b) from the right of appeal conferred by section 173 of the Act if the delay caused by the holding of the appeal against that decision is likely to have a material adverse effect on the availability of electricity or gas for meeting the reasonable demands of consumers in Great Britain.

13. Where GEMA excludes a decision under article 12, it shall, as soon as reasonably practicable after the exclusion of that decision, publish a notice stating the reasons for its having exercised its power to exclude in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

18th June 2005

Malcolm Wicks
Minister of State for Energy,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the documents in relation to which decisions of the Gas and Electricity Markets Authority may be appealed to the Competition Commission under Part 3 Chapter 4 of the Energy Act 2004.

The documents designated by article 3 are the Balancing and Settlement Code, the Connection and Use of System Code, Network Codes, the Supply Point Administration Agreement, the Master Registration Agreement and the Uniform Network Code. All of these documents, and the licences referred to in this Order, may be inspected at the offices of the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE.

This Order also provides for the circumstances in which a decision is or may be excluded from the right of appeal. Article 4 excludes decisions which satisfy the conditions set out in articles 5 to 10. Article 12 provides that the Gas and Electricity Markets Authority may exclude a decision under any of the above mentioned codes where the delay caused by the holding of an appeal is likely to have a material adverse effect on the availability of electricity or gas for meeting the reasonable demands of consumers in Great Britain.

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0964 7/2005 150964T 19585

ISBN 0-11-072990-0



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