
STATUTORY INSTRUMENTS

2014 No. 1293

ELECTRICITY

GAS

**The Electricity and Gas Appeals
(Designation and Exclusion) Order 2014**

<i>Made</i>	- - - -	<i>19th May 2014</i>
<i>Laid before Parliament</i>		<i>27th May 2014</i>
<i>Coming into force</i>	- -	<i>18th June 2014</i>

This Order is made in exercise of the powers conferred by section 173(2)(b), (d) and (7) of the Energy Act 2004⁽¹⁾.

The Secretary of State, in accordance with the requirements of section 173(6) of that Act, has consulted the Gas and Electricity Markets Authority⁽²⁾ and such other persons as the Secretary of State considers appropriate.

Accordingly the Secretary of State makes the following Order:

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Electricity and Gas Appeals (Designation and Exclusion) Order 2014 and comes into force on 18th June 2014.

(2) This Order does not extend to Northern Ireland.

(3) This Order applies to appeals under section 173 of the Act⁽³⁾ from decisions made by GEMA on or after the date on which this Order comes into force.

Interpretation

2.—(1) In this Order—

“the Act” means the Energy Act 2004;

(1) 2004 c. 20.

(2) The Gas and Electricity Markets Authority, referred to as “GEMA” in accordance with section 196(1) of the Energy Act 2004, was established by section 1 of the Utilities Act 2000 (c.27).

(3) Section 173 has been amended by paragraphs 101 and 102 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013 (c. 24) and section 81(4) of the Energy Act 2011 (c. 16).

“distribution licence” means a licence granted under section 6(1)(c) of the Electricity Act 1989(4);

“electricity supply licence” means a licence granted under section 6(1)(d) of the Electricity Act 1989(5);

“gas supply licence” means a licence granted under section 7A of the Gas Act 1986(6);

“smart meter communication licences” means—

- (a) the licence granted to Smart DCC Limited(7) on 20th September 2013 under section 7AB(2) of the Gas Act 1986(8); and
- (b) the licence granted to Smart DCC Limited on 20th September 2013 under section 6(1A) of the Electricity Act 1989(9);

“transmission licence” means a licence granted under section 6(1)(b) of the Electricity Act 1989(10);

“transportation licence” means a licence granted under section 7(2) of the Gas Act 1986(11).

(2) Subject to paragraph (3), a reference in this Order to—

- (a) a Standard Condition or a Standard Special Condition of a licence, or
- (b) a document designated by this Order,

is to the version current at the date on which this Order comes into force.

(3) At the time of any appeal under section 173 of the Act, the references mentioned in paragraph (2) are to the version of those conditions or documents current at the time of the decision by GEMA which is the subject of the appeal.

Designation of documents

3. The following documents are designated for the purposes of section 173 of the Act—

- (a) the Balancing and Settlement Code, being the document of that title required to be prepared pursuant to Standard Condition C3 of a transmission licence(12);
- (b) the Connection and Use of System Code, being the document of that title required to be prepared pursuant to Standard Condition C10 of a transmission licence;
- (c) the Network Code, being the document of that title required to be prepared pursuant to Standard Special Condition A11 of a transportation licence(13);

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- (4) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000, and subsection (1)(c) was amended by Part 1 of Schedule 23 to the Energy Act 2004.
 - (5) Section 6(1)(d) was amended by S.I. 2012/2400.
 - (6) 1986 c. 44. Section 7A was inserted by section 6(1) of the Gas Act 1995 (c. 45); amended by section 149 of the Energy Act 2004 and Schedule 8 to the Utilities Act 2000; and modified by section 3(2) of, and paragraphs 1 and 2 of Schedule 6 to the Utilities Act 2000.
 - (7) A company registered in England and Wales with company number 08641679.
 - (8) 1986 c. 44. Section 7AB was inserted by S.I. 2012/2400. A smart meter communication licence authorises the carrying out of a smart meter communication service, which has the meaning given by section 5(11) of the Gas Act 1986; section 5 was substituted by section 3(1) of the Gas Act 1995, and subsection (11) was inserted by S.I. 2014/2400.
 - (9) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000. Subsection (1A) was inserted by S.I. 2012/2400. A smart meter communication licence authorises the carrying out of a smart meter communication service within the meaning of section 4(3G) of the Electricity Act 1989; subsection (3G) was inserted by S.I. 2012/2400.
 - (10) Subsection (1)(b) was substituted by section 136(1) of the Energy Act 2004.
 - (11) Section 7 was substituted by section 5 of the Gas Act 1995. Subsection (2) was amended by section 76 of, and paragraphs 1 and 4 of Schedule 6 to, the Utilities Act 2000 and by S.I. 2011/2704; and modified by section 3(2) of the Utilities Act 2000.
 - (12) A consolidated version of the standard conditions for a transmission licence can be found here: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>.
 - (13) A consolidated version of the standard special conditions for a transportation licence can be found here: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>.

- (d) the Uniform Network Code, being the document of that title required to be prepared pursuant to Standard Special Condition A11 of a transportation licence;
- (e) the Uniform Network Code, being the document of that title required to be prepared pursuant to Standard Condition 9 of a transportation licence⁽¹⁴⁾;
- (f) the Supply Point Administration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 30 of a gas supply licence⁽¹⁵⁾;
- (g) the Master Registration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 11 of an electricity supply licence⁽¹⁶⁾;
- (h) the Distribution Connection and Use of System Agreement, being the document of that title referred to in Standard Condition 22 of a distribution licence⁽¹⁷⁾;
- (i) the Smart Energy Code, being the document of that title required to be maintained and in force pursuant to Condition 21 of smart meter communication licences⁽¹⁸⁾.

Exclusions

4.—(1) A right of appeal under section 173 of the Act is excluded in respect of a decision by GEMA relating to a document designated by article 3 if—

- (a) in the case of a decision falling within any of articles 5 to 13, the condition specified for that decision is satisfied; or
- (b) GEMA determines that 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.

(2) Where GEMA makes a determination under paragraph (1)(b), it must give notice of the determination in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in it.

Balancing and Settlement Code

5.—(1) For a decision relating to the Balancing and Settlement Code, the specified condition 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.

Connection and Use of System Code

6.—(1) For a decision relating to the Connection and Use of System Code, the specified condition is that the decision consists in the giving of a consent to a majority recommendation of Panel Members in the Modification Report.

(2) In this article—

(14) A consolidated version of the standard conditions for a transportation licence can be found here: https://epr.ofgem.gov.uk/Content/Documents/Gas_transporter_SLCs_consolidated%20-%20Current%20Version.pdf.

(15) A consolidated version of the standard conditions for a gas supply licence can be found here: <https://epr.ofgem.gov.uk/Content/Documents/Gas%20supply%20standard%20licence%20conditions%20consolidated%20-%20Current%20Version.pdf>.

(16) A consolidated version of the standard conditions for an electricity supply licence can be found here: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>.

(17) A consolidated version of the standard conditions for a distribution licence can be found here: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>.

(18) The Smart Energy Code came into force on 23rd September 2013 and is available at www.gemserv.com.

- (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 Modification Report; and
- (b) the words “Panel Members” and “Modification Report” have the same meanings as in the Connection and Use of System Code.

Network Code

7.—(1) For a decision relating to the Network Code, the specified condition 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 designated by article 3(d).

Uniform Network Code required under transportation licence Standard Special Conditions

8.—(1) For a decision relating to the Uniform Network Code designated by article 3(d), the specified condition 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 designated by article 3(d).

Uniform Network Code required under transportation licence Standard Conditions

9.—(1) For a decision relating to the Uniform Network Code designated by article 3(e), the specified condition is that the decision is to give consent to the recommendation by the Panel Majority in respect of a proposed modification in a Final Modification Report.

(2) In this article, the words “Final Modification Report” and “Panel Majority” have the same meaning as in the Uniform Network Code designated by article 3(e).

Supply Point Administration Agreement

10.—(1) For a decision relating to the Supply Point Administration Agreement, the specified condition is that the decision consists in the giving of a consent to a Change Proposal.

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

Master Registration Agreement

11.—(1) For a decision relating to the Master Registration Agreement, the specified condition 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.

Distribution Connection and Use of System Agreement

12.—(1) For a decision relating to the Distribution Connection and Use of System Agreement, the specified condition is that the decision is to give consent to the deemed recommendation of the Parties pursuant to the Voting Procedure.

(2) In this article, the words “Parties” and “Voting Procedure” have the same meaning as in the Distribution Connection and Use of System Agreement.

Smart Energy Code

13.—(1) For a decision relating to the Smart Energy Code, the specified condition is that the decision accords with—

- (a) a recommendation by the relevant body in respect of a Path 1 Modification or a Path 2 Modification; or
- (b) a decision by the Panel in respect of a Path 3 Modification.

(2) In paragraph (1)(a), “relevant body” means—

- (a) the Change Board where, in accordance with section D8.1 of the Smart Energy Code, the Change Board has been established; or
- (b) the Panel where, in accordance with section X2.3(d) of the Smart Energy Code, the Change Board has not been established and the Panel is performing the functions of the Change Board.

(3) In this article, the words “Panel”, “Path 1 Modification”, “Path 2 Modification”, “Path 3 Modification” and “Change Board” have the same meaning as in section A1 of the Smart Energy Code.

Revocation and transitional provision

14.—(1) The Orders listed in the Schedule are revoked, subject to the transitional provision in paragraph (2).

(2) The Orders listed in the Schedule continue to have effect in relation to any appeal under section 173 of the Act from a decision made by GEMA before the date on which this Order comes into force.

19th May 2014

Verma
Parliamentary Under Secretary of State
Department of Energy and Climate Change

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Article 14

	<i>Orders revoked</i>	<i>Reference</i>
1	The Electricity and Gas Appeals (Designation and Exclusion) Order 2005	S.I. 2005/1646
2	The Electricity and Gas Appeals (Designation and Exclusion) Order 2009	S.I. 2009/648
3	The Electricity and Gas Appeals (Designation and Exclusion) Order 2013	S.I. 2013/2429

EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates three Orders, the Electricity and Gas Appeals (Designation and Exclusion) Orders of 2005, 2009 and 2013.

These Orders designated documents in relation to which certain decisions of the Gas and Electricity Markets Authority (“GEMA”) may be appealed under section 173 of the Energy Act 2004. From 1st April 2014 appeals lie to the Competition and Markets Authority (“CMA”); previously appeals were to the Competition Commission.

The documents designated by article 3 are available as follows:

- the Balancing and Settlement Code, available online at www.elexon.co.uk; hard copies may be requested from ELEXON, 4th Floor, 350 Euston Road London NW1 3AW, BSC Service Desk tel. 0870 010 6950;
- the Connection and Use of System Code, available online at www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Connection-and-Use-of-System-Code/; hard copies may be requested from the National Grid, National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA;
- the Network Code and the two types of Uniform Network Codes are particular to each licensee, and hard copies may be requested directly from the relevant individual licensee;
- the Supply Point Administration Agreement, available online at www.spaa.co.uk; hard copies may be requested from the SPAA Helpdesk tel. 020 7432 3005 or email SPAA@electralink.co.uk;
- the Master Registration Agreement, available online at www.mrasco.com; hard copies may be requested from Gemserv, tel. 020 7090 1029 or email helpdesk@gemserv.com;
- the Distribution Connection and Use of System Agreement, available online at www.dcusa.co.uk; hard copies may be requested from DCUSA Helpdesk tel. 020 7432 3011, or email dcusa@electralink.co.uk;
- the Smart Energy Code, available online at www.smartenergycodecompany.co.uk; hard copies may be requested from SECAS, Gemserv Ltd, 10 Fenchurch Street, London, EC3M 3BE, SECAS Helpdesk tel. 020 7090 7755, email secas@gemserv.com.

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Both consolidated and non-consolidated versions of the licence conditions referred to in this Order are available online on the electronic public register maintained by Ofgem at <https://epr.ofgem.gov.uk/Document>; hard copies may be requested from Ofgem, 9 Millbank, London, SW1P 3GE, tel: 020 7901 7000.

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 13, or where GEMA has determined that 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.

The Orders which have been consolidated are revoked, subject to transitional provision in respect of any appeals from decisions of GEMA which were made before the Order comes into force.

An impact assessment has not been produced for this instrument as no impact is foreseen on the private, voluntary or public sectors.