

2009 No. 648

ELECTRICITY

GAS

**The Electricity and Gas Appeals (Designation and Exclusion)
Order 2009**

<i>Made</i> - - - -	<i>11th March 2009</i>
<i>Laid before Parliament</i>	<i>13th March 2009</i>
<i>Coming into force</i> - -	<i>6th April 2009</i>

The Secretary of State, in exercise of the powers conferred by section 173 of the Energy Act 2004(a), and having consulted the Gas and Electricity Markets Authority (“GEMA”)(b) and such other persons as the Secretary of State considers appropriate, 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 2009 and shall come into force on 6th April 2009.

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

Interpretation

2. In this Order—

“the Act” means the Energy Act 2004;

“the Distribution Connection and Use of System Agreement” means the document of that title referred to in the condition which, on 1st October 2008, constituted condition 22 of the standard conditions of distribution licences;

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

“transportation licence” means a licence granted under section 7 of the Gas Act 1986(d); and

“the Uniform Network Code” means the document of that title referred to in the condition which, on 1st October 2008, constituted condition 9 of the standard conditions of transportation licences.

(a) 2004 c.20.

(b) GEMA was established by section 1 of the Utilities Act 2000 (c.27).

(c) 1989 c.29. Section 6 was substituted by the Utilities Act 2000, section 30, and subsection (1)(c) was amended by the Energy Act 2004, section 197(9) and Schedule 23, Part 1.

(d) 1986 c.44. Section 7 was substituted by the Gas Act 1995 (c.45), section 5, and was amended by the Utilities Act 2000, sections 3 and 76, and Schedule 6, Part 1, paragraphs 1 and 4, and Schedule 8, and the Energy Act 2004, sections 149 and 197(9), and Schedule 23, Part 1.

Designation of documents

3. For the purposes of section 173 of the Act, the following documents are designated—

- (a) the Distribution Connection and Use of System Agreement; and
- (b) the Uniform Network Code.

Exclusion of decisions

4.—(1) A decision relating to a document designated by article 3 and which would otherwise be one to which section 173 applies shall be excluded from the right of appeal under that section if, in respect of that decision—

- (a) the relevant condition 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) For the purposes of paragraph (1)(a), the relevant condition is—

- (a) in the case of a decision in relation to the Distribution Connection and Use of System Agreement, the condition in article 5(1); and
- (b) in the case of a decision in relation to the Uniform Network Code, the condition in article 6(1).

(3) Where GEMA makes a determination under paragraph (1)(b), it shall 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.

5.—(1) The condition referred to in article 4(2)(a) 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.

6.—(1) The condition referred to in article 4(2)(b) 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.

11th March 2009

Mike O'Brien
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates two further documents in relation to which certain decisions of the Gas and Electricity Markets Authority (“GEMA”) may be appealed to the Competition Commission under Part 3 Chapter 4 of the Energy Act 2004. Six documents were originally designated by the Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (S.I. 2005/1646).

The documents designated by article 3 of this Order are the independent Gas Transporters’ Uniform Network Code (available from Gemserv Limited on the website “www.igt-unc.co.uk”) and the Distribution Connection and Use of System Agreement (available from DCUSA Limited on the website “www.dcusa.co.uk”). 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.

The Order also provides for the circumstances in which what would otherwise be an appealable decision is or may be excluded from the right of appeal. Article 4 excludes decisions which satisfy the condition set out in article 5 or 6, or where GEMA has determined that the delay resulting from an appeal would be likely to have a material adverse effect on the availability of electricity or gas for meeting the reasonable demands of consumers in Great Britain.

An Impact Assessment was prepared with respect to the proposal to extend the right of appeal to decisions in relation to the two further documents designated in this Order. A copy can be obtained from the Energy Markets and Infrastructure Group, Department of Energy and Climate Change, 1 Victoria Street, London, SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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