2004 No. 2952

ELECTRICITY

The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004

Made - - - - -	*8th November 2004*
Coming into force - -	*1st December 2004*

The Gas and Electricity Markets Authority(**a**), in exercise of the powers conferred upon it by sections 6A(2), (3) and (6) and 60 of the Electricity Act 1989(**b**) hereby make the following Regulations:

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004 and shall come into force on 1st December 2004.

(2) The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004(**c**) ("the 2004 Regulations") are hereby revoked.

Transitional provisions

2.—(1) Where an application has been made under the 2004 Regulations, or by virtue of Regulation 1(2)(b) of those Regulations is to be treated as so made, but in either case at the point at which these Regulations come into force the application has neither been granted or refused, the application shall be treated thereafter as having been made under these Regulations.

(2) An application to which paragraph (1) applies which conformed to the requirements of the regulations in force at the time it was made and was accompanied by the fee prescribed under those regulations shall not be treated as defective by virtue only of failure in any respect to comply with these Regulations.

(3) But the Authority may—

(a) by notice in writing request the applicant to supply any such information as is prescribed by these Regulations in respect of an application of that kind but which was omitted from the application; and

(b) defer its decision on the application until such time as that information has been produced.

(**a**) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c. 27).
(**b**) 1989 c. 29: with effect from 1st October 2001, section 30 of the Utilities Act 2000 introduced section 6A into the Electricity Act 1989.
(**c**) S.I. 2004/2541.

(4) Where, in relation to an application to which paragraph (1) applies, the applicant, before the coming into force of these Regulations, published a notice of the application in accordance with the regulations in force at the time the application was made, the requirements of these Regulations as regards publication shall be taken to have been met.

Interpretation

3.—(1) In these Regulations—

"the 2000 Act" means the Utilities Act 2000(**a**);

"the 2004 Act" means the Energy Act 2004(**b**);

"the Act" means the Electricity Act 1989;

"application" means an application for a licence, or for a modification of a licence under the Act; and references to an application in respect of a licence shall be construed accordingly;

"the Authority" means the Gas and Electricity Markets Authority established by section 1 of the 2000 Act;

"distribution licence" means a licence granted or to be granted under section 6(1)(c) of the Act;

"domestic premises" means premises used wholly or mainly for domestic purposes;

"extension", in relation to a supply licence, means an extension of the licence under section 6(4) of the Act and, in relation to a distribution licence, means an extension of the licence under section 6(6) of the Act;

"generation licence" means a licence grante or to be granted under section 6(1)(a) of the Act;

"interconnector licence" means a licence granted or to be granted under section 6(1)(e) of the Act;

"modification of an area" in relation to a transmission licence, means a modification of an area of the licence under section 6(6B) of the Act;

"restriction" in relation to a supply licence, means a restriction of the licence under section 6(4) of the Act and, in relation to a distribution licence, means a restriction of the licence under section 6(6) of the Act, and, only in relation to a transmission licence for the purpose of Regulation 8(4) and Part II of Schedule 2 to these Regulations, unless a modification of an area of the licence under section 6(6B) of the Act by a restriction of the area of the licence;

"supply licence" means a licence granted or to be granted under section 6(1)(d) of the Act;

"transmission licence" means a licence granted or to be granted under section 6(1)(b) of the Act; and

"ultimate holding company" means a holding company (within the meaning of sections 736, 736A and 736B of the Companies Act 1985(**c**)) of the licensee which is not itself a subsidiary of another company; which is in the position to control, or exercise significant influence over, a policy of the licensee by virtue of rights under contractual arrangements or rights of ownership which are held by the company or of which the company is a beneficiary.

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference—

(a) in relation to a distribution licence, a generation licence, a supply licence or a transmission licence, to a standard condition which is determined under section 33(1) of the 2000 Act or section 137(1) of the 2004 Act; or

(b) in relation to an interconnector licence, to a standard condition which is determined under section 146(1) of the 2004 Act,

subject to any modifications of the standard conditions made under Part I of the Act, the 2000 Act, or the 2004 Act, after the determination under those sections.

(3) In these Regulations, unless the context otherwise requires—

(a) any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations; and

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(**a**) 2000 c. 27.
(**b**) 2004 c. 20.
(**c**) 1985 c. 6.

(b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference occurs.

Manner of Application

4. An application shall be—

(a) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal office; and

(b) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory.

Form of application

5. An application shall be in the form specified in Schedule 1 or a form to the like effect, and shall contain the information there specified.

Additional information and documents to accompany application

6.—(1) Subject to paragraphs (2) and (3)—

(a) an application in respect of a generation licence shall be accompanied by the information and documents specified in Part 1 of Schedule 2;

(b) an application in respect of a transmission licence shall be accompanied by the information and documents specified in Part 2 of Schedule 2;

(c) an application in respect of a distribution licence shall be accompanied by the information and documents specified in Part 3 of Schedule 2; and

(d) an application in respect of a supply licence shall be accompanied by the information and documents specified in Part 4 of Schedule 2; and

(e) an application in respect of an interconnector licence shall be accompanied by the information and documents specified in Part 5 of Schedule 2.

(2) The obligation imposed by paragraph 6(1) shall, to the extent that information and documents are specified in Schedule 2 by reference to, or in relation to, a standard condition, apply—

(a) subject to paragraph 6(3), in the case of an application for a licence, as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and

(b) in the case of an application for a modification of an area, or for an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence.

(3) Where a modification to any standard condition is requested in accordance with paragraph 4 of Schedule 1, the obligation imposed by paragraph (2)(a) above shall be modified accordingly.

Application fees

7.—(1) Subject to paragraph (2), the prescribed fee in relation to an application of the description specified in the first column of the Table in Schedule 3 shall be the corresponding fee specified in the second column of that Table.

(2) Where more than one fee would, but for this paragraph, be payable in respect of a particular application, the prescribed fee shall be the higher or highest such fee.

Notice of application

8.—(1) The period prescribed for the purpose of section 6A(3) of the Act (notice of applications) is ten working days ("the prescribed period").

(2) The prescribed manner of publication for that purpose shall be either by—

(a) requesting the Authority to place the notice on the website address of the Authority (at "www.ofgem.gov.uk" or such other website address as may be notified to the applicant by the Authority in writing); or

(b) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant's website address on the website address of the Authority (at "www.ofgem.gov.uk" or such other website address as may be notified to the applicant by the Authority in writing).

(3) Where an application is for the restriction of a licence, the applicant shall also ensure that notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

L.S.

John Neilson
A member of the Authority
Department

8th November 2004

SCHEDULE 1

Regulation 5

FORM OF APPLICATION IN RESPECT OF A GENERATION LICENCE, TRANSMISSION LICENCE, DISTRIBUTION LICENCE, SUPPLY LICENCE OR INTERCONNECTOR LICENCE UNDER THE ELECTRICITY ACT 1989

GENERAL PARTICULARS

1. State—

(1) name and registered address of applicant in full. In the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.

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(2) name, address, facsimile number (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.

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(3) where the address provided in paragraph 1(1) above is not an address in Great Britain an address in Great Britain for service of documents.

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.....

(4) whether the application is in respect of a generation licence, a transmission licence, a distribution licence, a supply licence or an interconnector licence(**a**).

.....

(5) whether the application is for a licence, a modification of an area(**b**), an extension of a licence or a restriction of a licence(**c**).

.....

(6) the date from which the licence, the modification of an area or extension or restriction is desired to take effect.

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2. State—

(a) whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).

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(b) where the applicant is a body corporate,—

(i) the jurisdiction under which it is incorporated.

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(ii) if applicable, its registered number.

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(**a**) Application may not be made on the same form in respect of more than one of these types of licence.
(**b**) Application for a modification of an area may only be made in relation to a transmission licence.
(**c**) Application may not be made for an extension or restriction of a generation or an interconnector licence.

(iii) the full names and addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985) or, where applicable, the corresponding officers.

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(iv) the name and registered office of any ultimate holding company and its current directors (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of the Companies Act 1985) of the applicant.

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(c) where the applicant is neither a body corporate nor a sole trader, the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.

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(d) where any person (other than a person whose name is given at paragraph 2(b)(iv) or paragraph 2(c) above) holds 20 per cent or more of any class of the shares(**a**) of the applicant, the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

.....

3. Give particulars of any licences under the Act or the Gas Act 1986(**b**) held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person(**c**) in relation to the applicant.

.....

DETAILS OF APPLICATION

4.—(1) If the application is for a licence describe—

(a) any modification requested to any of the standard conditions for the type of licence for the purposes of section 8A(2) of the Act; and

(b) the grounds on which the applicant believes that—

(i) any such modification is requisite to meet the circumstances of the particular case; and

(ii) any such modification is such that—

(aa) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and

(bb) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the applicant).

CRIMINAL OFFENCES

5. Either—

(a) give particulars of any criminal convictions of the applicant and any other person specified in paragraph 2(b)(iii), 2(b)(iv), 2(c) or 2(d) (other than for offences under the Road Traffic Offenders Act 1988(**d**) or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974(**e**)); or

(b) provide a statement that there are no relevant convictions.

(**a**) Reference to shares—
(i) in relation to an applicant with share capital, are to allotted shares;
(ii) in relation to an applicant with capital but no share capital, are rights to share in the capital of the applicant; and
(iii) in relation to an applicant without share capital, are to interests—
(a) conferring any right to share in the profits or liability to contribute to the losses of the applicant; and
(b) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of winding up.

(**b**) 1986 c. 44.

(**c**) In this sub-paragraph "related person" means—
(i) in relation to an applicant who is an undertaking within the meaning of section 259 of the Companies Act 1985 ("the principal undertaking"), a parent or subsidiary undertaking of the principle undertaking or a subsidiary undertaking of the parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act; and
(ii) in relation to any applicant (including such an undertaking), a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992 (c. 12).

(**d**) 1988 c. 53.

(**e**) 1974 c. 53.

SCHEDULE 2

Regulation 6

PART 1

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A GENERATION LICENCE

1. A generation licence may authorise the holder to operate—

(a) throughout Great Britain; or

(b) within a specified area or areas at specified premises;

Please specify which of (a) or (b) is applicable, and in the case of (b) provide a sufficient description adequately specifying the area or premises to which the application relates(**a**).

2. A statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc) and under Schedule 4 (other powers etc) to the Act to be given through the licence for which he is applying.

PART 2

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSMISSION LICENCE(**b**)

1. Provide a brief description of the activities that the applicant intends to carry out with respect to the tranmission of electricity.

2. Provide a sufficient description of—

(a) the area to which the application relates; and

(b) where different to the area in sub-paragraph (a), the area in which the applicant intends to carry out activities under a transmission licence(**c**).

MODIFICATION OF AN AREA OF A TRANSMISSION LICENCE

3. If the application is for a modification of an area of a transmission licence and the modification in question constitutes a restriction of the area, also provide details of any of the following persons who may be affected by the application—

(a) any person authorised by a licence granted under section 6(1) of the Act or an exemption granted under section 5(1) of the Act;

(b) any person directly connected to the applicant's transmission system; and

(c) any other person who may reasonably be affected by the restriction which is the subject of the application.

PART 3

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A DISTRIBUTION LICENCE(**d**)

1. A distribution licence may authorise the holder to operator—

(a) throughout Great Britain; or

(b) within a specified area or areas at specified premises;

Please specify which of (a) or (b) is applicable, and in the case of (b) provide a sufficient description adequately specifying the area(s) or premises to which the application relates(**e**).

2. Provide a statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc.) and under Schedule 4 (other powers etc.) to the Act to be given through the licence for which he is applying.

(**a**) The description should enable the areas to be adequately and readily identified by map if the applicant so desires or by any other convenient means.

(**b**) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement—

(i) with an application made by the applicant in accordance with these Regulations; or

(ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

(**c**) The description should enable the areas to be adequately and readily identified by map if the applicant so desires, or by any other convenient means.

(**d**) In this part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given insofar as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement—

(i) with an application made by the applicant in accordance with these Regulations; or

(ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

(**e**) The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by other convenient means.

3. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 6 (Safety and Security of Supplies Enquiry Service), 8 (Provisions Relating to the Connection of Metering Equipment), 17 (Provision of Services for Persons who are of Pensionable Age, Disabled or Chronically Sick), 18 (Provision of Services for Persons who are Blind or Deaf), 19 (Code of Practice on Procedures with Respect to Site Access), and 21 (Complaint Handling Procedure).

RESTRICTION OF A DISTRIBUTION LICENCE

4.—(1) If the application is for a restriction of a licence provide—

(a) an estimate of the total number of premises to which the applicant distributes electricity at the time of the application and to which the applicant would cease to distribute electricity if the application were acceded to ("relevant premises");

(b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in paragraph (2) below) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with section 16 of the Act (ensuring the connection of all such relevant consumers is maintained); and

(2) For the purposes of paragraph (1)(b), a person is a relevant consumer if—

(i) immediately before the restriction takes effect, he is connected to the distribution system of the holder of the licence; and

(ii) his premises are to be excluded from the licence by the restriction.

PART 4

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SUPPLY LICENCE(**a**)

1. A supply licence may authorise the holder to supply electricity—

(a) to any premises;

(b) only to premises specified in the licence, or to premises of a description so specified; or

(c) only to any premises situated in a specified area, or to premises of a specified description which are so situated (section 6(3) of the Act).

Please specify which of (a), (b) or (c) above is applicable. Provide a sufficient description adequately specifying(**b**) the premises or a description of the premises and the location of the premises intended to be supplied, and, in the case of an application that relates to (c) above, also the specified area. Also state whether the application relates to domestic premises.

SUPPLY TO DOMESTIC PREMISES

2. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 7 (Duty to Offer Terms for Meter Provision), 24 (Code of Practice on Procedures with Respect to Site Access), 25 (Efficient Use of Electricity), 35 (Code of Practice on Payment of Bills and Guidance for Dealing with Customers in Difficulty), 36 (Code of Practice on the Use of Prepayment Meters), 37 (Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick), 38 (Provision of Services for Persons who are Blind or Deaf), 39 (Complaint Handling Procedure), and 43 (Contractual Terms—Methods of Payment).

SUPPLY TO NON-DOMESTIC PREMISES

3. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard condition 7 (Duty to Offer Terms for Meter Provision).

RESTRICTION OF A SUPPLY LICENCE

4. If the application is for a restriction of a licence provide—

(a) an estimate of the total number of premises to which the applicant supplies electricity at the time of the application and which the applicant would cease to supply if the application were acceded to ("relevant premises"); and

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(**a**) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement—

(i) with an application made by the applicant in accordance with these Regulations; or

(ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

(**b**) The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by any other convenient means.

(b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c) below) in relation to the applicant, a description of the applicant's proposed arrangements under standard condition 22A (Restriction or Revocation: Securing Continuity of Supply) for—

(i) ensuring continuity of supply for all such relevant consumers; and

(ii) in the case of each such consumer who is supplied with electricity in pursuance of a contract (which does not include any contract which, by virtue of paragraph 3 of Schedule 6 to the Act, is deemed to have been made), securing such continuity on the same terms as nearly as may be as the terms of the contract.

(c) for the purposes of sub-paragraph (b), a person is a relevant consumer if—

(i) immediately before the restriction takes effect, he is being supplied with electricity by the holder of the licence; and

(ii) his premises are to be excluded from the licence by the restriction.

PART 5

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF AN INTERCONNECTOR LICENCE

1. An application in respect of a interconnector licence must specify the actual or proposed point of connection to an electricity transmission or electricity distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection.

2. In relation to an application for a licence in respect of an interconnector that was not completed by 3 August 2003, state whether the applicant seeks not to have applied to the licence any or all of the following standard licence conditions—

(a) conditions relating to the use of revenues;

(b) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector;

(c) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector.

3. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in paragraphs 2(a), 2(b) and 2(c) above not to be in effect the following additional information must be provided in respect of those licence conditions—

(a) the period of time for which the applicant seeks that the licence condition or conditions not be in effect;

(b) a statement setting out the evidence and reasoning as to why the applicant considers—

(i) the investment in the interconnector enhances competition in electricity supply;

(ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not be or would not have been made unless those licence conditions were not in effect;

(iii) that, should the licence conditions not be in effect for the period of time sought, this will not be detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked; and

(c) a further statement that—

(i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of its legal form, from the system operators in whose systems the interconnector to which this application relates will be built; and

(ii) charges will be levied on users of the interconnector; and

(iii) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.

SCHEDULE 3

Regulation 7

APPLICATION FEES

Description of application	*Fee payable £*
Generation	
1. Application for licence	450
Transmission	
2. Application for licence	450
3. Application for modification of an area	225
Distribution	
4. Application for licence	1,250
5. Application for extension or restriction	125
Supply	
6. Application for licence not including authorisation to supply electricity to domestic premises	450
7. Application for licence includinding authorisation to supply electricity to domestic premises	1,150
8. Application for extension of a licence so as to include authorisation to supply electricity to domestic premises	400
9. Application for any other extension or restriction	400
Interconnector	
10. Application for licence	950

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the information, and other documents that are required to be submitted with applications for electricity generation, transmission, distribution, supply and interconnector licences (and for modifications of an area of transmission licences and extensions, or restrictions of supply and distribution licences) under the Electricity Act 1989, as amended by the Utilities Act 2000 and the Energy Act 2004. They specify the form and manner of such applications. These Regulations also set out the manner in which notices of applications are to be published.

These Regulations come into force on 1st December 2004. Regulation 1 provides for the citation, commencement and revokes the previous Regulations. Regulation 2 makes transitional provisions for applications made but not determined before the Regulations come into force.

Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

Regulation 5 concerns the form of applications, and incorporates Schedule 1 that specifies their form, and the information and documents to accompany them.

Regulation 6 specifies the additional information and documents to accompany applications. It incorporates Schedule 2, which covers, respectively, applications for:

—generation licences, at Part 1;

—transmission licences, at Part 2;

—distribution licences, at Part 3;

—supply licences, at Part 4; and

—interconnector licences at Part 5.

Regulation 7 incorporates Schedule 3, which specifies the fees payable in respect of applications.

Regulation 8 provides for the notice period and publication requirements for applications. It requires applicants to ensure notice of the application is published either on the Ofgem website or their own website. If the application is for a restriction (including a modification of an area of a transmission licence to restrict that area) the applicant must also publish the notice in local newspapers.

STATUTORY INSTRUMENTS

2004 No. 2952

ELECTRICITY

The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004

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