



Emma Kelso  
Head of GB Markets  
Ofgem  
No. 9 Millbank,  
London  
SW1P 3GE

Richard Street  
Corona Energy  
1 The Exchange,  
Brent Cross Gardens,  
London  
NW4 3RJ  
t. 020 8632 8136  
e. [richard.street@coronaenergy.co.uk](mailto:richard.street@coronaenergy.co.uk)

29 May 2009

Dear Emma,

## **Re: Energy Supply Probe – proposed retail market remedies**

Corona Energy is a shipper and supplier in the UK Industrial and Commercial (I&C) gas market which includes a portfolio of SME customers. CE is grateful to Ofgem for the opportunity to comment on the proposals advanced in its document dated 15<sup>th</sup> April 2009 relating to the 'micro-business' market.

CE notes that Ofgem's motive in advancing the proposed remedies is to address issues they believe exist in the supplier services offered to the 'micro-business' sector. While CE broadly agrees with Ofgem that there are a number of improvements that shippers/suppliers could make to improve service levels generally, it notes that customer service is a core differentiator for many niche I&C suppliers.

### **Information availability, clarity and transparency**

The Ofgem consultation document suggests suppliers should provide customers with timely, clear and understandable information. CE believes that all customers should be provided with this information and is surprised that some customers within the micro - business sector don't have access to this information at the time of entering into a supply contract. It is unclear why a commercially focused supplier would avoid providing the pertinent contract information to a customer as CE believes this behavior could make their supply contracts potentially unenforceable.

On balance CE believes that the Ofgem proposal to include a provision in the supply licence relating to information may have some merit as it ensures that all suppliers compete fairly and should not impact on supplier's opportunities to compete and differentiate.

A general requirement with guidance on implementation would appear preferable to a long and prescriptive clause. This would allow suppliers and Ofgem to react to



changing market products and conditions without changing the supply licence. It would also avoid situations arising where a supplier may be adhering to the requirement in such a way that negates its intention.

## **Use of the Objections Process**

CE would like to reiterate its concern that some suppliers have used the objections process as a method of retaining a customer while attempting to renegotiate an extended contract, despite knowing that the customer has already signed a contract with another supplier. It is also aware that the current objections process may on occasions be used by some suppliers to bind customers into long-term (e.g. three years) contracts without their knowledge.

CE believes that this kind of behaviour by a limited number of suppliers has misled customers, Ofgem and government into the belief that such behaviour is widespread in the SME gas market. CE is also aware of claims that some suppliers are only allowing in their contract terms a limited period in which they can transfer supplier. CE believes that these types of terms have the potential to unfairly restrict competition in the SME market.

CE has sympathy with consumers that find themselves subject to such behaviour by suppliers. It believes however it is also important that customers fulfil their obligations where they are under contract. Any measures taken by Ofgem should not allow customers to break their contracts leaving the suppliers with the risk of holding gas purchased in good faith for the consumer.

The removal of the right to object at the end of the initial contract period would result in customers being moved onto deemed contract rates which in most cases would leave both customer and the supplier worse off. Clauses that allow contracts to 'roll' or renew for another term are therefore of benefit to many consumers providing they are operated in an appropriate way with the knowledge of the customer.

Corona Energy therefore intends to progress a UNC modification to require a number of prerequisites before using the objections process. This would require the shipper/supplier to:

- Ensure customers are aware of rollover/contract extension clauses at the beginning of the contract.
- Contact the customer 28 days prior to any 'break' deadline, advising them of the deadline and any actions required. Here the burden of proof should be on the supplier to positively show that the customer has been contacted.
- Allow the customer at least a 28 days period in which to advise the supplier they were terminating the contract
- Limit automatic rollover/contract extensions to 12 months.



The change would also require the shipper to provide a valid reason for objecting (ie. the use of 'other' or 'blank' as a reason would be removed).

It is CE's belief that this proposal, along side Ofgem's general information proposals and increased reporting on suppliers use of the objection process, would resolve the issues identified without punishing suppliers who have been operating fairly and responsibly.

Alternatively Ofgem could progress a similar proposal that obligates the same prerequisites within the standard licence conditions of the supplier licence.

### **Third Party Intermediaries**

CE welcomes Ofgem's consideration of the role and behaviour of Third Party Intermediaries (TPIs) in the gas supply market. CE has relationships with many TPIs who act in an exemplary manner towards their customers and believes there is a risk that inappropriate behaviour by a minority of TPIs mars the reputation of the entire sector. It is concerning to many suppliers including CE that this minority appear to act with impunity.

It is unclear that the proposals advanced by Ofgem will have any effect on the behaviour of such individuals. CE believes that until Ofgem take steps to provide a level of transparency over the funding of TPIs by suppliers then this minority will continue to profiteer at the expense of the customer.

CE welcomes Ofgem's comments that stronger measures will be considered in the event that the TPI community doesn't voluntarily address the issues raised. CE request that Ofgem set out a clear strategy and timeframe for dealing with this issue which should include a mechanism for monitoring behaviour.

### **Definition of Micro-business**

The definition promoted by Ofgem for the market that requires these protections is the 'micro-business' definition, created during the implementation of the Consumers, Estate Agents and Redress Act 2007 during the course of 2008. While CE understands the logic in advancing the use of a pre-existing definition this creates a number of issues.

The first measure in the definition is that of a consumers whose annual usage is below 200,000 kWh. This measure is verifiable to suppliers and in that aspect it is welcome. Currently however it is unclear how or when this measure would be applied during the contract process.



If the measure is applied at the beginning of the contract then the supplier can apply this measure with some surety. If the measure is applied throughout the contract then this will create some real issues as customers usage could change during the period.

An extreme example would be that of a power station that has the option to burn gas. If for some reason their usage for a year was small then they could be captured by the regime despite having high capacity requirements and operating as an advanced gas purchaser.

CE therefore believe that it is essential that the below 200,000 kWh threshold is applied at the beginning of the contract period.

The second measure, which defines a micro-business as one that has 10 or less employees and a turnover of less than two million Euros per annum, is less verifiable to the supplier. This measure would therefore be extremely difficult for suppliers to manage and verify.

This measure would also suffer from issues of clarity over how and when this measure would be applied during the contract process. A customer's turnover may alter during the contract period and staffing levels may change. Were this measure to be applied throughout the contract period it would prove almost impossible for a supplier to understand who would qualify. This could lead to distortions in the gas supply market with unethical consumers or agents claiming to qualify under this measure as a means to extricate themselves from a commercially concluded contract.

It is unclear to CE the value that this second measure provides. Given the value of a 200,000 kWh gas contract and the levels of gas consumption by small businesses it appears highly unlikely that a true micro-business would not be captured by the measure.

CE therefore suggest that Ofgem give a more detailed consideration to a definition that captures business customers whose annual usage is reasonably expected to be 200,000 kWh or less at the beginning of the supply contract. This would provide a clear definition and would ensure suppliers have no justifiable reason for not ensuring that these customers are identified as being inside the scope of these proposals.

If Ofgem would like to discuss the issues raised in this response in greater detail then please contact Richard Street (details above) who will be happy to help you.

Regards,

Richard Street



Regulatory Affairs Manager – Corona Energy