



Neil Barnes  
Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

29 May 2009

Dear Neil

**Energy Supply Probe – proposed retail market remedies**

First Utility welcomes the opportunity to respond to Ofgem's proposed retail market remedies. Our detailed response is attached on the following pages and is not confidential.

In general terms we are very supportive of the proposed retail market remedies. However unless the wholesale market liquidity issues are addressed the levels of concentration in the retail market will remain the same as it will not be possible for a new entrant to build up any meaningful market share.

I hope that you find our input helpful, please contact me if you have any further questions

Yours sincerely

Darren Braham  
Chief Financial Officer

Tel: 0845 215 1812  
Email: [Darren.Braham@first-utility.com](mailto:Darren.Braham@first-utility.com)

## **1. Introduction**

### *Other probe work streams*

We understand that the wholesale market liquidity issues are being progressed separately and, as outlined in paragraph 1.7, a discussion document will be published shortly. However, we believe that along with general concerns regarding liquidity the specific lack of liquidity at settlement level granularity in forward markets and the significant levels of collateral required to cover market volatility represent a serious impediment to new entrants ability to gain retail market share. As outlined in our November response we believe a possible solution is the creation of a 'regulated market maker'. Under this proposal incumbent suppliers would be mandated under license to establish and co-finance an independent 'market maker' who is constitutionally required to offer product to third parties who meet certain requirements (e.g. licence holder, peak demand/generation below a trigger level) and on certain pre-agreed terms (e.g. collateral requirements). It is envisaged that the 'market maker' would operate on a 'not for profit' basis and there would be an implied incentive on the owners of the company to ensure the market displays sufficient liquidity for downside risks to be managed.

We also see a link between the separation of the Big 6's retail and generation accounts and improvements in wholesale liquidity. If separation of accounts was predicated on prohibition of netting generation and supply outside an open market mechanism, then there would automatically be an improvement of access to power and gas on comparable terms for small players.

It is our firm view that until the above wholesale market issues are addressed it will not be possible for a new entrant to build up any meaningful market share notwithstanding the proposed retail market remedies.

## **2. Standards of conduct for suppliers in the retail market**

### *The overarching standards*

We support the overarching standards of conduct as outlined in paragraph 2.12

### *Status of the overarching standards*

We support Option 1, having the overarching standards as a preamble to the relevant licence condition as outlined in paragraph 2.13. In our view these must also be made enforceable through changes to the standard licence conditions.

## **3. Promoting more efficient customer engagement**

### *Billing information*

We support displaying the customer's tariff and consumption for the last 12 months in £ per year and kWh on each customer bill as outlined in paragraph 3.13.

### *Annual statement*

We support sending each customer an annual statement as outlined in paragraph 3.19. It is the supplier's responsibility to ensure that settlements are based on the most up to date estimates of annual consumption (EAC and AQ). We therefore suggest that customer's annual statement should be derived from the information held at meter point level in the settlement systems. This will further support the work undertaken by every supplier to improve the number of reads submitted and hence quality of this data. In addition the annual statement should be based on the current rates being charged to the consumer. This will allow the consumer to compare his run rate charges against any quote obtained via say a switching site.

### *65 day notice period for unilateral contract variations*

We support advanced notification of unilateral contract variation, and believe that where this is an adverse change it should be accompanied by a statement clearly showing the annual impact of the variation. However, when notification is in advance we believe that supplier's should retain the right to debt block customers where a debt is over 28 days old, and do not support its removal as proposed in paragraph 3.27.

### *Addressing tariff confusion*

We support £/year as the basic metric for price comparison as proposed in paragraph 3.38. We also suggest that customer's should be categorised into high, medium and low consumption bands based on the estimate of annual consumption used in the annual statement.

i.e.

<b>Customer type</b>	<b>Consumption band (KWh/year)</b>	<b>Typical consumption (KWh/year)</b>
Low user	Less than 2,475	1,650
Medium user	More than 2476 and less than 4,125	3,300
High user	More than 4,126	4,125

We would like to see these set on a national basis by Ofgem under advice from the relevant industry bodies (Elexon and Xoserve).

We agree with paragraph 3.44 that placing restrictions on tariffs and tariff structures would stifle innovation. This is particularly true given the changes underway with smart metering.

### *Simplifying the switching process*

When a customer moves to First Utility we undertake both a change of supply and a meter exchange process in the industry. Whilst it is our responsibility to manage this process the ease with which we can do this is largely dependent on the quality of data maintained by the losing supplier. Like Ofgem we have not had clear sight of proposals from the ERA for their "peace of mind guarantee" and before supporting its introduction would want to understand that it did not penalise new entrants wanting to gain market share.

### *Reviewing debt blocking arrangements*

We broadly support the proposed changes to the debt blocking arrangements outlined in paragraph 3.67. Again we would want to be confident that new entrants gaining market share were not unfairly penalised by changes to debt blocking when the original intention of the change is to support vulnerable customers currently supplied by the Big 6. Paragraph 3.69 describes potentially opening up debt assignment to other payment methods, we would support this based on outstanding billed debt being against actual readings and within a maximum threshold.

### *Promoting confidence in price comparison and switching sites*

We agree with concerns raised in paragraph 3.77 regarding supplier's practices regarding their tariffs on switching sites, and would like to see the Confidence Code restrict results to being only the best current tariff available from any supplier. Whilst the promotion of telephone based services will potentially enable greater access for vulnerable customers we would not like to see these services become reactive sales channels.

#### **4. Helping consumers make well informed decisions**

##### *Strengthening sales and marketing rules*

We fully support the provision of greater information for domestic customers during and after any direct sale. This includes written quotations, written comparisons on comparative claims, additional information at the point of sale and post sale follow up. We support the proposals to redraft licence condition 25 to be more based on outcomes for consumers. Building on the proposals of Chapter 3 we would also suggest that the current estimate of annual consumption held in industry systems (EAC and AQ) are made more generally available during the sales process so that accurate comparisons can be made.

#### **5. Helping small business customers**

##### *Increasing availability, clarity and transparency of information*

We support the provision of timely, clear and understandable information to customers as set out in paragraph 5.11. We believe that this is equally applicable to all NHH customers not just “micro businesses” as described in paragraph 5.13.

##### *Eliminate ability for contracts to be automatically rolled over.*

We fully support the principle of removing the supplier’s right to automatically lock a customer into a long term contract on unreasonable terms. This practice is widespread, has been in place within the industry for many years, undermines a supplier’s duty of care to their customers and financially motivates minimal customer engagement. A material side effect of automated roll-over is also the foreclosure of the market to new entrants.

Parties who oppose this change may argue that customers who do not accept renewal offers will be placed on expensive tariffs that are not in their best interests, or that such tariffs would need to contain high premiums to cover the mark to market risk of customers leaving. However, automatic roll-over is a disproportionate response to the alternative risk management techniques available.

In our view the proposal to facilitate removal of automatic roll-over through changing the objection conditions will present practical implementation issues and potentially make enforcement difficult. We suggest that there is action required in two areas:

1. Definition of the maximum contract term that customers can be rolled on to at renewal in Standard Licence Condition 7. If this was 28 days then a tariff based price market would be created, as opposed to the annual contract price based market that exists today. We suggest that contracts with a duration of 3 months would introduce significant improvement in SME customer engagement and satisfaction, whilst balancing supplier’s practical implementation issues.
2. An obligation in Standard Licence Condition 7 for all suppliers to publish these prices, thus creating a visible market price for customers at the end of their contract.

The proposed licence change should apply to all contracts at the point of licence change and not those entered into after the change is introduced.

##### *Accreditation scheme for non-domestic switching sites*

We support the concept of an accreditation scheme for non-domestic switching sites as set out in paragraph 5.18, whilst recognising that the development of online price comparison in a predominately bespoke priced market carries with it complication.

### *Strengthen code of practice for Third Party Intermediaries*

Whilst Ofgem has no direct powers over TPIs we strongly believe a voluntary approach to regulation as suggested in paragraph 5.20 represents a significant missed opportunity to improve transparency for business customers and strengthen their confidence in this area of the market. We are also very concerned that a combination of releasing customers into the market through removal of automated roll-over and continued lack of transparency in TPI sales could lead to a significant shift in power towards these channels which would ultimately disadvantage business customers.

We believe that licence conditions should be amended to oblige all suppliers to disclose commissions to TPIs on their quotes and their bills. At the same time TPIs should be urged to adopt the same level of transparency as suppliers with regard to contract terms and conditions and end of contract roll-overs.

## **6. Promoting market transparency**

### *Improving transparency of supply and generation*

We fully support better visibility and monitoring to ensure that there is a level playing field between the Big 6 integrated players and smaller suppliers as set out in paragraphs 6.6 to 6.20. We recognise that this is a complex area which needs a proportional response, but which must also result in numbers being reported to Ofgem in a consistent manner across a variety of financial and corporate organisational structures. We also note that a key component to consistency is a common transfer price methodology between the generation and supply sides of the suppliers. As such taking action to ensure that the majority of all generation volume is contracted through a market and that the granularity of this trading is at settlement level would go a long way to removing this impediment to visibility.

### *Enhanced market monitoring*

We are happy to discuss and support Ofgem's requirements for greater visibility of the impact of their proposed remedies.

## Summary of First Utility response

Action area	Remedy	Comment
1. Introduction	Other probe workstreams	Lack of liquidity and collateral requirements represent a serious impediment to new entrants wanting to gain retail market share and must be addressed.
2. Standards of conduct for suppliers in the retail market	The overarching standards	Support
	Status of the overarching standards	Support along with enforcement through standard licence conditions
3. Promoting more efficient customer engagement	Billing information	Support
	Annual statement	Support proposal with the use of EAC and AQ
	65 day notice period for unilateral contract variations	Support advanced notification
	Addressing tariff confusion	Support £/year as the basic metric
	Simplifying the switching process	Support improving consumer confidence, no detailed knowledge of ERA proposals
	Reviewing debt blocking arrangements	Broadly support subject to small suppliers not being unduly penalised
	Promoting confidence in price comparison and switching sites	Support and would like to see only supplier's best tariff displayed
4. Helping consumers make well informed decisions	Strengthening sales and marketing rules	Support
5. Helping small business customers	Increasing availability, clarity and transparency of information	Support and believe that this should be applicable across all NHH customers
	Eliminate ability for contracts to be automatically rolled over.	Support the introduction of a maximum roll over period and a published SME price without changes to the objection rules.
	Accreditation scheme for non-domestic switching sites	Support
	Strengthen code of practice for Third Party Intermediaries	We believe that suppliers should be obliged to disclose TPI commission to customers
6. Promoting market transparency	Improving transparency of supply and generation	Support
	Enhanced market monitoring	Support