

# RWE npower's response to Ofgem's Energy Supply Probe - proposed retail market remedies

RWE npower welcomes the opportunity to respond to your consultation on your proposed retail market remedies from the Energy Supply Probe. For ease of reference, we have responded using the structure of your consultation paper.

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

### **The overarching standards and Status of the overarching standards**

We have the following concerns:

1. The aim to “future proof” regulation (2.7) through a broad set of standards is likely to lead to greater uncertainty and so may be contrary to best regulatory practice.
2. DTI Energy's Better Regulation Project used the Supply Licence Review where supply licences were removed if other legislation existed as a model of good practice. The approach to apply new licence conditions in addition to Consumer Protection from Unfair Trading Regulations 2008 (CPRs) is a reversal of the better regulation approach.
3. As currently drafted, the standards are open to interpretation. For example, not offering “products that are unnecessarily complex or confusing” might appear to exclude Price Guarantee and Price Tracker deals, the take up of which has grown significantly in recent years; such an interpretation would stifle diversity and innovation.
4. As currently drafted the standard that a supplier, “must not sell a customer a product or service that he or she does not fully understand or that is inappropriate for their needs and circumstances” appears to require suppliers to provide advice – a step up in the regulatory burden (or merely an increase to the process and paperwork if the customer signs a waiver). We also have concerns that we can never be absolutely confident that the customer fully understands a product despite our best efforts. How does Ofgem think we could deliver the proposed obligation?

Given our view above, we do not believe these standards should have regulatory force. Any inclusion of these standards either as a preamble or in guidelines de facto would give them regulatory force. However, we would be interested in exploring alternatives such as Mission Statements for Ofgem and Suppliers or possibly a joint mission statement.

### **3. Promoting more effective consumer engagement**

#### **Improving consumer information**

##### **Billing information and Annual Statement**

Whilst we agree that advising customers what their total energy consumption has been over the last year is a very helpful enhancement in data provision to inform any switching evaluation, we would argue that it is unnecessary and unhelpful to advise customers what their past year's bill totalled in monetary terms. This is, in any case, information that the npower customer already has. Any comparison should be on a **forward-looking** basis as there is a very real risk that a customer might compare the historical bills from his current supplier with forecast bills from a rival supplier and take the wrong decision as a result. In addition, there is the risk of comparing apples and pears if the customer has changed tariff. The proposed annual statements (which will also be provided in each price change notification) will provide forward-looking annual cost projections on the customer's current product. It is these annual cost indicators that will provide sound switching information and any additional annual cost data would only serve to confuse.

Where the customer is a recent recruit and less than a year's consumption data is available we believe that the best practice would be to avoid providing any estimated annual figure using an extrapolation of the available part-year data. Such an extrapolation could be very misleading due to differences in customer behaviour and seasonal factors, e.g. we will not be able to discern the customer's principal form of space heating based on a summer's energy consumption. In this case, the customer could look at the low, medium and high benchmarks provided by npower's price metric along the lines of the information brochure provided to Ofgem as part of the process of developing our Initial Findings response.

Further, it will be important to provide customers on multi-rate tariffs such as Economy 7 with a kWh breakdown, showing Day and Night unit consumption separately in the E7 example.

Detailed discussions are required on this issue to ensure that data provided by respective suppliers is, so far as practicable, produced and presented on a consistent basis. For example, how will an annual consumption figure be derived especially where meter reads are estimated, as is commonly the case? If each supplier devises its own methodology it may be difficult for customers to make informed decisions when they move between suppliers. Further, a protocol should be agreed for circumstances where the customer has remained with the same supplier over the past year but has occupied more than one home during that period. We would suggest that it is only meaningful to provide an annual consumption figure for the customer's current home and that data can only be provided once the customer has resided in that home for at least a year.

##### ***Prospective notification of price changes***

Given Ofgem's preference for prospective notification of price changes expressed in the consultation, we are exploring the implications and practicalities of such a proposal. However, we would endorse the statement in paragraph 3.28 that best practice demands that customers are notified of any price increase as soon as

possible. npower practice has continued to be that we spread a price notification exercise over four to five weeks in order to balance call centre response standards against prompt notification. The 65 working days limit is very much seen as a backstop. As stated in our response of 6 March 2009 to your earlier consultation on this subject, we would support a reduction of the maximum notification period to 35 working days. Suppliers remain free to provide prior warning of price rises and could seek to offer a competitive advantage by providing customers with an assurance that they will always provide advance notice of price changes.

### **Addressing tariff confusion**

As indicated by the draft information brochure provided to Ofgem as part of the process of developing our Initial Findings Response we are keen to work with Ofgem to establish a price metric for comparison of products. As previously indicated, in terms of practicality we propose using agreed consumption levels and agree with the “£ per year” measure but, of course, transparency of the kWh volume on which any £/year figure is based is imperative so that customers can check that any comparison against an alternative tariff is based on the **same kWh volume**; otherwise such a comparison is meaningless. We agree with the point that sufficient flexibility is required to include a wide range of products. We do not believe that providing historic costs provides any customer benefits.

### **Implementation issues**

The Electricity and Gas (Billing) Regulations 2008 have recently been implemented. This took considerable IT resource and time (around a year). Therefore, requesting further changes on bills relatively soon afterwards imposes a substantial further burden

We require further clarification of both billing information and the annual statement information required to assess the IT timescales and resource required. To avoid penal costs, it will be important that we have the flexibility to dovetail any additional obligations with existing developments of our billing and information capability towards a new platform by late 2010.

### **Simplifying the switching process**

We agree with Ofgem’s approach and, as it is fully aware, we are working with the ERA to develop a customer “peace of mind guarantee”. We welcome its view that all suppliers should comply with such an approach and would suggest that this applies to all agreed proposals.

### **Reviewing debt blocking arrangements**

As you comment, Ofgem does not intend to implement major changes to the debt blocking arrangements. We support this approach and so require clarification that your proposals do not, in fact, imply major changes.

With regard to your proposals in paragraph 3.67:

- **When suppliers object to a domestic transfer for debt, they must offer debt, tariff and energy efficiency advice to customers at the point of objection**

We support the proposal to offer customers additional advice on debt, tariff and energy efficiency at the point of objection on the grounds of debt. However we believe that the mechanisms by which suppliers would fulfil this requirement and the details of the information which suppliers need to provide to customers should not be overly prescriptive. A number of factors would inhibit the provision of specific, tailored advice (e.g. availability of actual consumption information; eligibility for certain products/payment methods). Any detailed application would need to be assessed in terms of IT resource and timescales required for application.

- **Removal of the ability to debt block where the debt has accrued, or is a result of, supplier error**

We are unclear of the precise meaning of:

“Removal of the ability to debt block where the debt has accrued, or is a result of, supplier error.”

If this refers to erroneous debt as a result of supplier error, the ability of the customer to change supplier would be resolved after investigation (i.e. once an error has been confirmed) triggered either by a customer dispute or the supplier's bill validation controls.

For the avoidance of doubt, we do not believe that the customer raising a dispute is in itself sufficient reason to prevent a supplier objecting on the grounds of debt, with suppliers' complaint handling processes in place to resolve such cases.

In terms of genuine debt that has accrued as a result of supplier error (e.g. delayed billing), there are existing safeguards in place for customers and which provide incentives for suppliers' billing performance:

- Suppliers are already prohibited from back-billing more than 12 months unbilled consumption, where at fault.
- There is also a specific licence obligation to take all reasonable steps to reset a prepayment meter within a reasonable period of time.
- Suppliers' complaint handling processes and the Energy Ombudsman provide for redress on the merits of individual cases.

Any further restrictions on the ability to object in respect of genuine debt would be disproportionate and place an undue operational burden on suppliers.

- **Increase the Debt assignment Protocol (DAP) threshold to £200 to encourage customers with high levels of debt to make use of the DAP**

We question the benefits of increasing the threshold of the Debt Assignment Protocol (DAP) from £100 to £200.

Indeed we question whether, in the light of experience, the DAP should be retained. Ofgem has provided no detailed reporting on success rates of DAP since its introduction.

There are a number of reasons that perhaps help explain why the DAP has not been successful:

- Suppliers frequently do not object to prepayment customers leaving with small debts, they just write off the debt;
- it is a convoluted process for customers, it is probably easier to wait until the debt is repaid rather than use the DAP;

- if a customer does enter the process, the initial objection is upheld. The two suppliers involved then need to exchange various pieces of information, which takes time. The new supplier then needs to initiate the gain again; by the time this comes through, given standard industry timings, the debt for some customers will have fallen to below the objection threshold, so the old supplier will not object this time.
- Some customers appear to decide not to take advantage of the DAP on the basis that liability transfers along with their supply.

Given our experiences, even if the DAP was heavily publicised, because of the above, we question whether it would attract more customers.

- **Prevent suppliers from debt objecting where a customer would avoid the retrospective application of an adverse unilateral T&C variation (price increase) by switching**

We are unclear of the precise meaning of:

“Prevent suppliers from debt blocking where a customer would avoid the retrospective application of an adverse unilateral contract variation by switching (in accordance with SLC 23).”

This would appear to indicate that virtually no customer would be prevented from switching even with pre-existing debt as all customers tend to be adversely affected by the retrospective application of an adverse unilateral contract variation. If a customer elects to terminate their energy supply contract after receiving notification of a price increase and initiates a switch to an alternative supplier any energy usage between the date of the planned price increase and the final closing account date is charged at the pre-increase rates, i.e. no additional debt arises directly from the price increase. Any debt objection then would be in respect of pre-existing debt and we do not believe that customers should be permitted to switch supplier until settling such a debt.

Given that we understand that is not Ofgem’s intention to allow all such customers to avoid paying off their debt and because the cost burden would pass to customers who do pay their bills, we believe that this proposal should not be progressed.

- **In addition, through our debt and disconnection work we will be encouraging suppliers to introduce the following measures to improve the transparency and customer awareness of debt build-up and the debt blocking arrangements**

In terms of the measures to promote transparency and customer awareness of debt build up, whilst we support the principles, any detailed application needs to be assessed in terms of IT resource and timescales required for application.

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

We note Ofgem’s approach to leave suppliers, site providers and Consumer Focus to determine what information is required. We would support provision of comprehensive tariff information by all suppliers through their respective websites.

## **4. Helping consumers make well-informed choices**

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

#### **Written quotation**

Whilst we understand the need for a record of the offer to the customer, we are currently looking at how best to deliver this in possibly a more robust, way than a hand-written quote. We believe that the independent sale validation telephone call process npower now employs represents best practice in this regard. This call could be extended to cover any bill comparison against the customer's current deal and claimed savings. All such calls are recorded and provide customers with reassurance through truly independent validation of the sales agent's work. Where a savings claim has been made against the customer's current deal this could be provided initially on an indicative basis by the sales agent and then verified by a precise calculation completed by the validation call operator using a sophisticated computer savings calculator. That saving and the data inputs upon which it is based could be confirmed with the prospective customer by telephone and a written copy subsequently sent as verification. In some cases it may be possible to send the savings comparison to the customer instantaneously by e-mail.

#### **Comparison with consumers' current deal**

As explained above, the contract validation process over the phone offers the opportunity for the customer to compare his current deal where a sales agent has made a comparative claim or where the customer is on a PPM.

With regard to Ofgem's proposal for suppliers to provide a written comparison of the offer and the customer's existing deal where the sales agent makes a comparative claim or where the customer is on a PPM, as you point out the accuracy of the information presented to customers will depend to some extent on what they provide to the prospective supplier. However, it is also dependent on the availability of information on, for example, the current rate of a competitor's historic tariff. Therefore, we would support a requirement where suppliers are obliged to make available through their respective websites all tariff information, notably current rates on all products – currently on sale **and** preserved tariffs such that this data would be readily available to all suppliers, web brokers, customers and other interested parties.

#### ***Deal Comparisons with a Non-monetary element***

It should be noted that where a customer's current deal provides a non-monetary element, e.g. Air Miles, boiler breakdown insurance cover or Tesco Club card points, it will not be possible to provide anything other than a purely monetary annual bill comparison. It must be for the customer to evaluate the benefit they perceive they receive from any non-monetary elements.

#### **Additional information at the point of sale**

Our contract booklet covers the aspects of what happens next, the cooling off period and how to contact npower in case of problems. We are also involved with the ERA in putting together the "peace of mind guarantee". However, whilst we would

anticipate that our contract verification by phone would address whether customers have signed up to suitable contracts and the draft information brochure provided to Ofgem as part of the process of developing our Initial Findings Response would provide further assistance, we would be interested in exploring other aspects of additional information at the point of sale further with Ofgem.

### **Post-sale follow-up**

We require clarification whether this requirement would be satisfied by the (recorded) independent validation call npower makes at the time of the sale which both alerts customers to their cancellation rights and confirms that they are content with the sale.

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

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

Our present processes for providing information to our smaller business customers follow a number of your proposals. With regard to the timing of the renewal notification, our present practice is to write to smaller business customers, with prices for the following year, approximately 104 days prior to the end of their contract. This allows them a 14 day decision window and time to tender the required notice if they have not done so earlier in the life of the contract. If customers give notice at that point they have three months to decide whether to contract with us again or to move elsewhere.

Given the concerns that customers may not have sufficient time to make a decision whether or not to accept our price offer, we are willing to explore the potential to extend the renewal notification period to 30 days (before a 60 day termination notice period). Clearly such changes would require process, IT and contractual changes which would take some time to implement.

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

We consider that business customers, whatever their size, have a responsibility to manage their affairs and that the framework we provide for renewals allows them to do this. This position would be strengthened by moving to a 30 day renewal window.

Under Ofgem's proposal, those who would not have considered our correspondence but would have benefited nevertheless from a competitive renewal price will now need to be supplied on out of contract rates. These will be short-term prices and will be necessarily higher than if we had been able to hedge for a longer-term contract. The considerable increase in administration that would be involved in attempting to contact those customers who are no longer in contract will also mean additional costs being rolled into the out of contract rates.

If Ofgem prohibits the rolling over of contracts we assume that this would apply for new contracts only, as existing customers will have agreed a contract containing specific terms for termination and renewal.

Suppliers will need to consider how to implement any necessary IT system and procedural changes and the timescales. A phasing in of any changes would be helpful to enable suppliers to deal with them appropriately.

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

We note Ofgem's intention to work with Consumer Focus in relation to an accreditation scheme for non-domestic customer switching sites. From a supplier perspective it is crucial that:

- as you recognise, customers know whether information is complete and impartial;
- sites need to be transparent about how they receive payment;
- they give a fair comparison of pricing;
- prices are up to date; and
- as for the residential code, it will be important to build in appropriate audit requirements by an independent auditor.

We have some concerns about the basis for comparison, in that in the non-domestic market there is more variation between terms and conditions than in the domestic market. It will be important to build this in to the system to enable customers to get a full understanding of each supplier's offering. Further, business pricing is often bespoke and updated on a frequent basis, meaning that any spend comparison would be changing constantly. This will need to be addressed.

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

We support the development of a code of practice, including the requirement that accredited Third Party Intermediaries (TPIs) explain how they receive payment and that they identify which suppliers they deal with. Indeed, the important points in relation to the code are as noted above for an accreditation scheme. Given the range of third party arrangements in the market it will also be important to confirm that all are intended to be covered.

The code must be governed by a body that is plainly independent of any participant or other interested party.

### ***Definition of micro-business***

The definition of micro-business proposed is impractical. It will mean that suppliers will be unable to identify in many cases with any certainty whether or not a customer is a micro-business. In particular they will not know the number of employees or financial turnover, which in any case may change over time. In addition, it may also bring into scope fairly sophisticated energy-intensive users. Thus, it is likely to lead to homogeneity and a reduction in the variety of contract offerings available. Therefore, the definition needs to relate only to specific electricity consumption volumes for electricity supply contracts and gas consumption volumes for gas supply contracts.

## **6. Promoting market transparency**

## **Improving transparency of supply and generation**

We have been working with Ofgem to determine what appropriate information we could provide further to its Information Requests. However, as we have explained, our structure means that we are unable to provide all the inputs in exactly the form set out in the draft templates.

However, having considered the options, our initial view is that we could accept Option 1.

## **Enhancing market monitoring**

As our response to Louise van Rensburg's letter of 27 April indicated, we need clarification of the requirements, but given this, we would expect to be able to provide the information requested in that letter's spreadsheet templates for domestic customers going forward.

Following Ofgem's Information Requests, we are aware of the complexities of providing information on the non-domestic sector and are concerned about the regulatory burden as compared with the potential benefit. We may need to discuss with you the definitions of some of the information required in order to ensure compatibility with the way our and other suppliers' systems capture the data.