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Dear Sirs,

**Re: Flexible and responsive energy retail markets: Putting consumers at the centre of a smart, low-carbon energy system**

Thank you for the opportunity to comment on the above consultation and for permitting a short extension to enable us to submit our comments.

Utilita is primarily a smart, prepay energy supplier. We specialise in offering a traditionally poorly served sector of the market a high quality, smart prepay service. We installed the first prepay smart meters back in 2008 and have continued our smart offering since. The majority of our customers are prepay and the vast majority of our customers have smart meters, operating in smart mode.

Our core business offering is a smart prepay service, which allows the customer to top up conveniently through multiple methods, while giving them real control over their energy supply via our App and the IHD. We look to install a smart meter for the customer as soon as we can after they come on supply. This installation approach ensures they benefit from our extensive emergency and friendly credit facilities as soon as possible, and gets them access to the other benefits of our service through our My Utilita App.

While prepay is not a proxy for vulnerability, a relatively high proportion of prepay customers are vulnerable, including by being in financial difficulty. We have always believed that prepay customers have the most to gain from smart meters, with smart prepay being a transformative customer experience relative to traditional prepay. The smart prepay option is more flexible, more suitable for a broader range of customers, and in the case of our SMETS1 solution, resilient to no WAN.

We welcome the consultation document and agree that the topics under consideration are important for the future of the energy retail markets. As we strive towards a low-carbon, energy efficient future, the regulatory framework must be able to flex and adapt, taking account of technological innovation and the changing ways communities, consumers and market participants will interact.

We agree with the principle that the regulatory framework needs to facilitate the launch of products and services which may be frustrated today. However, we note that the proposals appear to centre around providing assistance to non-supplier organisations – it is important to recognise that licensed suppliers may also want to innovate and currently be frustrated in doing so.

The framework currently permits sandbox type arrangements, but these may have only a limited number of places available and focus mainly on complex or cutting-edge requests with major 'appeal'. We suggest a more self-service facility for simpler innovation/incremental improvement requests should also be made available. Derogations from licence conditions and regulations

should be more widely used, and made available in a timely manner against a broader range of licence conditions.

Utilita supports the approach of addressing and removing market distortions and has historically argued strongly for this principle. Implementation may however, involve a number of different areas of work. We support an approach of reducing the extent to which suppliers are used as a delivery body for social policy. Further, where suppliers are obligated in this way, the obligations must apply to all suppliers even if such obligations are made tradeable for a fee (to ensure proportionate impacts for the smallest). Placing costly obligations on some suppliers while sparing others, but still allowing the equivalent cost recovery is not acceptable and leads to market distortions. This is demonstrated in the current energy industry default and prepayment tariff caps, where allowances are made for policy costs, but only certain suppliers are obligated. The effect is clear in the prices available in the market, but equally such additional support has not prevented a number of supplier failures.

Other distortions may be caused by the extent to which suppliers are required to select beneficiaries as well as administer policy schemes. The Warm Home Discount (WHD) is a case in point. We consider that there are more appropriate ways to address vulnerable households in difficulty than the WHD, and that these should rightly be managed by government. However, if WHD is to continue, we believe strongly that it must be reformed and that DWP should simply notify all suppliers of the eligible households who are to be paid on a Core Group only basis. There should be no Broader Group, and the Core Group obligation should apply to all suppliers.

The current arrangement, whereby DWP selects some households while suppliers must identify others to be paid is not well conceived. The level and cost of additional resources in the management of the Broader Group scheme and necessary assurance activity cannot be justified. Customers who are not selected due to spaces being filled blame suppliers, while high levels of applicant verification may be needed for the supplier to operate the scheme properly. This is required as there is evidence that significant numbers of applicants for the Broader Group may not be eligible. Together, these areas mean the supplier must manage thousands of additional calls, emails and letters, often in a short period of time. Allowances in the tariff caps do not reflect these requirements.

While we note in the consultation that changes to WHD are being considered, we believe these changes need to be implemented from scheme year 10. While we are not generally in favour of immediate change, the removal of the Broader Group has the potential to relieve the industry and customers of a significant amount of difficulty, and so should be urgently pursued as a quick win.

The principles and learning from schemes such as the WHD and current environmental schemes must be carried forward to ensure that similar distortions are not allowed to develop in the future. Where schemes and obligations are imposed, this must also be carried out after due consultation and with adequate notice to allow for planning and contracting.

We support the need to address Fuel Poverty and agree it is essential that government have a robust strategy to address fuel poverty. Government must also have clear metrics which are transparently measured and comparable over time to demonstrate progress. Actions taken need to be economic and cost effective, as well as being efficiently implemented and responsibility allocated fairly. We have recently submitted our response to the government's consultation on the Fuel Poverty Strategy for England, which also contains observations relevant to this submission.

We agree that protections are needed for less engaged or vulnerable customers, however we do not support a price cap as the method of delivering this protection. We argued, and continue to believe, that the underlying issue in the market related to the use of acquisition tariffs and standard variable tariff differentials by the six large energy firms, and that the application of a market wide cap on all suppliers was not a proportionate solution.

The proposals which focus around a range of innovative market entrants are very welcome. At the same time, consideration should be given to ensuring that some of the same freedoms can be extended to innovation activities within existing licensed supplier businesses, who would like to

offer innovative and helpful services to their customers. In addition, given that consumers will interact with such parties, regulatory arrangements must still afford consumers adequate protections for their energy supply. It is not clear in the proposals how consumers using some of these new services would be protected in the case of 'supplier' failure. Where licensed suppliers are expected to maintain last resort services to underpin new 'Lite' market arrangements, such services must be funded equitably and properly managed.

Finally, in carrying out the improvements proposed, we urge BEIS to ensure that where new solutions and consumer obligations are imposed on the competitive market, they are fairly and explicitly funded, to enable efficient suppliers to run their businesses and make a reasonable profit.

We have set out answers to most of the consultation questions in Appendix 1, attached to this letter. In order to help BEIS assimilate our submission, I have provided a Word version as well as the main PDF submission to enable copying of responses. Where I have been unable to add further detail to my comments, I have either noted this or referred to previous responses.

I would welcome an opportunity to meet and discuss any points raised in this submission in more detail if this would be helpful.

Yours faithfully,

*By email only*

Alison Russell  
Director of Policy and Regulatory Affairs

## Appendix 1: Utilita's submission in respect of consultation questions

1. Do you agree with our vision for the future of the energy retail market, the outcomes we are seeking to achieve and our characterisation of the key challenges we need to overcome?

We are a member of E-UK and support the answer to this question in that submission.

In addition, we generally agree with the vision for the future of the energy retail market. However, in developing the regulatory framework for the future BEIS should build on existing efforts and innovations and allow those to continue.

One area which is missing is how the new arrangements will make provision for safeguards and last resort arrangements in the case of failure. One unavoidable consequence of a competitive market with new entrants and changes is that there will need to be provision for effective management of market exit. Where light touch regulatory frameworks and easier entry are targeted, it is essential to ensure appropriate protections are in place.

2. Are there examples of new products, services and business models that would benefit current and future consumers, but are blocked by the current regulatory framework?

We consider that there are such issues in the market. The proposals to address such obstacles for non-Licensed parties must also make provision for equivalent flexibility within the Licensed regime.

Such services and arrangements may allow for unusual bundling of different types of products and services to allow customers to manage their requirements. Current arrangements prescribe a certain inflexibility of approach to the treatment of matters such as managing payments and different types of services within an energy account. The framework needs to develop so that suppliers can offer customers a more tailored approach to particular types of services where this is the customer's requirement.

Government should also use these changes as an opportunity to ensure that all innovators – whether new entrants or established Licensed parties – can access joined up, cross regulatory advice and support for innovation and development. For example, if an energy offering included aspects of regulation in the financial services arena, the proposal needs to be considered in the round by both regulators.

3. Are there current or emerging harms to energy consumers which are currently out of scope of the regulatory framework? Do these differ for domestic and non-domestic consumers?

We have particular concerns in the area of managing supplier failure, the necessary protections for consumers, and how the costs to industry of such failures are effectively and equitably managed.

Given the failing supplier can generally be expected to have been in difficulty in a number of areas, SoLR events are fraught with difficulty. Customers must be protected and managed carefully, but at the same time, the costs of failure and requirements for customer debts to be paid must also be addressed.

Supplier failures can lead to unpaid industry energy charges which are spread among other suppliers, unpaid environmental schemes such as ROC payments, which are mutualised and a range of other costs. These will be imposed on the remaining suppliers and their customers, leaving them to meet the costs of the failure, and indeed, the frequently below cost tariffs enjoyed by the customers of the failed supplier to that point. This process means that vulnerable customers of all suppliers will end up contributing to the costs of the failure. The regulatory framework does not address this unfair distributional impact.

4. Would it be beneficial to allow suppliers to specialise and provide products and services to targeted groups of customers? If so, how can this be delivered while balancing the need for universal service?

We do not believe that specialisation and universal service are necessarily in tension to the extent that innovations would be unduly blocked from coming to market.

Suppliers are already able to, and do, target specific products at particular customer groups through marketing and advertising strategies. However, the current framework, and in particular the complexity and extremely high hurdle of seeking licence change where derogation is not available will act to constrain such approaches.

5. Are incremental changes to regulation sufficient to support the energy transition and protect consumers? Or does this require a more fundamental reform, such as moving to modular regulation?

We believe it would be appropriate for Ofgem to be required to directly regulate TPIs in the energy market, both domestic and non-domestic, as we see an increasing risk for customer detriment with the growth in unregulated third-party services.

With auto-switching services, for example, the customer relationship is being primarily owned by the TPI acting as the service provider, with the customer's relationship with supplier being secondary. However, the supplier retains full responsibility for all obligations and requirements related to the relationship, including consumer protections and managing vulnerable customers, whereas the TPI is free from such obligations other than under general consumer law.

We expect these risks of harm to increase as new innovations come to market which make use of greater data availability in the digitalised energy system, if a suitable regulated framework is not delivered in a timely manner.

We welcome and support the review's consideration of bringing TPIs within the scope of Ofgem's regulatory powers, but the regime must offer sufficient consumer protection, recognizing the distribution between obligation and contractual relationship. As energy is an essential service, it would be detrimental to customers (and distortive to competition) if a customer was afforded less robust or fewer protections should they chose to engage with a TPI for their energy needs rather than directly with a supplier.

6. Are there any other potential market distortions we should be considering as part of our review?

Please see our covering letter for our thoughts on specific obligations. These apply to all obligations and schemes where selected Licensed parties only must comply with an obligation, in particular WHD, ECO, FiT, Green Deal and SEG.

In addition, please see our comments above on the detrimental and distortionary impact of the SoLR provisions.

In designing changes, BEIS must avoid creating new distortions. In considering this point, it is important to recognise that simply making obligations applicable at different thresholds of growth acts as a distortion and participants seek to manage exposure to additional risk.

7. Would removing the thresholds for the Energy Company Obligation and Warm Home Discount help remove imbalances in the retail market, and could this be done without significantly increasing barriers to supplier entry or expansion in the retail market?

We agree that where obligations are applied, this should be to all participants in the market. Where delivery is unduly onerous, trading for a fee may be an option.

We also support the majority of the E-UK submission in relation to this question.

8. How could the delivery burden on suppliers from the Energy Company Obligation be reduced, for example through the introduction of a buyout mechanism?

A key area would be to ensure the scheme is stable and regulatory requirements associated with the scheme are not changed mid-year. The current proposals on which a decision is awaited, have caused major damage to the ECO market. Installation capacity has fallen, costs of compliance are rising, and contractual variations are being sought.

Costs of the specific proposals have brought significant detriment, and real concern on how such exposure is to be met, given the costs and availability of some of the guarantees proposed.

Regulatory change and risk impose resource and financial burdens on suppliers. Where obligations are imposed, government must ensure that compliance is manageable, and can be funded reasonably by an efficient supplier.

9. What effect does the range of Energy and Climate Change Policy Levies have on the retail market?

Policy costs currently mean electricity is a more expensive fuel for customers than mains gas, resulting in higher energy costs for those with electrical heating systems. The impact of such schemes impacts customers through their bills, including those customers who may be in need, but unable to benefit due to their circumstances.

The review should consider how the continued use of electricity bills to fund environmental and social obligations may have a detrimental impact upon the take up of alternative heating technologies and the UK's ability to meet its new 2050 net-zero legislative target.

Where there are supplier failures, or even simply failure to make the requisite payments, the use of mutualisation to cover shortfalls in delivery/funding resulting from supplier non-compliance is a major risk to other, prudent and compliant suppliers. The mutualisation process spreads the costs of failure and non-compliance across other suppliers and their customers, imposing additional inequity.

Ofgem is considering a licence condition to allow for earlier action to be taken against suppliers not making prudent provision to discharge their obligations through its ongoing Supplier Licensing Review. We support this approach in principle.

10. What actions could government take to reduce any negative impact of Energy and Climate Change Policy Levies?

Please see our covering letter and other answers for our view on using suppliers to deliver policy.

11. Do you agree that now is not the time to make further changes on system and network cost recovery, metering and access to data as part of this retail market review?

Generally yes, subject to comments elsewhere in this submission. Where distortions are affecting the markets or rule are acting as unnecessary blockers, such matters should be addressed as soon as is reasonable.

12. What total costs do suppliers face with regards to bad debt and supporting consumers who struggle to pay for their energy?

We have limited comments to make in respect of this question other than those made specifically to the team on debt and customers in difficulty.

It is however important to note that the issue of debt and bad debt is not only a matter for credit customers. Prepay customers may acquire debt through inability to repay emergency and friendly credit as well as discretionary credits. They equally need careful management to maintain payment for usage while reducing debt.

Current proposals being consulted upon by Ofgem seek to add significant new obligations to suppliers in this area, with a potentially unlimited exposure. While we absolutely support the fact that the most vulnerable in our communities need our help and support, we must also recognise that broad brush support policies do carry costs and that this needs to be addressed.

Failure to manage costs of supporting vulnerable and fuel poor customers adequately risks imposing costs on other customers who are also in difficulty, or that some suppliers may seek to avoid supplying such customers. In the long run this can only be detrimental, and act to reduce the range of competitive offers available.

We agree there may well be potential for additional third party support services for customers struggling to afford their energy. We support the view that if effectively constructed, this might reduce customers getting into debt while minimising market distortion. The key to the success of such a service would be how services are allocated and fairly funded.

13. How could any potential distortions related to high cost-to-serve customers be addressed, for example by the provision of additional support services for customers struggling to afford their energy?

No additional comments

14. Would addressing market distortions (for example size-based obligation thresholds for some policy schemes, supporting those who are struggling to afford their energy bills) help reduce incentives for suppliers to adopt pricing strategies that lead to excessive prices for loyal consumers? If so, to what extent (providing quantitative evidence, where possible)?

Please see our other answers.

15. What are your views on the measures being considered to address loyalty penalties in different markets? What approach or – combination of approaches – would be most effective in the energy retail market?

No additional comments

16. What other approaches could be adopted to ensure loyalty penalties do not reemerge?

No additional comments

17. What protections or support may be required to engage consumers in vulnerable situations in the future market?

No additional comments