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Dear Ms Tewari

Consultation: Supply Licence Condition 23 – Period for notifying unilateral contract variations and related matters

We support the Energy Retail Association's response to this consultation. We do not believe that there is material new evidence to make a change which would cause additional cost and potentially worse service to all customers.

We agree that the issue of how customers who need to budget are made aware of a price increase is important.

These customers are best served by a strong offer of energy efficiency advice and measures[1]. Ideally, this would be well in advance of any price increase, with customer awareness raised by open and honest presentation, in the media and by consumer groups, about the inevitability (as it would be if it was substantive) of a price rise. However, some customers may only respond to the notification of the price rise. It is essential then that any mailing is spread over a reasonable time period, so that suppliers are able to handle the calls, giving full energy efficiency, or tariff, advice.

A requirement for suppliers to take all reasonable steps to notify customers promptly would allow us to better meet these customers' needs.

We would also be better able to maintain service levels to any other customer who has a routine need to contact us at the same time as a price rise notification. In principle, we would stagger notification to customers in order to reduce the risk of call overload, but, as we explained in our previous submission[2], the cost of delaying a price rise can be tens of millions of pounds and it is inevitable that advance notification will lead to some compression of timescales.

We are surprised that Ofgem's consultation letter does not consider the consequences of delayed price rises, which is much more relevant to energy customers than a comparison to other industries. The potential effects include:

- An advantage to the first supplier to raise prices, as all preparations can be made before any announcement.

[1] Energy efficiency measures can typically save a household a few hundred pounds a year.
[2] Probe consultation on 65 day notice period. Response dated 6 March 2009.

- Increased risk, and hence requirement for increased margin, as suppliers have to manage unexpected price positions.
- Regional variation as suppliers' stagger price changes to seek to mitigate price risk, and to reduce the adverse impact on customer service.
- Increased promotion of price guarantee products, as an alternative means of staggering price changes.

Ofgem should also consider customer choice. Customers who may struggle with an unexpected price increase can avoid this by choosing a price guarantee product. With the proposed licence change, customers who are comfortable with a variable price product would have to bear the costs of advance notification without a choice.

We recommend that the current licence condition is modified to add a requirement on suppliers to take all reasonable steps not to delay notification. We would expect Ofgem to monitor this carefully, requiring any supplier which took more than a few weeks to notify customers to have detailed justification of its timescale. We would also expect reasonable steps to consider customer vulnerability and the previous availability and promotion of price guarantee products. Illustratively the outcome at the next price increase might then be:

- Delayed price rise/advance notification for social tariffs, prepayment meter customers and minority meter types (based on the current position of there not being a price guarantee alternative);
- Priority notification for customers on the PSR and regular cash payment;
- Prompt notification for all other customers, but spread over a few weeks to manage call volumes.

This would seem to balance the overall benefit to customers of the current arrangements with the need to protect customers who struggle to afford their energy.

Notwithstanding that we do not believe that advance notification is in consumers' long term interests, we have considered what consequential changes would be required if such a change was made. We attach our analysis in the attached Annex.

We would be pleased to participate in any workshop Ofgem arranges, or to meet, to discuss these issues.

Yours sincerely

Graham Kirby

Retail Regulation & Energy Policy Manager

Annex – Consequential Issues from Advance Notification

Advance notice period

Although there would be a benefit from a longer advance notification period, in giving those customers who need it more time to adjust to higher prices, there could also be a perverse effect of losing immediacy so that customers put off change and then forget to take action.

All other impacts of a longer advance notice period are unequivocally negative:

- Each day of advance notice increases the risk in any decision to change prices as there is more uncertainty over wholesale costs, at a time of volatility, and, at some times of year, of networks costs. This could lead to slightly higher prices, affecting all customers.
- An extended period when a price rise was known but not yet implemented would compound the issues described below under SLC25 and SCL31.
- The total time to effect a price change (planning + communication + advance notice) could become as long as one quarter. Networks charges would need to be notified at least 13 weeks in advance.

Nor would there be any advantage of reducing the administrative overhead of the unilateral variation procedures of SLC23.3-23.6. Even a 30 day advance notice period would not give sufficient time to be confident that customers would be able to switch before the implementation date, and hence meet the requirements of the Unfair Terms in Consumer Contracts Regulations 1999.

A short advance notice period would reduce the risk of postal delays resulting in customers being informed after the implementation date.

Any advance notice period should be at most five working days.

Unilateral contract variations

We cannot envisage a material non-price variation which we would not want to advise a customer of beforehand (e.g. a charge for lost payment cards could reasonably only be applied after a customer was informed). However, it also seems unlikely that there could be any need for an extended notice period for such variations.

The notification requirement for non-price variation should only be aligned with the requirements for a price increase if these have an advance notice period of at most five working days.

SLC22.7 Availability of new prices

As discussed in the body of our response, advance notification gives an advantage to the first supplier to raise prices, as all preparations can be made before the date of announcement. *There should be no excuse for the delayed response we have seen from some suppliers to a request for a copy of a new pricing schedule.*

SLC23.6b Switching period

Ofgem do not cite any firm evidence of supplier failure to initiate a transfer within 15 working days (our systems start the transfer automatically after 15 calendar days), only anecdotal evidence of a protracted time to complete the transfer. It is unreasonable that the old supplier has to bear the consequences of the new suppliers' failure. It is also probably in the general customer interest for no preference to be given to customers who choose less efficient suppliers. Depending on the agreed terms, these customers would have recourse to the ombudsman. It would require some system changes, but if there is evidence of substantive difference in performance between suppliers, it would be appropriate to collect data on supplier performance on an ongoing basis and for it to be published by ERA or Consumer Focus.

SLC 25 Comparison of charges

It is not easy to give the fair comparison required by SLC25 at a time of price change, but we would expect any supplier to be careful not to mislead e.g. either to use the new price in a comparison, or at the point of sale to advise prospective customers of the future price change. Ofgem could usefully issue guidance (which would also cover a price reduction, where it is a competitor's new price which should be used), as has recently been done over the method of making comparisons.

SLC25A Guidelines, staggered price rises

As discussed in the body of our response, one potential means of mitigating the risks to competitiveness, and the adverse impact on customer service, of a requirement for advance notification would be to stagger price changes. Price differentials could, for a period, be much larger than perhaps envisaged in the Guidelines (Materiality – Para 5.3(i)). *We request that Ofgem acknowledge that this would be acceptable.*

SLC31A Projected costs

The potential for advance notification of price changes has highlighted two issues with SLC31A:

I. The projected cost on bills issued before the implementation date will use old prices;

II. The Notice of a price increase will be staggered over a few weeks as letters are sent to customers. It is only practicable to start the process of issuing the information required by SLC31.A.1(b) when the last customer has been informed (and because of Point I, only sensible to start from the date of implementation).

We do not believe there is a material adverse customer impact from providing the information update in the quarter following the date of implementation. However, if licence changes are proposed, we would welcome Ofgem taking the opportunity to tidy up SLC31A.