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Dear Rachel

Switching Programme and Retail Code Consolidation: Proposed licence modifications

EDF is the UK's largest producer of low carbon electricity. We operate low carbon nuclear power stations and are building the first of a new generation of nuclear plants. We also have a large and growing portfolio of renewable generation, including onshore and offshore wind and solar generation, as well as coal and gas stations and energy storage. We have around five million electricity and gas consumer accounts, including residential and business users.

EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new consumer offerings that encourage the transition to low carbon electric transport and heating.

Short Billing Periods

While we have set out our detailed comments on the licence condition drafting in the attachment, we are particularly disappointed with the approach that Ofgem has taken to switching during the cooling off period. Under the current proposals, suppliers will be required to bill for small amounts where consumers switch during the cooling off period and cancel their contract in order to switch to another supplier. Experience shows that such low value bills have high non-payment rates. Ofgem creates a risk that consumers (or brokers acting on their behalf) could switch and cancel frequently in order to avoid paying small sums that may not be cost-effective for suppliers to recover.

Based on cancellation rates and non-payment of low value bills, we estimate that across industry the unrecovered amounts are likely to be in excess of £5m per year. This is a concern in the current environment where consumer debt is already rising as a result of the impact of COVID-19. Ultimately it is consumers who pay their bills on time that will be impacted, as the debt risk will be passed on to all consumers as part of the wider cost to supply.

Ofgem should adopt an alternative approach to switching during the cooling off period that avoids the debt risk inherent in the proposed approach. Automatically switching back to the old supplier and continuous billing by them, similar to the approach used for Erroneous Transfers, would mitigate these risks. It is also a simpler process from a consumer's perspective and avoids the risk associated with a more complex set of choices that consumers need to make. Some consumers may choose to do nothing at all, or to take action that is not right for them. This could cause particular detriment to some customers in vulnerable circumstances where the financial impact of being placed on more expensive Deemed Contract rates could be significant.

If Ofgem does decide to proceed with its current approach to cancellation during the cooling off period, it must act to mitigate the risks of increased supplier debt.

- Ofgem must go further than the stated commitment to *"monitor the extent to which there is a problem with abusive switching, such that consumers avoid being billed by switching serially within short amounts of time."* On its own this commitment – just to monitor, will not alleviate any debt risk associated with short billing periods. Ofgem must also commit to an action plan. Specifically, that if the number and value of unpaid bills that arise from cancelling after switching goes beyond a certain pre-agreed threshold, that Ofgem will trigger clear actions to address the issue. Measures should be put in place ahead of the new arrangements going live to ensure there is clear visibility of the impact of this decision on consumer debt across all suppliers.
- Reducing the grace period where a supplier can remain on their existing contract terms to a maximum of 10 working days will limit the amount of time in which a debt can be accrued.

Licence drafting and other regulatory changes

Ofgem must ensure that the Licence drafting provides clear direction for suppliers on what action a customer or supplier may take for potential edge case scenarios following a cancellation in the cooling off period (e.g. multiple cancellations). Ofgem guidance is that *'suppliers should take their own legal advice in relation to how statutory cooling off rights might affect them in different circumstances, and must design business processes that comply with the statutory rights of consumers and the licence obligations'*.

However, the draft supply licence conditions go beyond what is required in statute. For example, the option to return to the 'Old Supplier' on 'Equivalent Contract Terms' could require a supplier to reinstate a cancelled contract. There is no statutory obligation under Consumer Law on the supplier party (nor indeed the customer) to perform the obligations of the contract once it has been cancelled. Ofgem must ensure that the final licence drafting does not contradict Consumer Law – otherwise it risks placing suppliers in the impossible position of having to comply with two sets of inconsistent obligations.

It is also concerning that these licence obligations, which have a direct impact on our design for the Switching Programme, are still uncertain. Ofgem must ensure that there is design clarity on these and any further regulatory changes required to implement faster switching. This certainty is

essential for suppliers if they are to finalise and implement the system changes required for faster switching effectively. For example, the consultations refer to changes to the Guaranteed Standards of Performance to ensure they align with the revised Supply Licences. We require clarity on the detail of the proposed changes so they can be built into our system design as soon as possible. Any delay increases the cost and implementation time, adding further risk to an already delayed Switching Programme.

Our further detailed points on the licence drafting itself are set out in the attachment. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Nicola Pope, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink, appearing to read "Denise Willis".

Denise Willis
Senior Manager of Industry Change

Attachment

Switching Programme and Retail Code Consolidation: Proposed licence modifications

EDF's response to your questions

Q1.1 Do you agree with the proposed standard licence condition modifications as drafted in Appendix 3 for the Gas Supply Licence?

No, we do not agree.

Short Billing Periods

We are disappointed with the approach that Ofgem has taken to switching during the cooling off period. Consumers will be able to change their supplier every few days and, if they cancel within the cooling off period, avoid termination fees. There is a risk that consumers (or brokers acting on their behalf) could switch frequently in order to avoid paying small sums that may not be cost-effective for suppliers to recover. At a time when levels of consumer debt are rising as a result of COVID-19, the proposed approach is likely to increase levels of unrecovered debt – the costs of which are then recovered from those that do pay their bills.

Our analysis of the types of bill values we would expect to see, indicates up to ■■■% of these bills may remain unpaid. Based on projected switching volumes and cancellation rates, the unrecovered amount for EDF will be around £■■■■ per year – across industry the unrecovered amounts could be in excess of £5m per year. Debt recovery action on these unpaid bills is likely to be limited given the costs relative to the unpaid amount. Mitigations could be applied to lower the risk, such as suppliers enforcing upfront payments, carrying out increased credit risk vetting and restricting payment options available to certain customers, but these measures could discourage consumers from switching in the first place.

We strongly advise Ofgem to look for an alternative approach to switching during the cooling off period that avoids the risk inherent in short billing periods. Continuous billing where a supply is automatically switched back to the old supplier avoids the risks associated with short billing periods and would be a simple process from a consumer's perspective. This approach would continue to encourage consumer engagement, if a consumer is made of aware of their options to agree a new contract once they have switched back to their old supplier.

If a decision is made to proceed with the current approach, Ofgem must mitigate the inherent debt risks of short billing periods. Ofgem has already noted that it will "*monitor the extent to which there is a problem with abusive switching, such that consumers avoid being billed by switching serially within short amounts of time.*" Ofgem should go further than this and commit to acting if the number and value of unpaid bills that arise from cancelling after switching goes beyond a certain pre-agreed threshold. This threshold value should be defined ahead of go-live and, if this threshold is met, Ofgem should trigger clear actions to address the issue.

Complexity and consumer engagement

The proposed approach is very complex for both suppliers and consumers alike, with several options available to a consumer if they cancel a switched contract. The scenarios and options for a consumer become particularly complex if several contracts are cancelled in a short period of time e.g. how to explain clearly to the consumer how to identify their old supplier. This has the potential to result in customer dissatisfaction and increased complaints.

Consumers are expected to take a number of decisions that require them to have accurate and timely information. If this is left to a principles-based approach under Standards of Conduct, there is a risk that suppliers could implement the licence obligations inconsistently, which will have a negative impact on consumer outcomes if they do not fully understand the options available, or the implications of them. Consumers in vulnerable circumstances will be particularly at risk if they fail to engage effectively and end up inadvertently on more expensive Deemed rates. To mitigate this risk, Ofgem should issue guidance to ensure a common understanding of the consumer journey and the key touchpoints across suppliers.

Equivalent Contract Terms

The protections given to Domestic Consumers go beyond the requirements of Consumer Law. 'Old supplier' is defined in the draft Licence Conditions as '*the Supplier that was, immediately prior to the most recent Supplier Transfer the Relevant Supplier for the relevant premises.*' If a consumer can return to a contract on 'Equivalent Terms' after cancelling in the cooling off period, this potentially gives them the right to reinstate a cancelled contract, if the previous contract was also cancelled during the cooling off period. This is not a requirement of Consumer Law and indeed in the '*The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013*' once a contract is cancelled there is no longer an obligation on either party to perform the obligations of the contract.¹ A consumer should not be able to effectively keep switching between two (or more) cancelled contracts.

Where the previous contract is also cancelled, the previous supplier should not be obligated to offer an 'Equivalent Terms' contract – effectively no previous Contract exists so the consumer should by default be placed on a Deemed contract or be able to agree an alternative contract with the supplier if they wish. However, the supplier is under no obligation under Consumer Law that this be on Equivalent Terms, and the Supply Licence should be clear on this point.

¹ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

33.(1) If a contract is cancelled under regulation 29(1)—

(a) the cancellation ends the obligations of the parties to perform the contract, and

(b) regulations 34 to 38 apply.

(2) Regulations 34 and 38 also apply if the consumer withdraws an offer to enter into a distance or off-premises contract.

Cancellation not actioned (14A.13 and 14A.14)

If a consumer cancels a contract during the cooling off period but the switch is complete, the subsequent options available to them are the same whether a supplier has received the cancellation notice both *prior* and *post* the switch completing. We do not agree that the consumer should have to act if they provide notification to a supplier to cancel a contract *prior* to a switch which the supplier then fails to action before the switch takes place. In this instance, it is the supplier's fault that the switch went ahead, and therefore unfair and onerous to expect a consumer to act to rectify the supplier's mistake. This is a clear instance where a registration is erroneous, and the supply should be returned to the previous supplier as an Erroneous Transfer.

Annulment

We support the proposed requirement on suppliers to retain evidence for the reason of any annulment for a period of 12 months. This should help to prevent misuse by some suppliers.

The current policy does not, however, recognise that there is potentially a more significant risk to suppliers of Non-Domestic consumers (especially those that are not Microbusinesses) if the annulment process is used fraudulently by a consumer or a supplier. For most larger Industrial and Commercial (I&C) consumers we will purchase energy to fulfil a contract as soon as it is sold. If a supplier then incorrectly annuls a contract, this could lead to a significant financial loss to the gaining supplier, and/or a complex and potentially unsuccessful route to charge the consumer a large Early Termination Fee (ETF).

As a result of this significant risk, Ofgem must ensure that misuse in the Non-Domestic sector is monitored carefully by the Retail Energy Code (REC) Performance Assurance Board (PAB) and the right to annulment removed for larger I&C consumers if there is evidence of fraudulent behaviour.

Non-Domestic Objections - Gas sites (SLC14)

The current drafting is unclear as to when an objection should be made by a supplier directly under the REC, and when a supplier should continue to make a request to the shipper to prevent a Supplier Transfer under the Uniform Network Code (UNC). To ensure there is absolute clarity on this point, Ofgem must explicitly define within the licence the gas sites that are in scope under the Central Switching Service.

Ofgem should ensure that the drafting of scenarios where a supplier can prevent a Non-Domestic transfer (SLC14.2(a)) is aligned across both the gas and electricity licences to ensure consistency.

Erroneous Transfer flag set incorrectly

We require clarity from Ofgem on what action a losing supplier should take if a registration notification has the Erroneous Transfer flag set, but the losing supplier has not agreed with the

gaining supplier that there has been an Erroneous Transfer. Currently there is a risk that the Erroneous Transfer flag could be mis-used by suppliers to override the validation in the Central Switching Service that enforces a minimum period between switches, as the current supplier will not be able to prevent the registration from proceeding. To mitigate this risk, we recommend there is provision in the licence to raise an objection in this circumstance to prevent suppliers mis-using the flag. If suppliers are unable to object in these circumstances, Ofgem should outline how it intends to prevent the mis-use of the Erroneous Transfer flag in this instance.

Q1.2 Do you agree with the proposed standard licences condition modifications as drafted in Appendix 2 for the Electricity Supply Licence?

No, we do not agree. Our comments are the same as in Question 1.1 for the Gas Supply Licence (excepting the specific comments on Non-Domestic gas sites).

Q1.3 Do you agree with our proposal to modify the five working day switching regulatory backstop by introducing a 5pm cut off on a working day, after which, if a consumer signs up, the start of the five working day period will be counted as the next working day?

We largely agree with the proposals of a 5pm cut off, as this mirrors existing requirements in the Standards of Performance and Complaints Handling Standards Regulations. However, we have concerns on the definition of Relevant Date.

A Domestic contract is not entered at *'the point at which the Consumer has provided all of the information necessary to the Supplier or its Representative with sufficient information to conduct the switch'*. Rather, it is legally binding when there has been an offer and an acceptance between two parties, which may be before or after the supplier has all the information they need to complete the transfer.

Ofgem should adopt a definition of 'Relevant Date' based on when a supplier has all the information they need to complete a transfer (similar to the Standards of Performance). This must not depend on consumer perceptions. Suppliers can never know when a consumer might perceive they have provided sufficient information, and a consumer may not necessarily be aware of all the information a supplier needs for a transfer to take place, or when the supplier would receive that information. The reference to the consumer's expectation on when they would *"reasonably expect the switch to take place without further action on their part"* should be removed to ensure consistency between suppliers.

The licence refers to a 'Representative' of the supplier, however there are numerous parties that would meet these criteria where we do not have a direct contractual relationship with that 'Representative' e.g. some Price Comparison Websites and brokers. We do not fully control when the supplier transfer information is provided to us as a supplier. Where this is the case, we assume that we can use the exemption under 14A.3(c) that *'the licensee does not have all of the information it requires in order to complete the Supplier Transfer....'* in order to complete the

switch for a later date, but not later than 5 working days from receipt of the outstanding information from the broker. We require confirmation that this is the case.

The drafting of 'Relevant Date' is also very specific to Domestic consumers and does not reflect the nature of the contractual process for Non-Domestic consumers, especially in the I&C market. Non-Domestic consumers are not subject to Consumer Law. I&C consumers enter into a contract with us at the point we accept the Non-Domestic consumer's signed agreement, and all relevant pricing checks have been completed. This may be later than the point at which the consumer has provided all the necessary information for the transfer to proceed. As a result, any reference to 'Relevant Date' that is based upon receipt of information must apply to Domestic consumers only. This would be in line with the remit of the Switching Standards of Performance that do not apply to Non-Domestic consumers.

Q1.4 Do you agree with our proposals to measure the start of the grace period, from which Supplier B must continue to supply the consumer on the same tariff after the consumer has switched and cancelled, from the point that Supplier B sends notice to the consumer of their options and that the grace period should be 15 working days?

No. We do not agree that the grace period should be 15 working days. This grace period will potentially significantly increase supplier debt by increasing the value of bills that have a higher likelihood of remaining unpaid, as previously noted. A shorter grace period would mitigate these risks and limit the value of supplier debt that could be accrued.

The grace period should be no longer than 10 working days. This will not limit consumer protections in anyway, as consumers will already be made aware of the options available to them if they cancel during the cooling off period when agreeing the original contract. Consumers are also likely to know what they want to do next before they cancel, therefore it is unlikely they will cancel without any view of what they intend to do next. 10 working days is more than adequate for a consumer to be able to enact their decision.

Q1.5 Do you agree with our proposals to measure the start of the period over which Supplier A must offer to take a consumer back on equivalent terms from the switch date? Do you agree that the period that Supplier A must maintain this offer is 16 working days from the switch date?

No, we do not agree. The grace period of Supplier B, and the offer of Equivalent Terms by Supplier A, must be aligned. If a shortened grace period of 10 working days is adopted, a shorter offer of Equivalent Terms is also required. In line with a shorter grace period, this should be no longer than 11 working days from the switch date.

Q2.1 Do you agree with the proposed standard licence condition modifications as drafted in Appendix 4 for the Gas Shipper Licence?

We have no comments on the proposed standard licence condition modifications to the Gas Shipper Licence.

Q3.1 Do you agree with the proposed standard licence condition modifications as drafted in Appendix 5 for the Electricity Distribution Licence?

We have no comments on the proposed standard licence condition modifications to the Electricity Distribution Licence.

Q3.2 Do you agree with the proposed standard licence condition modifications as drafted in Appendix 6 (a-d) for the Gas Transporter Licence?

We have no comments on the proposed standard licence condition modifications to the Gas Transporter Licence.

Q3.3 Do you think the change to the definition of Metering Point to remove direct reference to the codes is suitable, and do you consider there to be any risks or unintended consequences that we should take into account for our decision?

While this approach is possible, Ofgem needs to ensure that if a direct reference to codes is removed when defining 'Metering Point' that the distributor is still obligated to have regard to any guidance and principles set out in any other codes that underly the definition.

Q4.1 Do you agree with the proposed licence modifications as drafted in Appendix 7 for the Smart Communication Licence?

We have no comments on the proposed standard licence condition modifications to the Smart Communication Licence.

EDF
January 2021