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Dear Rachel

SWITCHING PROGRAMME AND RETAIL CODE CONSOLIDATION: PROPOSED LICENCE MODIFICATIONS

Thank you for the opportunity to comment on this consultation. ScottishPower supports Ofgem's programme of consolidating the Retail Energy Codes via the phased roll out of the Retail Energy Code (REC), recognising the need to implement key parts of the REC ahead of its full implementation. This response reflects the perspective of our retail business. SP Energy Networks (SPEN) is responding separately to this consultation from its perspective as a network licensee.

We recognise that the Switching Programme licence modifications reflect processes that have been discussed at a number of forums and in previous consultations. However, this is the first time the proposed licence drafting has been provided, and we have identified a number of new issues that these present compared to our understanding of Ofgem's proposals from previous consultations and forums.

In addition, we would note that we have not been able to carry out a full end to end review of the switching timescales as this consultation does not include proposals for the standstill period. This element of the proposals is critical to our system development for the Switching Programme and we would welcome this being issued for consultation as soon as possible to support our activity.

Proposed licence modifications

Our answers to the consultation questions are in Annex 1 to this letter. In general, we welcome the drive to consolidate the retail industry codes and fully support the proposed modifications to the licence conditions to facilitate the Retail Code Consolidation (RCC). However, we would highlight the following concerns:

- We do not agree with the drafting of SLC 14A.4A which could require suppliers to complete a transfer in breach of the Consumer Contracts Regulations. This could happen in circumstances where the sales process does not proceed as planned and the start date for the purposes of the 14 day cooling off period under the Consumer Contracts Regulations is different from the 'contract entered into date' for the purposes of SLC 14A (ie the Relevant Date).
- Given the delays to smart roll out, we would encourage Ofgem to consider including a licence condition to the effect that switches faster than five working days during the transitional period should only be allowed for DCC-enrolled smart meters.
- We would request that Ofgem confirms its position on the interaction of the proposed new SCL14A with the existing 'price protection window' licence conditions, in particular SLCs 23.6 and 24.9 to 24.11.

Reducing the switching maximum timescale

Ofgem, says (paragraph 1.22) that the transitional period (ie the period when registrations should take place in five working days) will only end when two measures are met. Those measures are:

- a) there is no evidence of significant numbers of erroneous switches prevented during the five working day switch period, and
- b) there is not a significantly higher level of switching problems associated with suppliers who do choose to switch faster than the five working day period compared to those who use the full five working day period.

We would welcome information on the evidence Ofgem plans to use and note that we would expect this information to be published, at an industry level to allow review by all impacted industry participants. As a supplier we have noted from the start of the programme a risk of increased Erroneous Transfers as customers and suppliers have reduced time to resolve any issues before a transfer completes.

Volume of consultations

We welcome the key aim of the faster, more reliable switching programme, to engage more consumers and encourage more competition. However, we have concerns about the complexity of the programme and the volume of documentation requiring review at any one time. The need to review everything in a consistent and effective way places considerable pressure on us, and the publication of three REC consultations and the MHHS consultation so close together has added to this pressure. We would ask Ofgem consider this when publishing any future consultations.

Should you wish to discuss any of these points further then please do not hesitate to contact me or Lorna Mallon (lorna.mallon@scottishpower.com, 0141 614 1163).

Yours sincerely,



Richard Sweet
Head of Regulatory Policy

**SWITCHING PROGRAMME AND RETAIL CODE CONSOLIDATION: PROPOSED
LICENCE MODIFICATIONS – SCOTTISHPOWER RESPONSE**

Chapter 1 - Standard Licence Conditions: Electricity Supply Licence and Gas Supply Licence

Question 1.1: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 3 for the Gas Supply Licence?

We are comfortable with the licence modifications proposed to facilitate RCC and have no further comments on them.

There are a number of points we would like to make on the proposed Switching Programme modifications and we have listed these below. They are also applicable to the Electricity Supply Licence modifications (therefore are relevant to Question 1.2).

Microbusiness changes

We would note that a number of the proposed changes are to parts of the licence conditions which Ofgem is also considering amending under its Microbusiness Review. It is therefore important that Ofgem considers both sets of changes in a holistic manner to ensure suppliers have a clear understanding of all the proposed changes for Microbusiness customers, can understand and comment on any interactions between the proposed changes and/or any unintended consequences, and ultimately can implement all required changes in as efficient and cost-effective a way as possible.

Definition of Relevant Date and switching outside of cooling off period

Ofgem is proposing to revise the definition of the 'Relevant Date' in SLC 14A.20 as follows:

"Relevant Date" means:

- (a) the day on which a Customer enters into a Contract with a new Electricity Supplier;
or
- (b) where a Customer enters into a Contract with a new Electricity Supplier after 5pm on a Working Day, the next Working Day,
and for the purpose of this definition, the point at which a Customer enters into a Contract is the point at which the Customer has provided the Supplier or its Representative with sufficient information to conduct the switch and the Customer would reasonably expect the switch to take place without further action on their part.

Although the definition states that '*for the purpose of this definition, the point at which a Customer enters into a Contract is the point at which ...*', paragraph 1.17 in the consultation document suggests that Ofgem considers this definition to be consistent with the requirements of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. However, we would note that:

- Under the Regulations (and indeed consumer contract law in general), the contract is not entered into unless the customer has given their explicit consent (in the context of the Regulations this is referred to as the point at which the customer is bound by the contract). We agree that in general a customer would not reasonably expect a switch to take place unless they had given their consent. But it cannot be ruled out that if a sales process goes wrong, a customer could be left thinking they had given their

consent when their consent has not been properly obtained or recorded. If the supplier then recontacts the customer to confirm they wish to enter into the contract, the cooling off period would start at that later date.

- Under the Regulations, the cooling off period starts when the contract is entered into, or when the trader provides all the information it is obliged to provide, whichever is the later. Again, if the sale does not proceed as planned and information is not provided soon enough, the cooling off period would start at a later date than the Relevant Date.

In summary, whilst suppliers will endeavour to ensure that the conditions of the Regulations have been met by the Relevant Date, Ofgem must recognise that there may be occasions where processes don't work as planned (whether due to supplier, Price Comparison Website (PCW) or customer (in)action), and the 14 day cooling off period commences after the Relevant Date.

In circumstances where the 14 day cooling off period commences after the Relevant Date and where the customer has not requested that the switch can complete in advance of the cooling off period ending, suppliers will be unable to comply with both SLC 14A.4A and the Consumer Contracts Regulations. SLC 14A.4A requires that the switch is carried out within 5 working days of the earlier of (a) the end of the cooling off period and (b) 14 days from entering into the contract. If 'entering into the contract' in limb (b) is defined in terms of the Relevant Date, and if there was a glitch in the sales process which means that the cooling off period started after the Relevant Date, SCL 14A.4A would require suppliers to complete the transfer earlier than permitted under the Regulations (and, as a result, expose suppliers to significant commercial risk that they would not be permitted to bill for energy consumed in that period)¹. We think the circumstances described above may happen frequently enough that this cannot simply be dismissed.

We also think that the reference in the drafting to "the date on which the condition [in paragraph 14A.3 (f)] ceases to apply" is unclear. The condition in 3(f) is that "*the customer is a Domestic Customer and, having been prompted by the licensee or its representative, they have not expressly requested to start the supply before the expiry of the Cooling Off Period*". This condition relates to whether a particular event happened or not (the customer expressly requested to switch during the cooling off period) and does not apply for a particular period: it is either satisfied or it is not.

We suggest that the licence condition be amended as follows.

14A.4A Where the condition in paragraph 14A.3 (f) applies, the Supplier Transfer must be completed as soon as reasonably practicable and, in any event, within five Working Days of ~~the date on which the condition ceases to apply which will be the earlier of~~ the expiry of:

- ~~(a) the Cooling Off Period, or~~
- ~~(b) the period of 14 days from entering into the Contract.~~

Registrations under Five Working Days

Ofgem says (consultation document paragraph 1.20) that it will ask suppliers who want to switch faster than five working days during the transitional period to satisfy themselves that they have mitigations in place that give them additional confidence with regard to the reliability of their switching arrangements. We appreciate that this allows the gaining supplier more flexibility. However, we believe that this option should be available only for DCC-enrolled

¹ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Regulation 36(6)(b).

smart meters. The risk to settlements and the potential detrimental impact on customers is considerably greater for non DCC-enrolled smart or dumb meters, as the flows, readings and prepayment details take longer than 1 working day to complete. This will be a particular concern for the losing supplier, who will have no say in how quickly their customer is transferred away, yet may be impacted in terms of settlements or having to manage additional misdirected prepayment claims. Given the delays to smart roll out, we would encourage Ofgem to consider including a licence condition to the effect that that this should be followed only for DCC-enrolled smart meters.

Gas objections obligations

Gas SLC 14.1A states that:

“The licensee, where it is a registered supplier under the Network Code, must not ask or allow a Relevant Gas Shipper to prevent a Proposed Supplier Transfer, except in accordance with the provisions of this condition. For the purpose of this requirement, all references to the Retail Energy Code should be treated as if they were references to the Network Code and any request that it makes under the Retail Energy Code or receipt of Notice shall be treated as if it were a request to the Relevant Gas Shipper for it to undertake an action under the Network Code or the receipt of Notice by way of the Relevant Gas Shipper”..

Ofgem explains (consultation document paras 1.42-1.43) that this paragraph has been introduced to cater for the possibility that objections may be used for switches that happened under the Uniform Network Code (UNC), for example associated with sites directly connected to the NTS or LNG sites. Whilst the paragraph in question may make sense to readers who can also refer to the consultation document, we think it is likely to prove confusing to new readers coming to it cold in future. We wonder if the paragraph is really needed (how often will the circumstances that Ofgem describes arise in practice?) and if so, whether Ofgem can amend the drafting to make it more self-explanatory.

Consequential Changes to Reporting Requirements

Whilst not directly related to licence drafting, we would request that all consequential changes to reporting and evidence requirements are discussed and documented as early as possible, for example, for Guaranteed Standards, Performance Assurance, impacts on other Ofgem routine reports, as this will have additional system impacts that are not part of our current Central Switching System (CSS) delivery programme. If we are able to include such consequential changes within the main CSS delivery it allows for a more efficient roll out. It is important these issues are opened up for industry discussion and input prior to any decision being made by Ofgem.

Question 1.2: Do you agree with the proposed standard licences condition modifications as drafted in Appendix 2 for the Electricity Supply Licence?

Please see response to Question 1.1. We have no Electricity Supply Licence specific comments.

Question 1.3: 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 welcome the additional clarification and are generally supportive of the approach. However, to consider this in a more complete manner, it is important that suppliers can review this alongside proposals for the standstill timescales (ie the time period immediately following a change of supplier when a customer cannot transfer). This would allow a review of the full end to end process including the risk of customers continually transferring supplier to create very small bill periods. This element of the proposals is critical to our system development for the Switching Programme and we would welcome this being issued for consultation as soon as possible to support our system development activity.

Question 1.4: Do you agree with our proposals to measure the start of the grace period, from which Supplier B must continue to supply the customer 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?

Yes, we agree that the proposals to trigger the grace period from the point that Supplier B sends the notice to the customer of their options. We also agree that a 15 working day grace period should be sufficient, even taking account of the differing periods of time it may take for the customer to receive the notice via different media depending on their preferences. We do not think it should be less than 15 days, as it needs cater for customers who are unable to receive electronic communications and therefore rely on receiving notifications by post.

Question 1.5: Do you agree with our proposals to measure the start of the period over which Supplier A must offer to take a customer 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?

Definition of Equivalent Terms Contract

We would welcome clarification of how the definition of Equivalent Terms Contract (reproduced below for ease of reference) is intended to apply in the situation where a customer is coming to the end of a fixed term contract with Supplier A when they transfer to Supplier B.

If the customer had taken no action to 'amend the terms of that Contract' (ie select a new tariff) they would automatically have defaulted onto Supplier A's default tariff (generally a standard variable tariff (SVT)). In these circumstances our interpretation of the definition is that Supplier A would meet the obligations set out in SLC 14A.18 by offering the customer the opportunity to return to Supplier A's SVT, which is the terms they would have been on had they remained with Supplier A and taken no action at the end of the fixed term tariff. However, it is impossible to apply limb (b) of the definition with any certainty, since it cannot be known for sure whether the customer would have selected a new tariff or defaulted onto SVT. Hence, we consider that limb (b) must also include consideration of the customer's inaction within the drafting. We suggest that the definition is amended as follows:

"Equivalent Terms Contract" means: a Contract available from the licensee (or, where there are any Affiliate Licensees, the licensee and any Affiliate Licensees), that: (a) has terms and conditions that are similar in nature to the Contract or Deemed Contract that would have been in place had the Domestic Customer not undergone a

Supplier Transfer or taken any other action to amend the terms of that Contract or Deemed Contract with that licensee, including in respect of:

- i. their previous payment method;
 - ii. their previous Relevant Meter Type;
 - iii. their previous Account Management Arrangement; and
 - iv. their characteristics and preferences;
 - v. where the Domestic Customer is subject to a White Label Tariff, a White Label Tariff of the same White Label Tariff Provider; and
 - vi. where the Domestic Customer is not subject to a White Label Tariff, a Tariff which is not a White Label Tariff; and
- (b) is the same or cheaper than the tariff the Domestic Customer would have been on had they not undergone a Supplier Transfer or taken any other action to amend the terms of that Contract or Deemed Contract with that licensee.

Interaction with 'price protection window' obligations

Further to the point above, we would request that Ofgem confirms its position on the interaction of the proposed new SCL14A with the existing 'price protection window' licence conditions, in particular SLCs 23.6 and 24.9 to 24.11. For example, where a customer returns to Supplier A following a supplier transfer within 20 Working Days of any of the scenarios that the 'price protection window' obligations apply to, we would not expect the price protection window to apply. This would be on the basis that the customer is intended to return to Supplier A in the same position as if he/she had not switched, and if they hadn't switched (or chosen a new internal tariff), the price protection would not apply (including for the purpose of assessing the terms of an Equivalent Terms Contract). As Ofgem will be aware, implementation of the existing price protection window obligations has proved extremely complex and challenging for suppliers from a systems perspective, and it is vital that any remaining uncertainties are resolved as soon as possible.

Obligation to make an offer

SLC 14A.18 requires that where Supplier A has received notification from the Domestic Customer that they have cancelled a Contract during the Cooling Off Period and have chosen to return to Supplier A, Supplier A must offer them an Equivalent Terms Contract for a minimum period of [16 Working Days] starting from the day that licensee became the Old Supplier.

The current drafting implies that Supplier A must proactively contact the customer and make an offer. But given that there is no industry process for Supplier B to notify Supplier A that the customer has chosen to return to Supplier A, we think the obligation on Supplier A needs to be a reactive one, ie Supplier A should only be required to make an offer on request from the customer.

Although we support the 16 working day proposal, we think the drafting should be amended to make it clear that 16 days is the period during which the contract offer is valid for acceptance, not the minimum fixed term period of the Equivalent Terms Contract.

We would suggest amending the condition as follows to clarify these points:

14A.18 Where the circumstances in paragraph 14A.19 apply, the licensee must if requested by the Domestic Customer, offer the Domestic Customer an Equivalent Terms Contract valid for acceptance for a minimum period of [16 Working Days] starting from the day that licensee became the Old Supplier.

Chapter 2 - Standard Licence Conditions: Gas Shipper Licence

Question 2.1: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 4 for the Gas Shipper Licence?

Yes, we agree with the proposed modifications, and have no comments.

Chapter 3 - Standard Licence Conditions: Electricity Distribution Licence and Gas Transporter Licence

Question 3.1: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 5 for the Electricity Distribution Licence?

Yes, we agree with the proposed modifications, and have no comments.

Question 3.2: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 6 (a-d) for the Gas Transporter Licence?

Yes, we agree with the proposed modifications, and have no comments.

Question 3.3: 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?

We have no comments on the change to the definition and recognise that it will move to the BSC at CSS go live.

Chapter 4 - Smart Meter Communication Licence

Question 4.1: Do you agree with the proposed licence modifications as drafted in Appendix 7 for the Smart Communication Licence?

We are comfortable with the proposed new licence obligation that requires DCC to make sure that there are appropriate communication arrangements in place for parties to exchange messages with the CRS (ie Centralised Switching System)²

Further, we are comfortable for those minimum standards to be set out under the REC and we recognise that if those standards can no longer be met, the licence would require DCC to seek to introduce improvements to existing and/or new arrangements that would ensure that the standards are capable of being met. This option would make it easier for any REC party or any other valid industry participant to raise a change as required. However, we would recommend that any such changes should require Authority consent to avoid any potential or unintended conflict of interest.

ScottishPower
January 2021

² It was Centralised Registration System; this seems to be a carry-over.