

12 January 2021

Rachel Clark
Programme Director
Switching Programme
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

Email: AlisonRussell@utilita.co.uk

Dear Rachel,

RE: Switching Programme and Retail Code Consolidation: Proposed licence modifications

Thank you for the opportunity to comment on the above consultation.

Utilita Energy Limited (Utilita) is a smart prepayment energy supplier, specialising in providing an excellent smart service to a previously poorly served market sector. We have been installing smart meters for our customers since 2008, and SMETS meters since 2013. Our portfolio is around 95% prepay customers, and of those approximately 90% have smart meters operating in smart mode.

We broadly welcome the proposals within this consultation and are largely supportive of the licence modifications. However, we strongly disagree with current proposals concerning the timings of the grace periods which result from a customer choosing to cancel a contract within the cooling off period. We believe the proposals will lead to confusion for customers in understanding their rights relating to the switching process when different rules apply for their old and new suppliers. To remove any ambiguity, we urge Ofgem to consider amending the start date to be the switch date on each occasion, and the grace period should be 15 working days from the switch date.

Utilita also has concerns with Ofgem's determination of the start of a Supply Contract with a customer, and the point at which the Supply Contract begins where a contract has been agreed with a Price Comparison Website (PCW). Ofgem must reconsider this to enable Suppliers to validate PCW data ahead of a switch commencing. Without this validation, switching errors are likely to increase at significant determined to consumers. Instead, we consider the contract start to be once formal agreement has been made between a Supplier and PCW.

Our response comprises this letter and the attached appendix, in which we set out our detailed review of the proposed licence conditions. If you would like to discuss any of the points raised, we would be happy to help.

Yours sincerely,

By email only

Alison Russell
Director of Policy and Regulatory Affairs

Appendix 1: Utilita's response in respect of the consultation questions

This appendix sets out Utilita's views on each of questions posed in the consultation paper.

Question 1.1: Do you agree with the proposed standard licence condition modifications as drafted in appendix 3 for the gas supply licence?

See our responses in Appendix 2.

Question 1.2: Do you agree with the proposed standard licences condition modifications as drafted in appendix 2 for the electricity supply licence?

See our responses in Appendix 2.

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 are supportive of the approach to introduce a 5pm cut off on a working day within the switching regulatory backstop, providing these messages are communicated clearly to consumers by suppliers, consumer advocates and Price Comparison Websites (PCWs). We also welcome Ofgem's intention to amend the Guaranteed Standards of Performance Regulations (Switching) to take into account of the 5pm cut off period.

We also note Ofgem's proposed approach that the five working day switch window will start from the moment that the customer enters into a contract with the supplier, or via a third party such as a price comparison website. We believe that this will limit supplier's ability to validate data sent from PCWs before the clock starts ticking on a switch. This may lead to an increase in switching errors such as Erroneous Transfers at significant detriment to consumers. We urge Ofgem to reconsider its determination of a contract start i.e., the contract start date must begin when the supplier receives full and correct information. The unintended effect of leaving the definition as it currently states will be that suppliers may be discouraged from working with PCWs, as they will have less time to validate the customer data.

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?

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?

We have answered question 1.4 and 1.5 in the same response.

No, we do not agree with this proposal because it creates a lack of consistency with other existing processes. It will also create confusion for customers, making it much harder for them to understand their rights relating to the switching process.

There is an existing legal requirement to provide the customer with 14 calendar days to cancel their contract, from the date of the contract agreement.

When a customer cancels their contract within their 14-calendar day cooling off period, the new proposed rules suggest that they have:

- 15 working days from the date of receipt of their notice from Supplier B to remain with them on a new contract or switch away; OR
- 16 working days from the date of their switch to move back to Supplier A on equivalent terms that they would have had, had they remained with Supplier A.

The 15 or 16 working day countdown starts at different times (the notice date, after cancellation or the switch date, which means one will come before the other and create an inconsistency). The proposal also goes further than the requirements set out in legislation, which are already onerous for suppliers to manage. The inconsistency resulting from the proposed approach adds further unnecessary cost and risk.

There is additional ambiguity regarding the commencement of the grace period which starts from the date of the notice provided by Supplier B. The requirement to provide the notice is at Supplier B's discretion, leaving it difficult to predict on a consistent basis. Utilita requires clarity on when the notice will be deemed to take effect i.e., on receipt by the customer (this could be extremely difficult to monitor), or the date the Notice is provided (if by email, this can be the same date, but by post may be the difference of a few working days).

By way of an illustrative example:

With 5 working day switch:

- Customer agrees switch on 1st, the switch completes on 5th, customer cancels contract on the last day of the cooling off period: 14th.
 - Supplier A is obliged to offer equivalent contract terms until 29th, giving the customer 11 working days to want to switch back.
 - However, Supplier B issues notice on 19th (for illustrative purposes this reaches the customer 5 working days after the cancellation is received)
 - Customer has until 9th to stay with Supplier B or move to Supplier C (as they are unable to switch back to Supplier A as the time has already expired).

With Next Day switching:

- Customer agrees switch on 1st, the switch completes on 2nd, customer cancels contract on the last day of the cooling off period: 14th.
 - Supplier A is obliged to offer equivalent contract terms until 24th, giving customer 3 WDs to switch back.
 - However, Supplier B issues notice on 19th (for illustrative purposes this reaches the customer 5 working days after the cancellation is received)
 - Customer has until 9th to stay with Supplier B or move to Supplier C (as they are unable to switch back to Supplier A as the time has already expired).

These are worst case scenarios but are an example of how this could play out in practice. This will be incredibly confusing to customers, and difficult for them to

understand why there are different rules for their old and new suppliers. For consistency, the grace periods should start and end at the same time, allowing the customer the option of selecting Supplier A, B or C in the same time frame. We propose that the start date should be amended to be the switch date on each occasion, and the grace period should be 15 working days from the switch date in each case. This will allow clear and unambiguous communications to be sent to the customer, which will be consistent. If consistency is not applied there is a real risk customers will receive communications from the supplier(s) involved which they may believe to be contradictory. This will drive significant contact to suppliers and serve only to discourage customers from switching.

We believe this can work in practice, where the notice, required from Supplier B, is issued on the switch date and explains to the customer what would happen in the event of the cancellation within the cooling off period. This enables the customer to receive clear information on their options before they make a decision, giving them the opportunity to make informed choices.

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

See our responses in Appendix 2.

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

See our responses in Appendix 2.

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?

See our responses in Appendix 2.

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?

Yes, Utilita does not foresee any material issues with the proposed changes to the definition of Metering Point.

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

See our responses in Appendix 2.

Appendix 2: Utilita's response in respect of the description of the licence changes

Please see our comments in the separate attachment entitled "UEL
Response_description_of_licence_changes_spreadsheet (version 1)"