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Dear Louise

Re: Call for input on the Non-Domestic gas and electricity market

Further to the launch of Ofgem's call for input on 28 February 2023, on behalf of SSE Business Energy (a non-domestic gas and electricity energy supplier), I welcome the opportunity to set out our views on the issues highlighted within Ofgem's call for input.

As always, we welcome the opportunity to work collaboratively with Ofgem on these issues and I look forward to discussing these in the coming months. In particular, I wanted to highlight several key points:

- Our experience of the non-domestic market is that it is – and it remains – competitive. With around 60 suppliers, the non-domestic market is sufficiently large enough to facilitate a reduction in suppliers willing to make offers (by comparison to historic norms) and remain competitive. We consider that the data Ofgem has gathered from suppliers confirms this.
- The period from June to December 2022 was exceptional in energy markets. As an example, prices for 12 month Power commodity rose from c£300/MWh in June (already c 5-6 times historical norms) to over £700/MWh in August before reducing back to under £200/MWh by Christmas. Gas prices demonstrated similar volatility. This rate and scale of fundamental change should not be underestimated and Ofgem should consider any learning in the context of the extreme macro environment in which Suppliers operated.
- We recognise that Ofgem has identified some areas where the data received from individual suppliers is outwith 'market norms'. We consider that this is not unique to the current market conditions and that benchmarking is often used by Ofgem as a precursor to decide whether to initiate compliance discussions with individual suppliers. Accordingly, we do not consider that the identification of these issues is indicative of broader concerns with the market but agree with Ofgem that they merit further discussion with the suppliers identified.
- We welcome Ofgem's considered approach to assessing those issues using an evidence-based approach. We appreciate that there are likely to be 'lessons learned' in terms of how the market operated in the exceptional market conditions throughout the last 6 months (in particular) and understand there are some areas where Ofgem may deem it would be helpful to set out guidance for suppliers. We would welcome the opportunity to work with Ofgem on these issues to ensure we can continue to ensure the market delivers fair outcomes for consumers.

We understand that the challenging market conditions have increased the scrutiny of the market, and that customers are, understandably, concerned about whether they are being treated fairly. SSE Business Energy continues to recognise the importance of supporting customers through this difficult period and we are currently implementing a reduction to our deemed (out-of-contract) rates by an average of 30% with effect from April.

Yours sincerely,

Megan Coventry

Senior Regulation Analyst

Annex 1

Q1. Do you have evidence of suppliers not being proportionate or reasonable regarding charges necessary to secure a contract, including security deposits? If so, please provide us with details.

As per our recent response to Ofgem's open letter¹, we consider our security deposits to be proportionate and reasonable, with our approach to calculating them set out in the information shared with Ofgem previously as part of our responses to the Financial Responsibility Principle RFI and Part 1 of the Deemed Prices RFI². We also shared with Ofgem the relatively low numbers and mean/median value of security deposits we requested from customers in 2022 in our evidence submitted with Part 2 of the Deemed Prices RFI.³ As such, we would expect once Ofgem has completed their review of all supplier's recently submitted evidence and responses, the resulting overview would provide a good indication of market offerings and whether there are any outliers that are disproportionate or unreasonable.

We agree with Ofgem's analysis, set out on pages 8-9 of the Call for Input, around the impact of higher energy prices and the challenging economic environment on the non-domestic energy market.

Q2. Do you have suggested solutions to the concerns around high costs requested to secure a contract and manage risk?

As per our answer to Q1 above, we believe our own requirements of customers to secure a contract are proportionate and reasonable. This includes our security deposit amounts which are consistent with Ofgem's previous statement, that they "believe that up to 3 months of future energy consumption is typically adequate and [that security deposits] should not exceed 6 months".⁴ As Ofgem recognises in the Call for Input, security deposits are priced "as a proportion of expected energy contract charges" and it follows that security deposit costs to consumers will fluctuate in accordance with market price movements. We also note that our security deposit amounts were reduced as a result of new legislation brought in under the Energy Bill Relief Scheme Regulations 2022.

Q3. Do you believe there has been an improvement in terms to contract as market conditions start to show signs of improvement? Please explain your answer.

We consider that Ofgem's data on contract offers, shared during industry meetings with suppliers on 20 March, highlights that customers have always been able to access a range of offers from suppliers except for a short period of time at the peak of market price volatility. However, we would highlight that a reduction in suppliers willing to make offers does not necessarily correlate with a reduction in competition – in fact, the non-domestic market is sufficiently large (with around ~60 suppliers) that it can facilitate a reduction in suppliers willing to make offers and still remain competitive. Notwithstanding this, we believe that customers will have noticed an improvement in the terms to contract with the onset of more stable market conditions. Our fixed price contracts reflect current market prices, and as such convey changes in market conditions. We have been keen to support customers by reacting quickly to positive changes. For

¹ Ofgem, Open letter: Good practice expectations for non-domestic suppliers on issues surrounding debt management and disconnection of customers, <https://www.ofgem.gov.uk/publications/open-letter-good-practice-expectations-non-domestic-suppliers-issues-surrounding-debt-management-and-disconnection-customers>

² Please see monthly responses to Qs 14 – 16 of the Financial Responsibility Principle RFI, and Question 12b of the Deemed Prices RFI, Part 1.

³ Please see Q2.5a-c of our response to the Deemed Prices RFI, Part 2.

⁴ Ofgem, Energy non-domestic consumer advice for Autumn/Winter 2022, "How much can a supplier ask for a security deposit?", 29 September 2022

example, comparison of our own prices show a reduction in contract prices between October 2022 and March 2023, which is in-line with wholesale market prices also reducing. Whilst we reduced our typical contract length to 6-months during the challenging Winter period, we continue to offer 12 and 24 month contracts with start dates further into the future. Furthermore, as set out in our recent response to Ofgem's open letter,⁵ our deemed (Out of Contract) prices are also being reduced from April by an average of 30%.

Q4. Do you have evidence to support the allegation that suppliers have been inflating prices in response to the introduction of the Energy Bill Relief Scheme? If so, please provide us with details.

We do not have any evidence to substantiate this allegation. As Ofgem is aware from our Deemed Prices RFI submissions, we did not announce any changes to our out of contract pricing during the duration of the EBRS.

Q5. What issues are you aware of businesses having in relation to deemed contracts?

We are aware that a higher proportion of our customers moved onto deemed contracts through spring and autumn, and that these rates can often be higher than fixed contract rates. However, as Ofgem is aware, deemed pricing is set less frequently and this means deemed contract rates can also be cheaper than fixed contract rates (particularly in a rising price environment). As such, sometimes customers may choose to remain on deemed rates for this reason. Or, some customers may be utilising the flexibility that a deemed contract provides whilst they consider their options with regards when they might enter a new fixed contract. Whilst we cannot provide objective evidence on this point, we can advise that our sales teams witnessed this approach regularly throughout periods of peak price volatility as customers, understandably, took longer to decide whether to enter a fixed contract. We also believe that some of the domestic customer focussed messaging in the media to 'do nothing' (i.e. stay on their current supplier's variable rates) may have bled into non-domestic mindsets.

Q6. Are there any other matters not discussed above related to pricing and contractual behaviour that you would like us to explore? Please provide details and your reasons.

None.

Q7. Do you believe there has been an increase in offers to contract in the past year as wholesale market conditions improved, or are there are segments of the market that are still struggling to secure contracts?

As per our answer to Q3 above, the non-domestic market is sufficiently large (with around ~60 suppliers) that it can facilitate a reduction in suppliers willing to make offers and still remain competitive. Notwithstanding this, we are not aware of segments of the market that are "struggling to secure contracts" although we recognise that there are some industry sectors (e.g., hospitality) which are viewed as higher risk by credit reference agencies as a result of the perceived impact of the economic conditions on those sectors. This means, as Ofgem has noted, that businesses in those sectors may have access to a lower

⁵ Ofgem, Open letter: Good practice expectations for non-domestic suppliers on issues surrounding debt management and disconnection of customers, <https://www.ofgem.gov.uk/publications/open-letter-good-practice-expectations-non-domestic-suppliers-issues-surrounding-debt-management-and-disconnection-customers>

number of offers and/or that those offers may be subject to credit requirements that were less commonplace historically. We would expect that an improvement in the prevailing economic environment would be reflected in the types of offers received by these businesses. In the meantime, we would highlight the role played by the Small Firms Loan Guarantee Scheme (and Enterprise Finance Guarantee Scheme) during the Global Financial Crisis in improving availability of financial credit to small businesses and the potential role that an equivalent energy-based scheme could offer at the present time to increase the number of offers that these businesses could receive.

Q8. Are suppliers following the best practice steps around debt management and disconnection that we highlighted in our December 2022 letter or do you think that licence conditions need amending? Please provide evidence for your views and details of any specific examples.

Per our response to Ofgem's December 2022 letter, we endeavour to follow many of the best practice approaches that Ofgem highlighted and we consider that disconnection is a last resort. However, we note that several of Ofgem's best practice expectations go further than the obligations set out in the domestic licence conditions and would highlight that non domestic debt management requires unique consideration, not least because of the potential for rapid accumulation of and much higher values associated with business debt that can remain unpaid over extended periods of time.

Q9. Are suppliers' complaints process easy to find on their websites, or elsewhere? Do you believe we need to strengthen the rules around complaints processes? Please explain the reasons for your response.

We consider that requirements for supplier complaints processes and reporting mechanisms are already strong. Nondomestic consumers are able to utilise the Citizen's Advice Bureau league table, which has a significant reputational impact for suppliers. Since December 2022 Microbusiness consumers can utilise the services of the Energy Ombudsman Alternative Dispute Resolution (ADR) scheme for complaints of broker misconduct, in addition to the supplier ADR scheme that already existed. With regards complaints processes on supplier websites, we recognise the importance of easy access to this for consumers. We recently welcomed feedback from Ofgem on the website presentation of our own complaints information, and we have since made improvements to promote easier access via multiple routes a customer might take to make a complaint via our website.

Q10. To what extent do you believe the communication you receive from your non-domestic supplier is clear and transparent? Please provide examples where possible.

Non-domestic customers will be best placed to answer this question. However, we recognise the importance of clear and transparent communications to our customers. That is why, as part of our investment in upgrades to our core platform, we are in the process of reviewing all standard communications we send to customers. We have a rigorous internal approvals process which assesses all relevant consumer facing messaging against the Standards of Conduct. We've also begun new initiatives to engage and support our customers in understanding the market, for example in response to ideas shared by EUK from a recent Ofgem roundtable event with selected suppliers, we now publish a regularly updated blog to help explain events and changes with customer impacts, such as price changes. Furthermore, we recognise there are always opportunities to improve and would welcome Ofgem sharing any examples of feedback received during this Call for Input that could be used to improve things further.

Q11. Do you think the issues around Change of Tenancy/Occupier are significant? What potential solutions would you suggest to address the perceived shortfalls in the existing Change of Tenancy and Change of Occupancy processes, that do not exacerbate the potential for fraud?

We agree that Change of Tenancy represents a material risk of fraud within the non-domestic industry. Where accurate and clear information is provided by the customer, we will act upon the details available to us including setting up the new occupier and generating a final invoice for the outgoing customer. However, we do apply additional checks on sites where the debt is significant, or where any obvious markers suggest suspicious activity.

We consider that it is challenging to identify a solution that limits potential for fraud. Even where we suspect fraud, if a customer can validate a Change of Tenancy (CoT) with relevant evidence we will allow it to proceed, accepting that outstanding debt with the 'previous tenant' will most likely be written off and that this will potentially increase cost to serve.

A possible solution to aid suppliers in timely management of CoT processes whilst combatting fraud might be the introduction of a standard list of compulsory business 'proof of identity' CoT documentation requirements, ensuring consistent expectations between suppliers and customers. We'd be happy to engage further on this if helpful.

Q12. Are there any other issues you would like to highlight related to competition in the non-domestic supply market? Please provide detailed explanations.

None.

Q13. Do you believe that there are segments of the non-domestic supply market, other than microbusiness customers, where there is not sufficient market pressure to correct any potential inappropriate supplier behaviours? Please provide detailed descriptions of these customers and evidence to explain your view, including what aspects of harm the regulations would need to help protect against.

We do not consider that there are segments of the non-domestic market that lack market pressure to correct potentially inappropriate supplier behaviours. There is competition for customers, who are aided by around a thousand third party intermediaries, from around ~60 suppliers in the non-domestic market. Accordingly, competition in the non-domestic energy market is driven by price and switching figures confirm that the non-domestic energy market is still competitive.⁶

We consider that larger business customers are exposed to the least potential harm or risk in the energy market. As Ofgem recognise, "Larger industrial customers have an advantage in being able to negotiate better deals than smaller businesses given their stronger bargaining power".⁷ In many cases, larger businesses will have their own in-house energy, procurement and legal teams who have developed a good understanding of the energy market, and can engage effectively with energy suppliers and third-party intermediaries during bespoke tender exercises to agree or renew their energy contract with a

⁶ Energy UK, Electricity Switching – January 2023,
<https://www.energy-uk.org.uk/index.php/publication.html?task=file.download&id=8418>

⁷ Ofgem, State of the Energy Market 2019, 3 October 2019,
https://www.ofgem.gov.uk/sites/default/files/docs/2019/11/20191030_state_of_energy_market_revised.pdf

supplier. We do not consider that there is any requirement for consumer protections to extend to this market segment.

There is a third customer segment, often referred to as SMEs, that sits between the larger industrial & commercial sector, and microbusiness consumer sector. These are, in many instances, larger and more diverse by comparison to a microbusiness consumer and, as a result, energy becomes a very small part of their overall operation. Accordingly, we do not believe there is merit in extending the full regulatory framework to this customer group.

However, notwithstanding our point above that non-MBCs are likely to require lower levels of regulatory protection, we recognise Ofgem's evidence-gathering identified "a lack of transparency around commission costs as a particular issue".⁸ We continue to believe transparency is important to maintain consumer trust in the industry and would support the implementation of a requirement for third party intermediaries to provide all non-domestic customers, irrespective of size, with transparent information regarding commission arrangements. We consider that the impact – on suppliers and third-party intermediaries – of extending this requirement to all non-domestic customers would be low. The system and process changes made to implement Ofgem's commission transparency remedy would be capable of being easily extended to all non-domestic customers. In addition, given the complexity of the licence condition definition of a 'microbusiness', this would simplify compliance for this particular requirement across both suppliers and third-party intermediaries that deal with a broad range of customers.

Q14. If you responded yes to question 13, please suggest how these customers could be defined in the supply licence and identified by suppliers and customers.

Please see our response to Question 13.

Q15. If we expanded the definition of microbusiness customers or created a new class of customers, what are the possible implications and costs of doing this?

It is difficult to consider possible implications and costs to consumers or suppliers without first understanding the extent of changes that could be made. At a very high level, suppliers would be impacted by any expansion of supply licence conditions which would likely require significant system and process changes, which would have knock-on impacts to costs to serve. There is also potential for increasing Ombudsman scheme costs as caseloads could increase with a wider set of customers with widely different requirements.

Q16. What additional protections do you think might need to be put in place to protect domestic customers who are supplied via a non-domestic contract? Please provide an explanation or evidence of the areas of harm any new regulation would protect against.

As per our recent response to Ofgem's open letter⁹, we would welcome Ofgem setting clear expectations for suppliers on the steps that should be taken when they become aware of a 'change of use' (from a non-domestic to domestic premise), including the requirement for domestic suppliers to offer terms.

⁸ Ofgem, Microbusiness Strategic Review: Statutory Consultation, 1 June 2021, https://www.ofgem.gov.uk/sites/default/files/docs/2021/05/microbusiness_strategic_review_-_statutory_consultation_final_1.pdf

⁹ Ofgem, Open letter: Good practice expectations for non-domestic suppliers on issues surrounding debt management and disconnection of customers, <https://www.ofgem.gov.uk/publications/open-letter-good-practice-expectations-non-domestic-suppliers-issues-surrounding-debt-management-and-disconnection-customers>

We consider that many of the domestic protections that exist in the licence conditions exist to protect domestic customers as part of their engagement with the energy market. Where a domestic individual is supplied through a non-domestic contract this is often under a contract agreed between an energy supplier and a large non-domestic customer (e.g., housing association, local authority provider etc) and there is, therefore, lower risk of harm as the domestic individual does not need to engage with the market. In addition, there are already incentives within the residential housing market that mean that further regulation is not needed – for example, residential landlords already operate in a competitive marketplace where tenants are legally entitled to receive minimum standards,¹⁰ and resolutions can be obtained from dispute resolution providers in the sector where issues arise.

However, as set out above, there may be some scenarios where further consideration is needed and we would welcome further engagement with Ofgem on any scenarios identified from responses to this question in the Call for Input.

Q17. Do you agree with the definition of, and clarifications around, what is a domestic customer as described in Appendix A? Are there other areas where further clarification is required?

We agree with the definition of, and clarifications around, what is a domestic customer as described in Appendix 1.

Q18. Do you have any further comments about how the non-domestic market is currently segmented?

No.

¹⁰ For example, [Domestic private rented property: minimum energy efficiency standard - landlord guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance)