



Ofgem  
10 South Colonnade,  
Canary Wharf,  
London,  
E14 4PU

By email to: [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk)

6 September 2023

Dear Louise van Rensburg,

**RE: Shell Energy UK response to Ofgem's Non-domestic market review: Findings and policy consultation**

Shell Energy UK (SEUK) welcomes the opportunity to respond to this consultation. SEUK is Shell's non-domestic energy supplier in the UK, providing gas and electricity to a range of business customers. The majority of the contracts we provide are targeted toward larger Industrial & Commercial customers; we also provide energy to the mid-market plus a small portfolio of legacy microbusiness customers.

Shell is committed to the continuation of energy retail to UK non-domestic customers and is undertaking considerable investment to enable SEUK to fulfil its ambition to continue to grow in this market. SEUK expects to be a significant supplier of gas and electricity in the non-domestic retail market for the foreseeable future.

Within this response we provide a short summary of the key points, and more detailed answers to the specific consultation questions within the appendix of this letter.

**Summary**

SEUK agree that all non-domestic energy customers deserve to receive fair and transparent services delivered with high standards of customer service. We also agree that all non-domestic

consumers deserve an energy market where they can access excellent service, fair prices, access to net-zero transitional services provided by suppliers that are well managed and financially resilient. Overall, we believe the approach for all non-domestic customers should be aligned however, it may be appropriate to include less specific intervention for the larger and more energy savvy I&C customers. Specifically, we consider that the 'Treating Customers Fairly' requirement can be applied to customers of all sizes, recognising the need for some small changes to ensure it is appropriate, however our position is that some of the proposals are not as appropriate for the largest Industrial & Commercial (I&C) customers. For example, due to the complexities of products and contractual arrangements, we do not believe there is benefit in enabling these customers to refer complaints to the Energy Ombudsman. We recognise that there may be a natural deterrent due to the level of award achievable by the Ombudsman, however we would like this matter to be explicit as to avoid the possibility for customer confusion.

As Ofgem has recognised, the last two years have seen unprecedented volatility in wholesale energy prices. This follows significant challenges faced by many businesses as a result of the Covid-19 pandemic and we have acted to support customers during this time. We will always seek to work transparently and constructively with any customer in difficulty and provide appropriate support.

The challenges of recent times have resulted in significant changes and volatility in energy prices. We agree that there are likely to be non-domestic customers feeling that they have been subject to price increases that they do not understand. We are keen to work with Ofgem and other industry stakeholders to continue to educate and inform the necessary elements of the non-domestic market, or their representatives, in relation to the causes of any price changes. This includes wholesale market volatility, increased risk, removal of government support, industry cost mutualisation, and changes to charging methodologies.

We agree that non-domestic customers should be able to access appropriate levels of complaint handling. Within our response to the relevant consultation question, we make the point that for some larger customers disputes can be highly complex and could take many months or years to resolve. It is also not necessarily the case that a complaint would always be upheld in favour of the customer in all instances.

We recognise value in the introduction of increased transparency of TPI \ Broker commissions to a wider cohort of non-domestic customers, and would support this is on the basis that it is introduced consistently across the industry. We consider that an extension of the current methodology to a wider audience would be most appropriate and limit the need for additional development costs.

We welcome Ofgem's pragmatism in relation to some of the matters brought to your attention, specifically in relation to continuity of the microbusiness thresholds, and the recognition that no

specific market sectors should be treated differently in regulation. We are supportive of Ofgem's recommendations to government in relation to further regulation of TPIs and domestic customers supplied via non-domestic contracts.

It is our hope that the comments provided in this response are helpful to Ofgem and aid the continued development of regulation in the non-domestic retail market. If you would like to discuss any element of this response, please feel free to reach out and we will be happy to meet you on a bilateral basis.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Parry', with a large, sweeping flourish above the name.

Daniel Parry  
Head of Regulation  
Shell Energy UK Ltd.

## Appendix

Please see below, the responses to the specific questions posed within the consultation.

**Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?**

***SEUK Response:** We recognise that in recent times many customers have experienced changes to their energy prices that they do not understand. We also recognise that the last couple of years have been particularly turbulent in wholesale markets with further significant financial change occurring due to network charging costs. For example, as introduced by Ofgem's Targeted Charging review. Issues have then been further conflated with the introduction and subsequent removal of complex financial government support (EBRS and EBDS).*

*One of the examples quoted in the consultation document relates to instances whereby customers signed multiple year deals at the height of the market that ran past March 2023 (the end of the generous government Energy Bill Relief Scheme, EBRS). These customers may have seen a comparative increase in their costs compared to a customer who had signed a single year deal. The latter customer group will have benefited from a greater level of support from EBRS and had the opportunity to renegotiate prices after the market had settled. We recognise that this is unfortunate however, it is difficult to understand what additional transparency could have prevented this. At the time that many of these contracts were agreed, the details of EBRS were yet to be provided by government. This meant that suppliers were working with customers, or their representatives, to pro-actively undertake measures to reduce prices. One of the few options at the disposal of suppliers was backwardation, that is, the process to bring down the overall cost of a contract by extending the term into a future period where prices are lower, hence bringing down the overall price. No matter what level of transparency was given to these customers, suppliers could not have anticipated the specific details of the EBRS support.*

*At SEUK, we believe that when we contract with customers the term of the contract is made clear. There is a joint responsibility between the customer and the supplier in relation to communicating and understanding the contract term however, it is ultimately the customer that makes the decision as to which product best fits their need.*

*As Ofgem has stated, suppliers adopt different pricing strategies, and these are a matter of commercial sensitivity. We do not anticipate a scenario whereby suppliers are required to provide detailed explanations as to the specifics of their pricing methodology.*

*We do agree with Ofgem that there is room for improvement in transparency of pricing. It is our expectation that this would be in relation to clarity of contractual terms and further explanations in relation to market and industry cost changes. To do this on a contract-by-contract basis would likely add significant complexity to the contracting process. We suggest that communication of the generality of the market and industry costs would be most appropriate for the majority of customers.*

*We consider it would be beneficial to non-domestic customers if Ofgem were to undertake specific communication on matters such as charging reviews e.g. a customer friendly web page detailing the changes that suppliers can reference.*

Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.

*SEUK response: Overall, we agree with the proposed definition of 'significantly exceeds'. In generality, the explanations and examples given support our understanding of what Ofgem is trying to achieve, that is with exception to the below, which we feel may require some further clarity:*

*"An equivalent contract rate in this context means a contracted rate that is comparable to the deemed rate. For example, a contract rate for Small to Medium enterprises (SME)s and a deemed rate for SMEs, across a broadly equivalent time period (for example, comparing a contract rate taken out on 1 Jan 2022 for a year with the deemed rates throughout 2022), where there may be similar energy usage/consumption for this SME on deemed and the equivalent contracted".*

*The above, provides a comparison between a deemed and a fixed customer over the same period. It is important to note the key potential differences in relation to the commercial approaches in purchasing for these customers. These may include:*

- For fixed customers, the general practice is for "back-to-back" hedging, that is where a supplier purchases all energy anticipated for the relevant customers at the point the contract is entered in to.*
- For deemed customers – due to unpredictable and uncontrollable fluctuations in both the number of deemed customers and their consumption, it is not possible to "back-to-back" hedge supply in the same way as it is for fixed contracts. This means that suppliers are exposed to market and volatility fluctuations to a far greater extent than compared to fixed customers.*
- Suppliers will also have considerable other commercial risks associated with deemed customers to which they have no formal arrangement. The most considerable of which is non-payment. There are also additional costs associated with cost to serve.*

*The result of the above means that a deemed customer's prices will not be possible to be compared retrospectively to that of a fixed customer. Other comments within the guidance do allude to Ofgem's understanding of the above circumstances. We only highlight it to aid clarity in drafting the guidance.*

*Please note: It is also important to recognise that supplier size and risk appetite will also influence a supplier's hedging (purchasing) decisions in relation to deemed customers. For example, suppliers with larger deemed customer portfolios may have a more significant cohort of customers to distribute associated attrition risk (customer churn).*

Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

*SEUK response: We agree that deemed rates should be reviewed on a regular basis and consider that the proposed quarterly interval is appropriate.*

Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

*SEUK response: Having consulted with our colleagues within the Shell Energy domestic supply business, they have not raised any concerns.*

Q5. Do you have any further comments on our proposals for the deemed contract guidance?

*SEUK response: No further comments.*

Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

*SEUK response: Paragraph 2.17 states that supplier profits are generally showing a return to normality. Examples of profits were included in this section however, the source (19) was provided as "Ofgem Assessments". It would be helpful to understand more detail about how this profit was calculated and whether this relates solely to the non-domestic market.*

Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

*SEUK response: Whilst the CoT/CoO process can be an area susceptible to potential fraud, the majority of cases are legitimate, and we agree with Ofgem that any new processes should not cause unnecessary delays. However, the risk of fraud in this area is*



*real and if not properly addressed could increase supplier's risks of negative market-to-market cost exposure. This is caused when customers seek to exit a supply contract via a fraudulent CoT/CoO in order to leave a pre-existing contract and attempt to access cheaper pricing.*

*At SEUK we request that customers undertake a simple CoT/CoO process, this is mainly driven by the customer completing our CoT/CoO form. This form asks the outgoing customer a set of reasonable questions about the reason for their CoT/CoO and basic contact information related to the incoming occupier or proprietor. Each case is reviewed on its own merit. If there is significant doubt about the legitimacy of the request, further information may be asked for. This could include requesting tenancy agreements.*

Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?

*SEUK response: We have not undertaken any analysis to determine the level at which Microbusiness customers are aware that they can contact Citizens Advice.*

*At SEUK we already have signposting to Citizens Advice, this includes on all customer bills. We do not consider mandatory signposting of Citizens Advice to Microbusiness customers at key points in the customer journey would be particularly challenging to achieve. We suggest that mandating signposting via the bill for all non-domestic suppliers would be a sensible and pragmatic starting point.*

Q9. Is an obligation requiring efficient and timely complaints handling needed? If so, what are the costs and benefits associated with introducing this?

*SEUK response: We believe that all customers deserve to have complaints managed in a reasonable, efficient and timely manner.*

*The significant regulatory challenge here is the interpretation of ambiguous words such as efficient and timely. Issues in the non-domestic market are often complex and therefore require difficult remedies. Indeed, there may also be instances where remedies are not possible, or the only available remedies do not meet the expectation of the customers. For example, a large industrial and commercial (I&C) customer may dispute a complex commercial element of a contract. This dispute may relate to a multi-million-pound disagreement between the two parties. The supplier may not accept the customer's dispute as they may consider it counter to their understanding of the contractual agreement in place. This dispute may take months, or even years, to resolve, and may require the parties to undertake significant legal intervention, potentially via the courts. In*

*this instance it may be challenging for Ofgem to determine if a supplier had dealt with this complaint in a timely and efficient manner.*

*Potentially there is a compromise to the above challenge. Rather than a direct mirroring of the domestic \ microbusiness regulation, it may be more appropriate to fine tune the proposed regulation to be more fitting to such circumstances. We propose that rather than simply prescribe 'efficient and timely', that the regulation also includes words such as 'reasonable' and 'appropriate'. It may also be sensible to add in a specific carve out for complex legal disputes. In any case, we would like Ofgem to keep large industrial and commercial customers (e.g. oil refineries, large manufacturing etc.) at the forefront of their minds when developing regulation in this area. It may also be a reasonable response to remove Industrial & Commercial customers from this specific obligation.*

Q10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?

*SEUK response: SEUK already has systems and processes in place for recording complaints for Microbusiness customers. We therefore do not consider that any costs requiring this for larger customers would be significant. However, at this stage the only differentiation in customer type possible via our current systems is microbusiness \ non-microbusiness. Any further differentiation would require system development, which is currently uncoded.*

Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

*SEUK response: As outlined in our response to question 9, complaints associated with the largest non-domestic customers are often highly complex and commercially significant for both parties. Such complaints may require significant legal intervention, particularly where there is a contractual dispute. Instances of this nature may take months or years to resolve.*

*It is worth stating that, a customer choosing to pursue a complaint is not necessarily always an indication of supplier wrongdoing.*

*We do consider there is merit to the extension of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 to a wider set of customers, however we do feel this would be inappropriate for the largest industrial and commercial*



*customers. We propose that the cut off should be based on consumption and that this is set as 10 GWh (10,000,000 KWh) for both electricity and gas.*

Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?

*SEUK response: As outlined above, often complaints from the largest industrial and commercial customers are highly complex. As such, the Ombudsman may not be the most appropriate route to progress these complaints. Also, the Ombudsman may not be equipped to deal with such complaints.*

*If the access to Energy Ombudsman is to be extended, we suggest that the threshold is set at the same levels proposed in our response to question 11 (or lower).*

*We also suggest that the Energy Ombudsman is clear, prior to accepting a case from a larger non-domestic customer, the extent of their powers, and how this may impact a customer's ability to seek further redress via alternative routes.*

Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?

*SEUK response: We welcome the extension of the proposed changes requiring suppliers work with TPIs who are members of a redress scheme. At this stage we propose that industrial and commercial customers acquired from brokers are excluded from this. We suggest the appropriate threshold is set at the same levels set out in response to question 11 (or lower).*

Q14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?

*SEUK response: We consider that a timeframe of 10 to 12 months would be required to ensure TPIs and the Ombudsman have appropriate time to onboard. Suppliers would also need this time to extend the checks that are currently in place for microbusiness brokers. As with Q11, we suggest that I&C brokers are excluded from this. Specifically, this is because the outcomes being sought by I&C customers most probably exceed an award achievable from the current ADR providers.*

Q15. What are your views on our proposal to expand SLC OA (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.

*SEUK response: We are supportive of the proposal to extend SLC OA to a wider set of customers. We consider that the fair treatment of customers is paramount irrespective of their size.*

*The only specific element of the existing drafting of SLC OA that may require some further thought is in relation to OA.3bii which requires all communications to be drafted in plain and intelligible language. This is because some larger non-domestic customers may have complex products whereby communicating them via simple language may not be achievable. These customers are typically extremely energy savvy and often employ specific expertise in relation to energy management. As such, we propose that either industrial and commercial customers are excluded from the extension of SLC OA, or OA.3bii is changed to reflect such circumstances as outline in this response. An example of this is demonstrated below:*

*OA.3bii. is communicated (and, if provided in Writing, drafted) in an appropriate manner. This includes plain and intelligible language for microbusiness customers and appropriate language for larger non-domestic customers. More important information should be given appropriate prominence;*

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

*SEUK response: No further comments.*

Q17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?

*SEUK response: We are not a DNO, IDNO, GDN or IGT however, we would like to respond to this question supporting Ofgem's proposal. We agree with Ofgem that these industry parties may be better placed to provide the appropriate support, rather than non-domestic suppliers.*

Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?

*SEUK response: no response provided.*

Q19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?

*SEUK response: overall we are supportive of the disclosure of TPI commissions to all non-domestic customers, it is important that any extension of transparency is applied consistently across the non-domestic market.*

*We estimate it would take in the region of 6 months to implement such an extension, conditional on the final detail of the regulation requirements. This is based on the assumption that any new requirements mirror the existing obligation for microbusiness customers. If the requirement mirrors the existing requirement, we do not consider costs to be material.*

Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?

*SEUK response: We suggest that it would be most appropriate to keep consistency with the current requirement related to microbusiness customers. The introduction of a further methodology will add complexity and potential confusion.*

Q21. Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?

*SEUK response: On the basis that commission transparency is mandatory to all suppliers and applied in a consistent way, SEUK do not consider that a proposal to expand commission disclosure to all customers to be unreasonable.*

Q22. Do you have any further comments on the proposals in this section on focussed consumer support?

*SEUK response: No further comments.*