

Ofgem
Non-domestic Retail Policy
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Email to: NonDomesticRetailPolicy@ofgem.gov.uk

6 September 2023

Dear Louise,

Non-domestic market review: Findings and policy consultation

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore, offshore wind and solar generation, and energy storage. With around six million electricity and gas customer 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 customer offerings that encourage the transition to low carbon electric transport and heating.

Ofgem's policy consultation represents a proportionate and constructive outcome to the non-domestic market review. EDF broadly supports most of the proposals Ofgem has set out, and we look forward to continuing our engagement with Ofgem, as this policy progresses to implementation.

We share Ofgem's interest in a non-domestic market where customers receive great service and fair prices from financially resilient suppliers. This will enable suppliers to invest and provide customers with access to services and products which support the net zero transition. This has been central to the approach we have taken in all our decisions relating to our non-domestic customers.

We recognise that Ofgem has sought to distinguish between temporary issues related to the recent period of severe market turbulence, and more enduring challenges in the market, and has determined broadly pragmatic proposals. We are encouraged that Ofgem is turning to a quantitative basis, via the Request for Information (RFI) which will follow this consultation, to continue to shape these proposals into practical measures. In this regard, we urge Ofgem to be as transparent as possible regarding the outcomes of this RFI to ensure the basis for action is set out clearly, and to ensure that the resulting obligations are proportionate and appropriate to the diverse needs of non-domestic customers, as well as practical for suppliers to implement and operate going forward. This is particularly important for any thresholds which will determine to which customer groups specific consumer protections will apply.

In our detailed response below, we have asked Ofgem to expand on its rationale for extending SLC OA Treating Microbusiness Consumers Fairly beyond the existing microbusiness customer coverage. As a responsible energy supplier, EDF always aims to treat our non-domestic customers fairly, with regard to their characteristics and needs, while reflecting the diversity of our non-domestic portfolio. However, we are unclear as to Ofgem's rationale for explicitly extending SLC OA to include additional non-domestic customers in the scope of the obligation.

Ofgem's published findings prior to and in this consultation, do not indicate specific evidence of systemic issues which would form a robust evidence base for a significant expansion of this SLC. We would welcome additional transparency from Ofgem on what specific harms it is seeking to mitigate, and what outcomes it expects, which it cannot otherwise achieve by the other proposals set out in this consultation, including the proposed monitoring framework, or under the existing Supply Licence Conditions, using its enforcement powers.

In the context of Ofgem's proposed draft Guidance on Deemed Contracts, while it provides additional clarity of Ofgem's expectations to suppliers, Ofgem should take care to ensure that where it deploys formal guidance to illustrate expectations for supplier conduct, it does not create new prescriptive rules which go beyond the Supply Licence, which could then be subject to change without appropriate consultation. The role of guidance is to provide clarification on existing Supply Licence Conditions, not to amend or set new obligations.

We note that Ofgem has issued an extensive range of Supply Licence guidance documents over the years, but that these are not held in a specific repository (and we note in some instances that older, but still relevant, guidance is not always readily available on Ofgem's website, or signposted to suppliers). We urge Ofgem to establish a complete repository of such guidance for the reference of suppliers and other stakeholders. This will ensure clarity as to Ofgem's expectations, and any supplier obligations therein, and will support positive consumer outcomes.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Mark Hatton 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 'Dan Alchin', written over a light grey rectangular background.

Dan Alchin
Head of Customers Policy and Regulation

Attachment

Non-domestic market review: Findings and policy consultation

EDF's response to your questions

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?

EDF agrees with Ofgem's proposal to consider voluntary pricing transparency measures, and recognises the value of consistent and easy to understand information for customers. EDF takes great care to ensure customers receive the right information, in the right form, at the right time. We regularly review our communications to ensure accuracy, and monitor customer engagement with the messages we deliver. We already provide information on the backs of bills and across our website to aid customer understanding, and proactively communicate directly with our customers regarding changes, where this is appropriate.

We agree with Ofgem's conclusion that mandating specific billing information would not be appropriate. We note that in the domestic market, previous standardised rules on bill content did not aid customer understanding or otherwise improve outcomes, and Ofgem opted to move to principles-based regulation as a response, which EDF supported. Suppliers should remain able to differentiate their offerings to customers. Ofgem must ensure that this flexibility is retained to allow suppliers to respond appropriately, and tailor information to the differing needs of our diverse customers.

Additionally, we welcome Ofgem's recognition of its role in aiding customer understanding, and agree that consumer-facing resources from a trusted source, such as the regulator, could better support customers in understanding their energy costs. We look forward to supporting Ofgem in this work.

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

EDF agrees in principle that evaluating deemed rates against a comparator rate is an effective way of demonstrating the pricing rationale, mindful of the inherent differences between the costs of supply to deemed contract customers versus customers on contracted tariffs.

EDF appreciates Ofgem does not set out to prescribe suppliers' approaches to pricing (para A1.31), and as such acknowledges that suppliers will have different approaches to the determination of the equivalence of a comparator contracted rate. We note Ofgem has sought to illustrate its thinking for one potential approach by the example of a single SME contract rate taken out on 1 Jan 22 for a year and compared to deemed rates throughout 2022 (para A1.28). This does not necessarily reflect the 'generality of ... Non-Domestic

Customers' referred to in SLC 7.4(b), nor the changing market conditions that may occur through the year (as an equivalent/comparator, a fixed tariff would not be exposed to market cost changes). But, as Ofgem sets out in A1.29, as it will assess suppliers' methodologies on a case-by-case basis, we expect that a methodology which appropriately reflects the principles set down in this guidance will meet Ofgem's expectations for compliance with SLC 7.

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

EDF agrees that deemed contract rates should be subject to periodic reviews by suppliers to ensure they remain appropriate and aligned with the Supply Licence requirements in question (SLC 7.3 and 7.4). We understand Ofgem is seeking to establish a benchmark principle to ensure suppliers do not, by inaction, allow deemed rates to become unduly onerous over time. Ofgem should ensure the guidance reflects that Deemed Contract Rates, should be reviewed 'at least' quarterly, and acknowledge that different individual cost elements will be reviewed at different frequencies, as appropriate, to reflect their periodic variability.

We note that in practice the categories of costs which make up deemed charges will change by differing degrees and over different time periods. For some more changeable cost elements, such as some non-energy costs or risk premia, it may be more appropriate for suppliers to track on a monthly basis. This may also be appropriate for deemed rates for larger and half hourly customers depending upon the hedging approaches suppliers employ. Other costs, like bad debt or cost to serve, are more stable, so could be reviewed on a longer-term basis, e.g. annually. Additionally, we note that sharp changes in market conditions and volatility may require suppliers to respond quickly to ensure a balanced approach to cost recovery. Therefore, while we agree in principle that deemed rates should be regularly reviewed, a uniform structure and timing across suppliers and customer segments would not necessarily ensure that deemed rates remain reflective of costs.

As we discuss elsewhere in our response, we note that the Supply Licence does not set out a prescriptive requirement for the frequency of deemed rate reviews. Ofgem should take care to ensure that where it deploys formal guidance to illustrate Ofgem's expectations for supplier conduct, it does not create new rules which go beyond the Supply Licence, which could then be subject to change without appropriate statutory consultation.

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

No. We note that deemed contract rates for domestic customers are within the scope of the Default Tariff Cap (DTC), so the costs that underpin any charges are determined by the regulator within a prescribed methodology, and are subject quarterly revision.

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

We share Ofgem's interest in a non-domestic market where customers receive great service and fair prices from financially resilient suppliers. This will enable suppliers to invest and provide customers with access to services and products which support the net zero transition. This has been central to the approach we have taken in all our decisions relating to our non-domestic customers.

As acknowledged by Ofgem, the market conditions of the last 18 months have been extremely challenging, due to unprecedented levels of uncertainty in the energy market, and the economy more broadly. It is particularly challenging in respect of deemed contracts, where suppliers do not have the ability to object to non-domestic customers switching suppliers due to an outstanding balance, and where there is significantly more uncertainty on volumes, and extreme difficulty in securing engagement with customers. These circumstances have heightened the risk of customers facing insolvency, resulting in losses to suppliers and increased bad debt. It would be financially irresponsible for any supplier not to be mindful of such significant risks, and not to properly factor these into pricing decisions.

The deployment of guidance is useful where it provides additional clarity of Ofgem's expectations to suppliers, with regard to complying with Supply Licence rules. However, the Supply Licence does not set out a prescriptive requirement for the frequency of deemed rate reviews. Ofgem should take care to ensure that where it deploys formal guidance to illustrate Ofgem's expectations for supplier conduct, it does not create new rules which go beyond the Supply Licence, which could then be subject to change without appropriate consultation.

We also note that Ofgem has issued an extensive range of Supply Licence guidance documents over the years, but that these are not held in a specific, complete and up-to-date repository (we note in some instances that older, but still relevant, guidance is not always readily available on Ofgem's website, or signposted to suppliers). While EDF has a longevity in the domestic and non-domestic supply markets which broadly aids our awareness of various guidance, we note some smaller or newer suppliers will not necessarily be aware of pertinent guidance which could support their compliance. We urge Ofgem to establish a complete repository of such guidance for the reference of suppliers and other stakeholders. This will ensure clarity as to Ofgem's expectations, and any supplier obligations therein, and will support positive consumer outcomes.

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

We note Ofgem has published its Non-domestic best practice guide for security deposits alongside this consultation. We are pleased Ofgem conducted a positive and constructive engagement process with suppliers and other stakeholders in the development of this guide, and reached a measured and appropriate outcome.

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

EDF broadly agrees with Ofgem's proposal to introduce standardisation for Change of Tenancy (COT) documentation processes to encourage better outcomes for customers, provided a suitable range of evidence can be agreed to ensure suppliers can be responsive to customers' individual circumstances. Additionally, any changes must not be at the expense of robust, proportionate fraud prevention measures. We look forward to working with RECCo to develop any new requirements, and ensure a balanced outcome with regards to fraud prevention.

While the vast majority of non-domestic COT events are genuine, we have observed that COTs are a significant hotspot for attempted fraud, generally where a customer or broker is seeking to avoid an existing debt, or to unlawfully thwart agreed contract terms. In some instances, we have requested and received proofs of COTs which have subsequently turned out to be falsified. When considering a standardised approach, Ofgem and RECCo must allow suppliers to retain proportionate controls to prevent fraud, where a reasonable suspicion arises.

Where we require a SME customer to provide supporting evidence of a COT we offer a range of options to customers by which they can satisfy this requirement (e.g. a lease or tenancy agreement, with a photograph of the relevant meter at the premises, or a proof of insurance document). In our response to Ofgem's Call for Input (March 2023), we set out our current typical turnaround for these requests of between 3 - 7 days, depending on whether the request has come via a TPI or directly from a customer. We advise customers to allow up to 10 days to complete the process to ensure we appropriately manage their expectations. We believe this strikes an appropriate balance between swift resolution for customers and preventing the potentially significant financial impact of a fraudulent COT.

In our mid-market and large customer segments, we operate a similar COT process, which employs an online form to gather necessary information from customers in a convenient and recordable manner. Where necessary, these details are subsequently verified with the outgoing and incoming parties, to ensure they are accurate and valid. As we do for SME, this process is closely monitored to detect and prevent the occurrence of fraud.

Suppliers must be allowed to pursue reasonable steps to prevent fraud, and the subsequent accumulation of bad debt, in the interests of all customers.

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?

We are not aware of any specific deficit of awareness among our microbusiness customers on this issue. EDF already clearly signposts our microbusiness customers to Citizens Advice support on the back of bills, and on our website complaints pages.

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

We note Ofgem is planning a Request for Information (RFI) following this consultation to gather non-domestic complaints (and other) data from suppliers to establish a base of evidence to steer next steps. We welcome this quantitative approach, which will underpin the qualitative evidence Ofgem cites in this consultation, and support a balanced outcome for customers and the market. We additionally note that during engagement with suppliers on the content and format of this RFI, Ofgem has committed to ensuring that their monitoring approach appropriately balances obtaining the information it needs, with suppliers' capacity and the availability of this data.

We welcome Ofgem's recognition in this consultation, and during supplier engagement, that non-domestic customers' characteristics and needs are diverse, and that the proposed consumer protections may not be suitably applied as a one-size-fits-all approach. In particular, we note that larger customers will tend to have very different approaches to market engagement than microbusiness and other smaller non-domestic customers. Often, they will have dedicated resource (internal or contracted) focused on their energy arrangements and will usually work directly with a supplier account manager, or similar facility, to deal with any queries or complaints. For these large and mid-sized customers, it is unlikely they will require additional support to pursue their interests, and many will not face the barriers to legal redress Ofgem cites in this consultation. We expect that following the initial RFI submission and further evaluation, the data will bear out that a threshold which does not include mid-market or larger customers will be sufficient to ensure an appropriate level of protection and access to redress which satisfies the concerns expressed in this consultation.

It is vital that when considering expanding consumer protections to customers beyond the microbusiness category, Ofgem strikes a pragmatic balance between the needs of customers and any additional administrative burden this creates for suppliers and third parties, such as Citizens Advice and the Energy Ombudsman. We note Ofgem has scheduled consideration of appropriate thresholds for support following the initial RFI. It is important that this produces a workable outcome, based on metrics which are commonly identifiable by suppliers (e.g. consumption), and which suppliers can effectively and consistently implement across their customer portfolios.

For our part, EDF fully adheres to complaints regulations across our microbusiness customer base, and empowers customers across our non-domestic portfolio to escalate any issues via our specialist complaints investigation team, and, where necessary, our CEO's office. We clearly signpost our complaints procedures on our website and provide necessary contact details and set out the timelines for resolutions.

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?

Please see our answer to Question 9. We expect that following the initial RFI submission and further evaluation, the data will bear out that a threshold which does not include mid-market or larger customers will be sufficient to ensure an appropriate level of protection and access to redress which satisfies the concerns expressed in this consultation.

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?

Please see our answer to Question 9. We expect that following the initial RFI submission and further evaluation, the data will bear out that a threshold which does not include mid-market or larger customers will be sufficient to ensure an appropriate level of protection and access to redress which satisfies the concerns expressed in this consultation.

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?

Please see our answer to Question 9. Additionally, we are concerned that the Energy Ombudsman does not currently have sufficient resource, or access to the necessary expertise, to manage a significant uplift in complex cases, reflecting the diverse contractual and supply arrangements in the non-domestic market. It is vital that Ofgem has regard to the quantitative outcomes of the impending RFI when determining the relevant needs of diverse non-domestic customer segments, or it potentially risks broader detriment to non-domestic customers and endangering trust in the market.

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?

EDF supports Ofgem's proposals to establish a level playing field in the energy TPI market, in the interests of non-domestic consumers. While we support this measure as an interim step, we note that Ofgem's approach to steering TPI behaviours should not be dependent on

regulation via suppliers. For this reason we welcome Ofgem's proposal to Government that it should regulate the TPI market directly.

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?

This question is best answered by TPIs and relevant 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.

As a responsible energy supplier, EDF always aims to treat our non-domestic customers fairly, and with regard to their characteristics and needs, reflecting the diversity of our non-domestic portfolio. As Ofgem sets out in para 3.50, suppliers who already operate good practices should already broadly align to these principles.

However, we are unclear as to Ofgem's rationale for explicitly extending SLC OA beyond microbusiness customers, to include all, or at least more, non-domestic customers in the scope. We note Ofgem has referred to anecdotal reports from customers and other stakeholders, such as consumer bodies, that they or their members feel they have not been fairly treated by some suppliers. However, Ofgem's published findings prior to and in this consultation (following the initial RFI at the end of 2022 which began this review), do not indicate specific evidence of systemic issues which would form a robust evidence base for a significant expansion of this SLC.

We would welcome additional transparency from Ofgem on what specific harms it is seeking to mitigate, and what outcomes it expects, which it cannot otherwise achieve by the other proposals set out in this consultation, including the proposed monitoring framework, or under the existing SLCs, using its enforcement powers. Ofgem notes in this consultation that it has, for example, initiated compliance engagements with suppliers who it suspects are or have been in breach of specific obligations, as a result of monitoring activities as part of this review.

We note when the standards of conduct and related principles were conceived, and have subsequently been amended, the fundamental rationale was to ensure fair treatment for customer groups who need support to engage with the supply market, and/or are more likely to face an imbalance of rights, or other detriment, with regard to their interactions with suppliers. While this is applicable to domestic and microbusiness customers, the case is less clear for larger non-domestic customers, most of whom will be practiced business-people or organisations, with experience and expertise in managing various contractual arrangements, including energy contracts.

Following from these points, and with regard to any potential threshold regarding the expansion of SLC OA and other consumer protections, we direct Ofgem to our comments in response to Question 9 in relation to our support for a robust quantitative basis for establishing such a threshold which is both practical for suppliers to implement, and reflects the diversity of customer needs in the non-domestic market.

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

No additional 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?

We note Ofgem has directed this Question to DNOs, GDNs and IGTs. However, for reference please note EDF's previous response to Ofgem's February 2023 Call for Input from a supplier's perspective:

While we support consideration of protections for these domestic end users, we note that energy suppliers do not have a contractual relationship with these end-users, rather, this is usually via a third party who holds a commercial contract with the supplier, and is responsible for passing through Government support, and providing for various relevant services. Suppliers are unlikely to hold sufficient or consistent data on domestic end users to facilitate equivalent monitoring and provision of services to that set out under the supply licence. As has been established via the development of the Government support schemes last winter, these customers are best served by support from parties which already hold a legal duty with respect to their wellbeing, and the provisions of their contractual relationships.

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

No comments.

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?

As with our answer to Question 13, EDF supports Ofgem's proposals to establish a level playing field in the energy TPI market, in the interests of non-domestic customers. Transparency of TPI commissions would be a positive step to enable all non-domestic

customers to fully understand their energy-related costs, and aid them in making informed decisions.

We would need to understand the final outcomes of this consultation to set down a robust estimate of how long implementation would take. We already provide Third Party Costs transparency information to microbusiness customers, in line with SLC 7A requirements, and are expanding this measure across much of our non-domestic portfolio. Our initial assumption is that such a proposal could be fully implemented by mid-2024.

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

We urge Ofgem to stick with the current disclosure requirements set down in SLC 7A, which were the measured results of a robust consultation process. Retaining these rules will better enable suppliers and TPIs to implement the expansion of the requirement, and will continue to provide consistent outcomes for non-domestic customers.

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

Please see our answer to Question 19. We do not have any objections to extending this measure to all non-domestic customers, as it is unlikely to significantly affect suppliers' or TPIs' ongoing workload or have other detrimental effects on customers or the market. Although, we note that larger customers are likely to have significant resources in place to scrutinise any arrangements with third parties, so will likely already be aware of any related Third-Party costs.

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

No additional comments.

EDF
September 2023