



Shell
ENERGY

Ofgem
10 South Colonnade,
Canary Wharf,
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By email to: NonDomesticRetailPolicy@ofgem.gov.uk

31 January 2023

Dear Louise van Rensburg,

RE: Shell Energy UK response to Ofgem's Non-domestic market review statutory consultation on licence changes

Further to our letter of 6 September 2023 in response to Ofgem's Non-domestic market review: Findings and policy consultation, Shell Energy UK welcomes the opportunity to respond to this statutory consultation on the proposed licence changes.

Shell Energy UK (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 Energy 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 sustained growth in this market. SEUK expects to be a significant supplier of gas and electricity in the non-domestic retail market for the foreseeable future.

Below 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

Within our last response we agreed that all non-domestic customers deserved to be treated fairly, we generally were supportive of the proposal to extend the regulatory requirement SLC 0A. We

did raise concern that this would place a regulatory obligation on suppliers to communicate to all customers, irrespective of size and experience, in “plain and intelligible language”. The example we gave was I&C customers. We appreciate Ofgem’s comments on this in the policy document, we do however still have concerns that this could result in too much subjectivity. We would therefore again like to request some further tightening of the proposed regulation.

In our last response, we agreed with the principle of extending the protection provided via the Complaints Handling Standards to a wider cohort of customers. We made the point that we felt it would be inappropriate for this to extend to all non-domestic customers, and that larger I&C customers wouldn’t benefit from such a change. We are pleased that Ofgem has taken these points and proposed an appropriate way forward. We are supportive of the proposal to create the new “Small Business Customer” category, and we are comfortable with the proposed thresholds. We would like to suggest that this regulation is brought in in such a way as to specifically include only contracts signed after the implementation date. The application of this categorisation in a retrospective way would be near impossible for suppliers to administer.

We are also supportive of the other proposed measures. This includes the requirement to increase transparency of broker commissions to the wider cohort of customers.

Cooling Off Periods

We note that Ofgem is looking to reopen discussions regarding a cooling off period for non-domestic customers. We are keen to support Ofgem with this matter as we feel it will require significant consideration to ensure there are no unintended consequences. As set out in more detail in our response to question 22 in the annex, we are concerned the introducing cooling off periods for I&C customers will increase our overall cost of supply to our customers.

Conclusion

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,



Daniel Parry
Head of Regulation
Shell Energy UK Ltd.

Appendix

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

Q1. Alongside this consultation document we have published a draft impact assessment. Do you have any comments on the draft impact assessment published alongside this document, including the costs and benefits, competition impacts, and unintended consequences?

SEUK Response: No comments.

Q2. Is there anything that has not been included in the impact assessment that you believe should be included?

SEUK Response: No comments.

Q3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.

SEUK Response: As outlined in our previous consultation response of 6 September 2023, we have concerns in relation to the proposed extension of the requirement under SLC0A.3bii – this is the part of the regulation that requires all communications to be drafted in plain and intelligible language. As we discussed in our previous response, 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.

We have taken on board the comments and responses raised by Ofgem in relation to this point however, we still consider that the regulations would benefit from further clarity. We note that Ofgem states that the principle of this regulation is to ensure that communication is clear to the reader, and that this would be taken into account when enforcing the regulation. We believe this creates too much subjectivity, especially at the point of decision of any enforcement. We therefore would still strongly advocate for some additional clarity to be included in the drafting of the SLC.

Q4. Do you have any comments on our proposed draft licence text for SLC 0A?

SEUK Response: Not above the comments made in response to question 3.

Q5. Do you agree with our proposal to implement the SoC as soon as the updated licence condition takes effect? Please provide a reason for your view.

SEUK Response: We are satisfied that 56 days is a reasonable timescale for suppliers to undertake necessary preparations for the introduction of this requirement. We note Ofgem's comment about taking a proportionate approach to enforcement based on what is reasonable for a supplier to have accomplished over time.

Q6. Do you have any views on the updated draft Standards of Conduct Guidance?

SEUK Response: No.

Q7. Do you agree with our proposal to align with government proposals and expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS) to apply to Small Business Consumers? Please provide a reason for your view.

SEUK Response: Yes, as discussed in our last response, we are comfortable to support the CHS being available for an increased population.

Q8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?

SEUK Response: No.

Q9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?

SEUK Response: At the time of our last response in relation to this matter, we were welcoming of the proposal and didn't expect the implementation to be too onerous. However, the proposed way forward will require suppliers to undertake some significant system and process changes. This includes the ability to identify and flag a new group of customers, Small Business Consumers. We do not consider that 3 months is an appropriate implementation timeline. We expect that suppliers will require at least 5 months to implement this change.

Q10. Do you agree with our proposal to require suppliers to inform their Micro and Small Business Consumers (if this is applied) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland? Please provide a reason for your view.

SEUK Response: We are comfortable with this proposal and already undertake signposting.

Q11. What measures would suppliers intend to take to meet the obligation to signpost Small Business Consumers to Citizens Advice, and how would this impact costs?

SEUK Response: We currently signpost via invoicing. We suggest this is the most appropriate place. Signposting is also included in the Complaint Handling Procedure published on supplier's website and made available at certain times.

Q12. Do you have any comments on our proposed draft licence text for SLC 20.5A and 20.4A in the gas and electricity supply licences respectively? This proposed definition of Small Business Consumer includes Micro Business Consumers. However, do you think it would be preferable to explicitly set out in the licence condition that suppliers should signpost Micro Business Consumers and Small Business Consumers to Citizens Advice for the avoidance of doubt?

SEUK Response: The obligations of Microbusiness and Small Business Customers will be similar but not identical, for example Backbilling. It is our preference that any regulatory requirements for Small Business Consumers is distinct from Micro Business Consumers. To avoid any misunderstanding, we suggest that where the obligation would cover both groups of customers, we suggest explicitly stating this in the licence and any associated guidance.

Q13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?

SEUK Response: As outlined in our response to Question 9, we do not consider that 3 months is an appropriate implementation timeline. This is because of the additional work required to adjust processes and systems to accommodate the new "Small Business Consumer" flag. We consider that suppliers will require at least 5 months to implement this change.

Q14. Do you agree with our proposed change? Please provide comments to support your answer.

SEUK Response: We are supportive of the change to require the wider cohort of TPLs \ Brokers to be subject to the Alternative Dispute Resolution scheme change.

Q15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?

SEUK Response: No comments.

Q16. Do you have any comments on the suggested implementation timescale of 8 months?

SEUK Response: This timescale seems reasonable. When this was introduced for Microbusiness Customers, there was some challenges in relation to the ADR providers themselves being ready. We are comfortable as long as this has been taken into account.

Q17. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.

SEUK Response: We are in agreement with the proposed extension of the Third-Party Cost Transparency.

Q18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.

SEUK Response: A single standardised process for displaying broker commissions across all non-domestic customers is our preference. We are surprised that Ofgem is proposing to run two methodologies across two different sets of consumer groups. We consider that this could cause confusion for customers, especially customers that are Microbusiness for one fuel and not the other, or for customers that become Micro, or cease to be Micro within a short timeframe. We therefore propose that cessation of the current Microbusiness methodology in favour of the proposed p/KWh may help standardise communication across the market.

Q19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.

SEUK Response: We are comfortable with the proposed timescale.

Q20. Do you have any views on whether to retain the presentation of a lump sum for Micro Business Consumers and to have only a cost per unit for all Non-Domestic consumers?

SEUK Response: We do have some concerns that this will cause confusion for customers. Our preference would be a single methodology.

Q21. Do you have any views on the proposed wording of the supply licence conditions, in relation to this policy? Note that is SLC20.6 in the electricity supply licence and SLC20.7 in the gas supply licence.

SEUK Response: No Comments.

Q22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?

SEUK Response: We note that Ofgem intends to resume discussions in relation to the introduction of a 14-day cooling off period for non-domestic customers. We are keen to offer Ofgem support on this subject, and will seek to provide as much assistance as possible to help navigate the complexities, potential risks, and unintended consequences.

The primary distinction between domestic supply, which is already subject to a cooling off period, and non-domestic, is the level of contracted volume. In the domestic market each contract has a relatively small, anticipated supply volume. This means that any risk premia spread across the entirety of contracts is also relatively minimal. In the non-domestic market, suppliers may undertake a small number of contracts with high volume. This means that any risk premia required, to mitigate the risk of one or more contracts cancelling, will be required to be more significant. The value of each contract could also represent a significant risk compared to the current customer base (i.e. the volume supplied to the current customer portfolio).

In addition, typically non-domestic suppliers purchase the volume of energy at the same time as a contract is signed (back-to-back hedging), if a process is introduced that allows a customer to exit their contract after it has been signed, this will inevitably create further risk exposure for suppliers. The risk being that if a customer ends the contract during the cooling off period, the supplier will be exposed to market-to-market costs for this volume. In a falling market this could be subject to gaming by customers.

Non-domestic contracts, especially larger I&C contracts (e.g. Flexible Purchase) can often be subject to many months of negotiations. This requires significant investment from both sides. Any introduction of a process that could provide an opportunity to terminate that contract without consequence, will inevitably add additional risk, and therefore cost, to the entire non-domestic market.

In summary, the introduction of a cooling off period for non-domestic customers has the ability to create additional risk premia, increasing costs to consumers. If Ofgem were looking to introduce a cooling off period, we consider this should only be for the smallest

set of non-domestic customers, Microbusiness customers. We look forward to working with you on this subject to achieve an appropriate outcome.