

29<sup>th</sup> January 2024

Louise Van Rensburg  
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Dear Louise,

**Non-domestic market review: Statutory consultation on licence changes**

Thank you for providing an opportunity to respond to the statutory consultation on the non-domestic market review. We understand the intent of the outcomes following energy crisis and in the main it is proportionate set of changes Ofgem have put forward. We do have 3 points we need to highlight in the letter supporting our submission;

1. Standards of conduct guidance

The non-domestic market survived the energy crisis in more robust health than the domestic market, in part due to the flexibility it was able to generate via its energy contracts and thus avoid mutualisation costs into the market. There is one example within the guidance that puts this at risk;

*Examples of poor behaviours include:*

*Customers signed contracts with a supplier believing that they had been sold a fixed price contract. However, prices increased within the contracted period. When they asked their supplier, the supplier pointed out that there was a clause deep within the contract that allowed them to increase prices in certain circumstances. The principal terms of contract relating to charges had not been made sufficiently clear to the customer before they signed up to the deal.*

While we understand this example in the context of micro-business customers, it is not appropriate for larger customers. They have more complex contracts with more key points within a contract, more resources to review them and can benefit from lower prices such clauses provide outside of an energy crisis. If this guidance is to remain unchanged it will increase the risk suppliers have to take, so increase prices or make suppliers consider which products it offers to segments of customers within the market.

2. Micro-business TPI commission costs change

Suppliers have already successfully implemented the Micro-business TPI commission costs change. We struggle to understand why suppliers need to confuse customers by now showing the same information in two different ways by adding the requirement to also show a cost per unit of energy or a cost per day (month) where it forms part of a daily (monthly) standing charge. It will also add costs to bills implementing this new change while creating no new value. This adds complexity when customers want simplicity if possible.

3. TPI commission costs for other non-domestics

We want to express our support for the drafting of this area. It is the most sensible and easy way to implement the obligation. We have already implemented the obligation inline with how it is written with no negative feedback from customers.

Should you wish to discuss the matter please contact myself  
[REDACTED]

Yours sincerely



Andrew Jones  
Head of Regulation  
TotalEnergies Gas and Power

**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?**

We understand the unique circumstances that the review was conducted in. However, the impact assessment seems to have been produced after the changes have been decided on, which is not good governance or how Ofgem should go about implementing industry change. An impact assessment should support decision making, not be created after the event to validate what has already been decided on. If severe unintended consequences do arise it will leave Ofgem open for criticism.

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

The impact assessment does not properly take into account having to redo the micro-business TPI commissions work, as the Licence Drafting increases the complexity and costs of delivering it over the existing obligation.

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

We understand what Ofgem are trying to achieve, it does mean suppliers have to spend additional money monitoring compliance and adds to the overall complexity of operating in the market. We would support simplification of the market to encourage more competition, rather than creating more barriers to entry.

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

We do not have any comments on the proposed draft licence text.

**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.**

Our internal view is we are already compliant with the increase in scope, but we will be conducting a compliance review to ensure this is the case. Should the review find anything complex that needs to be updated then the timescales will be tight. Realistically six months should be given to suppliers to put in place any changes or processes needed.

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

The supporting guidance document needs to factor in more the varied nature of the non-domestic market and that not everything that is appropriate for micro-business customers translates to the rest of the market.

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While we understand this example in the context of micro-business customers, it is not appropriate for larger customers. They have more complex contracts with more key points within a contract, more resources to review them and can benefit from lower prices such clauses provide outside of an energy crisis. If this guidance is to remain unchanged it will increase the risk suppliers have to take, so increase prices or make suppliers consider which products it offers to segments of customers within the market.

**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.**

We are concerned that increasing the size of customers captured by the new definition will negatively impact parties such as the Ombudsman. We are concerned they will have trouble dealing with the complexities of the larger contracts and that it will tie up their resources reducing what is available for supporting domestic and micro-business customers.

The Energy Ombudsman is not regulated or underpinned by any formal legislation, and is a private, non-for-profit, company. Any Ombudsman for the market should be appointed by a tender process run by Ofgem or Government.

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

The definition of a small business consumer does not fix one of the fundamental issues that the micro-business definition has. Large customers may have very high consumption in one fuel, but little or nothing in the other, these leads to some of those customers demanding they are micro-business customers even though the intent was never meant to include them. For the small business consumers definition this can be easily rectified by changing an 'or' to 'and' as shown below.

Small Business Consumer

A non-domestic customer is defined as a small business if they:

- employ fewer than 50 employees (or their full time equivalent) and
- has an annual turnover no greater than £6.5 million or

- balance sheet total no greater than £5.0 million; ~~or~~ **and**
- uses no more than 500,000 kWh of electricity per year; or uses no more than 500,000 kWh of gas per year.

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

We are still assessing how best to implement the change, it will be easier to implement with the change suggested above. We would support an extension to 6 months to avoid the possibility of a short term fix to meet the obligation in time then becoming the long term solution or a second change needed to do it properly.

**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.**

Our concern is Citizens Advice and Citizens Advice Scotland being able to deal with the increased work and complexity if the small business consumers definition is applied. The biggest impact will be on domestic and micro-business customers who may have less resources to rely on than they had before.

**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?**

We will meet this obligation, we do not see any great impact to costs as it is written in the licence.

**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?**

We have no strong views on this.

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

We do not have any concerns currently with the timetable.

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

We do not have anything to add.

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

We do not have anything to add on this question in relation to the Third Party Intermediary redress scheme.

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

We do not have any concerns currently with the timetable.

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

We agree with the expansion to all non-domestic customers, but disagree with the tinkering with the existing obligation for micro business customers, as we set out in Q15.

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

We do not agree with changing the micro-business TPI commission costs obligation, it adds complexity and costs to deliver, while adding confusion to the customer and no added value. We would like to see the current obligation for micro-business to prevail.

We do support the proposed methodology of displaying Third Party Costs for other non-domestic customers.

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

As long as the micro-business obligation reverts back to its existing wording the proposed timescale is achievable.

**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?**

We strongly support the view a lump sum should remain. The cost for unit will cost money and add complexity to deliver, while adding no new value and confusion to customers. It also adds complexity to something that works currently.

**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.**

The micro-business TPI commission costs obligation (SLC 20.6B (a)) has already been implemented as set out in the original obligation and is fit for purpose. The proposed change will mean customers receive the same information in two different ways which adds confusion and complexity with no new value to them. For suppliers it means additional implementation costs and complexity to implement. The micro-business definition should remain unchanged.

There is one proposed licence condition change we do want to highlight support for, SLC20.6B (b). This is the most sensible way to implement TPI commission costs for other non-domestic customers and we have already implemented it as set out. We would not want this draft to change.

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

The proposed introduction on 14 day cooling off period for micro businesses will be costly for customers adding to bills and add additional complexity to the industry to manage. We struggle

to understand how this can have a positive business case. We will also put this message across in the Ofgem engagement planned for 2024 on this subject.

For billing transparency there is a concern the first draft of the voluntary best practice guide was not segmented enough by customer groups and requesting more detail on billing than 90%+ of the market actually wants. Simplicity and setting out the key data clearly is the requirement for most of the market, particularly smaller customers.