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Paul Redmayne , Senior Policy Advisor Non-Domestic Retail Policy, Ofgem
Non-Domestic Retail Policy Team
By email only

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Dear Paul,

Thank you for the opportunity to respond to the consultation on changes to the Deemed Contracts and Standard Licence Conditions 7.3 and 7.4.

We recognise the intention to provide greater clarity on when deemed contracts arise and the costs that may reasonably be recovered through deemed contract rates. However, we consider that parts of the proposed drafting risk moving beyond clarification of the existing framework.

The guidance should remain clearly aligned with the statutory basis for deemed contracts under the Gas Act and Electricity Act and should not extend the circumstances in which a deemed contract is considered to arise. Where the proposals introduce new substantive or operational expectations, these should be considered through the statutory modification process.

Our full response to the consultation questions is set out below.

Kind regards,

Michelle Olney
Head of Retail Regulation
Octopus Energy

Q1. Do you agree with our proposals on situations when we will generally view a deemed contract to exist depending on a customer's ability to consume energy? Please provide your reasons.

We do not consider the proposed approach to be consistent with the statutory framework for deemed contracts under the Gas Act and Electricity Act.

The legislation establishes a deemed contract where a supplier supplies energy to a consumer or premises otherwise than pursuant to a contract. This provides a clear and objective statutory trigger, which is also reflected in SLCs 1 and 7. The draft guidance appears to broaden that test by treating the ability or opportunity to take energy as sufficient, even where it has not been established that energy was capable of being supplied and taken at the premises.

In our view, guidance should not extend the circumstances in which a deemed contract arises beyond those provided for in legislation. Doing so would create uncertainty around the point at which contractual liability begins and introduce additional operational and commercial risk for suppliers.

This is particularly relevant where a premises remains connected but consumption cannot be accurately evidenced because of a faulty or unvalidated meter. Suppliers require a clear statutory basis both for establishing the deemed contract and for recovering the cost of energy consumed. Any departure from that position could leave legitimate consumption costs without a clear route to recovery.

Q2. Do you agree with our proposal around the reasonable recovery of bad debt? Please provide your reasons.

We agree with the proposal. We consider it appropriate that deemed contract rates are able to reflect bad debt costs that arise through deemed arrangements.

Q3. Do you agree with our proposed text that reminds suppliers of their obligations around customer transfer blocking and delayed switching? Please provide your reasons.

We understand this to be a clarification of the existing position, rather than a new requirement.

We recognise Ofgem’s position that suppliers cannot object to non-domestic deemed contract transfers on the basis of deemed contract debt. This reflects an existing asymmetry in the licence framework, as the domestic licence permits debt objections in certain circumstances, whereas the non-domestic licence only allows an objection where this is expressly provided for within an energy supply

contract. As a Deemed Contract is excluded from that definition, the same protection is not available.

There remains a practical risk that this reduces the incentive for customers to engage with their current supplier, allowing debt to build before transferring away and potentially repeating the same issue with the next supplier. This may also increase unrecoverable debt across the market.

We therefore consider that the underlying licence asymmetry would be better addressed through the statutory modification process, rather than confirmed through guidance alone.

Q4. Do you agree with our proposal around the circumstances in which suppliers should ask for security deposits? Please provide your reasons.

We agree with the proposal.

We support the principle that suppliers should not recover the same costs through both deemed contract rates and a security deposit.

Q5. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

While the proposed amendments are limited in scope, their impact should be considered across suppliers' wider businesses. Restrictions on debt objections, alongside limits on other credit risk mitigations such as security deposits, may increase exposure to unrecoverable non-domestic debt and place pressure on suppliers' overall financial resilience.

Q6. Do you have any further comments on our proposals for the deemed contract guidance?

Our main comments are covered above.