

13 February 2003



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Dear Mr. Anthony

**Transfer objections: stronger rights for industrial and commercial customers – a consultation document**

We welcome the opportunity to comment on the above document. When reading through our response, please bear in mind that we currently only operate in the gas industry, and therefore have limited knowledge of the operation of the electricity supply industry.

*Amending the rights of I&C suppliers to object only in cases where this is permitted in their contract with the customer*

We are strongly opposed to this proposal for the following reasons:

- If implemented the proposal will lead to many more non-standard contracts, the administration of which will result in additional costs being incurred by the gas supplier, which is likely to result in price increases for customers.
- We would expect suppliers to include objection clauses within contracts that will be tighter than the rights currently conferred by the gas supply licence. This would be detrimental to the majority of customers who would not be aware of such clauses until invoked by the supplier.
- It will prove very difficult for a new supplier to ascertain whether an objection has been made on valid contractual grounds, which may result in an increase in objections on the pretence that the underlying contractual terms support this action.
- For the reasons above, we expect the proposals will result in more transfer objections than are currently experienced, which cannot be good for the customers or suppliers.
- Where customers have negotiated contracts not allowing the supplier to object to a transfer, costs of an early termination may only be recovered through legal action. The costs of such action will ultimately result in costs smeared across the whole customer base, thereby increasing prices to all customers.

We believe the supply licence should allow objection on the ground of a valid contract but not for outstanding debt. Our reasons are set out below.

The right to object on the grounds of a valid contract should remain within the gas supply licence for the following reasons:

- Operation of the gas market. To protect margins, maintain competitive prices, and protect the customer from gas price fluctuations over a fixed term, suppliers must purchase gas on entering into a supply contract to cover the customer's estimated usage during the period of the contract. If the customer can change to another supplier mid-contract, then the initial supplier must sell out the future gas set aside for the customer, potentially at a loss. Such losses can be recovered via legal routes but this process takes time, ties up internal resources, which for smaller suppliers could put an unnecessary strain on operations and cash flow, and in some cases the costs incurred can exceed the amount being claimed.
- Early contract termination. If a customer wishes to change supplier mid-contract, we believe the customer should discuss this with their current supplier, and in circumstances where the customer has valid grievances, agree an early termination fee to be paid when the current supplier releases the customer. We do not support the idea of including termination clauses in contracts, as it is likely that they will need to be enforced by taking legal action - a customer is more likely to find a reason to terminate when supply prices are falling, as opposed to when supply prices are rising. For smaller suppliers this probably involves getting external advice, which is costly, and as stated above, takes time, and ties up internal resources, which could put an unnecessary strain on operations and cash flow.
- Existing customer contracts. It is extremely difficult to get customers to sign up to new Terms and Conditions, particularly when attempting to tighten the contract. If the gas supply licence no longer allows objection on the grounds of contract it is likely that a large proportion of a supplier's portfolio would be at risk of being lost to another supplier mid-contract. This will result in instability in the market, which cannot be in the best interest of customers or suppliers.
- Erroneous transfers. These can be prevented by allowing objections on the grounds of a valid contract, and this action ultimately protects the customer (they have signed up to a supply contract from a particular supplier and do not want to find their meter points transferred to another supplier). The current electricity arrangements appear to cause more problems to customers, particularly as they may not be aware of an erroneous transfer for many months (this is obviously of particular concern to multi-site customers). In our opinion, objecting to a transfer on the grounds of a valid contract is preferable to not being able to object on the grounds of an erroneous transfer. Furthermore, erroneous transfers can lead to billing problems as well as an increase in Inter Shipper Disputes.

The right to object on the grounds of outstanding debt should be removed from the gas supply licence and not be contractualised, i.e. the gas supply licence should state that objection is only allowed where the current supplier has a valid contract, for the following reasons:

- Whilst we recognise the benefits to the supplier of being able to prevent a customer transferring to a new supplier where there is outstanding debt, we don't believe this is in the interest of the customers and favours suppliers with inefficient cash collection processes.
- While it is probable that removing the right to object on the grounds of debt will result in more debt being recovered by legal means, we do not expect this to increase costs of the efficient suppliers significantly enough to result in price increases to customers.

In addition to our proposed changes to the supply licence set out above, we support the suggestion that a supplier that raises an objection should be required to inform the customer of the reason for the objection and how the cause of the objection can be resolved. This, we believe, would put greater onus on the supplier to ensure the objection is valid, and would ultimately reduce the number of objections.

*Is it beneficial for suppliers and consumer groups to draw up standard terms detailing the grounds of the supplier to object?*

It seems unlikely this would work as the consultation document suggests suppliers and customers seem to have diametrically opposed views on this issue. If standard terms could be agreed these would need to be incorporated into the supply licence to ensure they could not be negotiated between supplier and customer, and it seems likely that any compromise would result in the supply licence only allowing objections on the grounds of a valid contract.

*What transitional arrangements, if any, would be appropriate for dealing with existing contracts following amendment to suppliers' rights to object in the I&C gas market?*

We believe this is a major problem for many suppliers, as we do not believe a transitional period less than a year can overcome the problem of customers not wanting to sign up to an amended contract, when they are already in contract. Further with contract lengths in many cases exceeding one year, it will take a considerable amount of time before all customers reach the end of their contracts and the supplier is in a position to offer a new contract incorporating clauses relating to the supplier's right to object. It should be noted that there is a lead time in contract negotiation, so any transitional period must recognise this.

We do not support the proposal, in part because of our concern above, in addition to the fact that we are unable to identify any workable transitional arrangements unless the transitional period is two and half years.

*Is the draft modification proposal set out in Appendix 3 (to consultation document) fit for purpose?*

We do not support the proposal and therefore do not agree with the proposed wording for Standard Licence Condition 30.

We also do not support the grounds for objection within the electricity industry. We do not believe that the incumbent supplier is always able to identify erroneous transfers in a timely manner. Even in cases where the error is identified quickly, it is still the innocent supplier that has to initiate and agree with the confirming supplier that they may make the objection. Without agreement they may not act.

*Is 1<sup>st</sup> June 2003 an appropriate and achievable date for having amended the I&C objection arrangements in the gas and electricity markets?*

Achieving a 1<sup>st</sup> June deadline should be dependent on the views received to this consultation document. Issues and concerns raised may well result in Ofgem reconsidering what changes, if any, are required to the current operation of the market with regard to transfer objections as presently dictated by the supply licence.

Further, if bringing gas and electricity into line is an objective, then it is essential that changes are made simultaneously, otherwise when changes are finalised they could still result in discrepancies between the markets. Hence, implementation date should be dependent on the market that will take the longest to modify.

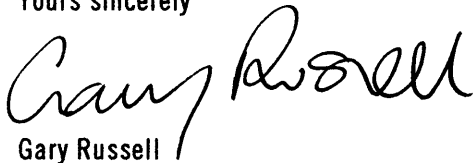
The consultation document states that "in parallel Ofgem would expect an equivalent change to the MRA to be proposed by a supplier and progressed by the industry", which suggests driving through changes in the electricity industry may take longer than in gas, and may be delayed by participants in the electricity market focusing on other developments.

In our opinion 1<sup>st</sup> June is not appropriate. The target date should be at least 3 months from when any change is agreed and announced, so that suppliers can make the necessary arrangements to accommodate such changes, whether contractual or operational.

In conclusion, we do not support the proposal to allow suppliers to object only in cases where this is permitted in their contract with the customer. We would propose that the supply licence only allows a supplier to object to a transfer on the grounds of a valid contract, not for outstanding debt, and that all objections are notified to the customer, stating the reason for the objection and how this can be resolved.

I trust you find these comments useful. If you wish to discuss any of the above further please contact me on 020 8632 8066.

Yours sincerely

A handwritten signature in black ink, appearing to read "Gary Russell". The signature is fluid and cursive, with the first name "Gary" and the last name "Russell" clearly distinguishable.

Gary Russell

Finance Director