

EASTERN SHIRES PURCHASING ORGANISATION

A Local Authority Purchasing and Distribution Consortium

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Your Ref: 84/02

My Ref: EN/OFGEM/DK

This matter is being dealt with by:

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29th January 2003

Dear Mr Anthony

Transfer Objections: Stronger Rights for Industrial and Commercial Customers

Eastern Shires Purchasing Organisation (ESPO) is a purchasing and distribution consortium of local authorities, accounting for a total annual expenditure on energy of some £38 million. We have previously made our views known to Ofgem on the subject of the Suppliers' Right to Object to Transfers, both through the previous consultation exercise and in subsequent informal discussions, and we welcome the opportunity to respond to this latest Consultation Document.

Current arrangements are inconsistent with other markets and as there are alternative remedies available to suppliers we see no reason why suppliers should have the right, on the grounds of outstanding debt, to prevent a customer transferring to another supplier. Disputes between I&C customers and suppliers over outstanding debt or termination payments should be resolved through normal commercial or legal routes.

However, where we believe gas and electricity supply markets are unique is that it is possible for a supplier to take over the supply of a customer's site without the knowledge or consent of that customer and in this respect we believe that there is a case for retention of some form of modified 'objection' facility.

Comments on Options and Consultation Recommendations

Option 1: Maintain Current Rules

Fails to address the issues and concerns raised and detailed in the Consultation document.

Also fails to achieve a common process for both gas and electricity.

Option2: Introduce New Gas Objections Rules Only

2a – where the contract permits

whilst this would improve the current arrangements for gas, it would not improve the arrangements for electricity transfers and would also fail to achieve common arrangements for gas and electricity.

2b – Permit Objections on a Co-operative Basis

In our experience the arrangements for registrations to be withdrawn have not been effective, either because suppliers do not have the functionality, or because their support staff are unaware of the facility or fail to understand the process. Furthermore, it places incumbent suppliers in a dominant position since, if they do not co-operate, the transfer will fail.

2c – Objection Information

Provision of additional information is to be welcome, however, the timescales are such that in practice it frequently does not happen currently and it is unlikely that relying solely on such arrangements would prove effective.

Mr Ian Anthony
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INVESTOR IN PEOPLE



Option 3: Introduce New Electricity Objections Rules Only

This would go some way towards addressing our concerns about the present arrangements for electricity but would not address the shortcomings in gas or achieve common arrangements for both gas and electricity.

Option 4: Align Gas Objection Rules to replicate Electricity Arrangements

We believe the present arrangements for electricity are fundamentally flawed, as previously detailed in our approaches to Ofgem, and would not support this option.

Option 5: Align the Gas and Electricity Objection Rules.

We consider modification of the Gas Licence and the MRA to allow suppliers to object where the contract permits represents the best solution. Our main concern in respect of this Option would be that SMEs would in practice have little leverage with suppliers if objection rights were only to be determined in conditions of contract.

The Recommendations and Conclusions summarised in Section 6 of the Consultation document provide useful parameters for such arrangements. We believe these would be strengthened further by;

1. retaining appropriate provisions within Supply Licences, consistent with the new arrangements, and the obligation on Ofgem to enforce against licence breaches
2. removing the supplier's right to block a transfer on grounds of debt from the gas supply licence and
3. discouraging suppliers from inappropriate supply point registrations by means of a financial instrument, for example, by requiring them to pay transportation / distribution & transmission charges for the supply point during the period following transfer, and requiring them to charge a 'reasonable' amount for the cost of gas/electricity supplied – perhaps expressed as a percentage of the 'deemed' contract rate used in the SOLR procedure. This would certainly incentivise suppliers to get it right more often.

Conclusions

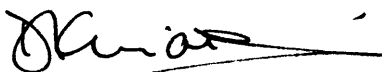
We support the objective of common arrangements governing the use of objections in supply point transfers for gas and electricity and favour the option of modifying both the gas licence and MRA to remove the suppliers' right to object on the grounds of debt, and to additionally allow suppliers to object only where the contract permits.

Transitional arrangements should, in so far as possible, be clear and relatively simple. On this basis we support the view that existing contracts should not be unduly disrupted - although we recognise that for some contracts this may delay the implementation of the new arrangements. It may be helpful to confirm the new arrangements can be applied to existing contracts with the agreement of both parties e.g. where a customer and supplier have more than one contract it would be preferable to maintain common terms, if possible, during the transitional period.

The target of 1st June 2003 for the amendments to the I&C objection arrangements may be achievable. However, assuming publication of a statutory consultation document proposing a modification to the gas supply licence, and a parallel change to the MRA, being in line with the timescales proposed in the Consultation document, this would only allow 4 - 6 weeks before the proposed date for amendment to the I&C objection arrangements. Whilst we would not wish to unduly delay improvements in the transfer process, such a short period could have implications for contracts agreed in the period leading up to 1st June 2003 (i.e. they would be considered to be 'existing' contracts unless the contract arrangement provided otherwise in terms of the changes to the transfer process).

We agree it may be helpful for suppliers and consumer groups to draw up 'standard' or 'model' terms detailing the grounds on which a supplier may (or is required) to object. However, although this is a worthy objective it may prove difficult to achieve with such a wide constituency, and is likely to take some time. Nevertheless, we would be pleased to contribute to such an exercise.

Yours sincerely



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Group Buyer, Energy