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Dear Ian,

Transfer Objections: Stronger Rights for Industrial and Commercial Customers

Thank you for the opportunity to comment on the issues raised in the above paper. We welcome Ofgem's proposals to amend the rights of I&C suppliers in both gas and electricity to object only in cases where this is permitted in their supply contract with the customer.

The benefits to both I&C customers and suppliers of relying on the contract to specify the circumstances in which an objection could be raised are summarised in Ofgem's paper and we will not therefore repeat them in detail here. In short, however, we support Ofgem's view that the relationship between I&C customers and their suppliers (including the supplier's right to raise objections) should be determined in the supply contract, rather than by licence or industry agreement, and that any disputes should be resolved through normal commercial or legal routes. This would allow customers to negotiate with suppliers to ensure that the contract best fits their needs, for example through better management of multi-site contracts and the prevention of erroneous transfers. It would also allow suppliers to more accurately assess the risks and costs of supplying I&C customers in the competitive market and allow them to tailor their offers accordingly.

In addition, if implemented, the proposals would create a common objections regime across the I&C energy sector. This would simplify the change of supply process and minimise the potential for confusion and/or frustration for dual fuel customers who wish to change supplier. The proposal to amend suppliers' rights to object in this way is also fully consistent with Ofgem's stated policy aim of withdrawing from regulation of competitive markets.

While we strongly support the proposal to amend the rights of I&C suppliers to object only where they are permitted to do so in their contract, we do have two concerns about Ofgem's proposals. First, Ofgem ask whether it would be helpful for suppliers, in conjunction with


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customer representative bodies, to draw up a set of standard industry terms for inclusion in contracts detailing the grounds on which suppliers could object. We do not believe that 'standard objection clauses' are necessary or appropriate in a competitive market. We are also unclear whether customers would still be free to negotiate individual objection terms should they wish and, if not, who would enforce the standard clauses and under which specific formal powers? We therefore do not support the development of standard objection clauses and we believe that, if introduced, many of the benefits to both customers and suppliers outlined above would be reduced.

Second, Ofgem ask for comments on the draft modification proposal set out in Appendix 3 of the consultation paper and, in particular, whether contract terms relating to debt objections should be restricted in the licence so that suppliers would only be able to object for 28 day-old billed debt (where this is also provided for in the customer's contract). This suggestion runs contrary to the rationale for making the right to object in the I&C market a contractual issue and would retain unnecessary regulation in this area. In addition, different customers may prefer different criteria to apply to a supplier's ability to object for debt, for example some customers may wish to vary the age of debt that triggers an objection depending on their payment method and/or frequency.


Similarly, we believe that paragraph 2 of the draft licence modification should be deleted as again, this is something that should be left to customers and suppliers to negotiate on an individual, commercial basis. A blanket obligation in the licence to inform customers of the reason for an objection may be considered by many customers as an unnecessary cost (they would already know the grounds on which their supplier could object from their contract). The draft modification only refers to non-domestic customers, but the existing licence condition applies to both domestic and non-domestic. For clarity, therefore, any modification to licence condition 30 to implement the above changes needs to ensure that gas suppliers' rights to object to domestic customer transfers remain unchanged by the modification.

Ofgem also ask for views on the transitional arrangements that should apply for existing gas I&C contracts. We believe that the licence modification should clearly state that the amendments only apply to new contracts made or renewed after the date that the licence is modified and any long-term contracts would run their course in accordance with the original contract terms and licence provisions. That is, a supplier would retain the right to object for debt and insufficient contract termination (as provided for in the existing gas licence) for contracts entered into before the date the licence condition is revised. This would avoid the need for existing contracts to be altered / re-negotiated and would ensure that neither the customer nor suppliers' rights were unfairly prejudiced due to changes in regulatory policy.

Finally, we consider that 1st June 2003 is an appropriate and achievable date for amending the I&C objection arrangements as outlined above in the gas and electricity markets.

I trust these comments are helpful.

Yours sincerely


AP Rob McDonald
Group Regulation Manager