

By E-mail & Post

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Dear David

Competition in Electricity Metering Services – Industry Guidance – v1.1

As a strong advocate of competition in electricity metering services, British Gas welcomes the publication of guidance with the intention to provide clarity of the regulatory framework to support competition in this market. The guidance considers issues that British Gas has previously raised with Ofgem; issues that potentially could have a significant impact on the development of effective competition. As such, there are very important matters discussed in the consultation that require careful consideration.

British Gas is content for this response to be placed on the Ofgem website in order to facilitate transparency and enable informed debate of the issues.

This response follows the order of the consultation but sections of the guidance are only referenced where comments of substance are relevant. Accordingly, the primary focus of this response is Standard Condition 7 of the Electricity Supply Licence.

The Electricity Supply Licence (General Conditions)

Standard Licence Condition 1

British Gas initially raised the issue of ownership in relation to the licence definition in February 2001 and wrote to the then Head of Metering Policy, Simon Doggett, on 13th March 2001. Our concern at that time was the definition of “owned” in the Gas Suppliers Licence to include leased or cognate expressions could potentially hamper the development of commercial arrangements to support gas metering competition. Ofgem’s response of 14th November 2001, copied to the industry, sought to clarify the regulatory regime

in this regard and also touched on the accounting treatment and indicated the “legal title owner” could be a bank or other body simply providing finance. The distinction was made with the “Gas Act owner” who can only rest with the gas transporter, gas supplier or the consumer.

A similar terminology is used in the electricity licence but the Electricity Act 1989 does not make reference to the distributor (transporter in gas) but merely the supplier and customer. However, the principle as outlined for gas should also apply to electricity i.e. the legal title owner of the meter could be a party other than the supplier or customer.

Standard Licence Condition 7

Ownership

This Condition sets out the key requirements on the owner of the meter and these are outlined in the guidance. British Gas believes the intention of these requirements is to protect the customer by ensuring a meter is in place to record ongoing consumption and that such arrangements are maintained through change of supplier events; an objective that British Gas wholeheartedly support.

This Condition requires that a supplier shall on application by any person offer to enter into an agreement to sell, hire or loan the relevant metering equipment. However, British Gas believes that “any person” within the context of the Condition cannot mean any supplier, since to do so would suggest the new supplier would also become the “owner” under the suppliers licence. This would effectively mean that the relevant metering equipment would have two owners as defined by this Condition e.g. the outgoing supplier leasing it from the meter operator and the incoming supplier leasing it from the outgoing supplier. If the customer transferred again to another supplier, a third owner could be created and so on. This is notwithstanding whether the equipment legal title owner is a completely separate entity e.g. a bank, as discussed above.

Furthermore, if this interpretation of owner were followed, the supplier or the customer would own every existing electricity meter. As every supplier leases meters from the local Distribution Network Owner (DNO), every supplier “owns” these meter and therefore is, in theory, bound by Condition 7 to offer terms to incoming suppliers. This is clearly not what happens in practice with the DNO offering terms under Condition 36-36C of its Electricity Distribution Licence.

British Gas therefore believes there is significant scope for confusion regarding the term ownership and the proposed interpretation cannot be what was initially intended in the Licence drafting (which has been inherited from the original licences prior to the Utilities Act) - applying the current interpretation would clearly create multiple owners of metering equipment. Accordingly, British Gas disagree with the interpretation within the guidance.

However, if Ofgem's interpretation is adopted, the issue could be addressed by reviewing the definition of owned in the Licence or amending Condition 7 itself. As it is acknowledged that the absence of collective modification rules could create delay in this regard, it is suggested that paragraph 5 of Condition 7 has the means to address this confusion in the interim. This paragraph gives the Authority the power to issue a direction relieving a supplier of its obligations under paragraph 1. Accordingly, a direction could be issued relieving suppliers of the duty to offer terms to other suppliers.

Customer Protection

At this point, it is important to return to what is believed to be the intent behind this Licence Condition i.e. to protect customers. There may be a concern that customers may be left without a meter on change of supplier. There are three provisions that will provide comprehensive protection to such customers.

First, suppliers have a requirement within this Condition that prevents a supplier entering into any agreement in respect of the provision of metering equipment that is intended or is likely to restrict, distort or prevent competition. British Gas maintains that the wide brief of this duty prevents "lock-in" type agreements and ensures that metering arrangements are accessible to all. This requirement is further reinforced by the provisions of Chapter I of the Competition Act 1998, where suppliers are prohibited from entering into agreements that prevent, restrict or distort competition.

Second, the outgoing supplier is unable to remove a meter at a customer's premises if it does not have legal title to the meter. If it does "own" it according to Ofgem's interpretation, it is prevented by Standard Licence Condition 47 from recovering the meter at any domestic premises.

Third, non-incumbent meter operators have a fundamental incentive to ensure their metering equipment is retained in these premises. Accordingly, their aim would be to provide competitive terms to any incoming supplier.

Competition

The guidance effectively suggests that suppliers should offer terms to other suppliers that it has negotiated in good faith for its customers with their chosen wholly independent (from the supplier) third party meter operators. Accordingly, any supplier would be able to approach the supplier who has selected non-incumbent meter operators and demand similar, if not the same, terms. Essentially this would negate the whole purpose of competition and remove the incentive to innovate.

In addition, British Gas believes those terms offered by the meter operator should not be dictated by the outgoing supplier who originally entered into an agreement with that meter operator. Offering similar terms would do this. It must be the right approach in a truly competitive market that each supplier decides how best to serve its customers and secure commercially favourable terms, bundled or unbundled, from the meter operator. If those terms are not

available from the existing operator, the competitive market is there to enable the supplier to source services from another provider. In these circumstances, the incoming supplier can request the existing meter to be removed if the meter is owned or provided by the outgoing supplier (SLC47).

Finally, British Gas fully support the Ofgem view that the transfer of meter ownership should not require the incoming supplier to make significant changes to his systems other than those agreed to facilitate metering competition as developed and agreed under the auspices of the REMA programme. It would be wholly inappropriate for a supplier to frustrate competition by making unjustified claims that its changes are “significant” and so cannot be implemented.

Summary

The concept of ownership and its application to Condition 7 is a critical component of the regulatory framework for metering competition. Adopting an interpretation of ownership whereby a supplier is required to offer terms to any other suppliers irrespective of the actual legal title of the metering equipment and the commercial arrangements it may have in place, has the potential to wholly undermine metering competition in electricity before it can become established. Accordingly, British Gas urge Ofgem to encourage a comprehensive debate in respect of this guidance to ensure the objectives of its metering strategy are met i.e. to facilitate the rights of suppliers and consumers to make their own metering arrangements through effective competition which promotes choice, innovation, new investment and cost efficient provision of services.

Standard Licence Condition 53-53C

British Gas does not have issue with the description of these requirements under these Conditions but suggest it would be helpful to include guidance of the expected scope of the prepayment meter services under Condition 53B, paragraph 3 i.e. what these services are expected to include.

The Electricity Distribution Licence

Standard Licence Condition 36-36C

The requirement on incumbent meter operators i.e. the DNO, to provide MAP and MOp services by is an important safeguard while effective metering competition develops. It is also important that urgent metering services are maintained to retain a rapid service for consumers in emergency situations. Accordingly, British Gas are concerned at the intimation that DNOs may not be obliged to offer these or other “ad-hoc” services where suppliers have selected competitive meter operators. Further clarity is required to ensure to consumer’s interests are protected and suppliers using non-incumbent service providers are not placed at a disadvantage.

As stated earlier, British Gas believe this guidance has the potential to severely impact the development of competition in electricity metering. British Gas, therefore, would welcome the opportunity to discuss the issues raised in this response directly with Ofgem and the rest of the energy industry. If there are any immediate queries in the meantime please do not hesitate to contact me on 0208 734 9359.

Yours sincerely

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