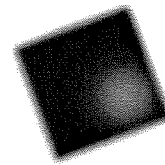


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Iain Osborne
Director of Consumer Markets
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RESPONSE BY EMAIL ONLY

29 April 2004

Dear Iain,

Microgen comments on the Ofgem decision document: 'Testing domestic consumer take-up of energy services: trial suspension of the 28 day rule' (Ofgem ref 73/04)

We welcome the development of this trial, and appreciate the opportunity to contribute through the consultation process.

It is clear that our comments (and those of others) - that the greatest benefit would come from a trial in which additional regulation was minimised - have been considered and taken into account. In particular, the latest decision document now recognises and takes account of the importance of customer choice.

We have some comments on the detail of the decision document, and these are presented in the appendix.

On the whole, we are very encouraged by the effective way in which Ofgem have consulted, and taken account of responses.

Please contact me if you would like to discuss these comments in more detail.

We look forward to the development of the trial and its successful implementation.

Yours sincerely

G Roberts

Graham Roberts
Regulation Manager – Microgen

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Appendix – Comments on the detail of the decision document

In this appendix, the term 'Supplier' means a licensed gas or electricity supplier.

Extracts from Ofgem's document (abridged where appropriate) are presented in italics.

Energy saving threshold and lock-in periods

Paragraph 4.27: Ofgem accepts the arguments that a 15% threshold would practically exclude many consumers, in particular those whose homes already incorporate some energy efficiency measures or who do not have cavity walls. Ofgem is also keen not to exclude micro-generation. For this reason, the draft direction in Appendix 3 includes within the trial energy efficiency packages saving as little as 9 per cent. This is subject to a shorter maximum lock-in period: packages saving 9-12 per cent will permit a three-year lock-in, while 12-15 per cent will allow four years, and over 15 per cent will allow a five-year lock

Microgen response:

The trial should permit suppliers and customers to enter agreements of any length, up to the maximum five years, for all levels of saving above the minimum threshold. The sliding scale approach is overly restrictive, and threatens to limit the scope of offerings suppliers may make (which in turn will limit what can be learned from the trial).

Termination

Ofgem proposed (in paragraph 5.12.9 of the January 2004 consultation document): *Ofgem also proposes that the customer should have a right to terminate where the supplier's contract does not comply with the terms of the supply licence (for example, with the terms of the derogation setting up the trial). This would ensure that, if suppliers fail to honour their contract, consumers are not obliged to rely on regulatory enforcement or court action to protect themselves.*

Microgen response (to the January document) was:

The proposal that customers may terminate if they believe the contract to be in breach of the Supplier's licence terms is founded on an unnecessarily pessimistic view of Suppliers, and an unrealistic view of how interested and informed of licence conditions will be the customers. The proposal appears to suggest that customers can unilaterally decide that a Supplier is in breach, and simply rip-up the agreement. This is unworkable.

Paragraph 4.56 of the Ofgem's March decision document states:

One respondent did not agree with Ofgem that a consumer should be able to terminate the contract if the supplier breached the terms of the trial, on the grounds that consumers were not well informed enough to make such judgements. Ofgem does not agree with this view of consumers, and believes it important to maintain a broad parity of arms between consumers and their suppliers. We have therefore maintained this provision.

Microgen response:

We fully agree that customers should be free to terminate agreements when the supplier has breached their licence conditions. However, it is unclear, given what was proposed in the original consultation paper, how this 'right' will work in practice, hence our original response, the logic of which is as follows:

- If the supplier has breached its licence conditions, and admits to the customer that it has done so, then both parties can terminate the agreement, effectively by mutual consent.
- If the supplier does not agree that it has breached its licence conditions, and does not want the agreement to be terminated, then how is the customer to achieve termination, if not through the intervention of the regulator or the courts?

G Roberts, April 2004