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4 May 2004

Dear Iain,

### **Objections for debt: Direct Debit domestic customers**

I refer to your letter to Laurence Poel dated 17 March in which you set out Ofgem's views regarding the use of the objections process for domestic direct debit customers. From a npower perspective, this is important given the recent financial penalties levied against Npower Yorkshire Supply Limited and Npower Gas Limited.

As you know, during the investigation the circumstances surrounding those customers whom Ofgem determined had been unfairly prevented from changing supplier were looked at in some detail. And as you further know, we felt that things were not perhaps as clear cut as was finally decided. Given the fundamental nature of the objections process to suppliers' businesses, it needs to be applied consistently across the piece. In addition, the definitions that are used need to be clearly understood by everyone involved in raising objections. Not least, customers need to understand their obligations to pay for electricity and gas, which they have consumed, and that, if they do not pay, they may be prevented from changing supplier.

Looking at definitions: the MRA in clause 16.1.1.1 uses the phrase that '*..charges for electricity...having been demanded in writing... remain owing... more than 28 days after that demand was made;...*'. The gas licence (both SLCs 30 and 46) talks of where '*...the customer fails to pay charges for the supply of gas...are due ...and have been demanded in writing...*'. As we said in one of our responses during the investigation, the phrases are ambiguous. It is not entirely clear what it means to send a customer a 'demand for charges'. It might mean simply that the company has notified the customer of its charges and stated its right to recover them. A 'demand for charges' of this sort may be necessary to give rise to the debt; a demand for repayment of the debt would be a further step. It is accepted that a bill, which contains something to the effect that the amount outstanding as shown therein has now become due, is a 'demand for charges'. However, would, for example, a letter that clearly states a sum of money has become due for payment constitute a demand for charges in Ofgem's view? Taking the above argument to its logical conclusion a 'demand for charges' could quite easily apply to direct debit statements, which may be branded as 'for information only' because they are notifying customers of a

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quantity of electricity or gas consumed by reference to price and quantity which has to be paid for at some juncture, ie it tells the customer money is owing. In the case of the supplier referred to in your penultimate paragraph which had used its direct debit statements as a suspended demand for payment, had the dispute raised under the MRA last summer been determined by MEC, it would have been interesting to see what that body decided. It is quite conceivable that the supplier in question would have been found not to have breached Clause 16.1.1.1.

Turning now to the examples contained in your letter and for the sake of simplicity putting to one side the argument above and accepting that a 'demand for charges' is the same as a demand for payment, customer A's circumstances are straightforward and we agree that a supplier is not able to object. In the circumstances of customer B, the customer had not yet been billed before agreeing to pay by direct debit, therefore a supplier should not object. However, if he or she had been billed before joining the scheme (the customer C in your suite of examples) Ofgem's view is that a supplier can object. Would this still be the case if the customer had received a bill, moved to direct debit within, say, 3 days of its receipt and then attempted to transfer, say, 7 days after that? Possibly not, if all the processes ran smoothly, as the demand for payment may not have been outstanding for 28 days at the time of a prospective objection. Nonetheless, clarification would be helpful here.

In an explanatory paragraph to the supplier's right to object in the case of customer C, you say you expect that a supplier would seek to recover the debt over an agreed period of time; the implication being that the right to object does not continue indefinitely, but only over what is reasonable in order to recover the debt. This assumption raises a number of questions as to when a debt is cleared taking account (or not) of the customer's ongoing consumption. An example is shown in the appendix to this letter which demonstrates the genuine potential for confusion for suppliers. Additionally, it is perhaps fair to say that most suppliers' systems are unable to account separately for debt and ongoing consumption with any degree of certainty.

In the case of Customers D and E - after missing a payment, reducing payments or taking a payment holiday - if they continue to pay but make no attempt to make good the missed month's payment (or deficit), for how long does the supplier's right to object remain? All other things being equal and no adjustment is made to recover the missed month (or deficit) at some later date, it must remain until such time as that (missed monthly or deficit) payment is made good.

You ask if there are particular problems with customers paying failing to pay final bills. To comply with the Direct Debit Guarantee we have to provide notification (not request permission) to the customer if we change their payment amount and/or the date that the payment is to be taken if this is different from that agreed at set up. For a final account usually both of them change. The 'notification period' varies (as agreed with the sponsoring bank) but is typically 10 working days. Notwithstanding, if the customer cancels the direct debit mandate before receiving the final bill, we would have to rely on conventional methods of debt collection, but as the customer is no longer a customer of ours this is not always reliable.

Although your letter deals exclusively with direct debit, is it to be assumed that the principles discussed therein apply equally to other regular payment methods, including cash and standing order, where the supplier does not have the ability to

collect the monthly payment directly but is reliant on the customer to make the scheduled payment? Would they also apply to prepayment where there is the added complication of the balance on a customer's meter not necessarily reflecting the balance on the supplier's billing system?

Finally, given what we have stated above, we believe that Ofgem should consult more fully on the issues surrounding domestic objections. The opacity of their drafting and subsequent application is such that suppliers can quite inadvertently fall foul of what it was they were originally intended to stop.

I would be happy to discuss this further if you wish.

Yours sincerely,

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## Appendix

Assume a customer receives a quarterly bill on 3/1/04 for £120 and elects to pay by direct debit. Their anticipated annual consumption is £360 pa. On the basis of this, the supplier agrees to a monthly payment of £40 comprising £10 for the debt and £30 for the customer's ongoing consumption.

Assuming the following payment schedule:

Date	Payment	Bill*/Statement of consumption	Balance
3/1/04		£120*	-£120
5/2/04	£40		-£80
5/3/04	£40		-£40
3/4/04		£100	-£140
5/4/04	£40		-£100
5/5/04	£40		-£60
5/6/04	£40		-£20
5/7/04	£40		+£20
5/7/04		£80	-£60
5/8/04	£40		-£20
5/9/04	£40		+£20
3/10/04		£60	-£40
5/10/04	£40		£0
5/11/04	£40		+£40
5/12/04	£40		+£80
2/1/05		£120	-£40
5/1/05	£40		£0

It is not clear at what point the debt has been paid. This could be in theory be at:

- a) 5/4/04 - when 3 x monthly payment;
- b) 5/7/04 - the point in time when the account first goes into credit, albeit that a statement is issued the same day, which takes it into debit;
- c) 5/9/04 - the first day the account stays in credit; or
- d) 5/1/05 - when 12 x the element of the monthly payment assigned to debt (£10) have been made

During the Ofgem investigation we argued that it was impractical from a systems perspective for suppliers to have to account for debt separately to consumption and that providing the account was in debit we should be entitled to object (i.e. up until 5/9/04). Ofgem argued that once the monthly repayments had recovered the debt then we could no longer object (ie 5/4/04). This is despite the customer having used £100 of energy in the meantime because as the customer has now switched to dd this £100 will not have been demanded but will simply be shown on a statement.