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3 September 2004

Dear Sir,

**Notice of an appeal by British Gas Trading ('BGT') against a decision of the MRA Forum regarding MCP 144**

On 18 June 2004 the Gas and Electricity Markets Authority ('the Authority') received notification of an appeal raised by BGT in accordance with clause 7.26 of the MRA. This appeal was made in respect of a decision of the MRA Forum on 29 July 2004 to accept MRA Change Proposal ('MCP') 144 (Clarify the scope of "contract" as referenced in clause 16.1.2.1).

Clause 7.26 of the MRA provides for any MRA party to appeal a decision of the MRA Forum within ten working days of receiving the minutes of the relevant MRA Forum meeting. The MRA party may raise an appeal where the party reasonably believes that a resolution passed by the MRA Forum will or is likely to prejudice unfairly the interests of that party, or will cause the party to be in breach of the MRA, its licence or the Electricity Act 1989.

BGT lodged an appeal within the period specified in clause 7.26 and a copy is attached for information<sup>1</sup>.

This letter is to inform you of the procedure that Ofgem will follow in relation to this appeal.

**Procedure for determining the appeal**

The procedure that Ofgem, on behalf of the Authority, will adopt in determining this appeal is based on Ofgem's Procedure for Determining Disputes, attached for information<sup>2</sup>. Iain Osborne, Director of Consumer Markets, is the appointed decision-maker. I am acting as the case-officer for the appeal. In summary, the procedure will be:

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<sup>1</sup> see Attachment 1

<sup>2</sup> see Attachment 2

1. Any addressee who wishes to make a written representation in relation to this dispute may do so. All such representations must be sent to the case-officer, **no later than 24 September 2004**. If any party wishes to provide confidential information, it should provide notice before doing so, explaining why it is confidential. All non-confidential representations will be published on the Ofgem website.
2. Following publication on the website, any addressee may then submit comments in writing on representations made by others. These should be sent to the case-officer **no later than 1 October 2004**.
3. While it is Ofgem's intention that the exchange of information leading to the determination should be largely in writing, any addressee may present its case in person to the decision-maker. Any such hearing will only take place after the written process has been completed.
4. Any decision on the admissibility of submissions received late will be made at the discretion of the case-officer.
5. The decision-maker will make his decision on the basis of the statement prepared by the case-officer, the written submissions and any oral hearings. This decision and the reasons for it will be published on the Ofgem website and a copy will be forwarded to all MRA parties and Gemserv.

#### **Wider consultation**

Concurrently with this appeal process, Ofgem is conducting a wider consultation ('**the Consultation**') on the subject of transfer objections under deemed contracts for non-domestic customers, to which this appeal relates, seeking the views of both gas and electricity suppliers as well as customer groups. This is due to the fact that Ofgem did not request views specifically on the subject of objections under deemed contracts during its previous consultation on non-domestic transfer objections<sup>3</sup>. In the Consultation, it is therefore seeking comments in order to establish whether transfer objections under deemed contracts are appropriate in the gas and electricity markets.

**The Authority's consideration of these wider views and its decision on whether to grant consent to MCP 144 will only be made following its appeal decision. To that end, comments received under the Consultation will not be made available to me, as the appeal case-officer, or to the decision-maker until after the appeal decision has been made.**

If the appeal is upheld, the responses to the Consultation may be taken into account when determining whether other changes to the gas or electricity arrangements should be proposed.

If the appeal is dismissed, Ofgem may consider views expressed in response to the Consultation when determining whether to grant its consent to MCP 144, as required by clause 9.5 of the MRA.

In order to separate responses to this letter and to the Consultation, where recipients wish their views to be considered under this appeal process, responses should be clearly marked '**Appeal Response**' and sent, separately to any responses to the Consultation, to me at the above postal or e-mail address.

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<sup>3</sup> 'Transfer objections: stronger rights for industrial and commercial customers', available from [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

Please contact me if you have any questions on the above process.

Yours faithfully,

Ian Anthony  
Electricity Infrastructure Manager

Mr N Nash  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Kevin Woollard  
3 The Square  
Stockley Park  
Uxbridge  
Middlesex  
UB11 1BN

12<sup>th</sup> August 2004

Dear Mr Nash,

**MRA CP 0144 – Clarify the scope of “contract” as referenced in clause 16.1.2.1**

I refer to the above MRA Change Proposal that was accepted at the May 04 MRA Development Board (MDB) and subsequently appealed by British Gas to the MRA Forum on 29th July 2004. At the MRA Forum the resolution taken by the MDB on 27th May 2004 was upheld and therefore MRA CP0144 stands accepted subject to Authority consent.

British Gas would like to appeal the resolution agreed at the MRA Forum for determination under the terms of clause 7.26 of the MRA. This appeal is also supported by Powergen who believe that the resolution taken by the MRA Forum unfairly prejudices their interests and those of other Suppliers.

We believe the MRA Forum resolution will unfairly prejudice our interests (and those of other Suppliers) for the following reasons:

- By excluding customers on “deemed” contracts from the wider definition of contract, a Supplier would be unable to object to customers on these contracts from moving to a new Supplier in an attempt to avoid paying legitimately levied electricity supply charges. These resultant additional debt recovery costs would be smeared across all customers, including those that pay on time.
- Where customers are re-negotiating a new contract the customer may inevitably be on a “deemed” contract for a short period. During this time the customer may require a “customer requested objection” to prevent an Erroneous Transfer (ET) from occurring. If “deemed” contracts are excluded from the definition, a Supplier would be unable to comply with the customer’s wishes and this will have a negative impact on the customer experience. Proposed ET corrective mechanisms would prove time consuming and cause unnecessary and avoidable inconvenience to the customer.
- Those Suppliers with larger portfolios of customers on “deemed contracts” would be at a greater disadvantage than other Suppliers.

British Gas would also like to highlight that a clear majority of Suppliers voted to overturn the approval of MRA CP0144 (73%) at the MRA Forum. The MRA Forum resolution to uphold the original MDB resolution was only agreed because a single Distribution Business voted against the appeal; at the MDB all Distribution Businesses provided a ‘No Interest’ vote on MRA CP0144.

Attached is the British Gas Briefing Paper that we presented to the MRA Forum; this provides an overview of the issue as well as the benefits to Suppliers and customers of allowing objections for "deemed" contracts. In summary, British Gas and Powergen believe that the resolution passed by the MRA Forum unfairly prejudices the interests of all Suppliers and therefore we appeal approval of this Change Proposal for your determination.

If you would like any further information, please do not hesitate to contact me on 07979 563 580.

Yours sincerely,

Kevin Woollard  
British Gas MRA Contract Manager

Attachment: British Gas Briefing Paper

Cc: Colette Baldwin, Powergen  
Andrew Wallace, Ofgem

# Ofgem's Procedure for Determining Disputes

## Introduction

- 1 There are circumstances in which a dispute between an electricity supplier or distributor or a gas supplier or transporter and a consumer may be referred to the gas and Electricity Markets Authority for determination. These may arise under statute (particularly the Gas Act 1986 and the Electricity Act 1989) or the provisions of licences or industry agreements.
- 2 This memorandum outlines the procedures that Ofgem will generally follow in such cases<sup>1</sup>. These procedures are in addition to any procedural requirements set out in the relevant Acts, licences or agreements.

## Start of the Process

- 3 Where a matter is referred to Ofgem that may lead to a determination, Ofgem will first consider if the matter is one which Ofgem may determine. Once Ofgem has decided that this is a matter in respect of which it is capable of making a determination, Ofgem start the procedure by explaining to all the parties the procedures that it proposes to follow. It is expected that this will usually be done by providing a copy of this note, together with any additional guidance which may be relevant to the particular type of dispute.
- 4 At the same time Ofgem will ensure that all the parties know the identity of the Ofgem official who will:
  - ◆ Be responsible for the conduct of the procedures (the 'case officer'), and
  - ◆ Make the final decision

These will never be the same people. If at any stage during the process the identity of either official changes for any reason, Ofgem will inform all the parties as soon as is practical.

## During the Process

- 5 It is Ofgem's intention that each party should have full opportunity to put their cases and that the case put by each party should be fully exposed in writing to all other parties, subject to appropriate safeguards in respect of commercially confidential information.
- 6 If any party wishes to provide confidential information, it should notify the case officer before doing so and explain why it is confidential. The case officer may require a non-confidential summary to be provided to the other party. In reaching its

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<sup>1</sup> These procedures do not apply where the disputes relate to a licence contravention and may lead to enforcement action.

decision, Ofgem will consider the weight which it is appropriate to give to information on which any other party has not had an opportunity to comment.

- 7 Ofgem will invite each party in turn to provide to it a written submission setting out the relevant facts and reasons supporting that party's position. Ofgem may provide a guide as to be information which a party will need to provide to enable the matter to be decided. At the start of the process, the case officer will set a date by which written submissions must be received by Ofgem. The length of the period allowed for preparation of submissions will depend on a number of factors including the complexity of the matter and the extent to which the documentation already exists. Ofgem would not normally expect this period to exceed four weeks.
- 9 Ofgem will normally expect to copy its correspondence to one party to the other parties and for each party to copy any letter it writes to Ofgem to the other parties to the dispute. Ofgem may itself raise questions to the parties on matters arising from the responses received.
- 10 In the light of submissions and comments, the case officer will draw up a statement of the main facts of the case and each party's arguments. The parties will have an opportunity to comment on the summary of the main facts and Ofgem's summary of their own evidence. This is not intended to provide an opportunity to restart any dispute of facts or raise new arguments.

### **Oral Hearings**

- 11 While it is Ofgem's intention that the exchange of information leading to determinations should be largely written, any party to a matter to be the subject of a determination can, at its request, present its case in person to the decision maker. It is expected that any such hearing will normally take place only after the written process has been completed. Both parties will normally attend such meetings but, in appropriate cases, it may be directed that only one party may attend, for example for the purpose of putting confidential information before Ofgem. When both parties are present, it is not envisaged that the hearing should be formal and it will not be normal for there to be cross examination, although each party will be permitted to comment in brief on the other's representations. When only one party is present, Ofgem will disclose any new information which it receives at the hearing but which is not in fact confidential to the other party for comment.
- 12 The case officer will be responsible for setting time limits at all stages of the process. In connection disputes, the case officer will specify the proposed timetable in his initial letter to the parties. He may, in exceptional circumstances, extend time limits that he has set. He has complete discretion as to the admissibility of submissions received late. It is therefore important that all parties provide information in a timely and accurate manner in support of their case.

### **The Decision**

- 13 The decision-maker will make his decision on the basis of the statement prepared by the case officer, the written submission of each party and any hearings which have

been held. This decision and the reasons for it will be recorded in writing and the case officer will provide a copy to each party.

- 14 During the course of the process the decision-maker may obtain advice from Ofgem staff, including guidance from the Ofgem management committee. The fact that he has done so, and the advice given will not generally be made public, but if any material new points are raised, the parties will be invited to comment on them.

#### **Public Register**

- 15 Ofgem is required to place on the public register maintained by it under the relevant Act a copy of certain types of decision and it is its normal practice to make all other decisions available to the public on request. The name and address of the customer will normally be omitted from the published version of the decision. If any party to a decision wishes any matter to be excluded from the publication, it should make representations to the case officer within fourteen days of the issue of the decision. After which it may be placed on the register or otherwise made publicly available in the form in which it was issued to the parties.