

Opus Energy Limited

APPEAL RESPONSE

Steve James
Opus Energy Limited
Oxford Centre for Innovation
Mill Street
Oxford
OX2 0JX

Mr I Anthony
OFGEM
9 Millbank
London
SW1P 3GE

23rd September 2004

Dear Mr Anthony,

Re: Notice of Appeal by British Gas Trading (BGT) against a decision of the MRA Forum regarding MCP 0144.

Opus Energy Limited (Opus) are responding to the above notification and believe that the appeal should be dismissed on the grounds that (i) it does not meet the criteria as set out in Clause 7.26 in the Master Registration Agreement (MRA) and (ii) it restricts competition by hindering customers switching.

Since January 2004, electricity business customers have found their wish to change suppliers blocked through provisions within a non-negotiated contract. The right to object is being used by certain suppliers as a mechanism to deter competition and as a sales retention channel for customers wishing to move to an alternative supplier. This is resulting in the customer being thoroughly confused and further operational costs being incurred by the supplier.

For the smaller supplier, increased sales costs are being incurred as further operational resource is required to try to maximise the number of customers transferring. As the percentage of successful contracts transferring continues to reduce new entrants will be dissuaded from entering the market and the current suppliers could choose to stop marketing to potential customers.

BGT indicates that MCP 144 “pre-empts the OFGEM Consultation”. However, Opus believes that by accepting the MCP and rejecting this Appeal, the market will revert to conditions prior January 2004. This will ensure a consultation can be carried out with a market where all suppliers are operating under the same objection guidelines.

The Right to Appeal Under Clause 7.26

The impact of MCP 144 would see the rules concerning objections on deemed contract revert to those existing prior to MRA v. 8.1.1. With many suppliers, including BGT, having acquired their portfolio of customers prior to this release, it is difficult to see how they will be unfairly prejudiced, simply by reverting back to how the market previously operated and how the Gas market currently operates.

In spite of this, the Appeal has been raised on the grounds that the change will “unfairly prejudice their interests and those of other suppliers”, by:

- A. forcing the parties to pass additional costs on the customers to recover debt incurred;
- B. being unable to comply with customer wishes; and
- C. by placing larger suppliers at a disadvantage.

Opus would like to address each point in turn.

- A. Forcing the parties to pass additional costs on the customers to recover debt incurred;*

As it was not possible for Suppliers to raise objections prior to MRA v.8.1.1 based on provisions within a contract, it was necessary for suppliers to have mechanisms in place to recover overdue monies accommodating the possibility that the customer could move to an alternative supplier. As these costs and debt risk were already in place prior to this change, it is unlikely that new or further costs would be incurred resulting in an additional pass through to the customers, with deemed contract prices already including debt costs.

The supporting documentation suggests that BGT would wish to block these customers and keep them on the deemed contract rates, which are higher, with the potential threat of disconnection. This is not in the interest of the customer and is currently having a detrimental impact on the customer experience.

- B. Being unable to comply with customer wishes;*

In addressing the second point, Opus would refer BGT to the mechanisms already in operation within the market. In the scenario detailed, if the customer was transferring to another supplier during contract negotiation, on the vast majority of occasions it is because the customer has signed an agreement with another supplier. If it were the case that the customer then agrees to be supplied by BGT, it will be in accordance with the terms of the other suppliers contract as to whether the site could revert back to BGT. BGT should not be using the objection process as an aid to portfolio retention as is implied in their documentation.

In cases where the customer has not signed another agreement, then BGT would still be able to object to such a transfer, under Clause 16.1.2.2, with agreement from the other supplier. Where the objection window has closed, Opus would suggest that the Erroneous Transfer process is the most appropriate mechanism already in place within the market and should be used in this instance. As these two options are available to

Opus Energy Limited

all participants within the market and enable the suppliers to meet the customers wishes, this situation does not create a case for the Appeal.

C. By placing larger suppliers at a disadvantage.

BGT put forward that “those suppliers with relatively larger SME based portfolios would be disproportionately disadvantaged because of the correspondingly greater incidence of Deemed Contracts associated with SME customers”. We have seen no evidence to show a correlation between the size of the supplier and the percentage of customers on deemed contract. Even if there is evidence, there are a number of complex factors that contribute to the proportion of customers on a deemed contract. However, the simple reason for a deemed contract must be because a supplier and the customer have not been able to enter into a negotiated contract. It is possible that a large supplier may have a large number of deemed contracts, but, this is not specifically because of the size of the supplier, rather the customer relationship between the supplier and their customer and this does not leave them unfairly prejudiced.

The BGT supporting documentation ignores those customers, still supplied by ex-PES companies, that have not chosen to move supplier or re-negotiate a contract. By dismissing this Appeal the market will move a step closer to ensuring that when these customers choose to move to an alternative supplier they will be able to do so. Likewise, those customers who move into properties as new tenants are not bound to stay with the current supplier removing any choice to choose an alternative.

Summary

Opus believes that the grounds on which the Appeal has been raised does not support the proposition that the raising party will have their interests unfairly prejudiced. Rather the Appeal is restrictive to the customer and benefits those suppliers that have not been able to negotiate terms with their customers and are using the objection rules to do so.

By dismissing the Appeal, OFGEM will be ensuring stronger rights for industrial and commercial customer within the transfer process. With the ever increasing electricity wholesale price, OFGEM and energywatch are actively encouraging customers to explore the market to find cheaper deals. It is imperative that the industry procedures allow those customers, who follow the advice of OFGEM and energywatch, to move to their cheaper alternative supplier.

If you have any questions regarding this response or require further information, please do not hesitate to contact me on 01865 812 003.

Yours sincerely

Steve James
MRA Contract Manager