

CONSULTATION RESPONSE

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Joanne Taylor
OFGEM
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30th September 2004

Dear Joanne,

Re: Consultation Regarding Transfer Objections under Deemed Contracts for non-domestic customers.

Opus Energy Limited (Opus) are responding to the above consultation and would strongly endorse the option that under no circumstances should a supplier be able to object to a customer wishing to transfer, where that customer is being supplied under a deemed contract.

The original consultation document, entitled “Transfer Objections: stronger rights for industrial and commercial customers” produced a change to the guidelines permitting objections through negotiated contracts. The rationale behind this was to ensure that the customer was in a strong position and could have transparency on the clauses relating to objecting and perhaps negotiate their removal with the supplier if required. Objecting under a deemed contract places the customers in a weaker position than they were in prior to January 2004.

Debt

Many suppliers believe that the right to object to deemed contracts is necessary as a mechanism to control debt. If suppliers are permitted to do this, the market will see business customers being held on high deemed contract prices with the possible threat of disconnection, if they fail to pay, often when they are not clear on any debt being due. This comes from some customers being supplied under deemed contracts, being those that have moved into a property and not being aware of who supplies them. The customer experience within the market will be confusing with contradictory messages being relayed from the industry. With the ever increasing electricity wholesale price and therefore deemed contract 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 supplied under deemed

contracts, who follow the advice of OFGEM and energywatch, to move to their cheaper alternative supplier.

The ability to object is not the only mechanism by which a supplier could recover any due monies. There are a number of alternative procedures in place whether they be through commercial or legal means. On this, Opus is in agreement with OFGEM's views in the decision document which stated that:

“Suppliers and customers would then be able to negotiate terms for debt objections appropriate to them.”

Also the view from the user group ESPO:

“Current arrangements are inconsistent with other markets and as there are alternative remedies available to suppliers we see no reason why suppliers should have the right, on the grounds of outstanding debt, to prevent a customer transferring to another supplier. Disputes between I & C customers and suppliers over outstanding debt or termination payments should be resolved through normal commercial or legal routes”.

Restriction of Competition.

To understand the significant impact on competition it is first necessary to define those electricity business customers that will be affected.

As stated in the consultation document, a deemed contract is

“A contract that is deemed to be in place where a customer takes a supply of electricity and gas otherwise that under a contract that has been expressly entered into with a supplier...”

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. As well as change of tenancy (CoT) customers, this will also include the customer that remains with the ex-PES and has neither chosen to move nor re-negotiated with the incumbent supplier. The recent discussions referring to the right to object under deemed contracts, has concentrated on those CoT customers, and not the ex-PES customers. The ability to object must cover all types of scenarios and must permit those customers, yet to negotiate a contract, the ability to negotiate and transfer when they choose to. Failure to have such a facility in the market, will lead to a reduction in competition and for the smaller supplier, increased sales costs which will be 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.

Summary

Since January 2004, electricity business customers have found their wish to change suppliers blocked through provisions within a non-negotiated contract by certain electricity suppliers. Many customers are experiencing confusion, when they are

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being offered cheaper prices, but being retained on high deemed contracts by a supplier that they do not wish to be with. Their rights within the market are considerably less than before January 2004.

The interpretation of the MRA, by a section of the market, is contradictory to OFGEM's views expressed in the decision document on stronger rights for industrial and commercial customers. Opus has looked to support these views by raising MCP144 and ensuring clarity for the customer and the right to object contained within negotiated contracts.

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