

# Duty to Supply, Contracts and Information SLR Workgroup

Meeting 3, 12 January 2006

Minutes - DRAFT

## Attendees:

|                  |                |    |
|------------------|----------------|----|
| Nigel Nash       | Ofgem          | NN |
| Andrew Wallace   | Ofgem          | AW |
| Yemi Balogun     | Ofgem          | JB |
| Robert Hammond   | energywatch    | RH |
| Gillian Cooper   | energywatch    | CP |
| Ljuban Milicevic | Ofgem          | LM |
| Mark Watson      | ERA            | MW |
| Tahir Majid      | Centrica       | TM |
| Roger Barnard    | EDF Energy     | RB |
| Kirsten Lewis    | Ofgem          | KL |
| Caroline Ormond  | Ofgem          | CO |
| Jill Ashby       | Gemserv        | JA |
| Jacqui Gehrman   | Scottish Power | JG |
| Laurence Poel    | npower         | LP |
| John Sykes       | SSE            | JS |

## 1. Introduction and welcome

NN welcomed the Duty to Supply, Contracts and Information workgroup to its third meeting. He explained that the main issues to be covered at the meeting would be further comments on the draft Duty to Supply Impact Assessment and the workgroup's review of Ofgem discussion document on contracts.

## 2. Minutes and action

AW thanked RB for the comments on the draft minutes. JS added that the attendee list was incorrect and Rachel Chalmers had not attended and that Jacqui Gehrman's comments had been incorrectly attributed to her.

LP asked whether Ofgem had determined how Northern Ireland has complied with the universal service obligation in the IMED. AW mentioned that Ofgem had a copy of the transposition note for Northern Ireland and would look into this.

**Action: Ofgem**

TM asked that the action on him to provide information on linkages between security deposits held and customers on the PSR be rolled over to the next meeting.

**Action: BGT**

## 3. Duty to supply – Further comments on draft Impact Assessment

NN explained that the group's discussions on IA were important to inform Ofgem's thinking on these issues for consultation in June. Several suppliers agreed to provide written comments and circulate these to the group at least 10 days in advance of the next meeting so that the group would have time to consider them fully at the next meeting.

**Action: Workgroup attendees**

AW noted that comments on the draft Duty to Supply IA had only been received from energywatch and that the aim was to review these at the meeting.

RH summarised that, subject to the requirements of the EU Internal Markets Directives, energywatch were in favour of retaining a simple requirement to offer domestic terms and referring the specific requirements for payment terms for vulnerable customers to the VC&Codes workgroup.

In relation to a discussion on SLC 43 on offering payment methods and publishing principal terms, RB highlighted that under competition law suppliers may be caught by the requirement not to discriminate between different customer groups. Equally this may apply to the SLC 43(4) provision not to process contracts with undue preference or undue discrimination. RB questioned whether this obligation was therefore still required. RH said that a better understanding of what was meant by processing might be required, but after further discussion it appeared to be common ground between energywatch and suppliers that licence regulation of the processing of contracts was no longer required.

RH said that energywatch do not believe it necessary to require suppliers to publish their contractual terms and conditions through regulation. They will naturally want to do so, although RH reported some difficulty in getting access to these on suppliers' websites.

On security deposits RH pointed out that energywatch still remain to be convinced that the deregulation of the protections surrounding security deposits in SLC45 were appropriate. He expressed concerns about particular customer groups such as rural consumers and students or those with no credit history. A licence condition not to require security deposits in certain circumstances does not prevent suppliers from being innovative and finding other means of protecting their interests. Where a deposit is demanded RH considered that the current licence condition provided a fair regime for both parties.

RB asked whether levels of security deposits should be set out in the licence or left to suppliers to judge given their obligations under the UTCCRs for these not to be disproportionately high. TM questioned whether demanding security deposits prevented customers from switching supplier, as customers are free to move to another supplier if they are unhappy with the security deposit demanded by the supplier, TM saw no reason to retain these provisions in the licence. NN welcomed any further comments on the draft IA.

#### **4. Contracts – Workgroup review of Ofgem discussion document**

AW presented a summary of the discussion document previously circulated to the group on contract issues. He noted that Ofgem had been granted powers under the Enterprise Act 2002 with respect to certain specified consumer protection laws but that in general the SLCs are more prescriptive than general contract and consumer protection law.

##### *SLC 30 – Non-Domestic Transfer Blocking (gas only)*

AW said that this SLC had been recently subject to a deregulatory amendment. SLC 30 only relates to the gas market and allows suppliers and non-domestic customers to determine terms for objections. AW said that it was not intended to amend this condition further.

All of the suppliers present were of the view that, rather than retaining the existing provisions for objections in the MRA and gas licence, the situation should

be harmonised by moving the gas arrangements into the SPAA. They considered that suppliers should be given the opportunity under self governance to take action where a potential breach had been identified.

NN stated Ofgem's preference that the objection arrangements should be harmonised by moving the MRA arrangements into the electricity supply licence. He noted that this was an area not subject to competitive pressure where there was a real potential for customer detriment. He noted that objections were one of the few areas where Ofgem had been compelled to take enforcement action.

RB asked that suppliers' disagreement with Ofgem's position on the treatment of objections be formally recorded.

#### *SLC 41 – Terms for Supply of Elec/Gas Incompatible with Licence Conditions*

AW said that the purpose of SLC 41 was to stop suppliers giving themselves rights incompatible with licence through contract. The initial view was that this SLC could be removed. Where a supplier omitted or included a term not compatible with a licence condition then this should be dealt with under specific licence enforcement powers. Further, Ofgem would take into account the extent to which the supplier had sought to take advantage of this action when considering enforcement action. The SLC had been introduced before Ofgem had the ability to impose financial penalties.

The group did not disagree with AW's statement of Ofgem's position.

#### *SLC 42 – Domestic Supply Contracts*

In relation to the different requirements of this condition AW presented Ofgem's initial views. The requirement to supply through contract (including deemed contracts) should be retained and the requirement for contract to be in standard form should be removed as suppliers should be free to define contracts in the form that they wished so long as this was compatible with the UTCCR requirements for terms to be in plain and intelligible language.

RB expressed the view that the requirement to supply through contract was needed at the beginning of the development of competition but was not now required. In particular the Utility Act placed a requirement for supply to be taken through a contract or deemed contract and the provision was therefore redundant.

AW said that the requirement that contracts should set out all terms and conditions (inc. price) in contract should be retained. It adds clarity for customers and prevents disputes over whether terms may have been agreed orally. TM disagreed with this proposal as unnecessary.

AW said that the initial view was that a requirement for the contract to contain termination provisions should be retained. TM disagreed with this proposal as unnecessary. The requirement to offer different terms for different cases or classes of cases, or for different areas, should be removed as these are matters for suppliers to determine. He also suggested that the requirement for terms to be as near as may be to those of a deemed contract should be considered at the next meeting.

AW expressed an initial view to retain the requirement to separately identify charges for energy and other supply related goods and services. It was important to clearly identify where Gas and Electricity Act powers, in particular in relation to

rights of entry and disconnection for non-payment of charges could be used. Transportation adjustment (gas only) should be also retained. This relates to charges passed through by virtue of the GT licences. However, RB pointed out that a requirement to separately identify charges might be more valuable to the consumer as a billing obligation, rather than as simply an obligation to identify them separately in the contract.

#### *SLC 44 – Notification of Terms*

AW said that requirements for reasonable steps to draw customers' attention to principal terms before entering into the contract and to provide customers with a copy of contract terms within 5 days of agreement should be retained as they assist customer clarity and may assist in preventing customer complaints. SLC 44 is more prescriptive than general contract and consumer protection law in that they required specific events and timescales.

RB questioned whether we need these provisions if suppliers already provide principal terms in the normal course of their business. JG agreed and thought that consumer protection law may cover this requirement. LP questioned impact of this requirement on the resources of small entrants. The group reviewed the definition of principal terms in the licence, this included areas such as termination fees that suppliers may not wish to bring to the initial attention of customers. Ofgem considered that it was important that customers were made aware of the key elements of the contract that are likely to impact on their decision whether to switch in advance of entering into a contract.

AW said that requirements to:

- (a) inform customers at least 30 days prior to the expiry of a contract; and
- (b) the ability of a domestic customer to transfer where the supplier has unilaterally varied any term to the significant disadvantage of the customer or raised charges if they terminate within 14 days of receiving written notice from the supplier,

should be retained. The first of these provided customers with a specified minimum period of notice of the impending end of their contract so that they can consider the options available to them. This was an area specific to the energy industry linked to only having one supplier at a time at each metering point. NN noted that on the second requirement some suppliers may seek to design contracts that permit variations to avoid the need for notification of price rises. Some suppliers said that the requirement to provide written notice to each customer was expensive and not required. Ofgem considered that other forms of communication such as email for internet customers may be appropriate but considered that national advertising may not be sufficiently informative for all affected customers. RB agreed to write a paper on this issue.

**Action: EDF Energy**

#### *SLC 46 – Termination of Contracts on Notice and Domestic Transfer Blocking*

AW said that Ofgem's initial view was that the requirement for contracts to be terminable on provision of 28 days notice should be removed. It was agreed that this restricts supplier innovation and investment. However, Ofgem did not consider that general contractual breaches should be enforced through blocking the customer's proposed transfer. Suppliers would be free to develop other mechanisms to manage their customers.

AW said that it had been Ofgem's stated view that the right of domestic suppliers to object on grounds of debt should be removed. The right to object reduces suppliers' debt management incentives and blocks customer access to

competition. There are issues surrounding the value of “debt” and previous misuse of right to object. However, it was noted that if debt objections were removed then suppliers may increasingly seek to mitigate the risk of debt through use of PPM meters and security deposits, and that where customers in debt moved supplier they would be faced with a large final bill. It was noted that considerable effort had been expended on allowing indebted customers to change supplier through a debt assignment scheme (a scheme for PPM customers is now in place).

Suppliers were extremely concerned about the prospect of removing debt objections. They considered that this would not operate in the best interests of customers in general and would lead to higher prices. In general suppliers said that they would have to alter their behaviour without the security of debt objections and that this would have negative impacts on customers’ views of and participation in the market.

NN said that to identify the correct way forward, Ofgem had decided to commission a piece of independent research. The purpose would be to identify whether debt objections operated to the benefit or detriment of customers. The study would look at comparisons in other markets to identify alternative debt management practices. Ofgem agreed to circulate Terms of Reference for the study and to invite energywatch and suppliers to assist in briefing the consultants at the start of the project and in reviewing output at the end.

**Action: Ofgem**

AW said that Ofgem’s initial view is that licence requirements for termination fees to be an amount that in all circumstances could reasonably be required should be removed. UTCCRs state that such payments should not be disproportionately high. RB thought that the amount should reflect economic value while LP questioned whether amounts could be adjustable, for example to take account of price changes.

With regard to defined circumstances (e.g. rolling contracts and where suppliers increase their prices) where a termination fee shall not be demanded, AW said that the initial view is that this obligation should be retained as it increased customer access to market. There was a debate about whether the UTCCR requirement that termination fees are not disproportionately high would give sufficient protection in this area. It was suggested that termination fees were likely to be acceptable if they were a genuine pre-estimate of loss and that it is clearly possible for suppliers to calculate such an amount.

AW noted that assignment of charges in respect of PPM customers are linked to the debt objection debate. This measure has not been taken up by customers in significant numbers but was originally intended to increase access to market for customers in debt.

AW said that requirements regarding other objection types and information provision on objections should be retained. The provision of information to customers and new suppliers when an objection was raised sought to secure against misuse of supplier right to object and provided information required for customer to resolve problems and access the competitive market.

NN noted that SLC 49 also covered assignment of final bill charges and suggested this should be included in the debate. This provision was not thought to have been used by suppliers.

*SLC 47 – Termination of Contracts in Specified Circumstances*

AW set out his initial view that requirements for contracts to be terminable when customers cease to occupy/own premises should be retained as it gave clear guidance for suppliers and customers on their liability for energy charges. RB questioned why the contracts should be terminable and why they could not move with the customer to their new premises. It was noted that the MPAN number was unique to the premises rather than the customer. The supplier would be liable in settlements for any energy taken at that site where the customer had moved out. There was a clear need for a customer's liability to be capped when they had vacated the premises and for the supplier to know with whom they had a contractual relationship, deemed or otherwise.

With regard to the requirement for fixed term contracts of a length greater than 12 months to be terminable within 5 days of date of contract, the initial view was that it should be removed as it was covered by Distance Selling Regulations and Doorstep Selling Regulations. The question here is whether these two regulations cover all instances where customers would require such protection. The group did not disagree with Ofgem's initial view.

SLC 47 currently requires contracts for other goods and services to be separately terminable and allows suppliers to require security for the continued provision of goods and services upon termination of the energy contract. AW said that it was not clear why customers could not sign up for equivalent termination provisions for energy and other goods and services. Further, the ability to require security for other goods and services did not appear to be appropriate for an energy supply licence. The group did not disagree with these propositions.

## **5. Work plan**

The next meeting was rescheduled and will be held on 9<sup>th</sup> February 2006 (not 6<sup>th</sup> February as stated in original work plan). At this meeting it was agreed that the group will look at deemed contracts and comments received on the draft Duty to Supply IA. For further discussion AW also agreed to draft a high-level paper on the main themes for the contracts issues discussed at the meeting.

**Action: Ofgem**

## **6. AoB**

In response to a question on the potential impact of the Unfair Commercial Practices Directive on the SLR AW noted that the DTI had agreed to make a presentation at the next Steering Group meeting.

Date of next meeting 9<sup>th</sup> February 2006.