

Mr Steve Smith
Managing Director - Markets
Ofgem
9, Millbank
London
SW1P 3GE

4th June 2007

Dear Steve

Re: Modifying the arrangements for the use of objections in the non-domestic market.

Opus Energy Limited (Opus) has serious concerns with the decision reached by OFGEM. We would support a further change to the Master Registration Agreement to ensure competition and a greater opportunity for more customers to switch and benefit from competitive tariffs.

Background

On reviewing OFGEM's letter dated 17th April 2007, it is apparent that there is a requirement to be absolutely clear on the background and events surrounding this issue and the use of objections.

- The majority of customers affected are supplied under Deemed or non-negotiated contracts.
- Deemed customers are paying significantly more than a customer being supplied under a negotiated contract.
- Objections are not permitted for a Deemed customer.

The Transfer Process

1. At the point a D0058 is received by the Old Supplier they are immediately aware that the Deemed customer has contracted with a New Supplier. The simple reason being that a New Supplier would not be able to register a customer unless they had a contract with that customer.
2. As soon as the Old Supplier attempts to re-contract with the customer they are encouraging the customer to breach their contract with the New Supplier.

3. The Old Supplier, having encouraged the customer to breach their contract, is allowed to enforce that breach using the objection process.

Whilst OFGEM may not see its role, or that of the MRA, as intervening in breach of contract disputes, the current industry transfer process, as detailed above, supports the breaching party in every case. Opus strongly feels that an Industry process should not be so biased towards a breaching party.

The Commercial Impact

The impact of the OFGEM-endorsed BGT practice will see the majority of Deemed customers held on significantly higher rates, whilst only a few may benefit from a reduced cost.

- For an averaged sized site, Opus' standard tariff is approximately a 50% reduction from BGT Deemed Tariff.
- In the commercial market place current re-contracting practice sees BGT offering to match Opus prices or beat them by 0-5%.

Opus does not doubt that a single customer who is re-contracted at a further 0-5% discount and remains with BGT will, from a purely price driven perspective, be better off. However, for the vast majority of customers this will not be the case for the following reasons:

1. Continued use of this practice by BGT will result in Opus having to stop marketing to these customers. In practice Opus is unable to recoup the cost of marketing to a customer which, encouraged by BGT, subsequently breaches their contract with Opus.
2. The result is that the customers with whom Opus may have contracted will remain on BGT Deemed rate at approximately double the Opus tariff.
3. Allowing BGT the ability to re-contract and then object, puts very little, if any, incentive on them to attempt to contract with Deemed customers until they are about to leave.

Opus estimates the total number of customers across the market left on Deemed rates, to be as many as 250 – 500,000.

Recommendation

Opus would recommend a change to the MRA which only permits an objection to be raised on grounds in place at the time of the receipt of the D0058. Should the Old Supplier have a contract in place with the customer, then they should be able to raise a notice of objection if the contract has the provisions to do so.

Should the customer be supplied under a Deemed contract, the Old Supplier will not be able to raise an objection. If the Old Supplier then re-contracts with the customer then they must proceed using the standard registration process as a new supplier.

Summary

The current transfer process supports the Old Supplier in encouraging customers to breach their contracts. The transfer process removes any incentive for the incumbent supplier to market to its Deemed customers, yet it penalises any supplier that does. This reduces competition to the obvious detriment of the customer.

This letter is not Confidential and we would be happy for it to be published with you findings.

Yours sincerely

Steve James
Manager