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Dear Steve

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

Thank you for inviting Scottish and Southern Energy to comment on the wider policy issues arising from BGT's MRA Appeal Authority Decision Letter of 17 April 2007. In the face of the considerable weight of opinion and evidence submitted by the industry, SSE is disappointed by the decision, but nevertheless welcomes Ofgem's consultation on the matter of whether or not re-contracting in the objection window should be a feature of the competitive market. In its decision letter, Ofgem opine that BGT could have been influenced by the Ofgem statement in relation to a breach allegation in 2005. However, as we pointed out in our submission letter, the breach in 2005 was a different allegation, namely that the old supplier was objecting before he had successfully re-contracted with the customer.

We do not believe that sufficient weight was given to the point which we and others raised, in relation to win-back and re-contracting. We agree that win-back is a feature of the market which can benefit customers, but the market mechanisms ought to reflect that it takes place as a separate and subsequent event, with the winning-back supplier in the role of NEW supplier, and the previous new supplier taking the role of OLD Supplier and vice versa. This enables the rights and obligations conferred on the old and new supplier in the transfer process to be preserved and makes for an orderly market. BGT has alluded several times that the MRA prevents win-back, and cites that there is no difference between a win-back on the 10th day as opposed to the 11th. There is a very important difference, which in our opinion has been overlooked, which is that in waiting until the 11th day, the supplier winning back has to do the same amount of work to register the customer as the previous new supplier. Before that, it is therefore able to win (back) the customer for a much smaller administration cost than its competitors.

In addition, to have a provision whereby the outgoing supplier always has the last say is in our opinion, anti-competitive, because it could unduly limit customer choice.

BGT makes great store of the use of the D0058 to facilitate competition, but we do not believe this is relevant. Of course, a losing supplier can use the fact that it has lost a customer to initiate whatever action it wishes from a customer relations point of view, but what it must not do is use it to stop a change of supplier event concluding as described in the MRA. The MRA contemplates win back, and prescribes how a new event should occur. It is therefore not correct for BGT to imply that unless it acts in the objection window, the MRA prevents it from winning customers back.

We still believe that the reason for objection must be in accordance with the MRA and exist at the time the D58 is received. The old supplier can initiate whatever it wants (acknowledging that it may well be triggered by the receipt of the D58) provided that if it does win back the customer, it initiates a new change of supplier event in accordance with the MRA. This makes for a level competitive playing field, an equal cost base for all suppliers, a time-pressure-free environment for the customer to make any decision, and an orderly market.

Reference has been made that in the non-domestic market, contracts are such that the customer is prevented from transferring once the objection period is over. We do not think that this is relevant because the contract must have existed for the new supplier to make the registration in accordance with MRA Clause 15.2. In any case, we believe that contracts have and would continue to evolve to take account of market conditions.

Arguments to support this were outlined in our previous submission, and we do not believe that the Authority's decision on the Appeal (which we acknowledged at the time to be a technical interpretative matter) affects either our opinion or the logic for it. In summary our arguments were:-

1. Triggers for Recontracting

We endeavour to offer our existing non-domestic customers a new contract before the current one expires. During this period, there is frequently negotiation with the customer and between the customer and other suppliers. If, at the end of that negotiation, the customer chooses a new supplier, we regard the matter as closed, and allow any change of supplier to proceed. Once a registration has been made we would only intervene if there were valid grounds for objection (as set out in the MRA).

We believe that the registration by the new supplier marks the end of the negotiation between the customer and the incumbent and the start of the actual Change of Supplier event. This is manifest in the MRA at Clause 15.2. Once a Change of Supplier event has started, the MRA anticipates that it will go through to a conclusion unless there are exceptions and circumstances that should prevent it from doing so.

For domestic customers, and other customers who have no specified contract end date, we do not seek to intervene in the change of supplier process initiated by the registration notified to us by the D0058 unless there are valid grounds for objection as

prescribed in the MRA. In accordance with the spirit of the MRA, we allow the Change of Supplier event, to which the D0058 refers, to go through. If we do re-contract with the customer, we then initiate a separate subsequent Change of Supplier event.

2. Use of the D0058 flow

For all customers we use the D0058 flow to check that there are no valid reasons to object to the customer transfer.

For domestic customers we use the D0058 flow to generate a customer exit letter. We also often attempt to telephone the customer in order to check that it is a genuine Change of Supplier event and, as part of our customer service feedback, to seek to understand why the customer had decided to change supplier. The operator does not use confidential information provided on the D0058, such as the identity of the new supplier, in any discussions with the customer, unless the customer volunteers it. If, during the course of discussions, the customer does decide to change back to SSE, we still let the original change of supplier event conclude, and initiate a new customer registration, within the prescribed period set out in the MRA under Clause 15.5.3. We find this administratively robust, and our track record in customer satisfaction on transfers bears this out.

For all customers the D0058 flow triggers other contract end processes, for example, to enable a final account to be produced.

3. The MRA should not further specify the use or uses that can be made of the D0058

We believe that to do so would be prescriptive, and may hinder innovation and competition. It would also move away from the principle that the MRA should not prescribe or seek to legitimise contractual matters. The MRA clearly anticipates at clause 15.2 that all contractual matters are outside its jurisdiction and that they must be complete before the registration is made.

There is always an opportunity for the customer to negotiate with its existing supplier and/or shop around. Recontracting or "win-back" activity can take place at any time, either before the change of supplier event has been initiated, or after it has finished. It should not be confined to the short objection window. Such behaviour by a supplier could be regarded as pressurising and potentially confusing for the customer, because the activity is bound to be rushed and frenetic. Furthermore, it might serve to restrict the customer's choice if the incumbent intervenes in the change of supplier process at this stage, once any contractual or statutory right of termination has expired.

We therefore believe that the MRA should provide that an objection can only be valid if the conditions that make it valid already exist at the time the D0058 flow is received by the incumbent supplier. It is our view that this is the intent of Clauses 16.1.1 and 16.1.2 in the MRA which list the valid reasons for objection available to the Old

Supplier at the time the Application for Registration is made by the New Supplier. We believe that changes to the MRA should be made to make this explicit and clear.

4. Use of the D0058 for purposes outside those contemplated by the MRA

The D0058 was introduced as a loss notification data flow to notify the old supplier that a new supplier is registering that customer. This flow is necessary to enable the old supplier to fulfil its obligations as an old supplier, i.e. to close its relationship with the customer, to protect its position with the customer if there are valid grounds for objection, or in circumstances where a mistake has been made. All our processes are in pursuit of discharging those obligations.

We do not see anything wrong in using any information we receive as an old supplier to anticipate or pursue a possible role as a new supplier in a subsequent separate future change of supplier event, such as one anticipated in MRA Clause 15.5.3.

We believe that this is an important distinction that does not seem to come out in either BGT's discussion paper or the Authority's decision letter. A win back is a separate event, where the parties' roles of new and old supplier are reversed, and the whole transfer process under the MRA starts again, with the proper rights and obligations conferred on the participants according to their rightful role in the process.

The objection window was designed for the sole purpose of objecting as prescribed in the MRA.

Conclusion

If a supplier uses the D0058 as a mechanism to engineer an objection to a customer transfer during the objection window we are concerned that this is detrimental to the operation of the competitive market. Whilst we firmly believe that recontracting activity is to the customer's benefit, we do not consider it appropriate for the old supplier to be able to "get round" the objection rules by signing up the customer within the objection window and then using this new contract as the basis for the objection. For smaller suppliers and new entrants such activity could force them out of the market because losing the customer could leave them with unsold contracted energy purchase agreements. We consider that there are plenty of opportunities for customer choice and negotiation to be conducted in a measured and objective manner. For this to take place in the short objection window is not in the best interests of the customer.

We therefore believe that an objection following a D0058 should only be made on the basis of the contractual conditions that exist at the time that the D0058 is raised. If a contract is subsequently signed, the old supplier should progress this through the standard registration window, rather than bypass this process by raising an objection. A win-back should be "win" "back", not a derailing of the customer transfer process.

I hope that our comments have been helpful. Please call if you wish to discuss them further.

Yours sincerely

Katherine Marshall
Regulation Manager