

Mr Philip Davies
Managing Director – Markets
The Office of Gas and Electricity Markets
9 Millbank
London SW1P 3GE

7th September 2007

Dear Mr Davies

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

The Utilities Intermediaries Association is a Trade Association for third party intermediaries in the energy industry and can therefore be regarded as surrogate customers.

It is good that Ofgem recognise the aim of the transfer process and the particular role of the Objection process to facilitate the successful transfer of a customer's site. Your letter is very comprehensive but in parts difficult to understand. It seems to be built on the premise that customers have a role in the contract construction process. Those of us who are close to the SME market will know that suppliers issue their contracts on a "take it or leave it" basis and the customer very often does not see the contract until after he has agreed to accept an offer (verbal contracts). This is a situation that is well known to Ofgem because they are holding workshops addressing these issues.

It would be beneficial to customers if Ofgem encouraged or even insisted that suppliers published their contracts on their websites in an easily accessible position. This puts the onus on the customer to check what he is signing up to before he does so and allows him to make an informed decision.

The letter also assumes that SME's actually want to be in the energy competitive market, when in reality most of them are there because they have to be and really have no interest in the market except to pay the lowest possible price for their energy. Suppliers know this and therefore make low prices the main marketing tool.

We agree completely with your thoughts on deemed contracts. However, we would encourage you to require suppliers to be more specific as to what a deemed contract is and not confuse the issue by quoting the description of deemed contract rates for out of contract arrangements.

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In regard to customers whose incumbent supplier does not have a valid reason to object to a transfer, our understanding is that nothing has changed in the ability of this supplier to continue to market after a loss notice has been received but that the transfer must go through. One could argue that there would be no point in the supplier marketing after he has lost the contract however, the marketing could be used for vexatious means and therefore we suggest it would be far better if all marketing ceased during the transfer window.

Should suppliers wish, they could undermine the whole Tpi market by choosing to re-quote the customer direct during this window, as opposed to the Tpi who has worked under a letter of authority to award the particular business. This would also jeopardise the principal that Tpis work for the customer and are usually required by the customer to deal with the whole market and not just the incumbent supplier and therefore exercise the competition option. We would like an acceptance within this whole process that as third parties deal with a large proportion of the market it should be recognised within the licence and should refer to "a customer or his approved representative, acting via a current letter of Authority"

As far as customers who are subject to existing objection clauses suppliers will continue to be able to act in the manner that gave rise to this problem in the first place and therefore all the problems highlighted for consumers in previous correspondence still exist.

We would also like to see a stronger mandate in 14.3 as an alternative to "as soon as reasonably practicable after making the request."

The area in which ofgem can now represent the consumer, as it seems that they have addressed a purely technical point from a suppliers perspective, is in the supplementary notes that you suggest will go with the licence changes of examples of non-acceptable practice. These notes should be enforceable and this is an area where the consumer should have the ability to seek redress from the envisaged ombudsman scheme and ideally would carry forward the work already going on regarding the clarity and disparity in contract terms and conditions. Because Ofgem will not accept any role in the contracting between suppliers and customers we would at least ask that this opportunity be used to insist that any clauses referring to objections, termination fees, contract period etc are required to be unambiguous and highlighted in some way.

As per our original letter we would prefer to see the situation common across all transfer situations and no further marketing allowed during the objection window. If your proposal goes ahead the reality is that we would expect to see **all** contracts introducing cancellation fees; we expect customers to be threatened with legal action for breach of contract within **all** contracts and to see some very original objection criteria. Furthermore we believe that it is just another complication to an already complex market which will have an impact

on customers being frightened to change supplier because of the possible implications.

In a lot of contracts the suppliers have already constrained the customer's ability to terminate a contract and made it very difficult in some instances for him to change supplier and now we are suggesting another set of circumstances where this may happen.

Perhaps the best way of dealing with this is for the suppliers who have said that they do not want marketing during the 5 day objection window should support their customers and pass their own rules within the MEC rather than look to a change in licences.

Yours faithfully,
For and on behalf of the Utilities Intermediaries Association

A handwritten signature in dark ink, appearing to read 'R R Sinden', with a stylized flourish at the end.

R R Sinden
Operations Director