



Suppliers, consumer groups and other interested parties

Promoting choice and value for all customers

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Dear Colleague

65 day notice period for unilateral contract variations (Supply Licence Condition 23)

On 6 October 2008 we released our Probe initial findings report. In their responses to this, key consumer groups raised the issue of the 65 working day period allowed for suppliers to retrospectively notify customers of adverse unilateral contract variations such as price increases (Supply Licence Condition 23). Ofgem has also received a number of contacts from individual consumers and other stakeholders complaining about what they perceive as late notification of price increases.

Prior to our Supply Licence Review in 2006/7, the supply licence condition required notification of contract variations within 10 days of the change. One of the key reasons for making the change to 65 working days was to allow suppliers to notify customers of any unilateral contract variations alongside their bill thus avoiding the additional cost of making separate notifications. However we are aware that separate notifications continue to be issued by most of the major suppliers.

This letter seeks views on whether we should revise the current licence condition to reduce the 65 day working day period that suppliers currently have after the variation comes into effect to notify customers of the change.

Responses to this open letter are invited by 6th March 2009 and should be sent to Marcus Clements (marcus.clements@ofgem.gov.uk or 020 7901 7200). We are seeking initial views at this stage and will consult in the spring if we are proposing licence changes.

Rationale for considering a reduction in the notice period for unilateral contract variations

Analysis of the contacts Ofgem has received has highlighted a number of problems arising from the length of time given to notify recent price increases. These are summarised below.

- Consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of the increased costs. This is a particular issue for consumers on low incomes.
- If a consumer is already in debt to a supplier, switching to an alternative provider to avoid the increase is unlikely to be an option. Delayed notification of the price increase is therefore even more detrimental as they have no choice but to accept

the change. Without advance notice they are unable to consider decreasing their usage to compensate for the higher prices, and as a consequence their debt is likely to increase.

- Delay in notification of a price increase or change in tariff structure denies the consumer the opportunity to take and provide meter readings around the date when the rise becomes effective and thus satisfy themselves that any change has been correctly applied by the supplier.

Noting the way in which suppliers appear to have operated the revised licence condition, and the issues this presents for consumers as outlined above, Ofgem believes it is worthwhile revisiting the changes made at the time of the supply licence review.

Options

We are interested in your views as to whether we should:

- a) retain the SLC 23 as is with a 65 working day notice period***
- b) revert to the 10 day notice period that was in the previous licence***
- c) whether there is a case for going further and requiring advance notice of any unilateral contract variations***
- d) change to any other notice period which you consider addresses the issues identified. If you are proposing a period of longer than 10 days please highlight how you believe this will solve the consumer problems being encountered with the current licence condition.***

Please set out the reasons for your views. In particular where relevant please explain the benefits you see the options bringing to consumers and/or any barriers to implementing these changes including any cost implications or operational difficulties the change might cause.

It is our understanding that in many instances suppliers send out separate notifications from bills. We are interested in further details from suppliers as to how they currently notify customers of unilateral variations and the timescales within which they normally do this.

The previous licence condition 44 is given as appendix 1 and the current licence condition 23 is given at appendix 2.

The options above only relate to changes in the Notice period of the licence condition. In contrast to the previous licence condition, SLC 23 ensures that the right to switch to avoid the retrospective change is no longer open ended. Once the customer has notified their supplier of their intention to switch (which must happen within 10 days of receiving the notice of the contract variation) the losing supplier must receive notification from the new supplier within 15 working days otherwise the contract variation will remain in effect. It also allows for other forms of notification rather than written (for example e-mail or text). We do not plan to consider changing these elements.

There is also some concern about the limited prominence given to the right to switch supplier and avoid the retrospective contract variation. For example, information may be positioned at the end of the leaflet accompanying the price rise notification, and/or in a font which makes it difficult to read. This means that consumers can be left unaware of their option to avoid the increase by switching supplier. We welcome any comments or observations related to this point.

Going forwards we intend to ensure that suppliers are abiding by the spirit as well as the letter of the licence condition and are, for example, displaying the message that customers can switch to avoid the retrospective price increase in an appropriately prominent way. We will also be looking to work with suppliers and the ERA to develop commonly applied good practice that could include:

- explanation of how any price increase will be apportioned in the quarter in which it applies;
- proactive encouragement to customers to provide a meter reading when a price notification is received; and
- the right to terminate the contract and switch supplier to be given in clear and understandable language and placed in a prominent position.

We welcome views on other elements of good practice that respondents would like to put forward for consideration.

Next Steps

Following the probe initial findings report we intend to publish our proposals on a package of remedies for the retail market (excluding the work on price differentials which is being taken forward on an accelerated timescale) in the spring. Our aim is to have a view on whether changes should be made to Supply Licence Condition 23 on unilateral notification of contract variations to be included in that spring document.

Responses to this open letter are invited by 6th March 2009 and should be sent to:
Marcus Clements
Head of Consumer Affairs
Ofgem
9 Millbank
London
SW1P 3GE
marcus.clements@ofgem.gov.uk
020 7901 7200.

We are happy to accept responses by post or email.

Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website at www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000. Respondents who wish to have their responses remain confidential should clearly mark the document(s) to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

Yours sincerely



Jude Cummins
Head of Consumer and Social Affairs

Appendix 1: Previous Licence Condition

Condition 44. Notification of terms

6. Except in such cases or classes of cases as may be approved by the Authority, where a domestic supply contract allows for unilateral variation (in any respect) by the licensee and pursuant thereto the licensee raises the charges for the supply of electricity pursuant to such contract or otherwise varies any term to the significant disadvantage of the domestic customer, the licensee shall within 10 days of the variation give the customer written notice:

- (a) Of the variation;
- (b) Of the domestic customer's right to terminate the domestic supply contract; and
- (c) Of the effect of paragraph 7.

7. Where a domestic customer gives to the licensee a valid notice of termination within 14 days of receiving notice under paragraph 6, the licensee shall treat the variation as ineffective and shall neither enforce nor take advantage of it.

Appendix 2: Current Licence Condition

Condition 23. Notification of Domestic Supply Contract Terms

Notification of unilateral variation

23.3

If, in accordance with the terms of a Domestic Supply Contract with a Domestic Customer, the licensee unilaterally varies a term of the contract:

- a) to increase the Charges for the Supply of Gas [Electricity] to a Domestic Premises or
- b) in any other way that is to the significant disadvantage of the customers,

the licensee must give Notice of that variation to the customer in accordance with paragraph 23.4

23.4 The Notice referred to in paragraph 23.3 must:

- a) have been given before the end of 65 Working Days after the date on which the variation has effect
- b) inform the Domestic Customer that he may end the Domestic Supply Contract if the variation is unacceptable to him;
- c) explain the effect of paragraph 23.5

23.5 If the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 10 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract, the licensee must treat that variation as ineffective and neither enforce nor take advantage of it.

23.6 Paragraph 23.5 only binds the licensee if, no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with that paragraph, the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier [Notice under the Master Registration Agreement that another Electricity Supplier] will begin to supply the customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given.

23.7 The licensee is not required to comply with paragraph 23.3 to such extent as the Authority may direct.

NB wording from Standard condition of gas supply licence with differences in the Standard condition of electricity supply licence given in [square brackets]

