



Holders of Gas Supply, Electricity Supply and/or Electricity Generation Licences, consumers and their representatives, and interested parties

Promoting choice and value for all customers

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Dear Colleagues

Implementation of the Energy Supply Probe Retail Market Remedies

On 7 August, the Gas and Electricity Markets Authority ('the Authority') issued a consultation on a package of licence modifications to promote competition and protect consumers in the retail energy supply market. These measures had been developed in the course of the Energy Supply Probe, a study of the state of the retail energy supply markets in Great Britain.

The deadline for statutory objections¹ and representations on these modifications was 15 September 2009.

Summary of responses

We received 47 responses to the consultation²:

- 6 from vertically integrated energy businesses, including 5 of the Big 6;
- 35 from small business consumers;
- 5 from consumer groups; and
- 1 from an energy broker.

The issues raised in these responses can be categorised into 3 groups: unqualified objections from relevant licensees; qualified objections from relevant licensees; and other comments.

Unqualified objections from relevant licensees

RWE npower formally objected to the Financial Information Reporting licence conditions. Whilst the level of objections was not sufficient to prevent the Authority from implementing the modifications under the relevant legislation, the reasons for the objection, including concerns raised after the consultation period, have been considered carefully.

¹ Relevant licensees are able to lodge objections against any proposed licence modification. The level of objections will be measured against a blocking-minority threshold of 20 per cent that was prescribed by the Secretary of State in an Order dated 15 July 2003. The Order states that:

- if the number of relevant licence holders that object to a collective licence modification proposal is equal to or greater than 20 per cent of the total number of relevant licence holders, or
- if the market share of objectors is equal to or exceeds 20 per cent,

the proposed modification may not be made (except via the Competition Commission).

² These responses can be found on our website, <http://www.ofgem.gov.uk>

Qualified objections from relevant licensees

EDF Energy, RWE npower and ScottishPower submitted representations stating that they had no objection in principle to some of the remedies but that practical constraints meant that they could not meet the implementation timetables that the Authority had proposed. In each case, these constraints were applicable to both the electricity and gas licence conditions. E.ON submitted representations requesting that consideration be given to the framework if the Authority chose to proceed with later implementation dates. In each case, the licensees concerned specified a particular implementation date upon which any objection was entirely conditional.³

The legal effect (in terms of the statutory process for modifications) of the qualified objections can be summarised as follows:

- 1 Proposed modifications to two standard licence conditions, 7A, 'Supply to Micro Business Consumers' and to 31A, 'Information about gas/electricity consumption', could not be implemented on the date that the Authority had initially proposed because the level of objections associated with implementation on that date would exceed the statutory threshold. They could however be implemented on or after 15 January 2010 (for 7A) and 1 July 2010 (for 31A). The Authority's consideration of this matter is explained in the next section of this letter.
- 2 Qualified objections were received in relation to three other licence conditions: 14, 'Customer Transfer Blocking'; 23, 'Notification of domestic supply contract terms'; and 25, 'Marketing gas/electricity to domestic customers'. In each of these cases, the level of objections was not sufficient to prevent the Authority from implementing the modifications under the relevant legislation, but such views have each been considered carefully.

A full record of the qualified objections is included in Appendix 1 to this document.

Other comments

A range of comments were received on the remedies package and the appropriateness and likely effectiveness of different measures. These comments largely reiterated issues already considered by the Authority during earlier consultation rounds - except in relation to the financial reporting remedies, where further and better particulars of certain issues were raised.

No changes to policy have been made as a result of comments received.

A number of respondents sought clarification on how we will interpret, or enforce the new and modified licence conditions. Our enforcement approach is already a matter of public record.⁴

In addition, a number of minor comments were made on the drafting of the licence conditions. In some cases, we considered that suggested revisions would make the drafting clearer without changing the obligations on licensees. Where this is the case, or the matters are clearly of no substantive impact (such as typographical errors) the text has been amended accordingly.

³ We note that this approach is consistent with Ofgem guidance on licence modifications which states, inter alia, that "...Ofgem would ... not expect to receive a qualified response unless the nature of the qualification is absolutely clear so that Ofgem can determine whether or not the qualification has been satisfied..." (paragraph 2.37, 'Guidance on modifying the standard licence conditions of gas and electricity licences', September 2003).

⁴ *Enforcement Guidelines (232/07)*, 28 September 2007.

The Authority's decision

Modifications to standard conditions

The decision has been taken to direct the implementation of the modifications that the Authority consulted on, although the implementation dates of the standard conditions have been pushed back.

After considering the representations and objections received in relation to the financial reporting proposals, including concerns raised after the consultation period, the Authority has decided that it is appropriate to proceed with these modifications. The Authority has also decided to proceed with its guidance on financial reporting and will publish this at a later date.

As noted above, the qualified objections relating to the proposals for small business consumers (standard condition 7A) and in relation to billing and annual statements (standard condition 31A) were sufficient to block the Authority from modifying those licence conditions with effect from the dates proposed (1 January 2010 and 1 April 2010 respectively).

Taking into account the representations received and the reasons for the qualified objections, and in particular the relatively minor extension of time in question (under 3 weeks in the first instance, and 3 months in the second – though even in that case there will be no impact on customers in respect of annual statements) it was decided that it was prepared to move the implementation dates of these measures back to 18 January 2010 for licence condition 7A, and 1 July 2010 for standard condition 31A. The impact of adjusting these implementation dates is that the conditional objections expressed by certain licensees were no longer to be treated as objections under the legislation.

It should be noted that whilst the commencement of changes to regular bills is delayed by three months as a result of this step, the backstop date by which customers should receive their first annual statement remains unchanged at 31 December 2010.

Aside from the small business consumer remedies, it had been proposed that three other remedies take effect from 1 January 2010 (conditions 14, 23 and the specific measures for face-to-face marketing contained in 25). Several respondents suggested that it would be preferable not to finalise significant system changes during the Christmas and New Year holiday period, for example due to resourcing constraints. We are persuaded that it would be sensible to move the implementation dates for these measures to a working day later in the same month to mitigate these concerns.

While the absence of a blocking objection (or set of objections) is a prerequisite for directing licence modifications by consent, full consideration was given to all representations. Indeed, changes to the deadlines are being made in light of such representations alone (i.e. even where there is no issue of a blocking minority). However, the interests of consumers requires prompt action and we have to weight this and other objectives against the arguments made for later implementation. It would not, for example, have been proportionate to meet the request by one major supplier to delay implementation of key conditions by some 9 months beyond even the latest date that its competitors are able to meet.⁵

⁵ Importantly, any dispensation allowed to one company ought to be allowed to others, who also face challenges implementing these measures.

The revised implementation dates for the modifications are:

Standard condition (gas and electricity supply)	Proposed implementation date	Revised implementation date
1, Definitions for standard conditions	1 October 2009	21 October 2009
7A, Supply to micro business consumers	1 January 2010	18 January 2010
14, Customer transfer blocking	1 January 2010	18 January 2010
19, Financial information reporting	1 October 2009	21 October 2009
23, Notification of domestic supply contract terms	1 January 2010	18 January 2010
25, Marketing gas/electricity to domestic customers	1 October 2009 (marketing objective) 1 January 2010 (other rules)	21 October 2009 (marketing objective and definitions) 18 January 2010 (specific measures for face-to-face marketing)
31A, Information about gas/electricity consumption	1 April 2010	1 July 2010

Standard condition (generation)	Proposed implementation date	Revised implementation date
16B. Financial information reporting	1 October 2009	21 October 2009

Statutory directions modifying the standard conditions of all electricity and gas supply licences have today been issued to all relevant licensees. A list of licensees, and a full set of standard conditions, can be found on our website.⁶

Market Investigation Reference

As a result of the decision to proceed with licence modifications, and the outcome of its deliberations as regards financial reporting, the Authority does not consider that it is necessary to make a market investigation reference to the Competition Commission pursuant to section 131 of the Enterprise Act 2002 at this stage.

The Authority will continue to have close regard to market developments, both in the light of the recent modifications made to relevant licences and generally, and remains willing to reconsider this issue.

Yours sincerely

Andrew Wright
Senior Partner, Markets

⁶ See the *Licensing* tab on our website, <http://www.ofgem.gov.uk>.

Appendix 1 – Qualified objections received

Standard condition 7A, 'Supply to Micro Business Consumers'

Two qualified objections were received in relation to this modification.

	Authority's proposed Implementation Date	Licensee objects if implemented on or before	Licensee consents if implemented on or after
ScottishPower	1 January 2010	14 January 2010	15 January 2010
EDF Energy ⁷		30 September 2010	1 October 2010

Standard condition 14, 'Customer transfer blocking'

One qualified objection was received to modify this licence condition.

	Authority's proposed Implementation Date	Licensee objects if implemented on or before	Licensee consents if implemented on or after
ScottishPower	1 January 2010	14 January 2010	15 January 2010

Standard condition 23, 'Notification of domestic supply contract terms'

One qualified objection was received in relation to this modification.

	Authority's proposed Implementation Date	Licensee objects if implemented on or before	Licensee consents if implemented on or after
ScottishPower	1 January 2010	14 January 2010	15 January 2010

Standard condition 25, 'Marketing gas/electricity to domestic customers'

One qualified objection was received in relation to this modification.

	Authority's proposed Implementation Date	Licensee objects if implemented on or before	Licensee consents if implemented on or after
ScottishPower	1 October 2009 (marketing objective) 1 January 2010 (specific measures for face-to-face marketing)	27 February 2010	28 February 2010

⁷ Due to the number of licences held by EDF Energy this objection amounted to 3 objections by gas and electricity supply licensees.

Standard condition 31A, 'Information about gas/electricity consumption'

Three qualified objections were received in relation to this modification.

	Authority's proposed Implementation Date	Licensee objects if implemented on or before	Licensee consents if implemented on or after
ScottishPower	1 April 2010	30 May 2010	31 May 2010
RWE npower ⁸		30 June 2010	1 July 2010
EDF Energy ⁹		31 March 2011	1 April 2011

⁸ Due to the number of licences held by RWE npower this objection amounted to 5 objections by gas supply licensees and 7 objections by electricity supply licensees.

⁹ Due to the number of licences held by EDF Energy this objection amounted to 2 objections by gas supply licensees and 3 objections by electricity supply licensees.

Appendix 2 – Respondents to statutory consultation

	Respondent
1	Aceline UK Ltd
2	Bertie Maffoon's Bicycle Shop
3	Caffe Canto Bistro
4	Capley Marker Systems
5	Cedarfalls
6	Celal Gurbuz
7	Chicchi
8	Citizens Advice
9	Classic Therapies
10	Consumer Focus
11	Dandara Ltd
12	Drax Power Limited
13	E. Houlton (Pork Butchers Ltd)
14	EDF Energy
15	Electrical Wholesale Distributors
16	Energy Action Scotland
17	Eon UK plc
18	Falon Nameplates
19	Forum of Private Business
20	Green Gables Guest House
21	Great Clacton Hall
22	Holton Hall Park Limited
23	Joya Brooks Lingerie
24	Khublai Khans Restaurants
25	Make it cheaper
26	Mann's furnishers
27	Manor House (Kenilworth) Limited
28	Mark Forth Independent Funeral Services
29	Meadowside Holiday Flats
30	Meanwells Bedrooms & Kitchens Ltd Grimsby
31	Mi3 Ltd
32	Moat Stores
33	Moons Bridge Marina
34	Mrs Jane Ward
35	Newmax Precision Ltd
36	Nicholsons Uk Ltd
37	Pine View Parks Ltd
38	Poppins Restaurants
39	Pulse Games Ltd
40	RWE npower plc
41	ScottishPower
42	Scottish and Southern Energy plc
43	T&S Enterprises (London)Ltd
44	The Poulton-le-Fylde Post Office
45	The Ray Smith Group
46	Which?
47	Windmill Hill Golf Club

These responses can be viewed on the Ofgem website. Where possible, we have respected any requests for confidentiality made by respondents.