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Dear Ms Tewari

Consultation: Supply Licence Condition 23 – Period for notifying unilateral contract variations and related matters

The Energy Retail Association (ERA), formed in 2003, represents electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the association – British Gas, EDF Energy, E.ON, RWE npower, ScottishPower, and SSE.

We are responding to the open letter from Emma Kelso, dated 31 March 2010, on the proposed amendments to Standard Licence Condition 23. We have discussed this with our members, who will also be responding individually.

Background

Currently, our members are required by SLC 23 to notify their customers of a unilateral contract variation to increase prices within 65 working days after the variation is to take effect. Customers can avoid the price increase by notifying their supplier of their intention to switch within 20 working days. The losing supplier must then receive notification from the gaining supplier within 15 working days. SLC 23 was introduced in August 2007 as a replacement for SLC 44, which required suppliers to give notice within 10 days of the variation (allowing customers to avoid the price increase by terminating the contract within 14 days of the notice).

After the Supply Licence Review, Ofgem published an open letter in February 2009, seeking views on whether the 65 working day notification period in SLC 23 should be revised. This letter proposed similar options to those included in Ofgem's open letter of 31 March 2010. The ERA responded to the February 2009 open letter, supporting retention of the 65 working day notification period.

The ERA response argued that advance notification or a return to the previous 10 day period would add time and costs to the decision-making process. The increase notifications could not be phased, reducing suppliers' ability to offer high quality customer service and possibly increasing call handling costs, which would impact on all customers. Following this open letter, the 65 working day notification period was not changed.

Following the Energy Supply Probe, Ofgem amended SLC 23 with effect from 18 January 2010, including increasing the period for customers to notify their supplier that they wish to switch. Ofgem committed to working with suppliers and the ERA to develop best practice. We are happy to work with Ofgem to develop this, benefiting suppliers and customers by bringing consistency to this area of the Supply Licence. However, we note that SLC 23 has been subject to a great deal of revision and consultation since August 2007. We would expect direct evidence to be obtained by Ofgem from a price increase before further changes are made.

Operation of the 65 working day requirement

We do not agree that poor notification practices have developed among suppliers. Some suppliers time the price notification to coincide with the dispatch of the bill, where possible, and all suppliers use the 65 day period to phase sending notifications to customers. This improves the customer service levels of the notification and call handling process, resulting in positive benefits for all customers.

We also do not agree that suppliers have not clearly notified customers' right to switch and avoid the increase. Suppliers have greatly increased the profile of the ability to switch, following the Probe, both through their own communications and through industry projects, such as the ERA's 'Energy Made Clear' initiative.

Customers are not prevented from changing their behaviour in reaction to a price increase – they are able to switch supplier to avoid a price increase. It is unclear whether reducing the time period for suppliers to notify customers of a price increase would encourage more customers to switch following a price increase. Through statutory policies and the voluntary agreement, suppliers are constantly offering ways for customers to reduce their consumption through energy efficiency measures, which would minimise the impact of future price increases.

In general, suppliers believe that most customers are informed of price increases through the general media, rather than through individual notifications. Ofgem's Consumer Panel in January 2010 found that following an in-depth discussion most participants were not concerned by the period of time allowed to suppliers to notify them of a price increase, as they could avoid the increase by switching. These findings suggest that the right to switch makes the length of time in which to send notifications irrelevant.

Suppliers have not had access to the full Which? research output and methodology and so cannot comment on any statements regarding its findings. However we would caution against coming to any decision based on limited subjective information, apparently based on customers' recall of events nearly a year before, and encourage a more evidence based approach, based on a full impact assessment of suppliers' potential costs and additional resources. Current evidence does not suggest that suppliers' increased operational costs involved in changing this requirement (which would impact on all customers) would be justified by the supposed inadequacies of the current rule. We would also expect due weight to be given to suppliers' own evidence. We do not agree with the assertion (in paragraphs 4.3 and 4.10) that the benefits of changing SLC 23 have not been realised. The major benefits identified by suppliers have been reduced costs and reduced stress on call centres, both of which were realised during the last round of price increases, in summer 2008.

Options for changing the 65 working day notification deadline

As explained above, we do not believe that the 65 working day notification period denies customers the opportunity to reduce usage or make timely budgeting decisions - it is unclear whether reducing the period would encourage more customers to switch following a price increase. We agree that equalising the notification period is not an option worth pursuing, and that giving 'appropriate' notice would provide uncertainty for suppliers and customers.

We note that Ofgem is minded to propose that suppliers provide advance notice of price increases. However, we would like to understand how the situation for customers under the current SLC 23 has significantly worsened since February 2009 before agreeing with Ofgem that advance notification of price increases is necessary to protect customers. Before proposing such a large variation in the current rules, we would like Ofgem to consider alternative ways in which low income and vulnerable customers could be helped through a period of rising prices. We would also like Ofgem to consider the impact on customers that a move to advance notification would bring.

We do not believe that it is the timing of a price increase notification which determines whether a customer will exercise their right to switch supplier; what is important is whether the customer is able to avoid the price increase by switching. Customers are able to do this under the current 65 working day notification period; therefore we believe that the system is not unfair to customers. We do not think that a requirement to notify in advance of price increases would significantly increase the number of customers who switch supplier to avoid a price increase. It would, however, create pressure on suppliers to accelerate timescales for communication to customers, which would cause operational difficulties in call centres, increase the costs of suppliers' communications with customers and undermine suppliers' ability to provide individually-tailored energy efficiency advice, which really helps customers who struggle to afford any price increases.

The 65 working day period was instituted less than three years ago and, since then, Ofgem has considered the notification period in its February 2009 open letter, without modifying it. There have been no price increases since February 2009 to provide new evidence and we do not believe that Ofgem has provided sufficient new insight to justify the finding that advance notification is the only viable option. Our members will reply individually on whether, provided that Ofgem produces new evidence of customer detriment caused by SLC 23, they could support a move to advance notification. However, in considering the potential impact of licence changes on customers, we would like Ofgem to consider whether a move to advance notification could be achieved with the removal of certain other obligations on suppliers. The ERA and suppliers would be happy to discuss this further.

SLC 23 – supplier notice to transfer within 15 working days

We do not believe that further legislation is required here. It is in the gaining supplier's best interests to register the customer quickly, and no firm evidence is adduced of supplier failure to initiate a transfer within 15 working days. If they do not, and the customer is unhappy, there are established complaint handling routes that the customer can take to recover any perceived losses. Given the small number of customers who exercise this right, it would be unduly onerous to make changes to industry codes or practices. It is also unreasonable that the old supplier has to bear the consequences of the gaining supplier's failure.

Unilateral contract variations 'to the significant disadvantage of the customer'

We agree that all unilateral contract variations should be subject to the same notification periods, although we do not agree that the current rules create significant detriment to customers. We would be happy to discuss ways of offering additional protection for vulnerable and low income customers.

Conclusion

Before Ofgem proposes such a dramatic change in the current licence conditions, we would like to see evidence of a significant change in the impact on customers of SLC 23 since Ofgem last consulted on this issue in February 2009. As Ofgem's own Consumer Panel noted this year, most customers are more concerned with the ability to avoid a price increase by switching than by the period of time a supplier takes to notify them of this change. Whilst a move to reduced or advanced

notification may be agreed in the future, we believe that Ofgem has to take into account all of the likely outcomes, both for customers and suppliers, of the options put forward. We do not believe that Ofgem has currently conducted sufficient research to justify the view that advance notification is the only viable option.

Ofgem could undertake an Impact Assessment on what the different options will mean for pricing decisions, implementation timescales, customer service and the impact on vulnerable customers. The ERA and suppliers would be happy to assist Ofgem in undertaking this further assessment. Following such research, we would be happy to work with Ofgem to ensure that the notification rules do not negatively impact on customers, and that low income and vulnerable customers are offered further protection.

Kind regards,

Frances Williamson
HEAD OF POLICY AND EXTERNAL RELATIONS