

By e-mail only

Liz Chester
Social Policy Manager
Ofgem
9 Millbank
London
SW1P 3GE

Name Paul Tonkinson
Address 1 Bridgwater Rd, Worcester, WR4 9FP
Phone 07989 493019
Fax 01905 340710
e-mail paul.tonkinson@npower.com

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Dear Liz,

Review of protection for vulnerable customers from disconnection

RWE npower welcomes the opportunity to respond to Ofgem's report, which on the whole paints a positive picture of how suppliers deal with potentially vulnerable customers in debt. You ask for comments on the proposals contained within the document; in particular proposed changes to the licence conditions relating to disconnection and reconnection.

We completely agree that companies have a responsibility to take reasonable steps to assist potentially vulnerable customers, particularly in this time of recession and straitened finances. We are pleased to see that Ofgem acknowledges all the good work that suppliers are doing in identifying and assisting potentially vulnerable customers. In addition suppliers' willingness to strengthen the Safety Net as regards reconnection, and the proposals to formally audit suppliers in relation to relevant provisions under an enhanced Billing Code are explicit signs of the proactive nature of the industry in dealing with these difficult issues. We are therefore disappointed that even with these changes Ofgem feels it necessary to suggest a tightening of suppliers' licence provisions.

It may help if I first put the rest of our reply in the context of how we see the role of Ofgem and its functions within what is, from a policy perspective, a difficult area.

Guiding principles

Ofgem's key functions are:

- to regulate network monopolies;
- to promote the interests of customers (consumer affairs); and
- to promote competition and apply competition law in the energy sector.

To this extent, Ofgem has a role equivalent to the Office of Fair Trading, but specific to the energy sector.

Ofgem does have broader social responsibilities, but the Government has been quite clear that, where there are significant associated costs, it would expect to legislate

RWE npower

Trigonos
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

T +44(0)1793/87 77 77
F +44(0)1793/89 25 25
I www.rwenpower.com

Registered office:
RWE Npower plc
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

Registered in England
and Wales no. 3892782

rather than for Ofgem to implement social policy on its own initiative (See “A fair deal for consumers” 1998). We think this is the right approach: matters of social policy involve cross subsidies from one group to another; decisions regarding the nature and extent of these should fall to the elected government rather than an independent regulator.

We believe the licence conditions being proposed fall clearly within the area of social policy.

This raises two questions:

1. Does the proposal derive from existing legislation?
2. Is there a problem which needs to be addressed?

Does the proposal derive from existing legislation?

The statutory position

Both the gas and electricity acts contain provisions which allow suppliers to disconnect or install a prepayment meter (ppm) where a sum of money remains owing at least 28 days after having been demanded in writing. So rather than effecting government policy, these proposals, by taking away the explicitly stated disconnection right would seem to contradict and further constrain it. However we recognise that the precedent has already been set with the existing licence conditions

2. Is there a problem which needs to be addressed?

Ofgem acknowledges in paragraph 3.31 that suppliers do actively seek to establish the vulnerability or otherwise of non-paying customers. Certainly, in our case, we go out of our way to avoid disconnecting potentially vulnerable customers. Ofgem has adduced no evidence that there is a problem which needs to be addressed; in fact the proposed licence conditions are seen by Ofgem as clarificatory. Nonetheless, the abolition of supplier rights may well have unintended consequences as discussed below.

A further dimension is the anti-competitive impact through stifling firms’ freedom to compete though the commercial practices they adopt in relation to bad debt.

The impact of the proposals

First, (and notwithstanding the fourth point below), the proposed reconnection provision as is its drafted intent for those groups covered by SLC 27.10 and 27.11 (if a consolidated approach is adopted) might be seen as one of strict liability; ie it appears to take no account that the supplier in disconnecting the premises may have no knowledge of the status of the customers within a property (because it has had no contact with them). So, even if it can demonstrate that it had undertaken all the steps outlined to try and ascertain the occupants’ status, it may be still held in breach of the licence, if it transpires that the customer is vulnerable. The corollary being that unless suppliers can prove or know that customers are not vulnerable, this would mean they could not disconnect. This creates an incentive for all customers, not just the vulnerable, to avoid contact with suppliers with a view to establishing debt resolution plans. We believe this development would run counter to Ofgem’s strongly held view that customers and suppliers should engage early to limit the build up of bad debt.

Second, companies will need to take a cautious approach to reconnecting customers in order to avoid the risk of breaching the new licence condition by reconnecting customers after 1 October. As stated above the proposed reconnection obligation in respect of, for example, all-pensioner households is absolute – there is no potential for “all reasonable steps” mitigation.

Third, in practice there would be almost no prospect of recovering the costs of disconnection given that the obligation to reconnect is not contingent on any agreement by the customer on a payment plan for paying off the charges. Given this, it will be cheaper for companies to allow summer consumption - even if this is not paid for - than to disconnect.

Fourth, the risk of being found to have breached the “all reasonable steps” requirement in establishing the status of a customer is likely to make companies reluctant to disconnect even those whom it believes not to be vulnerable. Again the absolute obligation to reconnect pensioner etc. households is also relevant.

The conclusion is that these effects could amount to a de facto ban on disconnection. Customers must have an obligation to engage with suppliers. For example they must have made some attempt to discuss their energy consumption, their energy bills, and their approach to debt. If this obligation was enshrined as part of the licence, then it would make the proposed approach more equitable (notwithstanding that we still believe the proposed licence condition changes are unnecessary). Plainly, the disincentive to engage with suppliers to work out manageable payment plans will exacerbate bad debt and working capital costs. Since the disconnection ban was introduced in the water industry, bad debt costs have increased markedly. We do not believe this is in the interests of the particular customers who fall into debt or of customers more generally. The status quo where disconnection is available as a last resort and as an incentive to engage, but where suppliers deal sensitively with customers in difficulty is working well. By comparison, these proposals are a retrograde step.

Focus of regulatory intervention

This does not mean that improvements cannot be made to the regulatory framework. In most cases, we are able to assist customers in managing their bills by fitting prepayment meters (PPMs). However, this option is not available on independent gas transporter (IGT) networks, leaving suppliers having no alternative but to keep customers on supply if they will not engage and enter a suitable payment arrangement.

The current position on IGT networks has a number of deficiencies:

1. IGT use of system charges remain bundled and include both transportation and metering.

Unbundling of meter charges for gas distribution networks took effect in 2001 and, following agreement of industry data flows to support metering competition in 2004, suppliers have increasingly looked to appoint their own Meter Asset Provider (MAP) and/or Meter Asset Manager (MAM) on IGT networks too.

When Relative Price Control of IGTs was introduced, Ofgem stated that they should take steps to unbundle metering charges from IGT use of system charges. (See

paragraph 3.49 of the 'The Regulation of Independent Gas Transporter Charging - Final Proposals - July 2003': *"All IGTs should follow the same arrangement and unbundle metering and meter reading charges to increase transparency and promote competition in metering services."*) But Ofgem did not make any changes to IGT licences to enforce these changes.

There is little transparency over the breakdown of IGT charges between metering and transport. This contrasts with the recent requirement for transparency in the competitive retail and generation sectors especially as IGT Use of System is essentially a monopoly service.

2. IGTs are unwilling to readily facilitate the fitting of PPMs

3. The additional cost for suppliers of installing, servicing and operating PPMs is prohibitive.

4. Standard industry data flows have yet to be developed to support IGT customers with PPMs switching supplier, and if wide scale switching were to take place this would result in suppliers having to rely on a manually intensive and error prone process.

5. There are also potentially implications for supplier billing systems.

Ofgem should require IGTs:

i) To charge separately for metering and transport

ii) To offer PPM meters or

iii) Allow alternative meter asset providers and managers with a commensurate reduction in charges

Ofgem should sponsor a project to allow industry data flows to support PPM customers on IGTs switching supplier.

The other issue mentioned briefly in the consultation document is meter tampering

Meter tampering

Meter tampering, overwhelmingly, is undertaken to abstract energy; regardless of the reason why a customer feels it necessary to do so. The safety of the consumer, other occupants and surrounding residents has to be of paramount importance.

We do have concerns about changes that might, however slight they may appear on the face of it, make it more difficult for suppliers and their agents to deal with meter tampering and related matters. While alleged and actual abstraction investigations can be difficult in terms of identifying culpability, suppliers do require clear powers to act where offences have been committed.

Given the potential for serious injury and possible loss of life that can result through meter tampering, any changes to suppliers' powers and obligations should not be undertaken without careful consideration and a full impact assessment. In addition, if the differences in the legislation between gas and electricity warrant harmonisation, Ofgem should, for the reasons set out above go through, the normal parliamentary process and lobby for the required changes to be made legislatively.

Conclusions on proposed licence amendments

Our conclusion is that the proposals in the consultation paper would be unhelpful for all customers compared to the status quo, particularly given that suppliers are doing, and are, willing to do, more for vulnerable customers voluntarily. By contrast, action to promote competition in IGT metering would benefit vulnerable customers. It would also be consistent with Ofgem's competition and consumer affairs remits.

If you wish to discuss any aspect of this response, please do not hesitate to contact me.

Yours sincerely,

Paul Tonkinson
Economic Regulation