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Ofgem  
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Dear Meghna,

**SUPPLY LICENCE CONDITION 23 – PERIOD FOR NOTIFYING UNILATERAL CONTRACT VARIATIONS AND RELATED MATTERS**

Thank you for the opportunity to respond to the above consultation on the proposals for revising the current 65 working day notice period allowed for suppliers to retrospectively notify customers of adverse unilateral contract variations, such as price increases.

The concept of allowing retrospective notification was developed at the opening of the competitive retail gas market in 1996, in order to ensure that companies could respond with sufficient speed to changes in wholesale market pricing. In return for the possibility of retrospective notification, customers were given a retrospective right to avoid the increase by changing supplier.

In the Supply Licence review which concluded in 2007, Ofgem increased the permitted period of time for retrospective notification from 10 days to 65 working days in order to allow the notification to be printed on or inserted with the bill. This would save the cost of a separate mailing – a saving that in time would be passed to consumers through the operation of competition. ScottishPower invested in the IT upgrades to enable notification to be printed on the bill where one was received within the timescale and we have used this as a key method for advising price increases.

Experience has also shown that the despatch of notifications has to be phased, not only to accommodate the logistics of printing and enveloping those notifications which are not sent electronically, but also to ensure that the ensuing enquiries do not all come at once, with the risk of overwhelming call centres, leading to poor customer service.

We are concerned that the combination of these practical factors with the proposed 30 day advance notice period could significantly elongate the process of price changes. For example, if one allocates 21 days to preparation and enveloping of notifications, a further 21 days for phasing the delivery and 3 days for the post, the process from decision to implementation would take 76 days – nearly 11 weeks. This could adversely affect the ability of the competitive market to respond to events.

The consultation letter gives the impression that the rules which apply for some financial products apply to all such products. This is not the case; individual advance notification is not required for certain products and customers purchasing financial products do not generally have the ability to retrospectively unwind an adverse change by changing supplier. Given the widespread publicity given in the media to utility price increases and the relatively high accuracy of apportioning algorithms, we doubt that needing to read the meter or adapt behaviour are points of great weight.

All this suggests that the benefits for consumers of changing policy here have not been fully thought through. We consider that this is a significant change for which Ofgem should prepare a regulatory impact assessment before moving to final decisions. This assessment should consider the impacts of the changes which have already been made in response to the Probe (and which have not yet been tested by a price increase) plus the option of more targeted measures to deal with the particular areas of poor practice that have given Ofgem concern.


In the event that Ofgem wishes to shorten the allowed notification period, we would wish to see a balancing of the benefits of so doing, as compared to the reduction of the ability of the market to move quickly. Any move to advance notification should be combined with removal of the retrospective right to cancel the increase and a significant deregulation of the notification requirements intended to give that right proper effect.

We believe that the 15 working days a new supplier has to give notice of a transfer is not an area that Ofgem need to consider changing. The responsibility of initiating the customer transfer lies with the new supplier and the current 3-week timescale for this to occur is not unreasonable. We believe that it is essential to have a cut off point by which the price increase must be applied to these customers who have expressed their intention to switch. This should not be an open-ended period of time during which customers are exempt from the price increase effects.

We would be happy to discuss ScottishPower's operation of the price variation notification process further with Ofgem, along with our compliance with the consumer protection legislation outlined within the consultation.

Please find our specific comments on the proposals suggested within the consultation set out in the attached Annex. If you wish to discuss these comments in more detail or have any further questions, please do not hesitate to contact me using the details printed on the previous page.

Yours sincerely,



**Rupert Steele**  
Director of Regulation

## **ANNEX 1**

### **Proposals**

#### **Advance Notice**

While this may seem at face value to be one of the most attractive options for customers, we remain unconvinced that this will actually will lead to increased protection for customers. We believe the opportunity for customers to amend their consumption or budget financially to accommodate an increase currently exists, due to the large amount of media attention that surrounds an energy price increase. We are sceptical that changing this requirement will lead to an increased volume of customers who amend their behaviour and do not feel that this should be the primary justification.

Customers are alerted of a change ahead of the effective date through press activity and are provided with information relating to not only the level of increase but also when it will be applied. This provides the customer with the opportunity to take a meter reading, therefore allowing them to check that their consumption is apportioned accurately if this is a concern. We are not aware of any significant difficulty in the use of our estimating algorithm to apportion consumption across a price change.

In addition to this, customers are provided with the protection of being given the right to cancel their contract without incurring the effects of the price rise if they wish to do so. This protection (which goes well beyond what is available in other sectors) is welcomed by most consumers, as demonstrated by the Ofgem Consumer Panel Research. This research clearly showed that most consumers were not concerned with the length of notification period as long as they could cancel and switch to avoid the increase. This would suggest that the existing approach works well for consumers and appropriate protection is in place. As Ofgem's research contradicts the research carried out by *Which?* we would urge Ofgem to conduct a full impact assessment of all options prior to making any decisions.

Advance notice in other industries may work for customers; however it is important that Ofgem appreciates the unique nature of the energy supply industry and how the considerations may differ. For example, the consultation draws on comparison to sectors such as house and car insurance as renewal notices are sent to customers in advance. Although insurance companies provide their customers with the option of switching before automatic renewal, a change in price does not affect 100% of the customer base at the same time, therefore limiting the volume of customer contacts and smoothing the effect on the customer by enabling the company to provide effective service. In the insurance industry, customer contracts are renewed on an individual basis, and generally once a year; there are no concentrated notification periods which require further resource, training and significant marketing costs.

ScottishPower's previous strategies have been to smooth out notifications across the full 65 working day period in order to ensure effective call handling and limit any negative impacts on customers. For example, for the price increase effective from 1<sup>st</sup> Sept 2008, over half of all affected customers were mailed over the first 4 weeks, with the remainder over the rest of the period. This was through a combination of bill messages and also standalone communications, where the customer wasn't due to receive a bill in the period. By utilising the full period we aim to provide the best possible service to our customers while keeping the costs of managing a change to a minimum.

Implementing and managing the price change process is complex and the preparation of the full end to end process can often span several weeks. In order to handle the volume

of contacts we would anticipate from a much shorter notification period, we would have to recruit additional call centre staff on a fixed term basis. Once recruited, these inexperienced agents would have to be adequately trained and subsequently let go at the end of their fixed term contract, which is a significant wasted cost, ultimately to be paid for by customers. We would be concerned with the effects on customer service of receiving a high volume of contacts over such a short period of time. In addition to this, there are also considerable marketing costs to consider as through losing the opportunity to provide this notification on the bill – we would have to send a dedicated standalone mailing to all customers. The additional costs of a revised notification period and process will ultimately have to be factored in to suppliers future overall pricing strategies.

We would also like to note the investment which has been made by suppliers in delivering the changes from the outcome of the SLR to amend to the 65-working day notice period. Moreover, further expense has been incurred to implement the additional changes which have been introduced from the Probe, specifically in relation to the 65-working day notification period. If the notification period was now to be amended again, this would result in further cost which is ultimately borne by customers.

We believe that retaining the 65-working day notice period is fair and reasonable and in line with European legislation, because the right to cancel offers suitable protection for our customers. We are concerned that the cost and service benefits afforded to customers by the 65 working day notification period would be substantially lost by moving to an advance notice notification period, particularly due to the unique nature of our industry. We urge Ofgem to conduct a full impact assessment before pursuing any options.

#### Notification no later than 10 days after the increase

While this would still mean a significant strain on contact centres, meaning reduced levels of customer service, we think that notification no later than 10 days following a price increase, would be a significantly better option than 30 days in advance. It would allow the notification drag on the operation of the market to be more than halved from about 76 to around 36 days, thus meeting the original objective of policy in this area.

A ten day limit would assist customers in making suitable adjustments to their consumption and/or their financial situation, provide meter readings or exercise their right to cancel if required, prior to or close to the effective date. Although there are still costs involved with this approach, the total cost would be less than the suggested option of full advance notice. By implementing this requirement, there would be a reduced overall impact on both suppliers and customers alike, but would also allow suppliers to make much quicker and therefore more competitive pricing decision in line with the market.

#### **How can the licence requirement be amended to protect customers from the consequences of their chosen suppliers' failure to act and request a transfer within 15 working days.**

We agree that it is important that customers are adequately protected from the failings of their new supplier and should not be penalised. However, we believe that it is imperative that there is a suitable cut off point so that some customers don't gain an unfair advantage of the right to cancel. In the competitive utilities industry, trying to gain new customers should be a high priority, therefore failing to request a transfer within a 3-week period should not be common practice. As previously highlighted, Ofgem should

take action against those suppliers who are adopting this practice as opposed to introducing a change that adversely affects all.

ScottishPower will always manage the customers' right to cancel in their favour, therefore would take a sensible approach in these cases where the customer is actively trying to leave and the new supplier has not requested the transfer. However, it is important to note that the existing supplier is not always aware of the circumstances of the customer's application with their new supplier, therefore it should be the customer's responsibility to notify their existing supplier if they are experiencing difficulty trying to transfer.

We would like to echo those responses submitted at the time of the Supply Licence Review in relation to an open ended time frame to transfer. It is unreasonable to expect suppliers to allow customers to be exempt from a price increase until they decide otherwise. It is important that this process is controlled and suppliers should be allowed to implement a cut off point as long as this is clearly communicated to the customer. We recognise that failure to request customer transfers is down to the gaining supplier and not the customer, however would ask that suppliers manage these customers on a case by case basis as opposed to amending the process for the minority. Due to this we do not believe that any change to this requirement is necessary.

*In the event that the 65 working day notification period is amended to advance notice, this requirement would not apply as the customer would be leaving before the effective to date.*

**Should the requirement on suppliers to notify customers of a unilateral variation of their contract be aligned to any changes to the 65-working day period of notifying customers of a price increase.**

We think that the main focus of the current concern is pricing and that it could be unwise to introduce a lengthy notification delay for other changes to terms and conditions. For example, if some loophole were to emerge allowing consumers to avoid payment for energy they have used, it would be appropriate to be able to close it quickly.