

Suppliers, consumer groups and
other interested parties

Promoting choice and
value for all customers

Direct Dial: 020 7901 7089

Email: meghna.tewari@ofgem.gov.uk

Date: 31 March 2010

Dear Colleague

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

Currently domestic energy suppliers are required as a condition of their licence (Supply Licence Condition 23 - SLC23) to notify their customers of a unilateral variation of their contract to increase prices or in any other way that is to the significant disadvantage of the customer. Energy suppliers can notify customers of such variations in advance or up to 65 working days after the variation is to take effect.

During the latter stages of our Energy Supply Probe last year we were made aware that some suppliers were notifying price increases separately from the billing cycle and occasionally near to the 65 working day limit, and the prominence given to these changes was limited. We therefore published an open letter seeking views on whether we should revise SLC23. On 7 August 2009 we published our Probe retail market remedies document. Whilst we made it clear that best practice was to notify an increase as soon as possible and preferably in advance, we said that we would explore practices in other industries and consider making further proposals in this area. We made a number of incremental changes to the arrangements. These included making the customer's right to switch more prominent in the notification and giving customers more time to switch suppliers to avoid the increase. We also highlighted the need for suppliers to comply with consumer legislation and said that we would be writing to suppliers. (A summary of work on the Probe in relation to SLC23 can be found in appendix 1).

We recognised that the issue of advance notification of price increases was not one of the major issues that we were trying to address through the Probe and its remedies. We therefore decided to make some incremental changes, noted above, but committed to undertake further work outside of the Probe. Accordingly, since the Probe we have considered further the operation of SLC 23.

The wider context in which SLC23 operates has changed. An amendment has been made during the House of Commons stages of the Energy Bill which, subject to the Bill receiving Royal Assent, would give the Government backstop powers to enable it to set the period within which energy companies must inform customers of changes to their tariffs. Whilst we would not expect Government to need to intervene in such matters, Ministers have made clear their intention to exercise this backstop power should our further work not secure changes in a timely way.

In this letter we now follow up on the further work highlighted in the Probe:

1. we set out options for changing the current licence requirement for notifying customers of a unilateral variation of their contract;
2. we seek views both on our currently preferred option for providing advance notice, and alternative options such as shortening the current 65 working day limit to, for example, a 10 day limit;
3. we seek views on the current period that a new supplier has within which to notify the losing supplier that it is taking over the supply and the consequences for the customer associated with any default by the new supplier; and
4. we highlight that we are seeking information from suppliers on compliance with consumer legislation and the operation of the price variation notification process, and will take into account this information as appropriate in progressing the consultation launched in this letter.

Responses to this open letter are invited by **14 May 2010** and should be sent to Meghna Tewari (meghna.tewari@ofgem.gov.uk). We intend to consult on any proposed licence changes and implement revised licence conditions later this summer.

1. Operation of the 65 working day requirement

Energy suppliers

- 1.1. As noted above, SLC23 gives energy suppliers up to 65 working days after a variation such as a price increase takes effect to inform their customers of the change. This change was introduced in August 2007 following the Supply Licence Review (further information about the change can be found in appendix 2). One of the reasons for amending the price change notification period to 65 working days was the cost to suppliers of providing separate price notifications to their customers. However we understand that most suppliers do not generally time the price notification to coincide with the dispatch of the bill.
- 1.2. We had expected in introducing the changes during the SLR that giving customers the ability to switch to avoid the price increase, together with the problems for suppliers associated with unravelling the customer's account if the customer chooses to switch supplier after an extended period, would ensure that suppliers would not rely on what was a backstop deadline of 65 working days following a price change. Instead, they would notify customers earlier, even if not actually in advance as also envisaged by the provisions of SLC23. However, our analysis of contacts to Ofgem from individual consumers and responses received during the Probe indicated that SLC23 appears to have allowed poor notification practices to develop among suppliers.
- 1.3. We also noted a lack of clarity on the associated notification of the customer's right to switch and hence avoid the increase. It appeared that suppliers had hindered transparency and effectiveness of the notifications by embedding them in other information, in some cases separating the price change and the notice of switching rights.
- 1.4. Since the Probe remedies were introduced there have been no price increases so we have not been able to see what effect these have had. However, as indicated above we did not expect the Probe remedies to substantially address the concerns identified.

Effects on consumers

- 1.5. Customer contacts to Ofgem and responses to the Probe have indicated that there are a number of adverse effects on customers which may result from the introduction of a maximum 65 working day retrospective notification requirement which was not clear to us at the time. Notifying customers up to 65 working days after a price increase takes effect prevents a customer from changing their behaviour in response to

the change, for example by reducing their gas or electricity usage. They also do not have the opportunity to budget to meet what could be up to three months extra charges. Customers on low incomes may be particularly disadvantaged because they have to make difficult financial decisions. The situation is even more acute in the current economic climate. Whilst customers can switch to avoid the price increase very few actually appear to do so in the current circumstances of timing and manner of retrospective notification of price changes. In some cases the wider publicity in the media around price increases can alert customers to the need to consider the impacts but for others the individual notification remains key.

- 1.6. Delay in notification of an increase denies the customer the opportunity to take and provide meter readings around the date when the price rise becomes effective to enable them to check that consumption is being properly apportioned between the old and new tariff.

Consumer research

- 1.7. Both the consumer body Which? and Ofgem have conducted research to elicit consumer views regarding the 65 working day requirement for notifying price increases. The Which? research was conducted in May-June 2009. Which? panel members responded to an online survey asking whether suppliers should notify customers in advance if they are increasing prices. This revealed that 98% wanted their supplier to notify them ahead of a price change.
- 1.8. Ofgem's Consumer Panel in January 2010 had an in-depth discussion around their experience of price notifications and the pros and cons of different notification periods. There was little awareness of the 65 working day requirement or of notifications being received with quarterly bills, which provided the context for the discussion. Fairness was considered to be a key element of the requirement. Some Panel members indicated a preference for advance notification so that they could prepare for the increase and decide whether to switch away. However, on balance most participants were not overly concerned by the length of time allowed to suppliers to notify them after a price increase as they were able to avoid the price rise if they wished by switching to an alternative supplier.
- 1.9. The difference in results between the Which? research and the results from the Consumer Panel may be due to a number of factors including timing. The Panel in January this year was asked to recall what they remembered about the last time they received a price increase notification and their reaction to it. Most Panel participants could not recall how they found out about previous price increases. The Which? research meanwhile drew upon a much larger sample and was conducted in May-June 2009 against a backdrop of more recent price rises. The results of the Ofgem research will be published alongside this letter.

2. Practices in other sectors for notifying price increases

- 2.1. As noted above, in our 7 August 2009 Probe remedies document we said that we would explore practices in other industries for notifying price increases such as financial services. We have summarised below the our findings.
- 2.2. In the financial sector The Lending Code, which replaced the Banking Code and is a self-regulatory code monitored and enforced by the Lending Standards Board, sets customer notification standards for banks, building societies, and credit card providers. For example, it requires banks to tell their current account customers personally at least 30 days before increasing an overdraft charge or introducing a new overdraft charge. The code also requires that if terms and conditions are changed to the

customer's detriment customers should be given at least 30 days personal notice (for example, by letter, e-mail, etc) before the change takes effect. At any time during the 60 days from the date of the notification, the customer must be free to close or switch their account without having to give notice. Customers should also be free to close or switch accounts without any financial penalty.

- 2.3. Government has introduced new standards for credit and store cards which will apply from January 2011¹. As well as the current 30 days advance notice of an interest rate increase, the card company will have to provide at least two notifications informing the customer of their right to reject the increase. For their part consumers will have 60 days to reject it.
- 2.4. In the telecoms sector, there is a statutory requirement on telephone providers to give customers' one month's notice if a contract modification is likely to be of material detriment to the consumer². Our examination of the main telecoms providers' contractual terms and conditions shows that they generally require that 30 days or at least one month advance notice be given of a price increase, regardless of the level of increase. The customer has between 10 and 30 days in which to cancel and not be subject to the increased prices.
- 2.5. Renewal notices in other competitive sectors, for example house and car insurance, are sent in advance giving the customer the option of switching before automatic renewal.

3. Consumer legislation

- 3.1. As noted above, in the Probe we said that we would be writing to suppliers about their compliance with consumer legislation. Under the Enterprise Act 2002, Ofgem's Authority may seek the enforcement of certain consumer protection legislation by means of court orders, called Enforcement Orders, against businesses breaching that legislation. We highlight some of the relevant consumer legislation below.

The Consumer Protection from Unfair Trading Regulations 2008³

- 3.2. The Consumer Protection from Unfair Trading Regulations 2008 (CPR) came into force on 26 May 2008. They implement the Unfair Commercial Practices Directive in the UK, and replace several pieces of consumer protection legislation that were in force prior to 26 May 2008. The Regulations introduce a general duty not to trade unfairly and seek to ensure that traders act honestly and fairly towards their customers. They apply primarily to business to consumer practices (but elements of business to business practices are also covered where they affect, or are likely to affect, consumers).⁴
- 3.3. The new regulations ban traders in all sectors from using unfair commercial practices towards consumers. They set out broad rules outlining when commercial practices are unfair. These fall into three main categories:

¹ A Better Deal for Consumers: Review of the Regulation of Credit and Store Cards

² General Conditions of Entitlement: http://www.ofcom.org.uk/telecoms/loi/q_a_regime/gce/cvqgc18032010.pdf

³ http://www.opsi.gov.uk/si/si2008/uksi_20081277_en_1

⁴ http://www.ofg.gov.uk/advice_and_resources/small_businesses/competing/protection

- general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith);
- misleading practices, like false or deceptive messages, or leaving out important information; and
- aggressive sales techniques that use harassment, coercion or undue influence.⁵

3.4. For a practice to be unfair under the CPR, it must harm, or be likely to harm, the economic interests of the average consumer in that it causes, or is likely to cause, that consumer to take a different transactional decision.

The Unfair Terms in Consumer Contracts Regulations 1999⁶

3.5. The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) protect consumers against unfair standard terms in contracts they make with traders. The UTCCRs can protect consumers from terms that reduce their statutory or common law rights and from terms that seek to impose unfair burdens on the consumer.⁷ In particular, the UTCCRs provide that contractual terms may be regarded as unfair where they enable a supplier either to:

- alter the terms of the contract unilaterally without a valid reason which is specified in the contract, although where the contract is a contract of indeterminate duration the supplier may reserve the right to unilaterally change the conditions, provided that he informs the consumer with reasonable notice and the consumer is free to dissolve the contract; and
- increase the price without giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.

3.6. Other consumer protection legislation may also be relevant to the notification practices of energy suppliers. Suppliers are, of course, responsible for ensuring compliance with all relevant consumer protection legislation.

Next steps

3.7. We intend to write to suppliers to seek information about their compliance with the consumer protection legislation outlined above and more generally on matters relating to the operation of the price variation notification process, during the consultation period for this letter. We will take into account the information received as appropriate in progressing the issues under review during the consultation.

4. Consideration of options for changing the 65 working day notification deadline

4.1. As noted above, in our August 2009 Probe retail market remedies document we said that in our view best practice was to notify customers of an increase as soon as possible and preferably in advance, and that notification within 65 working days was a backstop. We also said that we would consider making further proposals in this area.

⁵ In addition, the CPRs ban 31 specific practices outright.

⁶ <http://www.opsi.gov.uk/si/si1999/19992083.htm>

⁷ http://www.ofg.gov.uk/advice_and_resources/resource_base/legal/unfair-terms/

- 4.2. We have considered options available to us for revising the 65 working day requirement, taking into account our expectations of how the requirement would work, its effect on consumers, the responses we received to our earlier open letter, practices in other sectors, and the wider current context including the economic situation.
- 4.3. In all these circumstances outlined in this letter, retention of the current rules unchanged does not appear to be a defensible option. The reasons for and anticipated benefits of the changes leading to SLC23 as it was and now stands have not been realised. Suppliers have tended to make use of much if not all of the maximum notification period while still not generally timing the price notification to go with customers' bills. It appears that the customers' ability to switch to avoid a price increase and the problems for suppliers in unpicking the customers' account should they do so, has not prompted notifications to be sent earlier within the allowable maximum notice period never mind in advance as also envisaged within SLC23. The availability of the maximum 65 working day notification period and its use denies customers the opportunity to reduce usage or make timely budgeting decisions. Customers and consumer groups have voiced their concerns about the notification period and the manner of its exercise. As noted earlier, a similar view has been expressed by Parliament through the introduction of an amendment to the Energy Bill, supported by all parties.
- 4.4. We outline below key options and our preference for revising the current price increase notification period.
- *Equalising the notice period*
- 4.5. One option we have considered is equalising the notice period of suppliers and customers. For example, if suppliers have 65 working days to notify customers of a price rise then customers should have the same length of time in which to decide whether to switch. Whilst this might encourage earlier notification it does not require it and, in our view, does not overcome the difficulties in decreasing usage or budgeting and those customers who wish to switch are unlikely to wait 65 working days before doing so. Based on information reviewed to date, we do not therefore consider this option to be worth pursuing.
- *Giving 'appropriate' notice*
- 4.6. We have also considered a requirement to give 'appropriate' notice which would take into account the individual circumstances of a price change, for example for a small price increase a delay may be more reasonable. This would have the advantage of flexibility. However, by its very nature this requirement could lead to uncertainty for both suppliers and customers and could also be difficult to enforce. We are not therefore minded to pursue this option.
- *Notice within 10 days*
- 4.7. The original licence condition (Supply Licence Condition 44) permitted suppliers to notify customers of unilateral changes to their contract terms within 10 days of the variation, thus giving suppliers the opportunity to provide advance notification. However this would still allow suppliers to give notice after the increase came into effect and appears to be an unsatisfactory compromise between advance and retrospective notification. Based on information reviewed to date, we are not currently minded to pursue this option.
- *Advance notice*
- 4.8. In the Probe we made it clear that best practice was to notify customers of an increase as soon as possible and preferably in advance. We have outlined above some of the practices in other industries. We note in particular the requirements in the

financial sector where 30 days advance notice is given of price changes, and Government's recent introduction of similar rules for credit and store cards. A change to require advance notice of price increases would therefore be consistent with these other sectors.

- 4.9. Advance notice would also overcome the difficulties for customers noted in section two above associated with the current requirement. We are concerned that the 65 working day notice period denies consumers, particularly those on low incomes, an opportunity to budget for the extra costs or to decide to decrease their usage in light of the increased costs. Against a background of increasing energy debt, the recession, and the possibility of price increases in the future we are particularly keen that consumers on low incomes should not be faced with falling into or further into debt.
- 4.10. The requirements for notifying price increases up to 65 working days after the date of the increase does not appear to be operating in the consumer interest in any other way. As noted above, the anticipated outcomes from the Supply Licence Review have failed to materialise – suppliers are not generally combining the notification with bills and are sometimes taking the full 65 days to notify customers of the increase – and consumers have not benefited from the changes. The practices being followed by suppliers could be considered unfair.
- 4.11. We note the views expressed previously by suppliers (summarised in appendix 3). In our view whilst there may be some issues for suppliers for example in managing call volumes, we have not to date been persuaded that these issues are insurmountable. These issues existed before the changes made in the SLR. We note that pre-SLR price increases, for example many of those in 2006, were announced up to one month in advance. More recently, most price decreases this Spring have been announced ten days and more in advance of their introduction. We also understand that advance notification of energy price increases would not be against the FSA's Disclosure and Transparency Rules provided an announcement is made to the market before or at the same time particular customers are notified.
- 4.12. Accordingly, it would appear to us that the introduction of a requirement of advance notification of price increases is the option for change that is most likely to give consumers the opportunity to effectively consider and exercise the choices that should be open to them in the event of a price increase.
- 4.13. We note that common practice and requirements in other industries is to provide 30 days notice of a price increase. It appears to us that in all the circumstances it could be appropriate for a similar period to apply to notifying increases in gas and electricity prices. We would welcome views on the implications of different periods of advance notification.
- 4.14. Requirements in other sectors appear to allow customers to give notice at any time within the advance notice period (or a longer period in the financial sector) and avoid the price increase. SLC23 currently gives customers 20 working days to notify their supplier that they would like to switch in order to avoid the retrospective application of a price increase. It appears to us that if a customer can give notice at any time within the advance notice period then there would be no need to specify a time period for doing so within the licence.

Current proposal for changing the 65 working day requirement

- 4.15. In the circumstances set out above:
- **we are currently minded to propose that the 65 working day period for notifying customers of a price increase be amended to require suppliers to provide advance notice of a price increase;**

- customers should be able to end their contract before the price increase comes into effect; and
- we seek views on what period of advance notice of a price increase should be given by suppliers to their customers in the event that we were to proceed with our current proposal.

5. SLC23 - supplier notice to transfer within 15 working days

Current licence obligation – SLC23.6

5.1. Concerns were expressed during the SLR that the licence condition at that time did not prevent a customer from giving notice to terminate the contract in response to a price increase notification but subsequently failing to transfer to a new supplier. The new licence condition (SLC23) was amended to address this issue as part of the SLR. As a result, a supplier is prevented from imposing a price increase only if the new supplier provides them with notice that they will begin to supply the customer within 15 working days of the customer giving notice that he is ending the contract.

Consumer Panel view

5.2. Ofgem's Consumer Panel raised concerns regarding the 15 working day period as part of its discussion on the requirements for notifying price increases. The Panel was concerned that if the new supplier failed to notify their current supplier within 15 working days customers would have to stay in the contract with the increased price because of the supplier's default and despite their prompt and appropriate actions. Some Panel members reported that they had faced problems before while switching supplier which had taken several months to resolve. They felt that customers should be protected from the consequences of the new supplier's failure and the rule should be amended to provide this.

Ofgem's view

5.3. We are concerned that there is the potential for customers who wish to exercise their right to switch supplier upon notification of a price change to be prevented from so doing by the actions or omissions of a potential new supplier who may not contact the existing supplier within the 15 working day period allowed. This may lead to the customer being penalised through having to stay with the old supplier and be subject to a higher price without any remedy and through no fault of their own. **We therefore propose that this requirement be amended.** We recognise suppliers' concerns expressed at the time of the SLR that the time frame for receipt of the transfer request from the gaining supplier was open ended. **We welcome views on how the licence requirement could be amended to protect customers from the consequences of the chosen new suppliers' failure to act and request a transfer within 15 working days.**

6. Other issues

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

6.1. As noted earlier in this letter, the SLC23 requirement on suppliers to notify customers of a unilateral variation of their contract applies not only to a price increase but to any other variation which is to the significant disadvantage of the customer. Suppliers can notify customers of such variations in advance or up to 65 working days

after the variation is to take effect. Customers have 20 working days to notify their supplier that they would like to switch in order to avoid the retrospective application of the contract variation.

- 6.2. It appears that many of the arguments for amending the notice period for notifying a price increase could also apply in principle to other unilateral variations to the significant disadvantage of the customer. **We are therefore currently minded to align the requirement on suppliers to notify customers of a unilateral variation of their contract which is to the significant disadvantage of the customer with any changes to the 65 working day period for notifying customers of a price increase. We would welcome views on this proposal.**

Consideration of implementation of options

- 6.3. Depending on which options are to be pursued we will also give further consideration on the exact formulation of the resulting requirement to be enshrined in licence conditions.

7. Next Steps

Subject to this consultation we intend to publish a statutory proposals notice this summer.

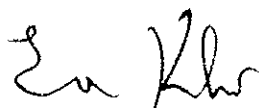
Responses to this open letter are invited by **14 May 2010** and should be sent to:

Meghna Tewari
Senior Economist, Markets
Ofgem
9 Millbank
London
SW1P 3GE
meghna.tewari@ofgem.gov.uk
020 7901 7089.

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



Emma Kelso
Head of GB Markets

Appendix 1

Energy Supply Probe

We launched our Probe into the GB energy supply markets in February 2008. The purpose of the Probe was to improve the functioning of the retail market for all consumers. As noted above, concerns were raised about the length of time some suppliers take to notify customers of price changes during the latter stages of our Energy Supply Probe and were not therefore considered in the initial Probe document. On 20 February 2009 we therefore published an open letter seeking views on whether we should revise SLC23.

In our open letter we summarised the concerns expressed by consumers and others regarding the length of time given to notify a price increase and set out four options for changing SLC23 (the options and responses to the open letter are set out more fully in section 5). We highlighted concerns about the limited prominence given to the customer's right to switch and avoid the retrospective price increase. We also recognised that the issue of advance notification of price increases was not one of the major issues that we were trying to address through the Probe and its remedies. We therefore decided to make some incremental changes but committed to undertake further work outside of the Probe.

Probe outcomes - 65 working day requirement

We made it clear in our August 2009 Probe retail market remedies document that in our view best practice was to notify customers of an increase as soon as possible and preferably in advance, and that 65 working days is a backstop. We therefore changed SLC23 with effect from 18 January 2010 to make it explicit that suppliers could notify customers of a price increase in advance. We also said that we would continue to explore practices in other industries such as financial services and consider making further proposals in this area.

We made it clear that there was further work to be done in terms of the interaction between the 65 working day requirement and consumer legislation. In particular, we made it clear that in deciding on how and when they notify their customers of any unilateral adverse changes to contract terms, suppliers should satisfy themselves that their behaviour is consistent with consumer legislation, including the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs).

We also committed to work with suppliers and the Energy Retail Association to develop commonly applied good practice. We expected this to include explaining to customers how any price increase will be apportioned in the quarter in which it applies, and proactively encouraging customers to provide a meter reading when they receive a price increase notification.

Probe outcomes - other revisions to SLC23

We made a number of other changes to SLC23 which came into effect from 18 January 2010.

To overcome concerns that customers right to switch supplier in response to a price increase notification and thus avoid the higher charges was not being made explicit, we made revisions to SLC23. Suppliers are required to make this information clear, easy to understand, and be placed in a prominent position. We have also included a requirement for suppliers to inform customers where they may obtain impartial advice and information about changing their supplier.

To provide customers who like to consider their options more fully for example by investigating other offers or consulting friends or family, and to avoid the risk that the

customer may be away for a time, the period that the customer has to notify their supplier that they want to switch supplier has been lengthened. Customers now have 20 working days to notify their supplier that they would like to switch in order to avoid the retrospective application of a price increase.

The licence condition was amended further to give those customers in debt a reasonable opportunity to repay that debt and to switch to avoid the retrospective application of the price increase. SLC23 now allows the customer 30 working days to pay any outstanding charges if they notify the supplier that they intend to switch in response to a notification of a price increase that is provided less than five working days in advance of the date on which the increase has effect. Suppliers are required to notify the customer of the 30 working day period to repay the debt when they notify the customer that their switch has been blocked because of the outstanding debt.

Appendix 2

Background to the introduction of SLC23 and the 65 working day notification period during the Supply Licence Review

In 2006 Ofgem conducted a review of all supply licence requirements (the Supply Licence Review – SLR). At that time, Supply Licence Condition 44 said that when a supplier varied any term to the significant disadvantage of the domestic customer the supplier was required to give notice within 10 days of the variation. Customers could avoid the price increase by terminating the contract within 14 days of the notice.

Ofgem noted that the 2003 Gas and Electricity EU Directives provided for direct notification of a price increase no later than one billing period after it comes into effect. Information from suppliers also indicated that £15m had been spent by them in 2006 to communicate two sets of price rises.

Following consultation, Ofgem therefore decided that the licence condition should be changed to give suppliers up to 65 working days to notify the customer following implementation of a price increase in line with the EU directive and to fit in with the quarterly billing cycle. This meant that a separate notification was not necessary (which was also a way to ensure consistency with the directive) and suppliers had the flexibility to manage this in order to reduce costs. From a consumer point of view it was assumed that the incentive to switch and avoid the new price would be increased if notification was delayed. In turn, it was assumed that this would limit the incentive a supplier had to delay the notification.

The licence condition (now Supply Licence Condition 23) was also amended to provide a cut-off point of 15 working days for receipt of a transfer request from the gaining supplier following concerns that the time frame for receipt of such a request was previously open ended. These changes came into effect from August 2007.

Appendix 3

Open letter February 2009

In our last letter we outlined a number of options on which we sought views for reviewing the 65 working day notice period. For completeness we have copied these again below.

- 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) **requiring advance notice of any unilateral contract variations**
- d) **change to any other notice period which the respondent considered addresses the issues identified**

We received a number of responses which we considered as part of our review as part of the Probe, and will take into account again in this review. A brief summary of these responses is provided below.

Responses to the February 2009 open letter

- *Domestic consumers*

19 responses were received from domestic consumers. There was overwhelming support amongst domestic consumers for advance notice of price increases. The suggested time periods for advance notice varied from one week to one month. Some respondents cited practices in other sectors where retrospective notification is not allowed. There was a concern that the requirement was skewed toward suppliers, and that the rationale for making the change to 65 working days had not been the reality.

- *Consumer bodies*

Five replies were received from domestic representative bodies. All respondents supported advance notification, with Consumer Focus suggesting the minimum requirement should be the reintroduction of the old licence obligation under SLC44 to notify a price increase within 10 days. Trading Standards and Citizens Advice raised concerns about the compliance of the current requirement with the Consumer Protection from Unfair Trading Regulations 2008. Citizens Advice, Which? and Consumer Focus all highlighted requirements in the financial sector for providing customers with advance notice of price increases. Both Which? and Consumer Focus also noted suppliers purchasing strategies which they considered allowed them to give more notice. Citizens Advice added that a lack of fairness caused reputational damage to the industry and regulator.

- *Small suppliers*

Two small suppliers responded to the open letter. One supplier said that it tried to notify in advance where possible, but a requirement to notify within 30 days post increase would provide flexibility. The other suggested that advance notification would cause them financial pressure. It supported reverting to a 10 day post increase notice period and suggested that the 65 working day requirement was unnecessarily loaded in suppliers' favour.

- *Big six suppliers*

Four of the suppliers supported retention of the current requirement, although one of those said they would go to 40-50 days if necessary. One supplier noted that the current requirement could lead to significant problems unravelling the customer's account if the customer chooses to switch supplier so would be willing to switch to a 35 working day

period, whilst another proposed a period of 25-30 working days with a reasonable endeavours not to delay the notification to encourage earlier communication with vulnerable consumers.

All suppliers suggested advance notification or a return to the 10 day notice period would add time to the decision making process with one noting that it would increase the time lag between wholesale and retail price movements (but we note that this would only apply to a price increase). One supplier added that price events are made according to Stock Exchange rules and under no circumstances should advance notice be given.

All suppliers phased dispatch of the increase notification, with two sending the notification with the customer bill. They suggested that phasing allowed them to manage calls into their customer service centre more effectively. All considered that they would be faced with increased costs particularly in call handling (overtime and outsourcing) and customer service would suffer if the notice period was changed. The two suppliers who send the notification with the bills noted the increased costs of not being able to do so under an amended notification period. One of these calculated that they would incur an additional cost of £0.5m if the notification was sent separately.

Two suppliers highlighted the system changes they had made as a result of the SLR. They also challenged whether there was any evidence that the 65 working day requirement was not working well.

Two suppliers acknowledged the benefits to budgeting of early notification. Another disagreed that customers were unable to budget, with two other suppliers highlighting the right to switch to avoid the increase. Three suppliers noted the media attention given to price announcements.

Appendix 4

CONDITION 23. NOTIFICATION OF DOMESTIC SUPPLY CONTRACT TERMS

Notification of Principal Terms

23.1 Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer.

Notification before Domestic Supply Contract ends

23.2 On or about 30 Working Days before a Domestic Supply Contract is due to end, the licensee must inform the Domestic Customer (who is party to that contract) in Writing of the Principal Terms of the Deemed Contract that will apply after the Domestic Supply Contract ends if he does not enter into a new Domestic Supply Contract.

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 Electricity/Gas to a Domestic Premises; or
- (b) in any other way that is to the significant disadvantage of the customer,

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) be given either in advance of the date on which the variation has effect or no later than 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) inform the Domestic Customer where he may obtain impartial advice and information about changing his Electricity/Gas Supplier;
- (d) inform the Domestic Customer that where he has any Outstanding Charges, his Electricity/Gas Supplier may be able to prevent a Proposed Supply Transfer; and
- (e) explain the effect of paragraph 23.6.

23.5 The licensee must present the information required in paragraph 23.4 in a form that is clear and easy to understand and must place the information required in sub-paragraphs 23.4(b) and (c) in a prominent position on the Notice.

23.6 The licensee must treat the variation as ineffective and neither enforce nor take advantage of it where –

- (a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 20 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract; and

- (b) no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with sub-paragraph 23.6(a), the licensee receives Notice under the Master Registration Agreement/Network Code by way of the Relevant Gas Shipper that another Electricity/Gas Supplier will begin to supply the Domestic Customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given; or
- (c) where the Notice of variation referred to in paragraph 23.3 is given either less than 5 Working Days in advance of the date on which the variation has effect or after the date on which the variation has effect; and
 - (i) the conditions in sub-paragraphs 23.6(a) and (b) are met; and
 - (ii) the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives notice that the licensee intends blocking the Domestic Customer's Proposed Supplier Transfer.

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