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By e-mail only

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Dear Liz,

Smart Metering Spring Package – Addressing Consumer Protection Issues

Please find RWE npower's response to the above consultation document issued on 7 February.

While we are in general agreement with the points made by the ERA in its response (and we have contributed to it), there are obviously specific considerations about which we would wish to make separate submissions.

We have followed the structure of the consultation document in providing our answers below.

None of the response is confidential; as such, it can be placed in Ofgem's library and published on its website.

Yours sincerely

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THE ENERGY TO LEAD

Prepayment and remote disconnection

Q1 Do you agree with our proposal to issue guidance on safe and reasonably practicable and require suppliers to have regard to this guidance through a licence amendment? If not, what else is needed

We support the issuance of guidance, which can adapt quicker to the changing smart meter environment if it is not bound by licence. But if bound by licence (which we question the need for), it must undergo and be subject to formal consultation.

While guidance is helpful, it should not become prescriptive and determine what the outcome of any particular case should be; there may well be instances when an alternative approach could be in the best interests of the consumer. We still question why it needs to be part of the licence, as the approach has the appearance of beginning to duplicate elements of self-regulation (presently discharged via the Energy Retail Association Safety Net) by, while conflating it with, formal regulation.

What is safe and reasonably practicable has been addressed in Ofgem's documents 'Supplementary document for Electricity Supply Licence' and its gas equivalent, both of which were published in support of the supply licence review in 2007. In these documents the view taken is that, '*...what is safe and reasonably practicable should be considered from the Domestic Customer's perspective.*', and '*...there are likely to be limited circumstances where what is safe and reasonably practicable can be considered from the licensee's perspective.*'

Clearly the new guidance is much more comprehensive and if Ofgem proposes to include it on the face of the licence via a revised condition which will include the requirement to comply with it (the guidance) (proposed SLC 27.11B refers), there ought to be included a formal change process. There is no requirement, as presently worded in the draft SLC, for Ofgem to be required to consult should it wish to change the guidance.

Compare this to the requirements under SLC 25A where any changes to the guidance referred to therein require Ofgem to consult formally before making these.

Given the guidance's importance and frequency of reference in how suppliers will apply its provisions, any changes to it should be subject to formal licence governance arrangements as is the case with SLC 25A.

Q2 Do you agree with our proposal to require suppliers, where they know or have reason to believe that prepayment is no longer safe and reasonably practicable for a customer, to offer an alternative payment method or some other form of action

We believe that customers are responsible for informing suppliers of relevant changes in this regard, and thence indeed suppliers should be responsible for taking action to enable safe and practical payment.

Clearly where prepayment becomes unsuitable for a customer, then an alternative payment method would be offered in the normal course of business. There is some concern as to what is meant by 'reason to believe'. While the Key Principles, which suppliers are adopting as part of their requirements for assessing customers' ability to pay will be relevant as these include a degree of proactivity in establishing the latter's circumstances, the former has to become aware that these have changed and that prepayment is no longer safe and reasonably practicable. Also of relevance are the five prepayment principles which suppliers have voluntarily agreed with Consumer Focus; again these deal self-regulatorily with matters that covered by the proposed licence condition

Therefore, as with our answer to question 1, we have concerns about the duplication of self-regulation by, and conflation with, formal licence oversight.

If a licence condition is to be The ERA's suggested amendment to the proposed licence condition addresses this point.

Q3 Do you have any comments on our proposed guidance regarding taking into account whether it is safe and reasonably practicable for a customer to pay by prepayment.

Yes. But please see our response to question 1 above.

Please see the comments at Appendix 1.

Q4 Do you agree with our view that the current notification periods for switching to a prepayment meter are sufficient?

Yes.

These are already factored into RWE npower's debt pathways. Note however, that in the Electricity Act 1989 the notification period is seven working days, while in the Gas Act 1986, it is seven calendar days.

Q5 Do you agree with our proposal to require suppliers to give customers information on using a prepayment meter ahead of switching them to prepayment.

Yes. But the requirement should not extend to prescription.

There should not be too much prescription as to when information is provided to customers. It may be preferable to some customers that information is provided at the time of, or even after, installation. It is worth noting that the in home display (IHD) will be the key interface for all customers with a Smart Meter and the functionality to support prepayment specific data is included in the base requirements of the IHD.

Q6 Do you consider it necessary to explicitly require suppliers to provide the ability to top-up by cash, where payment is made through a prepayment meter?

No. But if such a provision is introduced it should contain a sunset clause.

RWE npower has no plans to withdraw the option cash as a payment method. Indeed, it will need to remain in place at least until 2018 in order to support legacy prepayment customers. If cash payment is removed as an option, it will reduce the number of customers who meet the "safe and reasonably practicable" criteria and therefore reduce the ways that we can assist customers who are vulnerable, fuel poor or in debt.

Over the next decade we expect financial inclusion to be much greater, and the aim should be to reduce reliance on cash and to stimulate use of other channels such as top-up at the meter or by mobile phone.

Q7 Do you agree with our proposal to issue guidance on identifying vulnerability prior to disconnection and require suppliers to have regard to this guidance through a licence amendment? If not, what else is needed?

No. The Energy Retail Association Safety Net provides the most fit-for-purpose definition which caters for the fact that all people are different, and that a "tick box" approach is not appropriate.

Please see the answer to question 1 above in terms of the ramifications of this approach and the procedural aspects involved in making guidance an integral (and hence enforceable) part of the supply licences.

Q8 Do you have any comments on our proposed guidance regarding identifying vulnerability prior to disconnection?

Yes. But see our response to question 1 above.

Please see the comments at Appendix 2.

Q9 Do you agree that suppliers should ensure rapid reconnection and provide compensation on a voluntary basis where any customer has been disconnected in error?

We agree that disconnection in error should be followed by rapid reconnection.

We believe that the Ombudsman provides a sufficient backstop for consumers.

Under the ERA Safety Net, suppliers, already, are required to reconnect vulnerable customers, as soon as possible and usually within 24 hours. With Smart technology, one would expect, all other things being equal, reconnection to be completed even more quickly once the supplier becomes aware of the error.

There may be circumstances which are outside of a supplier's control which have either precipitated the disconnection in error, or have made any expedited reconnection difficult. For example, the speed of reconnection will be dependent on the communication providers contracted by the DCC. In this scenario, the only area of control the supplier will have is the ability to send an "urgent request" to the DCC and request priority (assuming that the DCC provides this priority service). Or despite all reasonable attempts to do so, it may not have been possible to identify the customer as vulnerable prior to disconnection.

In cases like these, it would be unfair to require suppliers to have to make compensation payments.

Licence requirements do not bind where the supplier is not the one registered for the consumer. In the event of a supplier disconnecting such a property, we would expect the Ombudsman and ultimately civil law to provide a backstop. Naturally we would expect a supplier to offer compensation in advance of such backstops.

Q10 Do you agree with our view that the current notification periods for disconnection are sufficient?

Yes.

Please see the answer to question 4 above.

Q11 Do you agree with our proposal to explicitly set out in the supply licences that load limiting and credit limiting amount prior to disconnection in certain circumstances?

No. Load and credit limiting would need specific rules

Since many customers choose prepayment to help them manage their energy, then load/credit limiting has the potential to offer greater choice.

Load and credit limiting are relatively new concepts in the UK for domestic customers. As such, it seems precipitous to seek to define their scope in licence, and even more so to consider them analogous to

disconnection, until their application has been agreed. For example, load limiting may be freely chosen by a customer as a budgeting tool for certain periods of the year, with him/her moving to an unconstrained load at other times. In these circumstances, it seems counterintuitive to consider the customer being considered to be disconnected.

From a technical and customer-facing perspective then, further work needs to be carried out before deciding how load and credit limiting should be treated.

Whilst load/credit limiting are in their infancy, we believe that a code of practice provides the most adaptable way of providing reassurance that the method is used in a proper manner.

Q12 Are there any protections that should be considered regarding disconnection and prepayment for non-domestic customers? If so, what are these? Please provide evidence to support your views?

The scope of any consumer protections should not extend beyond micro business.

Protections to micro businesses should be specific to vulnerability and not allow abuse of the protections.

As Ofgem recognises in its document, business customers, even small ones, will have access to, for example, a wider variety of payment methods, and hence, it is contended, more flexibility than their domestic equivalents should they run into difficulty.

Suppliers' debt follow-up processes are designed to ensure customers are made aware of debt situations, in order to encourage payment and to discuss payment issues. In combination with the existing provisions in the Gas and Electricity Acts we consider this to be sufficient protection.

Commercial Interoperability

Q13 Do you agree that there should be an obligation on the original supplier to offer terms for use of the meter?

No, although we do believe that regulatory oversight of both suppliers and meter asset providers is required.

We support the principle that customers should be able to change supplier without difficulty or constraint. However, we believe that any obligations in this arena should only be put in place once compliant metering systems/communications have been defined and approved by the EU.

We appreciate Ofgem's endeavours to create a market during the Foundation phase of the programme in which commercial interoperability facilitates change of supplier, but believe that the option outlined in the consultation paper is flawed.

We suggest that contractual relationship should be between the new supplier and old supplier's metering agent as it would be onerous and unmanageable for commercial arrangements to pass through the originating supplier.

With regards to the concept of "reasonableness", we believe that asking suppliers to "back off" their obligation on to their metering agent will prove challenging as agents have to be willing to be party to, what churn contracts are, in effect. Also the new supplier also has to agree to remain with the originators chosen agent until they are fully capable & can move.

All of these actions constrain the competitive metering market.

Taken together, we believe that there is a requirement for an impact assessment and business case to be made on the cost of implementing the proposals for such a short period of time prior to the arrival of full technical interoperability as delivered by the DCC.

Q14 Do you have any comments on the requirement for terms to be reasonable and non-discriminatory and factors we would propose to take into account?

Yes – stranding and other terms should be non-discriminatory and subject to regulatory oversight.

We support the aspiration for all terms to be non-discriminatory. However we believe firmly that gaining suppliers should not be bound by the same terms and conditions, and prices as losing suppliers, as this discourages competitive procurement activity and is therefore unfair to pro-active suppliers.

We suggest that suppliers should, however, be able to prove through procurement processes and audit trails that change of supplier terms have been negotiated in good faith and with the intention of being 'reasonable and non-discriminatory'.

We also support the need for terms to be reasonable. The term "reasonable", which although being flexible in interpretation in the legal sphere must, in this context, be linked to something that is clearly defined; otherwise issues may arise where, for example, a new supplier claims that the originating supplier's terms are unreasonable & discriminatory. Without a degree of certainty, this could then lead to a surfeit of legal disputes. Finally, we believe indexing of terms to reflect the cost of those components where cost efficiency improvements can reasonably be made

Q15 Do you agree with the proposed obligation that terms should be transparent?

Yes, with the emphasis being on standardisation of format rather than in the public domain.

Whilst we support the need for transparency, we also believe that it should only be between “interested” parties, i.e. old and new supplier following change of supplier. Further to that that the transparency should only extend to the terms & conditions/prices relevant to gaining suppliers, as we may negotiate different commercial terms and conditions as an originating supplier.

We do, nonetheless, support the concept of a simple common charging structure.

Q16 Do you have any views on the appropriateness of an obligation to offer terms for use of communications services as part of the Spring Package, and the timeframe for any such obligation?

No obligation prior to ratification after the EU standstill period.

Sensible novation after that but no obligation to offer terms.

We strongly believe that no obligation should be implemented until the Smart Metering System component specifications have been agreed and ratified by Europe. As outlined in the Ministerial Decision document, we understand that there will be no industry-wide technical solution put in place for the Foundation phase of the programme. However, we understand that in order to support industry pilots and testing the DCC prior to go-live in 2014, that we will need to procure our own communication services. We believe that it is in the industry’s best interest that as soon as Government has procured the DCC communication providers it (the Government) makes these parties known to suppliers so that contracts for the interim period may be entered into complete with suitable novation terms to allow for smooth transition to the DCC for all of our early Smart customers.

Question 17: Do you have any comments on our proposed approach for dealing with prepayment?

Some smart-for-PPM replacement is inevitable in this phase.

We support the principle that that smart meters should not be replaced with dumb prepayment meters on change of supplier, but must stress that this is totally reliant on the terms for the new supplier being reasonable. We suggest that any obligation in this area should be based on “offering” a “reasonable endeavours” solution for the period Q4 2012 and commencement of mass rollout in 2014.

Q18 Do you believe there should be a de minimis threshold before commercial interoperability obligations apply and if so, at what level should it be set?

Yes. However, while a precise threshold requires further work to determine, we believe it should be lower than, say, 50k and should be time limited.

This is a balance between encouraging contractual and technical innovation and preventing de facto monopoly.

For small number of meters, there should be no commercial interoperability restrictions, although customers should be made very much aware of the prospective need for meter exchange on change of supplier, and there should be no early termination costs for consumers.

For larger number of meters, then standard contractual format should be adopted.

Other Elements of Consumer Protection

Sales and Marketing at the point of installation

We agree that no new requirements are necessary to deal with the issues raised under this heading as sufficient remedies exist at present to deal with any problems that may arise.

Tariff complexity

This will be dealt with in greater detail as part of the Retail Market Review. At this point we note briefly that consumer empowerment in the management of demand is essential, and to maximise savings and minimise risk of paying extra, that consumer choice in tariffs is very important.

Appendix 1 - Comments on draft guidance: prepayment, only where safe and practicable

Please note that words in **emboldened italics** are drafting suggestions

This guidance applies in circumstances where the supplier offers a Prepayment Meter to a customer struggling to pay and where the supplier becomes aware or has **reason to believe** that it is no longer safe and reasonably practicable for the customer to use a Prepayment Meter.

Comment [pbbp1]: Please see our comments in answer to Q2 above

This guidance is not intended to be exhaustive, it is ultimately for suppliers to determine the steps they need to take to meet their supply licence **conditions**.

Comment [pbbp2]: Why does the guidance therefore need to be part of a licence condition?

What is safe and reasonably practicable should be considered from the Domestic Customer's perspective. Relevant factors are likely to include:

- whether the customer is able to understand and operate the Prepayment Meter and visit top-up points to add more credit. (For example, whether the customer has a physical or mental disability that prevents them from being able to appropriately use a Prepayment Meter.)
- whether the customer lives in a rural area quite a distance from any top-up outlets. What constitutes "quite a distance" is likely to vary depending on the customer's circumstances. (For example, it may not be reasonably practicable to provide a Prepayment Meter if a Domestic Customer needs to travel over two miles to top up the credit and does not have a car **and where public transport is poor**.)
- whether the customer requires a continuous supply for health reasons, such as dependency on medical equipment requiring an electricity supply
- whether the Prepayment Meter is situated in a position (such as high on a wall) that means the customer **cannot** operate the Prepayment Meter **without difficulty**.
- whether the Prepayment Meter would have to be situated outside or in a room to which the household does not have continuous access
- advice received from the Health and Safety Executive (HSE). (For example we are aware of advice from the HSE that it may not be safe for a Prepayment Meter to be installed in an in-take room).

Many of these circumstances may be addressed by technological innovations, particularly where a smart meter is installed, or some other form of initiative. For example, if the customer has a bank account and a telephone or internet access, then a Prepayment Meter that provides for top-up over the internet or telephone could still be reasonably practicable for the customer, even if top-up outlets are some distance from where the customer lives.

Another example would be if the IHD or some additional device allowed all the necessary features of a prepayment meter to be accessed by the customer even if the meter itself were not accessible. This would need to include the ability to re-enable supply if the prepayment arrangements in place with that customer allowed for the possibility of them self-disconnecting.

Suppliers should also consider their obligation not to disconnect unless they have first taken all reasonable steps to recover charges through a Prepayment Meter. Given this requirement, in some circumstances, it may be necessary for the supplier to consider additional measures to ensure it is safe and reasonably practicable for the customer to use the Prepayment Meter where the alternative is **disconnection**.

What is safe and reasonably practicable can also be considered from the supplier's perspective. However, there are likely to be limited circumstances where we considered it was not safe and reasonably practicable from the supplier's perspective, particularly where the alternative for the customer is disconnection. An example of such a circumstance may be where the customer has had a history of theft of gas or electricity or meter tampering.

Comment [pbbp3]: Suppliers need to retain the right to disconnect for debt. Although this will in practice be used only in extremis

Identification of customers' circumstances

The sort of proactive steps that we would generally expect suppliers to consider in order to identify whether it was safe and reasonably practicable in all the circumstances of the case to offer a Prepayment Meter to a customer struggling to pay include:

- recording the location of the meter when installed or inspected
- proactively seeking to ensure that all eligible customers are offered the opportunity to be registered on the Priority Services Register
- reviewing appropriate notes on the customer's accounts to ascertain whether any vulnerability which would mean it was not safe and reasonably practicable for the customer to have a Prepayment Meter is recorded
- making multiple attempts to contact the customer by various means, and at various times of day to discuss the option of paying through a Prepayment Meter
- where a discussion with the customer had not been possible or, following discussion, there was still uncertainty about whether it would be safe and reasonably practicable for the customer to pay through a Prepayment Meter, the supplier **must** visit the customer at their premises, with visits to the customer's premises attempted at various times of day
- checking whether there has been a change of occupancy to make sure that customers are not put on a Prepayment meter in error
- obtaining **senior management** authorisation prior to moving a customer to a Prepayment Meter.

Comment [pbb4]: What happens if the visits prove unsuccessful in the supplier being unable to speak to the customer?

Comment [pbb5]: Is this necessary given the steps to be followed prior to this.

Post installation of a Prepayment Meter

The sort of proactive steps that we would generally expect suppliers to follow after putting a customer on a Prepayment Meter in order to ensure it is safe and reasonably practicable for the customer includes:

- checking with the customer that they are able to afford any debt repayment level set on the Prepayment Meter
- **monitoring** whether the customer is topping up
- where the customer is not topping up regularly or top-ups are very low, making multiple attempts to contact the customer by various means and at various times of day to understand the reasons for this.

Comment [pbb6]: This will depend on technical capability

Appendix 2 - Draft guidance: identifying the status of customers prior to disconnection

This guidance applies with regard to taking all reasonable steps to ascertain whether the domestic customer or occupants of affected premises are of pensionable age, disabled or chronically sick prior to disconnection.

This guidance is not intended to be exhaustive, and it is ultimately for suppliers to determine the steps they need to take to meet their supply licence conditions.

Comment [pbbp7]: Why does the guidance therefore need to be part of a licence condition?

The sort of proactive steps that we would generally expect suppliers to take to identify the status of customers and occupants include:

- proactively seeking to ensure that all eligible customers are offered the opportunity to be registered on the Priority Services Register
- reviewing all the **relevant** notes on the customer's accounts to ensure no vulnerability is recorded, with regard to the customer or occupants at the premises
- reviewing written contact with customers struggling to pay to ensure that it is in plain English and that information is available in other languages where appropriate and that the customer is encouraged to ask for help
- making multiple attempts to contact the customer by various means and at various times of day
- undertaking personal visits to the property which is at risk of being disconnected at various times of day and completing a visual check of the premises looking for signs of vulnerability of the customer or occupants at the premises (for example using the good practice vulnerability checklist by Consumer Focus)
- checking whether a property is temporarily or permanently unoccupied
- checking whether there has been a change of occupancy to make sure that customers are not disconnected in error
- obtaining senior management authorisation prior to any disconnection being carried out.

Comment [pbbp8]: This is already business as usual, therefore the provision appears otiose.

Comment [pbbp9]: A visit may not be necessary where the customer has been contacted and a conversation has taken place

Comment [pbbp10]: Suppliers will have their own checklists. This sentence should therefore be deleted.