

**By email only**

Ljuban Milicevic  
Regulatory and Energy Economist  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Your ref  
Our ref  
Name Gerald Jago  
Phone 07989 481 153  
Fax  
E-Mail Gerald.Jago@npower.com

31 January 2011

Dear Ljuban,

**Classification of premises for the purposes of the standard conditions of the gas supply licence**

I am writing in response to Emma Kelso's letter of 14 December. The letter sought views as to whether changes are necessary to the gas licensing regime in order to accommodate a particular set of circumstances.

Your consultation poses three questions:

1. Are the current definitions of domestic premises and domestic customer clear?
2. If so, what do they mean?
3. Is there a case for any amendments?

The specific example you describe is of an apartment block where a non-profit making management company procures a supply of gas on behalf of individual residents within the block. The supply is to one communal supply point where the gas is used in turn to generate heat for the individual domestic residences. Because the entity acts as trustee and agent of the residents to procure supply to a communal supply point then we understand the question is whether, within the definition of the licence, it can be considered to be a domestic customer.

**Questions 1 and 2**

We believe that the definitions are unambiguous and consistent with the following paragraph in your consultation:

"The SLCs generally envisage that a Domestic Customer (and in turn a supply to Domestic Premises) will be a supply to an individual within domestic premises, e.g. an apartment or house and that there will be a direct contractual relationship between the energy supplier and an individual."

There are four strands to our reasoning:

- The licence definition of a domestic customer
- The licence definition of a non-domestic customer
- The licence obligations in respect of domestic customers
- Ofgem's guidance.

Our reasoning in respect of these strands is set out below.

***The licence definition of domestic premises and domestic customer***

Condition 6.1 of the Gas Supply Licence sets out the principal criterion for defining a premises as domestic: that is, that gas is taken wholly or mainly for domestic purposes. It is self-evident that "domestic purposes" for the use of gas at premises comprise the use of gas for heating, hot water and cooking in the individual dwelling to which the gas is provided. In this case, the gas is not provided to a dwelling and is not used for domestic purposes, but to a facility which provides heat (presumably in the form of hot water) to local dwellings in which the ultimate consumers reside. Similar arguments would apply if the customer was simply on-supplying gas or electricity. The customer would not itself be using the energy received at its premises for heating, hot water or cooking at its own premises for its own use. Since the customer is not using the energy for its own domestic purposes, the premises cannot be domestic and it cannot be a domestic customer.

In the example above, the principal to the licensed supplier's contract is the entity established as an agent to represent the individual residents. Therefore the building cannot be considered to be domestic premises. It must be non-domestic premises.

***The licence definition of non-domestic customer***

For clarity, the relevant part of the licence condition is reproduced here:

*6.2 Unless the context otherwise requires, a Non-Domestic Premises is a premises, that is not a Domestic Premises, at which a supply of gas is taken and includes:*

- (a) a premises where:*
  - (i) a person who has entered into a Contract with the licensee for the supply of gas to the premises is a person who has entered or will enter into an agreement with any other person for the provision of a residential or any other accommodation service at the premises; and*
  - (ii) the terms of the agreement referred to in sub-paragraph 6.2(a)(i) are commercial in nature and include a charge for the supply of gas to the premises (whether such charge is express or implied);...*

Your letter states that in the example the entity does not provide commercial services and does not charge residents for the supply of gas. In the context of condition 6.2 this does not mean that the customer is not a non-domestic customer.

Clause 6.2(a), in seeking to define a non-domestic arrangement, suggests that the supplier's principal will have a commercial agreement with another person

(for example, a tenant) that will include a charge for gas (either express or implied). However, the use of the word 'includes' confirms that the circumstances described in that condition are not the only circumstances in which premises can be non-domestic. While the legal arrangements in your initial example may not exactly reflect those in the condition, the customers will in some way be making reimbursement to the legal entity either for the gas or for the heat it produces. We would argue strongly therefore that it reflects the type of arrangement envisaged in the licence condition.

You ask how the definitions of Domestic Customer and/or Domestic Premises should be amended to clarify that in certain circumstances a supply of gas to a legal entity acting on behalf of individual residents is a supply to Domestic Premises and to a Domestic Customer. Your question seems to presuppose that your example is a domestic supply. Our argument, outlined above, is that in no circumstances is a contract with a principal/legal entity that is not an individual a contract with a Domestic Customer. The licence condition could make that clear by removing the word 'and' at the end of 6.2(a)(ii) and including an additional line:

*(iii) or any other premises where the principal to the supply contract is a legal entity established to represent residents of multiple dwellings; and*

#### ***Obligations in respect of occupiers of individual dwellings***

It is clear that a number of obligations in licence conditions operate on the basis that Domestic Customers are occupiers of individual dwellings consuming energy provided to them by their supplier. A further question in your letter asks whether the obligations placed on suppliers in SLCs 22-32 should change to reflect situations where a supply of gas to a legal entity acting on behalf of a number of individual residents should, in certain circumstances, be a supply to Domestic Premises and to a Domestic Customer. Again, we do not accept the premise that these arrangements comprise domestic supply. The domestic licence conditions you list could not have been written to deal with situations such as outlined in your example for the very reason that they can only be fulfilled if the supplier has a direct knowledge of and a relationship with the individual residents. This gives further support for the argument that they cannot be considered to be domestic supply arrangements.

Suppliers have no domestic licence responsibilities in these circumstances. It is the legal principal to the contract that must be responsible for dealing appropriately with elderly or vulnerable residents supplied under its contract. As your letter recognises, to try and impose licence obligations like those in SLCs 26, 27 and 29 on suppliers for the protection of the beneficiaries of gas supplied to the principal (which in the example cited in your letter is consumed in the form of heat) with whom we have no direct relationship is problematic and, we would argue, would result in regulatory uncertainty. A supplier in turn would seek to 'back off' these obligations in any contract with the principal and have to rely on him to provide and keep up to date all the relevant information necessary to allow the former to discharge its obligations.

Where the principal defaults on payment and there are vulnerable residents, we would deal sympathetically with the situation. We have, of course, on a voluntary basis, extended the ERA safety net to cover situations where vulnerable customers inhabit non-domestic sites and we would expect that this extension would apply to the case you cite.

### **Ofgem's guidance**

Ofgem's guidance published in April 2002<sup>1</sup> established that residential landlords, including local authorities, are not domestic customers and that domestic protections should not apply to premises supplied under these contracts. This guidance is consistent with the present licence condition in regarding domestic premises as individual dwellings and domestic customers as the occupiers of these individual dwellings who themselves consume the energy for domestic purposes.

Alternatively, Ofgem could issue additional and revised guidance to the same effect (any additional guidance would need to dovetail with or reflect the April 2002 guidance referred to above)

### **Conclusion**

In summary, we believe that all four strands of evidence confirm that a Domestic Customer is the occupier of an individual dwelling directly consuming the energy provided by his supplier. Any other situation is, perforce, a non-domestic supply, including the situation you describe.

Therefore the following statement in your consultation is also incorrect:

“a supply of gas to a legal entity acting on behalf of individual residents within an apartment block is also a supply to Domestic Premises and the legal entity is a Domestic Customer. These circumstances are that the legal entity does not provide commercial services to such residents such that it does not charge residents for a supply of gas.”

No attempt is made in the consultation to explain how this conclusion is reached, but it plainly breaches the definition of domestic premises as set out in 6.1 and is plainly inconsistent with that same definition of domestic premises which is necessary to make sense of other licence obligations.

### **Question 3**

The supplementary question, of course, is whether any amendment should be made to the definitions and licence obligations. Here it is necessary to understand the problem which changes would purport to solve. We have already established that several of the obligations only work on the basis of the current definitions. We already have the safety net to protect vulnerable customers on non-domestic sites. Customers already have the opportunity to seek priority status for the purposes of gas supply emergencies. We therefore struggle to identify any issues which changes could effectively resolve. On the other hand, moving away from the status quo could introduce substantial complexity and confusion.

For example:

- What would be the status of the customer if it provided services both to occupants of domestic dwellings and non-domestic premises?
- What would be the status of the customer if it was not simply a co-

---

<sup>1</sup> Ofgem's interpretation of the definition of the terms 'domestic customer' and 'domestic premises' as they appear in the gas and electricity supply licences.

operative of the residents? For example, suppose the shareholders of the customer were in fact owners of the dwellings who sub-let their properties to third parties?

- What would be the argument for treating a customer providing services on a commercial basis differently from a customer providing services on a non-commercial basis and how would the difference be determined?

It is evident that the example you give is only one of a class of possible similar supply arrangements. It does not differ in principle from other similar non-domestic contracts where the legal entity on-supplies to individual residents. Our review of the evidence leads us to conclude that there is no practical or theoretical case for redefining current licence terms and obligations. This conclusion applies both for the specific case you cite and for the wider class.

To sum up, the current framework is coherent, unambiguous and does not include the special case to which you allude (or indeed similar wider circumstances of provision of energy to dwellings). The framework has operated satisfactorily since privatization. This consultation adduces no compelling arguments for change. In view of the complexity and uncertainty which might arise in disturbing the carefully crafted and interlocking regulatory architecture, we would urge Ofgem to consider carefully the principles of Better Regulation. Let us identify the issue which needs to be addressed and then find the remedy with the least drawbacks. Until we know the former, we cannot know the latter.

I would be happy to discuss any of the points in this letter.

Our response is not confidential.

Yours sincerely,

Gerald Jago