



## SOUTH BANK MANAGEMENT COMPANY LIMITED

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By email and post

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Dear Mr. Milicevic

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

This replies, as an interested party, to Ofgem's invitation to comment on whether it is necessary to change or clarify any of the definitions or conditions in the gas licence as a result of Ofgem's finding that non-commercial residential management companies, or other legal entities, such as South Bank Management Limited (SBMC) purchasing gas for a residential apartment block are Domestic Customers under existing Licence terms. I write as the person who first raised the matter with Ofgem as far back as 2006 and has pursued the issue ever since.

In my view, in the interests of safety and to be consistent with the Licences, there needs to be a substantial change by the industry (both suppliers and Ofgem) in the mindset and approach to the supply of gas (and indeed electricity) to multi-apartment residential blocks. The current presumption, which has taken years to challenge, is that apartment blocks, particularly large ones, must be Commercial & Industrial Customers (C&I) by definition, because their consumption is so high. There are for instance no Domestic tariff bands for high consumption, similar to the ones that exist in the C&I market.

On the contrary, suppliers and Ofgem should take the position that multi-apartment residential blocks (which by definition use their gas for domestic purposes) are by default Domestic Premises (v. SLC 6.1). They should be encouraged to apply for Domestic Supply Contracts by suppliers and only switched to C&I terms if the exceptions defined in SLC 6.2 are found to apply. Suppliers and Ofgem should embark on a programme to inform the estimated six million residents in leasehold apartments of their rights under the Licences.

The implications of the present situation are obvious. Millions of residents in apartments which can be treated as Domestic Customers are unnecessarily at risk of being arbitrarily disconnected in the event of energy shortages because they are classified as C&I customers. This is a situation that the energy suppliers and Ofgem will wish, I am sure, to act on. Other than the cost of the information programme, I do not believe that there are any adverse cost implications for suppliers, since the quantity of gas supplied will remain the same and so will administration costs.

It seems to me that there has been a collective corporate memory loss at both Ofgem and suppliers about the contents and intention of the new Licences which were issued after the Utilities Act 2000. These Licences removed, after due consultation, the volume ceilings from the definition of Domestic gas and electricity supply. The intention was to extend the protections of a Domestic Supply Contract to Domestic Customers purchasing for use at domestic premises, however large the purchasers were. The exceptions to this protection are clearly and simply defined in SLC 6.

To summarise my submission on the specific issues raised by the consultation letter, I do not think there is any need for changes to the SLC 1 and SLC 6 definitions or to the Part B conditions as a result of Ofgem's finding (other than possibly a small change to the requirement to provide prepayment meters). What is required is a simple clarification notice along the lines of the one issued in 2002 (attached) to remind suppliers of their obligations to customers such as SBMC. This is the position I have taken since 2006 and nothing I have read in the many exchanges between myself, Ofgem and suppliers has caused me to change this view.

To deal with the specific areas you raise:

#### **SLC 1 - Definition of a Domestic Customer**

There is no requirement in the Licence that, to qualify as a Domestic Customer, the purchasing entity must be an individual. Indeed the removal of volume ceilings made it highly conceivable that the purchasing entity at Domestic Premises could be a group of residents organised as a non-commercial company, such as SBMC.

In SLC 1 there are two relevant definitions of "Customer"

**Customer** means any person supplied or requiring to be supplied with gas at any premises in Great Britain

**Domestic Customer** means a Customer supplied or requiring to be supplied with gas at Domestic Premises but excludes such Customer insofar as he is supplied or requires to be supplied at premises other than Domestic Premises

It is clear from reading the Licences that the first definition of "Customer" is intended to include both persons and Companies. The "Domestic Customer" definition, by capitalising the word "Customer" thereby takes on the earlier definition and must therefore mean that the "Domestic Customer" definition includes both individuals and Companies.

#### **SLC 6 - Definition of Domestic Premises**

SLC 6 is a binary/black and white definition of Domestic and Non-Domestic Premises. A Domestic Premise which meets the definition in SLC 6 cannot be a Non-Domestic Premise.

In a residential apartment block, it is self-evident that the supply of gas will be wholly or mainly for a domestic purpose (SLC 6.1) such as cooking, space heating or hot water heating. It must therefore be a Domestic Premise, unless there is an exclusion somewhere else in SLC 6.

SLC 6.2 (a) provides that exclusion and states that a Non-Domestic Premises.....includes

a) a premises where:

- i. the 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)

(Note: My underlining)

For a Domestic Premises such as a residential apartment block to be classified as a Non-Domestic Premise all three of the requirements above, linked by the word “and”, must exist. If any one does not then a residential apartment block is a Domestic Premise. Even though a residential management company may provide services in the apartment block, and may make a charge for gas supplied (as they do, via a service charge) provided it is not commercial, the premises remain Domestic for the purposes of the Licence.

The definition of Domestic Premises is therefore clear, binary, and does not need amending.

#### **Part B of the SLC's - Standard Conditions for Domestic Suppliers**

Suppliers will be perfectly able to fulfil the Standard Conditions since the direct contractual relationship is between them and a residential management company such as SBMC, and not with an individual. Indeed, in many respects it will be easier for them to do so, and in only one case (the mandated supply of prepayment meters in Condition 27) might there be problems, absence the existence of prepayment meters which accept direct debit cards.

#### *Condition 26. Services for specific Domestic Customer groups*

There are several reasons why this Condition is not problematic for suppliers.

The contracting Domestic Customer is a Company. Companies cannot suffer from any of the conditions or impediments identified. The services in 26.1 and 26.2 need only be provided if requested by the Domestic Customer and if appropriate and reasonably practicable for the supplier to do. Clearly it would not be appropriate to provide such services to a Company, or to meet any specific requests. Similar arguments apply to the other clauses in Condition 26.

#### *Condition 27. Payments, Security Deposits and Disconnections*

With reference to this condition, it should be stated that the direct contractual relationship between a supplier and a residential management company, as compared to one with individual residents, is of benefit to the supplier. It is the management company that is taking on the credit risk on behalf of all its residents, and the supplier only has to deal with a single customer.

Other than the mandated supply of prepayment meters (see above), the only condition which poses a real, important for safety reasons, obligation on suppliers is 27.11 (Condition 27.10 does not apply for the same reason as in 26 above -the Domestic Customer cannot be a pensioner because it is a Company). Indeed, the requirement that suppliers must take all reasonable steps to avoid winter disconnections if the premises include pensioners, etc.

is the most important protection needed for large apartment blocks as it could be potentially dangerous to at risk residents if supply was cut off.

However, it is not an insurmountable problem for suppliers. The risk of non-payment can be minimised in the terms of any Domestic Supply agreement via a Domestic Contract which requires that the Domestic Customer must pay a deposit.

*Condition 29. Gas Safety*

This Condition stipulates the conditions under which the supplier must provide a gas safety check. For the same reason as in Condition 26 (Companies cannot suffer from impediments) they are not required since Condition 29.1 provides the impediment criteria for providing the checks. Moreover, Condition 29.2 provides a further exclusion because it is the landlord who is responsible for arranging a gas safety check under Condition 29.2 (a). The entity who levies the service charge (either the landlord or the residential management company) has, under Landlord/Tenant legislation, the same obligations as the landlord.

I hope these comments are helpful and look forward to hearing the outcome of the consultation.

Yours sincerely

Andrew Walker  
Chairman  
South Bank Management Company Limited

Cc Audrey Gallacher, Consumer Focus