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Dear Andrew

Tackling gas theft

The Energy Retail Association (ERA), formed in 2003, represents electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the association - British Gas, EDF Energy, npower, E.ON, ScottishPower, and SSE.

The ERA welcomes the opportunity to respond to the consultation on tackling gas theft. The ERA's members have also responded individually. In this document, the ERA concentrates on areas of agreement between our members, particularly with respect to disconnections for theft and the drafting of licence conditions. We look forward to engaging further on the detail.

Summary

The costs associated with gas theft, including lost revenues, detection and prevention, are ultimately borne by honest customers. Gas theft also poses serious health and safety risks for those who commit the crime as well as others in close proximity. Furthermore, where gas is stolen, it is often used inefficiently, thus negatively impacting on the wider aim to reduce carbon emissions. For these reasons, the ERA welcomes the fact that Ofgem is taking action in this area.

As I am sure you are aware, the ERA has been leading the industry development towards the roll-out of smart meters, which should deliver significant benefits in the prevention and detection of theft of energy. The ERA believes that the access to energy consumption data generated by smart meters is a fundamental requirement for the industry, and we welcome Ofgem's recognition of this in the consultation document. In order to maximise the benefits of smart meters in this area, it is essential that Government policy on the privacy and use of data from smart meters supports the overall objective of preventing and detecting energy theft, and minimising the additional 'smeared' costs to all consumers.

The ERA has no comment on the three central proposals discussed in the consultation. However, we do have a number of recommendations for the drafting of the licence conditions, in particular to enhance clarity where there is currently a mixture of those that are principles and rules-based. Amongst other things, this has resulted in tensions between the Objective and the proposed restrictions on disconnection. Detailed comments on the drafting are contained in appendix 1.

Question 3: Do you consider that our proposal for gas suppliers to make reasonable efforts not to disconnect vulnerable customers should apply throughout the year or be restricted to the winter months?

Suppliers take their responsibilities for vulnerable customers extremely seriously, as illustrated by the ERA Safety Net. Disconnection is a last resort; provided a connection is safe, a large number of steps will be taken to recover outstanding charges before the measure is used. In addition, where reasonable efforts have been made by the supplier and disconnection of a vulnerable customer is the only option left to avoid ongoing theft and related health and safety concerns, suppliers would endeavour to inform the relevant local authority or social services.

It is not possible to answer this question without knowing what constitutes “reasonable efforts”, since there is clearly a tension between protecting vulnerable customers from disconnection and minimising health and safety risks and preventing gas theft.

The wording of the question compared to the proposed wording of the licence condition illustrates this problem: “reasonable efforts” may be interpreted to mean something quite different to “take all reasonable steps”, with the latter moving towards placing an effective moratorium on disconnections for theft by vulnerable customers (in which case there would be no deterrent to gas theft or remedy for safety risks).

As to what constitutes “reasonable efforts”, disconnection should be permissible where there is an unsafe connection (which would normally be resolved), the crime is repeated (for example bypassing a PPM), or where a customer is not prepared to pay for their energy despite being able to do so. In the case of the second, if there is a reasonable expectation that the customer will reoffend, then disconnection would be needed to prevent ongoing theft (and for safety reasons). However, where vulnerability is a factor and the customer resorts to desperate measures to stay on supply, suppliers should offer support that helps the customer avoid repeat offence.

Question 4: Do you consider that gas suppliers should be required to offer vulnerable customers and customers that would have genuine difficulty paying, a wide range of methods for the repayment of charges associated with gas theft as an alternative to disconnection?

This question is phrased as if disconnection is a normal response to gas theft; it is not.

Once the safety of the site has been secured, suppliers will always try to recoup the outstanding charges in a number of ways and agree an appropriate payment plan before resorting to disconnection, which terminates the relationship with the customer and limits the options for repayment.

Regarding the proposed requirement, a key question is its duration of applicability. For example, would a supplier have to offer a customer a range of payment methods for theft once or on multiple occasions (despite the fact that the crime has been repeated)? It would not seem reasonable to have to offer a range of repayment methods if the customer reoffends because the licence condition would then perversely facilitate gas theft (e.g. by mandating continued access to a PPM that can be bypassed).

I hope you find our comments helpful, should you require any more information please do not hesitate to contact me.

Kind regards,

Alun Rees
ERA Policy & External Relations Advisor

Appendix 1: ERA comments on draft licence conditions

Condition [x]. Theft of gas Objective

1.1 The objective of this licence condition (the “Objective”) is to ensure:

(a) the licensee or any Representative takes all reasonable steps, individually and/or in cooperation with other licence holders where necessary, to:

Comment [a1]: One supplier will not be able to control the actions of another.

(i) detect Theft of Gas;

(ii) investigate suspected Theft of Gas;

(iii) prevent Theft of Gas once detected;

(iv) prevent Theft of Gas by other means such as deterrence and the physical security of the supply in respect of any premises to which the licensee is registered for the purposes of the Network Code; and

Comment [a2]: Do these Objectives align with the measures designed to achieve them in section 1.12? A reasonable step in preventing Theft of Gas is deterring it through disconnection. However, disconnection is circumscribed by 1.12 (c) and (d).

(b) the licensee’s or any Representative’s behaviour and actions towards its Customers when taking the steps mentioned in sub-paragraph 1.1(a) are conducted in a manner which is fair, transparent, not misleading, appropriate and professional.

As currently drafted, suppliers could be faced with the situation of failing to comply with one licence condition by complying with another. This illustrates the tensions between principles and rules-based licence conditions that is explained further in comment a4 below.

1.2 The licensee must take all reasonable steps:

(a) to secure the achievement of the Objective; and

(b) to avoid doing anything which jeopardises its ability to achieve the Objective.

Comment [a3]: The meaning of “professional” is subjective.

1.3 The steps which the licensee must take to secure the achievement of the Objective include, without limitation, the steps which are detailed at paragraphs 1.5 to 1.14 of this condition, the obligations set out in paragraphs 3 and 4 of standard condition 17 and paragraph 6(e) of standard condition 30.

Comment [a4]: As currently drafted, the proposed licence conditions imply that compliance with paragraphs 1.5 – 1.14, including successful operation of the Theft Arrangement, is necessary but not automatically sufficient to constitute “all reasonable steps to secure the achievement of the objective”. If the Theft Arrangement is robust, no Objective should be required within the licence conditions. Rather, the Objective should be kept separate and used solely by the Authority as a reference point for consideration of what the Theft Arrangement might look like. A mix of principles and rules-based licence conditions creates a double-jeopardy (and regulatory uncertainty) for suppliers.

1.4 For the avoidance of doubt, where the licensee is not registered at a premises for the purposes of the Network Code, its obligations under paragraphs 1.1 and 1.2 are limited to the provision of notification to the Relevant Gas Transporter under paragraphs 3 and/or 4 of standard condition 17.

Requirement to detect, prevent and investigate theft of gas and damage

1.5 In respect of any premises to which the licensee is registered for the purposes of the Network Code, the licensee or any Representative must take all reasonable steps to detect and prevent Theft of Gas.

1.6 Where, in respect of any premises to which the licensee is registered for the purposes of the Network Code, the licensee or any Representative has reasonable grounds to suspect Theft of Gas, it must take all reasonable steps to fully investigate that suspected Theft of Gas.

1.7 Paragraph 1.6 does not apply if the Gas Transporter is required to investigate whether the supply of gas is/was illegally taken under paragraphs 1 and 2 of standard condition 7 of the Gas Transporter Licence.

The Theft Arrangement

1.8 The licensee must be a party to, comply with, and maintain such arrangement to give effect to the Objective, as the Authority may direct (the "Theft Arrangement").

1.9 The licensee must, take such steps as are necessary and within its reasonable control, and not take any unreasonable steps to prevent or delay, to ensure that the Theft Arrangement is implemented by no later than [xx] months after this condition takes effect (or such later date as the Authority may direct).

1.10 The licensee must take all reasonable steps to secure and implement changes to the Theft Arrangement and its systems, procedures and processes which are necessary to give full, timely and practical effect to the Theft Arrangement.

1.11 The licensee must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the achievement of the Theft Arrangement.

Standards for theft of gas investigations

1.12 The licensee must ensure that the following standards are met when it is taking any of the steps referred to in paragraphs 1.1, 1.2, 1.3 and 1.4 of this Condition:

(a) The licensee or any Representative must take all reasonable steps to identify whether the Domestic Customer and/or the occupants of the Domestic Premises (in this condition "the relevant premises") is of Pensionable Age, disabled or chronically sick;

(b) The licensee or any Representative must take all reasonable steps to identify whether a Domestic Customer at the relevant premises will have difficulty in paying all or part of the Charges for the Supply of Gas resulting from Theft of Gas;

(c) Where the licensee or any Representative knows or has reasons to believe that a Domestic Customer and/or the occupants of the relevant premises is of Pensionable Age, disabled or chronically sick the licensee or any Representatives must take all reasonable steps not to stop the supply of gas to the relevant premises in Winter;

(d) Where the licensee or any Representative has identified a Domestic Customer and/or the occupants of the relevant premises is reasonably suspected to be of Pensionable Age, disabled or chronically sick and/or the Domestic Customer at the relevant premises will have difficulty in paying all or part of the Charges for the Supply of Gas resulting from Theft of Gas, the licensee or any Representative must, prior to stopping the supply of gas to the relevant premises, at a minimum offer and facilitate for the Domestic Customer to pay those Charges for the Supply of Gas by using a Prepayment Meter, where it is safe and reasonably practicable in all the circumstances of the case for the Domestic Customer to do so;

Comment [a5]: What does "fully" mean?

Comment [a6]: This replicates clauses in the Objective.

Comment [a7]: The issues with this are described above.

Comment [a8]: It is not known how long the Theft Arrangement will take to develop. It would be safer to remove the reference to when the condition takes effect.

Comment [a9]: The consultation question said "make reasonable efforts".

Comment [a10]: As stated in comment a2 above, there is a tension between taking reasonable steps not to stop the supply and the stated Objective to prevent the Theft of Gas.

It might be most sensible to restrict disconnection to situations where there is no safe alternative available that would prevent future theft and facilitate the recovery of lost revenue.

Comment [a11]: There is no obligation to "facilitate" in SLC 27.5. Why is it proposed here? The licensee should not be obliged to cover the costs associated with installing a PPM in these circumstances.

Comment [a12]: A PPM should only be installed if it can be reasonably expected that the customer will not bypass it (otherwise installation will undermine the stated Objective to prevent the Theft of Gas). Could Ofgem specify that "reasonably practicable" entails the customer using the PPM as intended?

(e) The licensee or any Representative must have sufficient evidence to establish (on the balance of probabilities) the Statutory Disconnection Power before stopping the supply of gas to a premises on grounds of Theft of Gas;

(f) The licensee or any Representative must have sufficient evidence to establish (on the balance of probabilities) that Theft of Gas has occurred before requiring payment of all or part of the Charges for the Supply of Gas relating to that Theft of Gas; and

(g) The licensee or any Representative must provide clear, timely and accurate information and advice to the Customer about:

(i) the basis any assessment made by the licensee that Theft of Gas has been committed;

(ii) the basis for the calculation of any Charges for the Supply of Gas associated with the Theft of Gas made to the Customer;

(iii) what steps the Customer should take if they wish to dispute that a Theft of Gas had occurred; and

(iv) the steps a Customer may take to reinstate supply once the licensee has exercised the Statutory Disconnection Power.

1.13 The licensee and/or any Representative must keep a record of its compliance with its obligation under this licence condition.

1.14 The licensee must take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under this condition, including, as appropriate, steps to ensure that any agents and subcontractors of the licensee establish equivalent arrangements.

[Introduce new paragraph after SLC 30.6(d)]

The Theft of Gas Customer Code of Practice

30.6 The relevant objectives referred to in sub-paragraph 30(a) are:

(e) securing compliance with standard condition [state number] Theft of gas.

[Introduce new paragraph after SLC27.11A] 27.12

The prohibitions described in paragraphs 27.9 to 27.11 shall not apply where the licensee is considering exercising its Statutory Disconnection Power.

Comment [a13]: Are these paragraphs necessary? The Gas Act 1986 is sufficient to establish whether theft has occurred or disconnection is allowed. To add these paragraphs would be to imply otherwise. Does Ofgem consider that this is the case?

Comment [a14]: It is unusual to specify this requirement in the licence. Presumably this is because Ofgem expects particular records to be kept? If so can these be specified with the general wording removed? If Ofgem is not thinking of any specific records can the paragraph be removed?