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Sent via e-mail: [jemma.baker@ofgem.gov.uk](mailto:jemma.baker@ofgem.gov.uk)

10 April 2012

Dear Ms Baker

### **Consultation on the Undue Discrimination Prohibition standard licence condition**

Energy UK represents a wide spectrum of interests across the sector. This includes small, medium and large companies working in electricity generation, energy networks and gas and electricity supply, as well as a number of businesses that provide equipment and services to the industry.

Energy UK is pleased to respond to Ofgem's proposals to retain the existing Undue Discrimination Prohibition Standard Licence Condition ("SLC 25A") until 31 July 2014. This is a high level industry view and our members may also provide individual responses. We would be happy to discuss any of the points made below in further detail with Ofgem if this is considered to be beneficial.

### **Key Points**

Energy UK has no comment on whether or not Ofgem should retain the Undue Discrimination Prohibition standard licence condition until 31 July 2014. However, should Ofgem decide to proceed, then it is important to consider now what processes tests will be applied, and when, to establish whether it should be retained from 31 July 2014. In other words, we would ask Ofgem to provide clarity on what market conditions it believes would be "right" for the licence condition to lapse.

The above view is founded upon energy companies' requirement for regulatory certainty and predictability. For similar reasons, we would ask Ofgem to consider clarifying its Guidance on SLC.25A so that licensees can fully understand the policy intent in one or two areas. We would also encourage Ofgem to remain alert to innovations in the market that may not have been considered when the Guidance was originally drafted.

In particular, Energy UK would like to question why the first part of the test to determine whether undue discrimination has arisen is restricted to cases where "a Supplier offers terms and conditions of supply to one group of customers which are materially different from the terms and conditions of

supply offered to any other group of customers”<sup>1</sup>. We would have thought that the issue is whether terms and conditions offered to different groups of customers are cost reflective, or if not whether and differences or similarities can be objectively justified, irrespective of whether the terms and conditions are the same. To support this proposition, it is worth noting that Ofgem itself refers to the provision of social tariffs to vulnerable customers as an “exception”<sup>2</sup> rather than the rule when these customers would secure the same price as a different group of customers.

In terms of market innovations not considered when the Guidance was first drafted, the concept of collective switching provides a good example.

I hope that these comments are useful. Should you require any further information, please do not hesitate to contact me on 0207 104 4165 or [alun.rees@energy-uk.org.uk](mailto:alun.rees@energy-uk.org.uk)

Yours sincerely,

Alun Rees  
Policy and External Relations Manager

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<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Guidelines%20on%20Cost%20Reflectivity%20and%20Undue%20Discrimination%20in%20Supply.pdf> para 3.1

2

<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Guidelines%20on%20Cost%20Reflectivity%20and%20Undue%20Discrimination%20in%20Supply.pdf> s.6

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