



Louise van Rensburg
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Telephone: 01738 456726
roger.hutcheon@sse.com

15 February 2012

Dear Louise

Retail Market Review: Non-Domestic Proposals

SSE welcomes the opportunity to comment on Ofgem's Non-Domestic Proposals, which form part of the Retail Market Review. SSE continues to believe that competitive pressures on suppliers will provide the best outcome for customers. We therefore broadly welcome the proposals that Ofgem is consulting on, and believe that with generally only minor alterations they will have a positive impact on the non-domestic sector of the GB energy supply market.

We do, however, have serious concerns about Ofgem's proposal to put the onus on suppliers to regulate the behaviour of Third Party Intermediaries (TPIs), through the introduction of either a sales and marketing or a Standards of Conduct (SoC) licence condition. We outline our key objections to this approach below, with more detailed answers to the consultation questions included in the annex to this response.

Expansion of SLC 7A

We believe that the implementation of SLC 7A has led to an improved service being delivered to micro-businesses. In particular, our experience suggests that the new licence condition has resulted in improved customer understanding of their contract and the renewal process.

If the scope of SLC 7A is to be widened, it should only be to include *single site* customers falling within the consumption levels of 293,000 kWh for gas or electricity Profile Classes 3 and 4 (or the EU small business definition). Customers who have more than one site are generally able to take advantage of their larger size to negotiate bespoke contracts (and prices) which take into account all of their sites. Given that energy represents a significant expenditure, these companies will generally apply greater focus to negotiate these contracts. We therefore do not believe that this category of customer - or larger (HH) single site customers - needs additional protection via licence conditions.

The introduction of SLC 7A in January 2010 has delivered tangible benefits for micro-businesses. We can understand Ofgem's rationale for widening the definition slightly to extend the coverage of SLC 7A to include those small businesses that engage with the market in a similar way to micro-businesses. We support this move and expect it will lead to marked improvements, particularly around contract renewals. We are reviewing the material we send to our micro-business customers and will be happy to make any improvements that may increase customer engagement.

We also note that Ofgem is reconsidering the status of contract rollovers. This is disappointing because we think that the process for renewals now works well and is more transparent for customers (last year, our customer renewals resulted in a complaint rate of only 2%). The safeguards provided by SLC 7A mean that customers are clearly informed of the renewal process and the choices available to them. We are therefore concerned about unintended consequences for suppliers and customers if 12 month renewals are not

permitted – in particular, the increased dissatisfaction that is likely to be caused by greater numbers of customers moving to higher priced Deemed Contract rates.

Transfer blocking

We are very supportive of measures by Ofgem to monitor this area, and to take enforcement action where suppliers have acted improperly. We are also concerned about the high level of withdrawals by some suppliers, which Ofgem has noted in the consultation. Equally concerning to SSE is the incidence of winbacks. To help provide clarity in this area, we would welcome Ofgem issuing a clear statement on this behaviour. We believe there is a real issue caused by some suppliers offering reduced rates or cash incentives to customers who are under contract to a new supplier. This practice results in an erosion of customer trust in supply companies which ultimately damages competition.

Third Party Intermediaries

The behaviour of some TPIs has been a source of concern to us for some time, as identified in our responses to both the Probe and last year's RMR consultation. We would welcome any reasonable measures that can be put in place to address this problem. We would support greater monitoring or regulation of TPIs, for example via a mandatory accreditation scheme. We would also be willing to provide greater transparency over commission payments to TPIs if that became a condition of accreditation.

However, we are very concerned about the potential unintended consequences of the draft licence condition which puts the onus on suppliers to monitor the activities of TPIs. It is important for Ofgem to recognise that it is the customer that has the relationship with the TPI rather than the supplier. We do not think that the draft licence condition is workable – in particular we do not believe that it is appropriate to classify TPIs as suppliers' 'representatives' by virtue of commission payments alone. Furthermore it is not clear that this measure would have the desired result: the SLC would cause some suppliers to have contracts in place with all TPIs they deal with to protect them as far as possible from the risk of a TPI mis-selling on their behalf. We would envisage that these more onerous contracts would cause more TPIs to choose to operate outside this area of the market (i.e. to avoid any relationships with suppliers). Meanwhile other suppliers would continue to deal with TPIs on the same basis as they do now. The overall impact would be damaging to competition, as we anticipate that some suppliers would be less active in certain areas of the market. Under this scenario, some business customers would be no better protected than they are today.

In our view, the most effective means of ensuring that customers' interests are safeguarded would be for Ofgem to be granted the power to enforce the Business Protection from Misleading Marketing Regulations. This measure would provide Ofgem with the necessary powers to take enforcement action that leads to meaningful changes for the better whilst not adversely affecting the ability of small businesses to engage with the market. We intend to write to BIS in support of Ofgem's request for these powers.

Standards of Conduct

We strongly disagree with the introduction of legally binding SoCs via an overarching licence condition. There are various issues with the introduction of a principle based regulation of this type that would encompass all interactions between suppliers and consumers. We are extremely concerned by the use and interpretation of the term 'representative.' As noted above, we believe this puts too onerous a burden on suppliers to account for the behaviour of TPIs or other agents acting on their behalf.

Although we have discussed this we also are unclear regarding Ofgem's approach to enforcement and whether it is really aligned with the requirements of principles based regulation: we would expect increased dialogue and co-operation between Ofgem and regulated companies under a principles based approach, and possibly even a two stage enforcement process. What we would not expect is a zero tolerance approach to compliance which may result in a more adversarial relationship. Uncertainty on this point is also likely to



result in the imposition of a greater than anticipated burden on suppliers and may have the unintended consequence of creating a barrier to entry or a disincentive to expansion.

We believe that the SoCs as drafted in the consultation are a fair reflection of how we run our business. We would favour a public commitment to SoCs (Option 2) as that is consistent with our approach as a supplier and with our Building Trust initiative. In considering this option we do not believe that Ofgem has fully acknowledged the significance of the reputational damage that would result from a supplier failing to live up to such a public commitment. It is very unhelpful for Ofgem to suggest that such a public commitment would provide a less effective measure to raise standards than the proposed licence condition. It is also inconsistent with Ofgem's view on the efficacy of self regulation in the context of accredited codes of practice for TPIs, as stated in 4.12 of the consultation document.

We would emphasise that if implemented (either as a licence obligation or via a public commitment) we believe the SoCs should only apply to the smaller end of the business market. Larger businesses generally include suitable Service Level Agreements as part of their contract negotiations.

Conclusion

SSE welcomes the measures in this consultation that directly address concerns we have previously raised about the non-domestic market. We also support the proposed broadening of SLC 7A, subject to the slight modification we have proposed, as we can see the benefit to consumers that such a change would bring about. We remain concerned at the areas where Ofgem is seeking to impose an increased burden on suppliers to monitor TPIs as we feel a more appropriate and more direct solution exists. We are also disappointed at the discussion of possible future moves to prohibit contract rollovers as we feel strongly that this will have an adverse impact on customers.

Please contact me on 01738 456726 if you wish to discuss any of these issues, or the points raised in the annex to this response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roger Hutcheon', written in a cursive style.

Roger Hutcheon
Regulation, Markets