



Paul Fuller
Smarter Markets
Ofgem
9 Millbank
London SW1P 3GE

Chris Harris
Head of Retail Regulation
RWE npower
Chris.Harris@RWEpower.com

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Dear Paul

**Supporting Effective Switching for domestic customers with smart meters;
additional statutory consultation**

Thanks for the opportunity to respond.

We support Ofgem's decision regarding gas and electricity licence conditions 25B, altering the prevention of data deletion on change of supplier (CoS) to the prevention of provision of misleading or accurate information on CoS.

There remain Data Protection issues on change of tenancy, to which we would appreciate guidance from Ofgem and the Information Commissioner, or ideally a derogation in the Data Protection Act for specific circumstances.

We note also that this consultation round concentrates on one issue. Our views on the other issues remain as expressed in the previous rounds, and we do not believe that they have been fully resolved.

Our detailed comments are enclosed

Yours sincerely

Chris Harris
Head of Retail Regulation
Chris.Harris@RWEpower.com
07989 493912

RWE npower

Trigonos
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

T +44(0)1793/87 77 77
F +44(0)1793/89 25 25
I www.rwenpower.com

Registered office:
RWE Npower plc
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

Registered in England
and Wales no. 3892782



Summary position

Whilst we understand and fully support the concept of protecting domestic customers who have made an early choice to have Advanced Domestic Meters (ADM) installed and the need to ensure that effective switching takes place for these customers, particularly during the early stages of the Smart Programme, we do still have some concerns with regard to the consequential effect that the drafting of these Licence Conditions (LCs) can potentially have Suppliers' Data Protection obligations.

The scenario with risk – change of tenancy with in situ advanced meter managed as traditional

There are two key change events in the consumer/meter journey. These are change of supplier (CoS), and change of tenancy (CoT, also called change of occupier).

Whilst we believe that the Data Protection Act (DPA) issues for CoS are solved, there is a specific CoT event that warrants consideration. This is when an ADM is being managed as a traditional meter. It is this CoT event that we hope that this round of the consultation will solve.

Personal data

In assessing the consultation and our response to it we have considered whether or not the possibility could arise that 'personal data' could be made available to a party that it was not intended for and as such we have concluded that following installation of ADM/smart meters and In-Home Displays that information is recorded and can be displayed in such a disaggregated level to be regarded as personal, and potentially traceable back to an individual.

Following a change of tenancy (CoT), and non deletion of data, the supplier could potentially find themselves in breach of the DPA, as it can have inadvertently allowed a customer to see another customer's consumption information.

The real crux of the problem, as we see it, is that during trialling and foundation stages of the Smart Programme and whilst the industry is compelled to continue to utilise existing systems and processes, Suppliers have no ability, as far as we can see, effectively to restrict access to personal data where a Change of Tenancy has taken place where the meter is being managed as traditional.

The responsibilities of two data controllers

The current drafting of the Licence Condition requires two Data Controllers to be in place to cover the DPA responsibilities around both historic, stored data and any subsequent data that is obtained, stored and used by the incoming (new) Supplier. At some point during the CoS process, one of these Data Controllers will find themselves in a position where they do not have the required access, and so control, over the data that they are expected to be responsible for. This situation further



compounds the development of an appropriate solution to the issue over potential access to personal, historical data after a change of tenancy.

Potential solutions - practical

We have considered potential solutions that would involve obtaining the necessary permissions from customers at key touch points in the change of supply and change of tenancy process but have concluded that none of these is without a fundamental flaw in that it either removes information or access to information required by a relevant Supplier in order for them to undertake some of their regulated business activities, or unduly disadvantages a customer who potentially either loses access to their consumption history or has to have metering arrangements replaced in order to guarantee that no subsequent access to their personal data can occur.

DPA derogation/guidance when supplier has not been informed of CoT

Currently wherever there is a change of tenant at a property where there is a smart meter being managed as traditional (therefore no ability to delete the data), a Supplier could technically be regarded to be in breach of the DPA.

Often, the Supplier is not informed that a change of tenancy has occurred.

Since there appears to be no real practical solution, then a derogation in the Data Protection Act may be required when the Act is revisited. However, we recognise that this Act is broadly drawn. A derogation may be unsuitable whilst guidance could be very effective. Indeed, the specific nature of this guidance may mean that it could come from Ofgem or in a representation by Ofgem to the ICO.

Finding the right balance

In the smart meter consultations, we have been clear throughout that suppliers should have access to meter data to the degree to which it can be regarded as their inventory (demand forecasting, settlement, volume allocation, energy balancing etc.). We have at all times recognised the privacy concerns where data recorded by the meter could be used to gain insights into behaviour and other private matters.

At the same time, there needs to be a sense of proportion as to how damaging it would be to a person if the pattern of their historic consumption were known by an identified party.

We do not have a clear view of how damaging it may be to a departing person that an arriving person has access to a period of their historic consumption. Indeed we are not the best placed party to take this view. It may be that the Information Commissioner regards the combination of a low number of instances, a low probability of data misuse, and a low impact of this misuse, does not warrant a data protection risk (therefore not a violation of the DPA).

We would appreciate guidance on this point.