

Harpal Bansal
Smarter Markets
Ofgem
9 Millbank,
London SW1P 3GE

E-mail to: smartermarkets@ofgem.gov.uk

30 April 2012

Dear Harpal

Tackling gas theft: the way forward

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, combined heat and power plants, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the opportunity to respond to this consultation and our comments on Ofgem's proposed incentive scheme are set out in this letter. Our detailed responses to the questions in Ofgem's consultation are set out in the attachment to this letter.

EDF Energy considers that new licence obligations to detect, prevent and investigate gas theft will lead to improved performance in the industry.

However, we believe that the measures proposed provide sufficient incentive for suppliers to address gas theft and that implementation of an incentive scheme in addition to these measures is unnecessary.

In particular, we are concerned that an incentive scheme could create a disincentive for suppliers to work together to resolve theft for the benefit of the industry and customers alike. This approach would also seem to be in direct conflict with the objective detailed in paragraph 12B.1 of the proposed licence amendments which states that suppliers should cooperate to detect, investigate and prevent theft of gas.

There is also a possibility that the proposed incentive scheme could lead to suppliers treating any site where gas is not being correctly registered as theft. This would not protect customer interests and could lead to customers being unfairly alleged to have been stealing gas.

Further, we do not consider that theft occurs evenly across all supplier portfolios and that a scheme that rewards those with a high instance of theft on their portfolios and penalises those that haven't could result in an unfair distribution of funds.

Finally, we remain concerned that implementation of an incentive scheme would result in detection becoming more rewarding than prevention. This is not a desirable result and is not in the best interest of consumers or the industry.

EDF Energy remain committed to working with Ofgem both now and in the future to introduce an effective framework to increase theft detection performance in the industry and look forward to Ofgem's decision on the appropriate arrangements.

I confirm that this letter and its attachment may be published on Ofgem's website.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact my colleague Dan Simons on 07875 113701, or myself.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Delamare".

Paul Delamare
Head of Downstream Policy and Regulation

Attachment

Tackling gas theft: the way forward

EDF Energy's response to your questions

Consultation Questions

CHAPTER: Two

Question 1: Do you agree with our final policy proposals and the related drafting of our licence condition on:

a) The Objective for tackling theft of gas?

Yes. While we believe there is already a sufficient commercial incentive for suppliers to proactively detect, investigate and prevent theft, we accept that the proposed licence obligations will help to ensure that all suppliers undertake this activity and tackle offenders in a more consistent manner.

Whilst we acknowledge that the introduction of an overarching objective affords suppliers flexibility on how best to comply with the requirements, the inherently subjective nature of such an approach would introduce additional regulatory risk and uncertainty in terms of managing compliance. In particular, circumstances may arise where Ofgem has assumed or expected a different type of response and approach from that which individual suppliers assumed in terms of meeting the new standards.

We would therefore welcome any guidance that Ofgem are able to provide as part of the ongoing development of the Theft Code of Practice under the Supply Point Administration Agreement (SPAA) in order to reduce uncertainty and provide clarity to suppliers.

We also believe that paragraph 12B.4 should be amended to remove reference to paragraph 12B.1. Paragraph 12B.1 is not an obligation on the licensee and so does not need to be referenced in 12B.4. The purpose of paragraph 12B.1 is to set out the objective of Licence Condition 12B whereas 12B.2 sets out the obligation to secure the achievement of the objective.

b) Requirements to detect, prevent and investigate theft of gas?

Whilst we are satisfied with the majority of the drafting, we do note that the requirement to detect, prevent and investigate theft of gas simply repeats the requirements established in the "proposed objective" section in the licence. Therefore, we would suggest the removal of paragraph 12B.5.

c) The Theft Arrangement?

EDF Energy is broadly supportive of The Theft Arrangement but does note that agreement of an appropriate industry governance mechanism may prove difficult. For example, introducing the Theft Risk Assessment Service (TRAS) through SPAA may require a further change to licence obligations to require non-domestic suppliers to be a party to this agreement and comply with the relevant sections.

d) Standards for theft of gas investigations?

Whilst we are generally supportive of the requirements in the proposed licence conditions, we have specific concerns in respect of the prohibition on disconnection during winter for vulnerable customers, and the requirement to offer prepayment metering to customers that have difficulty in repaying charges associated with gas theft.

Firstly, we would always seek to disconnect (in accordance with our legal obligations in this area) where there is a material safety issue identified and/or where the installation of a prepayment meter is not feasible (for example, where a safe meter location is not available). In these respect, the proposed paragraphs 12 B12(c) and 12 B12 (d) should be more clear and explicitly allow for these circumstances.

Additionally, we also believe that it may be appropriate to consider disconnection where the consumer is a repeat offender and all reasonable measures have been taken to prevent theft from reoccurring.

We would also question whether it is appropriate to offer customers who steal gas the same level of protection afforded to honest customers who are experiencing payment difficulties. The cost of the risk (e.g. of further theft) created by such protection would inevitably be recovered from all customers. We ask Ofgem to explain what legal basis it has for taking such an approach.

We also note the obligation in paragraph 12.B12 (b) would require suppliers to take all reasonable steps to determine whether a customer will have genuine difficulty in paying charges associated with theft of gas. In reality, this may be very difficult to ascertain, particularly given the lack of trust a supplier may have in any information provided by a customer who has stolen gas.

Furthermore, it is also worth considering that if a customer is found to be stealing gas, you could reasonably expect that they are likely to have difficulty repaying charges. When this is taken into consideration along with paragraph 12.B12 (c), the new Licence Conditions could effectively require suppliers to install a PPM for all cases of theft. We do not believe that this is the policy intent, nor do we believe this to be an effective way to address theft.

Suppliers already have a licence obligation (27.5) to offer a range of payment methods to customers that are experiencing payment difficulty. These include prepayment metering, regular cash payments and Fuel Direct. EDF Energy would also offer Direct Debit.

Rather than an obligation to install prepayment metering in all instances, EDF Energy would prefer to maintain the flexibility to determine the best repayment arrangement on a case by case basis for customers who have been found to be stealing gas.

However, whilst EDF Energy continues to see disconnection as a last resort, it is vital that disconnection remains permissible where there is a serious safety concern, the crime is repeated (for example recurring bypass of a meter), or where a customer is not prepared to pay for their energy despite being able to do so. We therefore welcome Ofgem's intent to work with the industry as part of the ongoing development of the Theft Code of Practice to define when disconnection is likely to be a reasonable course of action.

We also believe that the drafting of paragraph 12.B12 (c) could be improved by making reference to paragraphs 12.B12 (a) and 12.B12 (b) rather than repeating them. For example 'Where a domestic customer and/or the occupants of the Domestic Premises has been identified in accordance with 12.B12 (a) or 12.B12 (b)...

Finally, we recommend that the wording of paragraph 12.12 (g) (ii) should be amended to "the basis for the calculation of any Charges for the supply of Gas resulting from the Theft of Gas at the relevant premises." We feel this would improve the drafting and repeats similar wording used earlier in the paragraph.

e) Introducing a new relevant objective for the Supply Point Administration Agreement on tackling gas theft?

EDF Energy has been actively involved in the development of the new SPAA Theft Code of Practice (CoP) and agrees that the CoP should apply to both domestic and non-domestic suppliers.

However, whilst consideration is currently being given to the amendment of the SPAA governance arrangements to facilitate the participation of non domestic suppliers, we remain unconvinced that this will happen without a modification to the Gas Supply Licence to require non domestic suppliers to become SPAA parties.

We also note that there may be some benefit in aligning the implementation of the proposed Licence Conditions with the SPAA CoP. Much of the CoP is focussed on ensuring that suppliers maintain a consistent approach when tackling gas theft. Different implementation dates could lead to the scenario where investigations may not be undertaken in a consistent manner for a period of time as a result of differing supplier interpretations of the Licence Conditions. For example, what constitutes "reasonable steps".

EDF Energy
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