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Dear Louise,

THE RETAIL MARKET REVIEW: UPDATED PROPOSALS FOR BUSINESSES

I am writing in response to above consultation which was published on 26 November 2012.

We continue to be supportive of proposals to improve the protections for small business customers and agree that the package of proposals that Ofgem is pursuing is broadly sensible. We have provided detailed answers to the consultation questions in the attached annex. However, our key points are as follows:

- **Definition of Small Businesses:** We welcome the proposal to extend the requirements of SLC7A to small business customers, and welcome the proposed higher consumption thresholds in the definition of small businesses. We would like to suggest, however, that the opportunity is taken to simplify the rules further.

The employee and turnover elements of the definition of micro business were introduced in 2008 by BERR because of a concern that the consumption thresholds then proposed might be exceeded by very small businesses such as owners of small convenience stores and pub landlords, who had relatively few full-time staff and small turnovers. However, with the higher threshold, this risk is much reduced and we believe that the staff and turnover tests (which are difficult for suppliers to apply because of limited data) could be dropped.

It would also be helpful if Ofgem were to allow, either for the condition or in guidance, reasonable operational proxies for the definition. For example, in our experience it is unlikely that a genuine small business would be part of a large multi-site "group" or would consume enough energy to require a Half Hourly (HH) meter (and the way in which HH customers are managed gives them broader protections in any case).

- **Protections for Small Businesses:** We support the proposal to require the customer's contract end and termination notice date to be shown clearly on all bills and/or statements. We recognise that this will provide clarity for the customer around important contractual dates.

We also agree with Ofgem's proposal to align the termination notice and the notice to prevent automatic rollover timeframes so that the customer only needs to send one communication.

We understand why Ofgem is proposing that customers should be able to give a termination notice at any time during their fixed contract (up to the final day allowed for in the contract), but we note there is a risk that if customers give early notice and then fail to agree a new fixed offer, or make arrangements to change supplier, they could end up reverting to higher out-of-contract prices.

- **Customer Transfer Blocking – Objections:** We are supportive of the analysis and conclusions drawn from this review. We are currently making improvements to the way we communicate with customers when an objection is raised. We are comfortable with the proposal that Ofgem should collect and potentially publish information from industry sources rather than from individual suppliers, providing that it was in a format that protected commercial confidentiality concerns.
- **Standards of Conduct:** We are supportive of the Standards of Conduct proposals, but would be keen to see more clarity on enforcement, given the high degree of subjectivity in their interpretation.

We agree with the proposal that the specific Standards of Conduct Licence Condition should apply only to small businesses and should be in relation to billing, contracting and transferring customers. We think that further consideration may need to be given to the definition of "Fair". For example, blocking a transfer due to debt (in accordance with the rules) would benefit the supplier and be detrimental to the customer, but ought not to be considered unfair.

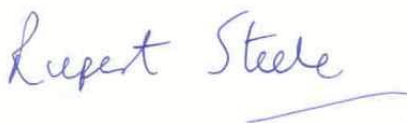
- **Third Party Intermediaries (TPIs):** We welcome the proposal to develop options for a single code of practice for TPIs. We believe that this has the real potential to restore consumer confidence and drive improvements in the TPI sector.

The focus of the code of practice should be on ensuring transparency at all times when engaging with customers. Specifically we would suggest that TPIs should be required to disclose their commission level at the point of sale so that there is absolute clarity for the customer both in terms of the price they pay and any associated costs.

In terms of implementation timeframes, we would ask that adequate time is made available and that simultaneous implementation of domestic and non-domestic RMR requirements is avoided, so as to mitigate resource conflicts. This will be a particular issue for us in 2013 as we roll out a new billing and customer management system.

I would be please to discuss further any of the points raised above or within the Annex, and provide further information that may be required.

Yours sincerely,



Rupert Steele
Director of Regulation

RMR NON-DOMESTIC PROPOSALS: SCOTTISHPOWER RESPONSE

CHAPTER 1: INTRODUCTION

Question 1: Do you agree with the envisaged implementation timetable set out in this chapter? If not, what factors do we need to take into account setting this timetable?

We estimate that we will need about six months from finalisation of the rules to design, implement and test the systems required to implement the non-domestic changes; this is close to the 56 days plus four months proposed. However we would ask that simultaneous implementation of domestic and non-domestic RMR requirements is avoided, so as to mitigate resource conflicts. This will be a particular issue for us in 2013 as we roll out a new billing and customer management system. Our recommendation would be to adopt a staggered approach to implementation to allow suppliers sufficient time and reduce risks of customer disruption.

CHAPTER 2: MARKET OVERVIEW

Question 2: Do you have any comments on our success criteria and the outcomes we expect to see?

We believe the success criteria reflect the issues raised within the RMR and we are broadly supportive of the expected outcome of the proposals.

CHAPTER 3: STANDARD LICENCE CONDITION 7A: PROTECTIONS FOR SMALL BUSINESSES

Question 3: Do stakeholders agree with our proposal for a revised definition for the expansion of SLC 7A?

Yes, we welcome the proposal for a revised definition to expand the scope of SLC7A to include Small Business Customers. We think it is important that the revised definition is carefully scoped to ensure that it is practicable for suppliers in light of the data limitations that suppliers experience.

Question 4: Do stakeholders foresee any significant costs or difficulties to our revised definition?

We welcome the straightforward extension to a higher threshold of consumption as a way to include a broader range of small businesses.

We would like to suggest, however, that the opportunity is taken to simplify the rules further. When BERR was implementing the Consumers, Estate Agents and Redress Act 2007, it was recognised that it would be difficult for suppliers to identify micro-businesses by reference to employee numbers or turnover. Accordingly, BERR intended to define a micro business by means of a consumption threshold only. (See pages 7-8 of the December 2007 Response to Consultation¹.)

¹ <http://www.bis.gov.uk/files/file43216.pdf>

The employee and turnover elements of the definition of micro business were subsequently introduced by BERR when the order was laid in 2008 because of a concern that the consumption thresholds then proposed might be exceeded by very small businesses such as owners of small convenience stores and pub landlords, who had relatively few full-time staff and small turnovers. (See pages 3 and 4 of the Explanatory Memorandum to the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008².)

However, with the higher threshold, this risk is much reduced and we believe that the staff and turnover tests (which are difficult for suppliers to apply because of limited data) could be dropped. The data difficulties on the staff and turnover tests include:

- **Availability of reliable employee and turnover data:** Companies are not obliged to declare employee and turnover data to Companies House and for other (eg public sector) bodies there is no central source for this data. Where this data is unavailable, credit bureaus use their own methodology to estimate employee numbers and turnover. Not only may this be inaccurate, but suppliers could end up with different classifications for the same company dependant on which credit bureau they use.
- **Corporate Structures:** Where businesses are structured into separate corporate entities, the energy supply contract may be with an entity which has (or is estimated to have) small employee numbers and turnover, even though the overall group of companies is much larger. This is often the case with the parent or holding companies, or UK divisions of multinational corporations.

In addition to this, we think that Ofgem should allow suppliers to use reasonable operational proxies in identifying small business customers, provided that these could be justified as not disadvantaging the customer.

For example, ScottishPower has already voluntarily extended the protections afforded by SLC7A to all single-site non half-hourly (NHH) metered customers, even though this typically involves significantly higher consumption levels than either the existing or proposed new thresholds.

Our HH customers are managed using separate procedures and a majority of them typically consume significant volumes of electricity and their contracts are designed to reflect that. HH contract terms are offered on a daily basis, with prices reflecting daily market price movements and only being available for short windows. This is reflected in the way in which these customer accounts are managed. For example, all HH customers have a named Account Manager and are provided with both their direct contact number and e-mail address. This provides the customer with a dedicated contact point for all pricing services, to agree contracts, to discuss all renewal options, any account queries, and to discuss all general account enquiries.

As a result, the customer does not need the additional protections in relation to contract terms as currently offered within SLC 7A, even in the rare cases where their consumption may fall below 100,000 kWh a year. Indeed, a move to the process set out in SLC 7A may even be a disadvantage to the customer, since they would not be able to take advantage of such flexible daily pricing at the end of the current contract period.

We recommend that Ofgem sets out guidance which would allow suppliers to use reasonable operational proxies that are not to the overall disadvantage of customers. We think the guidance could suggest that it would be reasonable to exclude HH contracted customers from the scope of SLC 7A where the customer's account was individually managed by a

² http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksiem_20082268_en.pdf

named Account Manager or similar, especially if some or all NHH customers above 100,000 kWh a year were included.

Question 5: Do stakeholders agree with our proposal to mandate contract end dates on bills for consumers covered by SLC 7A? Are there significant cost implications?

Yes, we are broadly supportive of the proposal to provide contract end dates on bills for customers covered by SLC7A. This will involve a technical change, which is still being scoped, and which will naturally involve some cost. However, at this time, we don't consider that this cost will be significant.

Question 6: Do stakeholders agree the last termination date should be included alongside the end date on bills? Are there any significant cost implications?

Yes, we are broadly supportive of the proposal to provide the last termination dates on bills for customers covered by SLC7A. We are still assessing the scope of the technical change needed to implement this. However, at this stage we do not consider that the cost would be a barrier to implementation.

Question 7: Do stakeholders agree with our proposal to require suppliers to allow small business customers to give notice to terminate their contract (as from the end of the fixed term period) from the beginning of their contract? What are the implications of this proposal, including cost implications?

Whilst we agree with the principle of the proposal, we believe that there is a risk that it will not provide the benefits intended.

We have concerns that, while the proposal gives customers additional flexibility, some customers may give early notice and then fail to take further action (ie agree a new fixed offer or make arrangements to change supplier), with the result that they subsequently revert to higher out of contract prices. This could arise in relation to TPI activity where the customer may be actively encouraged to send in the termination notice early, but is not then effectively managed through the renewal process by the chosen representative. Some of this activity may be addressed by the proposed TPI Code of Practice and it may be sensible to align the implementation of this proposal with the introduction of that Code.

We think further work may be required to put in place safeguards to ensure that customers are aware of the consequences of sending a termination notice, including when engaging with a TPI.

Question 8: Do stakeholders consider that it would be to the benefit of customers to allow suppliers to terminate small business contracts, signed under the terms of SLC 7A, in specific circumstances where a customer's energy usage significantly increased?

This is not an issue that we have significant experience of. We agree with Ofgem that this is an unlikely scenario, and would suggest that due to the rarity of this occurrence, changes to SLC7A.3 may lead to undue confusion and uncertainty when dealing with fixed term contracts. Usually we would expect to agree different terms with the customer at the end of the current fixed term period.

Should Ofgem decide to pursue this matter further, we would welcome further guidance on how the term “significantly increased” should be interpreted and what sort of parameters are appropriate.

Question 9: Do stakeholders have views on the proposed amendments to SLC 7A set out in Appendix 4?

We have no further comment on this point.

CHAPTER 4: CUSTOMER TRANSFER BLOCKING – “OBJECTIONS”

Question 10: Do stakeholders agree that industry processes could be improved to alleviate current issues with the objections process?

We agree with the conclusions drawn by Ofgem in relation to the current issues with the objections process.

Change of Tenancy Markers: We think that further improvements can be made in relation to the use of COT markers. In particular, given that different suppliers appear to have different interpretations as to how Change of Tenancy notifications should be used, we would welcome further guidance on this matter from Ofgem, specifically in relation to the timeframe over which the marker is applicable.

Multiple Invalid Registrations: Our current process allows us to submit a maximum of 3 times before ceasing the application where an objection has been raised by the other supplier. We do not consider this to be excessive, as it allows a reasonable opportunity for the reason for the initial objection to be resolved. We do however still have concerns that some other suppliers have no limit on the number of times they will send a registration request.

Building on guidance from Ofgem under the previous RMR and more recent correspondence, we have identified areas for improvement within our objections processes for non-domestic customers. These improvements specifically relate to our communication with customers where an objection is raised.

The changes will ensure that the customer is notified of all applicable objection reasons at the same time, rather than the first applicable reason on our hierarchy. We believe that this will allow the customer to address each objection concern as it is raised, therefore reducing the number of registration requests and objections raised overall.

Winbacks: We have appropriate checks in place within our sales renewal process to ensure, that where a customer tells us they have signed an agreement with another supplier that we do not re-contract or attempt to “winback” that customer. We recognise that they have a legally binding contract in place with another supplier and will not object to the transfer on that basis (we may still object should they not meet any other appropriate criteria).

Where we have contacted the customer and they inform us that they have agreed to a contract with a new supplier, we record this information as a call outcome and report daily on the list of customers who have advised us that they are in the process of changing to another supplier. This allows us to ensure that we are not inappropriately selling to a customer who has already contracted with another supplier. Where a customer has sent in a termination notice but has not made arrangements to transfer to another supplier, we will contact them and attempt to retain them by offering them a new contract.

Question 11: Do stakeholders agree that we do not need to make further changes to the licence conditions at this stage?

Yes, we agree that it is not necessary to make changes to SLC14 at this time.

Question 12: Do stakeholders agree that we should collect and potentially publish information from industry sources rather than from suppliers?

Yes, we agree that Ofgem should collect and potentially publish information from industry sources rather than from suppliers, providing that it was in a format that protected commercial confidentiality concerns. We would be pleased to engage with Ofgem to help shape the format for publication as this develops.

CHAPTER 5: STANDARDS OF CONDUCT FOR NON-DOMESTIC CONSUMERS

Question 13: Do you agree with our proposed approach to tackle issues in the non-domestic market? If not, which alternative proposals do you prefer?

We fully agree that consumer trust will play a vital role in building better engagement within the energy market and we believe that the proposed Standards of Conduct Licence Condition is likely to encourage positive behaviours by suppliers that are likely to build that trust and engagement. We welcome Ofgem's intention to encourage the industry to engage with customers and provide a good service in a fair and competitive market. We therefore support the proposed approach of the Standards of Conduct. However, such a new approach will require innovation and imagination from both suppliers and Ofgem if it is to be truly successful; the approach to enforcement will be vital in building this.

Question 14: Does the proposed approach to enforcement mitigate stakeholders concerns about the regulatory uncertainty and risk?

We appreciate that Ofgem has proposed a bespoke enforcement approach as an alternative to the 2 stage enforcement approach requested by suppliers. While the proposed bespoke enforcement procedure does address some of our concerns, we still believe it leaves too great a potential for subjective application of the Standards and therefore creates a degree of regulatory risk which may deter market entry and innovation.

We would continue to support a 2-stage enforcement regime to support any principles-based Licence Condition, as we believe that this would help to balance the risk outlined above. Under this regime, which would be underpinned by Licence, Ofgem would have a dialogue with affected suppliers in the first instance. This would allow the supplier or suppliers the chance to make representations and justify their approach, or rectify the behaviour as appropriate. If evidence exists of consumer harm after this, Ofgem could move to a formal enforcement investigation. We think that an appropriate 2-stage regime could be enshrined in Licence specifically for the Standards of Conduct (as was done for SLC25A), without fettering Ofgem's discretion in any other areas. There could be an exception from 2 stage enforcement in particularly serious cases.

In order to mitigate concerns over the uncertainty and risk raised by the Standards, any bespoke enforcement approach will need to be fully and clearly documented. We would expect this to be developed in consultation with industry stakeholders.

Question 15: Do you agree the proposed binding Standards should cover small businesses only?

Yes, we agree that that the proposed Standards should cover small business only. As in our previous response, we consider that the SOCs should not apply to larger business customers as the relationship between a supplier and a large business is much more equal, often involving bespoke or legally represented procurement, where contractual agreement under the general law should be the governing principle.

Question 16: Do you agree with the assessment that the scope of the binding requirements should focus on the relevant activities of billing, contracting, and transferring customers (and matter covered by related existing licence conditions)?

Yes, we agree that the scope of the requirements should focus on billing, contracting and transferring customers.

Question 17: Do you have any information about potential costs and benefits of the roll out of the Standards of Conduct?

We do not have a full breakdown of the potential costs and impacts of the Standards of Conduct as we consider that the cost of implementation will be materially impacted by the approach to enforcement and the final drafting of the condition. We would intend in any event to conduct our dealings with customers fairly and to apply the other standards of conduct, so the costs that arise will relate largely to compliance and monitoring activities.

Question 18: Do stakeholders have views on the proposed New Standard Condition 7B set out in Appendix 4?

We think that further consideration may need to be given to the definition of "Fair". For example, blocking a transfer due to debt (in accordance with the rules) would benefit the supplier and be detrimental to the customer, but ought not to be considered unfair.

CHAPTER 6: THIRD PARTY INTERMEDIARIES

Question 19: Do stakeholders agree with the proposal for Ofgem to develop options for a single Code of Practice (the Code) for non-domestic TPIs?

Yes. We fully support and welcome this proposal to develop options for single code of practice for non-domestic TPIs. We believe that this will increase consumer confidence and provide both suppliers and customers with the reassurance that any product or service being marketed is done so in line with the agreed standard.

Question 20: Do stakeholders consider the Code should apply to all non-domestic TPIs (including that serving small business and large business)?

We believe the Code should apply to all non-domestic TPIs who market energy for a more than one supplier to both small and large businesses. This would also cover the case of 'consultant' TPIs, who work with individual customers to secure an energy contract, as well as 'broker' TPIs who provide more general comparison services across a range of suppliers.

We consider that any TPI who works solely on behalf of a single supplier should not be subject to the code, as they would be deemed to be third party representatives of the supplier and, as such, would fall within the remit of the proposed Standards of Conduct.

Question 21: What do stakeholders consider should be the status of the Code, the framework in which it should sit, and who should be responsible for monitoring and enforcing the Code?

We believe that the code should be compulsory for any TPI wishing to market energy on behalf of more than one supplier. We also agree with the proposal that there should be an obligation on suppliers, through a Licence Condition, to only engage with accredited TPIs. This would ensure that both suppliers and TPIs were motivated to achieve the same objectives.

Key to ensuring the success of this code will be agreeing who is ultimately responsible for monitoring and enforcing it.

We believe that in order to improve the practices within the TPI sector and to restore consumer trust, Ofgem would be best suited to overseeing this code as an unbiased party. However, in order to be fully effective, the level of enforcement would have to be strong enough to act as a deterrent to any TPI who engages in harmful activities within the non-domestic market. Therefore we would add that we are fully supportive of the DECC discussion paper which proposes amending Ofgem's powers to apply for new licensable activities to make it clear that these powers cover TPIs.

Question 22: Would you like to register your interest in attending the TPI working group

Yes, we would like to be involved in the TPI working group.

Question 23: What issues should Ofgem consider in the wider review of the TPI market? What are the benefits and downsides to looking across both the domestic and non-domestic market?

We believe that the focus within the TPI market should be on transparency and trust. Central to this would be clarity on the level of commission paid to the TPI. We would expect the TPI to provide information on the level of commission paid, how it has been calculated and who is paying it (including whether it is included in the unit price or is a set amount). We would expect this information to be provided by the TPI in writing to the customer at the point of sale or renewal.

We also believe that the TPI should make the customer aware of the commission structure should they work on behalf of more than one supplier.

Additionally we think it would be appropriate for the costs associated with managing the code be recovered from the TPI sector.

ScottishPower
4 January 2013