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Dear Louise,

### **The Retail Market Review – Updated proposals for businesses**

SSE welcomes the opportunity to comment on Ofgem's Non-Domestic Proposals, which form part of the Retail Market Review (RMR). SSE continues to believe that competitive pressures on suppliers will provide the best outcome for customers.

### **Expansion of SLC 7A and protections for small businesses**

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.

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 improvements, particularly around contract renewals.

As detailed in our response to Ofgem's November 2011 RMR proposals<sup>1</sup>, we continue to believe that if the scope of SLC 7A is to be widened, it should only be to include single site customers falling within the consumption levels proposed in this consultation. 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. To address this, we think any small business on a group contract should be excluded from the SLC 7A protections.

We are happy to include the contract end date and last termination date on our bills and believe that it will lead to improved customer understanding of their contract and the renewal process. We also believe this additional information will assist towards Ofgem's proposals for a fairer and more transparent market for customers, as set out in the redrafted Standards of Conduct.

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<sup>1</sup>SSE Response

[http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/SSE\\_NonDomRMR\\_cover%20letter\\_nconfidential.pdf](http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/SSE_NonDomRMR_cover%20letter_nconfidential.pdf)

SSE Cover Letter

[http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/SSE\\_NonDomRMR\\_Annex\\_nonconfidential.pdf](http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/SSE_NonDomRMR_Annex_nonconfidential.pdf)

## Objections

We are happy to support the publishing of supplier objection data on a regular basis as increased transparency about the objections process will improve trust and encourage customer engagement. If Ofgem decides to publish information from industry sources rather than information received directly from suppliers then we think it is important that this information is supported with an explanation of the source of the data as well as an explanation of the objections process, to provide clarity to customers and ensure suppliers are not being inadvertently mis-represented.

## Standards of Conduct

We continue to believe that the proposed SoC as drafted in the consultation are a fair reflection of how we run our business and are consistent with our approach as a supplier and with our Building Trust initiative. Rather than introducing legally binding SoC via an overarching licence condition, our preferred implementation would be to publish our own charter which could be issued in support of the energy contract (with all complaints assessed by reference to this charter). This would be consistent with the approach we currently take in the domestic market and would allow suppliers the greatest scope to differentiate their service level within the market, whilst offering the benefits of a clear framework for self-regulation.

As a supplier we are committed to delivering improvements to our non-domestic customers and would like to highlight the progress we have made in committing to voluntary industry standards, such as our commitment not to backbill micro-business customers beyond one year, where we are at fault. This goes beyond the voluntary standard which was drawn up by EnergyUK, which gives suppliers the option to pledge not to back-bill these customers beyond three years for electricity and four to five years for gas.

The SoC are widely drafted and as a consequence they are open to interpretation. Suppliers need legal certainty with regard to the requirements they are expected to comply with. An immediate recourse to enforcement action would not be appropriate. Although Ofgem has provided some more clarity around its proposed approach to enforcement, we would expect further increased dialogue and co-operation between Ofgem and licensees under a principles-based approach. There needs to be engagement to understand the expectations of Ofgem and to allow supplier's approach to evolve in light of that, prior to enforcement action being taken.

We would not expect a zero tolerance approach to compliance as we believe this would likely result in a more adversarial relationship and it is simply not practical from either a licensee's or Ofgem's perspective. Indeed, creating an over-burdensome regime would have unintended consequences, because uncertainty associated with the enforcement regime is likely to lead suppliers to take a very cautious view when implementing the SoC, with the increased costs of compliance ultimately being passed on to customers. Furthermore, the increased perceived regulatory risk creates a potential barrier to entry at a time when one of Ofgem's objectives is to increase competitive pressure in the market and encourage new entrants.

We will require more detail from Ofgem regarding how it will monitor on an ongoing basis suppliers implementation of the SoC. Under a principles-based approach, in the event of an enforcement investigation, it is our understanding that suppliers would have to effectively demonstrate to Ofgem that they have taken account of the SoC and have implemented them into their systems, processes and strategic decision-making. We do not believe additional reporting requirements are necessary as Ofgem is already able, both informally and formally, to request information from suppliers about any aspect of their operations under the licence.



### **Third Party Intermediaries**

We would support greater monitoring or regulation of the TPI market and continue to believe that Ofgem should mandate all TPIs to be accredited and for suppliers to only work with those who are accredited. 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 (BPMMR). If Ofgem is to introduce a Code of Practice, it should explicitly cover the standards required by the BPMMRs, to highlight the areas of conduct that are currently of the greatest concern, both to SSE and other stakeholders.

### **Conclusion**

SSE welcomes Ofgem's updated proposals for businesses, with the addition of just a few minor amendments and suggestions. We welcome Ofgem's proposal to expand the definition of SLC 7A, and the additional protections which will be available to small businesses, but would like the definition to be refined to include 'single site' customers only. We think there needs to be further dialogue between Ofgem and suppliers around the proposed SoC and in particular how the SoC would be enforced. We would welcome the opportunity to attend Ofgem's proposed working group to discuss the terms of the Code of Practice for TPIs as there is still a significant amount of work needed here to address the issues identified by Ofgem.

Please contact me if you wish to discuss any of these issues, or the points raised in the annex to this response. We would be pleased to meet Ofgem in the New Year to discuss our response in further detail.

Yours sincerely

Lois Wares  
**Regulation**

## Annex

### **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 in setting this timetable?*

We largely agree with the envisaged timetable, subject to ensuring that if any significant changes are made to the proposals, this is reflected in the implementation timetable.

We will require more clarity from Ofgem on its expectations on how suppliers should demonstrate that they have taken 'reasonable steps' to implement the SoC before we can decide if Ofgem's proposed implementation timetable is sufficient.

### **CHAPTER 2: Market Overview**

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

Of the problems Ofgem has discussed, we are particularly interested in its proposals for addressing 'rogue' TPIs and we support greater direct monitoring or regulation of the TPI market by Ofgem. We continue to believe that Ofgem should mandate all TPIs to be accredited and for suppliers to only work with those who are accredited. This would ensure that any accredited TPI undertaking fraudulent or misleading activities will face the appropriate enforcement, eventually leading to a consequential reduction of these activities in the market and increasing consumer confidence.

We would be interested in receiving feedback from Ofgem on its proposed ongoing research with business consumers and their views on the outcomes of the proposals as we believe this is a good indicator of success.

### **CHAPTER 3: Protections for small businesses**

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

We believe that the implementation of SLC 7A has led to an improved service being delivered to micro-business customers. In particular, our experience suggests that the new licence condition has resulted in improved customer understanding of their contract and the renewal process. For this reason, we welcome Ofgem's proposal to expand the definition of SLC 7A, and the enhanced protections this will bring to small business customers.

Our view is that if the scope of SLC 7A is to be widened it should be to include *single site* customers only, falling within the lines of Ofgem's proposed definition:

- Electricity consumption • 100,000 kWh per year, or
- Gas consumption • 293,000 kWh per year, or
- They employ less than 10 employees and their turnover or balance sheet is no greater than €2 million.

We think it is important to include in the definition, 'single site', as the definition as it currently sits would capture many multi-site customers who are more sophisticated in their engagement with the market. Multi-site customers are able to use their larger aggregate demand to negotiate bespoke contracts which cover all of their sites, and on potentially better terms than are available to smaller businesses, yet both would fall within the scope of the revised

definition of SLC 7A. To address this, we think any small business on a group contract should be explicitly excluded from SLC 7A.

For the electricity consumption threshold, we continue to think that using Profile Classes 3 and 4 in the definition would clearly identify the small business customers who fall within the scope of SLC 7A and this is a nationally recognised classification which can be applied by all suppliers. However, with some system changes we will be able to facilitate the segmentation of our customers under the 100,000 kWh threshold proposed by Ofgem in this consultation.

Finally, the definition of the customer set should be based on information which is readily available to a supplier, i.e. consumption patterns. Information on employee numbers and annual turnover can be difficult for a supplier to verify and as discussed in Ofgem's draft impact assessment to these proposals; this information is not always a good indicator of the relative importance of energy to the business customer. Although the use of multiple criteria can provide a richer picture of the purchasing power of a particular organisation, we are concerned that this will be complex to deploy if suppliers do not have access to the information available under criteria c) of Ofgem's proposed definition, therefore, we think that the wording of the definition should be adjusted to ensure the exclusion of larger organisations with multiple sites and suggest this should be in the form of an additional clause which sets out the conditions where a customer would not meet the criteria for protection under SLC 7A. It would be at the discretion of the supplier to use this clause where they believe a customer should fall out with the protections of SLC 7A, for example, if the supplier believes the customer is part of a larger group of companies. We believe this would be consistent with Ofgem's proposed SoC for treating customers fairly and appropriately.

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

We currently segment our business customers by Profile class rather than level of consumption. Although we do not foresee any significant difficulties in applying Ofgem's revised definition, we will provide a detailed breakdown of our assumed costs in the Information Request which has been sent separately to this consultation.

**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?*

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

We are happy to include contract end dates and the last termination date on our bills and believe that it will lead to improved customer understanding of their contract and the renewal process, which will help prevent the incidence of automatic contract rollovers. We are happy that Ofgem has recognised the different needs of business customers and is not proposing to prescribe how this information is displayed on the bill, other than to ensure it is expressed in plain English. We want to ensure that providing the last termination date on our bills will not confuse customers who have already given their notice e.g. some customers provide their notice not to rollover/ to terminate at the beginning of their contract. We would propose a term before the termination date stating that if the customer has already given notice then they do not have to take any further action.

There will be cost implications of implementing this change, which will also be affected by the proposed expansion of SLA 7A. These cost implications will be detailed in our response to the Information Request which has been sent separately to this consultation.

**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?*

We currently allow our microbusiness customers to give a notice to terminate from the beginning of their contract. We also currently accept a microbusiness customer's notice not to automatically rollover their contract as their notice to terminate so we agree with this proposal and the clarification that it will bring for the customer.

**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 SLC7A, in specific circumstances where a customer's energy usage significantly increased?*

We consider that under circumstances where a customer (signed under the terms of SLC7A) increases their energy usage to the level where a HH meter would need to be installed (as defined by Elexon under the Balancing and Settlement Code), the subsequent changes to the costs of metering and energy charges should be reflected in the customer's bill so that the supplier is not obliged to recover these costs. Ofgem's original intention to include a term in the customer's contract setting out alternative charges in the event of a meter change would allow suppliers to recover any increased costs of energy supply under this scenario but without the customer losing the protections of their contract under SLC7A.

#### **CHAPTER 4: Objections**

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

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

As per our response to the November 2011 proposals, we agree that SLC 14 is fit for purpose and therefore no further changes should be made to the licence conditions. This is subject to appropriate investigation and enforcement action being taken by Ofgem in cases where suppliers have not been complying with their obligations.

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

We are happy to support the publishing of supplier objection data on a regular basis as improved transparency will improve trust and encourage customer engagement. If Ofgem decides to publish information from industry sources rather than information received directly from suppliers then we think it is important that this information is supported with an explanation of the source of the data as well as an explanation of the objections process, to provide clarity to customers and ensure suppliers are not being inadvertently misrepresented.

#### **CHAPTER 5: Standards of Conduct**

**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 are happy that the proposed SOC have been redrafted and no longer make reference to "any Representative", as our previous concerns, highlighted in our response to the November 2011 proposals, were that we should not be held responsible for the actions of TPIs as this created too onerous a burden on suppliers, when primarily the TPI holds a relationship with the customer, not the supplier.

We continue to believe, however, that the proposed SoC are a fair reflection of how we run our business already and are consistent with our approach as a supplier and with our Building Trust programme. Rather than introducing legally binding SoC via an overarching licence condition, our preferred implementation would be to publish our own charter which could be issued in support of the energy contract (with all complaints assessed by reference to this charter). This would be consistent with the approach we currently take in the domestic market

and would allow suppliers the greatest scope to differentiate their service level within the market, whilst offering the benefits of a clear framework for self-regulation. As a supplier we are committed to delivering improvements to our non-domestic customers and would like to highlight the progress we have made in committing to voluntary industry standards, such as our commitment not to backbill micro-business customers beyond one year, where we are at fault. This goes beyond the voluntary standard which was drawn up, which gives suppliers the option to pledge not to back-bill these customers beyond three years for electricity and four to five years for gas.

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

The SoC are widely drafted and as a consequence they are open to interpretation. Suppliers need legal certainty with regard to the requirements they are expected to comply with. An immediate recourse to enforcement action would not be appropriate. Although Ofgem have provided some more clarity around its proposed approach to enforcement, we would expect further increased dialogue and co-operation between Ofgem and regulated companies licensees under a principles- based approach. There needs to be engagement to understand the expectations of Ofgem and to allow supplier's approach to evolve in light of that, prior to enforcement action being taken.

We would not expect a zero tolerance approach to compliance as we believe this would likely result in a more adversarial relationship and it is simply not practical from either a licensee's or Ofgem's perspective. Indeed, creating an over-burdensome regime would have unintended consequences, because uncertainty associated with the enforcement regime is likely to lead suppliers to take a very cautious view when implementing the SoC, with the increased costs of compliance ultimately being passed on to customers. Furthermore, the increased perceived regulatory risk creates a potential barrier to entry at a time when one of Ofgem's objectives is to increase competitive pressure in the market and encourage new entrants.

We will require more detail from Ofgem regarding how it will monitor on an ongoing basis suppliers implementation of the SoC. Under a principles-based approach, in the event of an enforcement investigation, it is our understanding that suppliers would have to effectively demonstrate to Ofgem that they have taken account of the SoC and have implemented them into their systems, processes and strategic decision-making. We do not believe additional reporting requirements are necessary as Ofgem is already able, both informally and formally, to request information from suppliers about any aspect of their operations under the licence

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

We agree that the proposed SoC should only be considered for application to small businesses. Larger customers agree individual SLAs with us as part of their contract. The proposed SoC replicate the type of protection that is offered under Consumer Protection Regulations to domestic customers. Larger businesses are generally better equipped to deal with any contractual disputes that may arise without recourse to the type of consumer protection that is appropriate for small businesses.

**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 matters covered by related existing licence conditions)?*

We agree that Ofgem's principles based approach to applying the SoC should allow suppliers to adapt the services they provide to customers without Ofgem applying specific rules or individual licence conditions which could deter innovation and differentiation between suppliers.

We have previously highlighted our concern over suppliers' activities around customer transfers and objections so we agree with Ofgem's assessment that the scope of the SoC should cover customer transfers and SLC 14. However, we do believe that Ofgem's proposal under the expansion of SLC7A, to include additional information on bills and statements around contract end dates, should help provide more clarity to business customers around their choice to switch and the relevant timeframe to do this which should cause a reduction in the problems experienced by business customers when they attempt to switch supplier. This additional information is also a means of addressing Ofgem's requirement for clearer and better billing for customers.

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

We expect to experience costs from the rollout of our "Treating Customers Fairly" Statement, as proposed under condition 7B.8 Provision and publication of information. Imbedding the SoC into our business processes is also expected to incur costs, where staff training and further reporting is required.

A detailed breakdown of our expected costs, based on the current proposals, will be included in our response to the Information Request sent separately to this consultation.

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

We have noticed a small admin error in Ofgem's "Definitions for condition". The definition for "Standards of Conduct" means one or more of sub-paragraph 4(a) to (c), not sub-paragraph 5.

## **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?*

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

We support regulation of the TPI market and think it should be compulsory for *all* suppliers to work with accredited TPIs only *or* for Ofgem to require that that all TPIs are accredited – this will ensure that the interests of both small and large business customers are protected and they can feel confident when using TPIs.

Obliging all suppliers (through an underlying licence agreement) to work only with accredited TPIs will ensure there is no damage to competition in the market as all suppliers and TPIs would be subject to the same rules, where previously there may have been incidents where TPIs who are not accredited have had the option to work with suppliers who did not request accreditation rather than suppliers who requested more onerous accreditation checks - Under this scenario, some business customers would be no better protected than they are today, and all business customers would suffer if the range of tariffs advertised by TPIs comprised a smaller sample of the market.

**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?*

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 (BPMMR). In the consultation, Ofgem states that it is continuing to seek the powers to use certain parts of the Business Protections from Misleading Marketing Regulations to allow it to take action directly against TPIs for mis-selling





to business consumers. 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. The Code of Practice (CoP) should explicitly cover the standards required by the BPMMRs, to highlight the areas of conduct that are currently of the greatest concern, both to SSE and other stakeholders.

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

Yes, SSE would like to register its interest in attending the TPI working group.