

DONG Energy response to the ‘Retail Market Review – updated proposals for businesses’, December 2012

DONG Energy is one of the leading energy groups in Northern Europe. We are headquartered in Denmark. Our business is based on procuring, producing, distributing, trading and supplying energy and related products in Northern Europe. We have approximately 6,000 employees and generated £6.2bn revenue in 2011.

In the UK, DONG Energy is one of the most active offshore wind investors and operates with a total capacity of approximately 5GW. We have five offshore wind farms in production¹ and a stake in a further two sites currently under production² with a strong pipeline of future projects.

In thermal generation, DONG Energy is operating the highly efficient CCGT³ Severn power station near Newport in South Wales which has the capacity to generate up to 824 MW of electricity.

The DONG Energy UK oil and gas exploration activities started in 2001 with the award of three exploration licences. Today the portfolio includes over 20 UK licences. DONG Energy is one of the largest acreage holders West of Shetland and we are a partner in the Laggan and Tormore gas discoveries and have a number of other West of Shetland developments in the pipeline.

In May 2012, DONG Energy established DONG Energy Sales UK⁴ to supply natural gas to the non-domestic market.

DONG Energy is pleased to respond to Ofgem’s Retail Market Review. In general, we are supportive of Ofgem’s proposals and the general direction of travel. However, we have some concerns regarding the potential inequity of the implementation of SLC7B for Standards of Conduct on suppliers, without a similar Code of Practice on the TPIs. For many smaller customers, the first contact with an energy company is via a TPI and this can often be where many problems occur. It may prove difficult for suppliers to comply with SLC7B without a similar obligation on the TPIs.

DONG Energy would support a framework where the Standards of Conduct for the supplier and the Code of Conduct for the TPI operated under similar enforcement guidelines and had the same legal status. We recognise and support that Ofgem will need to acquire new powers either under the Business Protection from Misleading Market Regulations or the Energy Bill, as recently proposed by DECC.

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?

DONG Energy supports Ofgem’s timetable and the additional clarity to the non-domestic sector that these amendments should bring.

¹ Burbo, Barrow, Gunfleet Sands 1 & 2, Walney 1 & 2 and London Array

² West of Duddon Sands, Westernmost Rough

³ Combined Cycle Gas Turbine

⁴ Previously Shell Gas Direct Ltd

Market Overview

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

Ofgem states that it hopes to see a trend of fewer contracts involving unclear contract terms, contract termination and switching problems. Whilst DONG Energy is supportive of the use of success criteria and outcomes, we believe that this criteria needs to be objectively measured. We would therefore be supportive of the proposal to use xoserve as an independent provider of information and we would expect the information relating to the transfer of information to be publicly available and transparent.

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?

In its consultation, Ofgem is proposing to expand current microbusiness definition in SLC7A to encompass small businesses as set out below:

	Micro business	New small business
Electricity	≤55,000 kWh per year	≤100,000 kWh per year
Gas	≤200,000 kWh per year	≤293,000 kWh per year
Cost	Approx £5k/ fuel	Approx £10k per fuel
Employees and Turnover	< 10 employees and ≤ €2m turnover	Unchanged

DONG Energy is supportive of the proposal to expand the definition to encompass small businesses. We also support the use of consistent definitions across all areas of Government, particularly with respect to regulation pertaining to smart metering, to remove any confusion.

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

DONG Energy does not foresee any significant costs or difficulties for DONG Energy arising as a result of the expanded SLC7A definition.

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?

DONG Energy supports the pragmatic approach taken by Ofgem to give the customers access to information regarding contract end dates and the last termination date. In DONG Energy's view, this proposal ensures sufficient transparency and time should the customer wish to change supplier. However, in the event that a customer does not wish to change supplier, it ensures that a contract may rollover offering security of supply.

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

See response to Question 5.

DONG Energy agrees with the suggestion that "last termination date" should be included along with the contract end date on invoices sent to small businesses. However we are not sure that "last termination date" is the correct phrase as there may be some confusion between this phrase and contract end date. We therefore need to agree an industry wide standard term that all suppliers will use on their invoices.

The implementation of this proposed change should not have any significant cost implications for DONG Energy. We would have to get our invoices reprinted to accommodate the two new agreed phrases and two variable fields that will be populated with the appropriate dates pulled through from our systems. As such it would require some minor IT changes to implement this proposal.

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?*

There are no significant implications for DONG Energy.

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?*

DONG Energy strongly believes that it is in the customer's interest for them to be released from an unfavourable contract. We would rather renegotiate a contract than lose the customer and in the interests of transparency and fairness, a customer should be paying appropriate charges.

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

DONG Energy does not believe that the proposed amendment to SLC7A will have a significant impact on its business. The contract wording that it previously used for micro businesses is equally suitable for businesses that fall within the proposed definition of small businesses. The proposed amendment to SLC 7A will therefore not have any impact on the number of buyers that DONG Energy will have on its small commercial business contract.

DONG Energy does have some minor comments on the drafting (see Annex A) which we think are required to clarify that the provisions apply only to small business consumer contracts and to ensure paragraph references are consistent.

Customer transfer blocking - Objections

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

In general, DONG Energy believes that the current industry processes offer sufficient and justifiable grounds for objecting to customer transfers (i.e. still in contract, outstanding debt or if the transfer as initiated by mistake), if used appropriately. However, we are conscious that these processes are not always adhered to and whilst cases can be referred to Ofgem, we would support improvements to the operational processes.

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

DONG Energy agrees that there does not need to be further changes to licence condition 14 on customer transfer blocking at this stage,

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

DONG Energy supports Ofgem's proposal to keep monitoring the level and type of supplier objections. We would also support Ofgem's proposal for the data to be passed from xoserve to Ofgem, ensuring consistency and transparency of data reporting. We would also support anonymised data being made publicly available.

Standards of Conduct (SOC)

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?*

Ofgem proposes the introduction of a binding Standards of Conduct (SOC) to require suppliers to take small business customer needs into account when billing, contracting and transferring small business customers.

In principle, DONG Energy supports Ofgem's proposal to introduce a binding SOC via a licence condition to treat small business customers fairly. However, unlike the domestic market where many customers contract directly with the energy supplier, many of our small business customers are referred to us by Third Party Intermediaries (TPIs) and, initially at least, we do not have a direct relationship with the customer. Whilst we can take all reasonable steps to pass the obligations of the proposed SOCs to the TPI, for example via specific contract provisions and regular monitoring, we strongly support the proposed Ofgem licensing of TPIs to ensure that customers are treated fairly at all stages of the supply chain. DONG Energy would like to propose some minor amendments to the drafting of Standard Condition 7B to reflect this (see Annex A).

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

DONG Energy supports the proportionate approach adopted by Ofgem in the Enforcement Document⁵ for licensees and gives some comfort regarding regulatory uncertainty and risk. However, we would urge Ofgem to set clear timeframes for the development and completion of the TPI Code of Practice whilst pursuing statutory accreditation of TPIs.

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

Notwithstanding DONG Energy's response to Questions 13 and 14, we agree that the proposed binding standards should cover small business only and there is a lack of evidence to suggest the extension of the SOC to larger customers.

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)?

DONG Energy believes that the proposed scope is appropriate.

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

The Impact Assessment does not contain any information on the potential costs of the rollout of SOC for the industry. DONG Energy's concern is less about the cost of rollout and more about the ability to implement the proposal, as the primary relationship in the initial stages is between the customer and the TPI and therefore may be outside of our control, notwithstanding back to back contracts and obligations with our contracted TPIs.

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

DONG Energy would like to propose some amendments to the drafting of Standard Condition 7B. The basic principle is that DONG Energy cannot accept liability or be expected to procure compliance of any TPI with SOC. As we understand that TPIs will have their own Code of

⁵ Enforcement Guidelines on Complaints and Investigations, June 2012

<http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>

Practice, we do not believe that this will adversely affect the treatment of small business consumers.

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?*

Ofgem is proposing the development and implementation of a common Code of Practice for non-domestic TPIs. However, the areas under consideration for inclusion within such a Code of Practice are not clear, and it will be the responsibility of an industry working group (convened by Ofgem) to identify the elements that best contribute to consumer trust.

DONG Energy is wholly supportive of the proposal to implement a common Code of Practice for non-domestic TPIs and we would embrace the idea of using only accredited TPIs. However, we strongly believe that the Standards of Conduct proposals (discussed in questions 13-18) need to be aligned with the proposed Code of Practice. TPIs have the initial customer relationship until the customer is handed over to the supplier. Without a consistent approach to contracting and transferring customers, it is unlikely that the objective to treat small business customers fairly will be met.

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

In general, larger customers do not experience the same issues faced by smaller customers when engaging with TPIs. To this end, we believe the Code of Practice should apply only to non-domestic TPIs serving small businesses.

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?*

Ofgem is seeking powers to use certain parts of the Business Protections from Misleading Marketing Regulations to allow them to take action directly against TPIs for mis-selling to business customers. In addition, we support the view proposed by DECC in its recent discussion document⁶ to use the Energy Bill to amend Ofgem's existing powers to apply for new licensable activities to make it expressly clear that they cover TPIs.

DONG Energy strongly supports Ofgem seeking powers to enable it to take direct action against TPIs.

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

⁶ Ensuring a Better Deal for Energy Consumers, DECC discussion document, November 2011
<http://www.decc.gov.uk/assets/decc/11/consultation/better-deal-energy-consumers/6996-better-deal-energy-consumers.pdf>

Yes, DONG Energy would be keen to attend a working group. We strongly believe that it needs to be focused, clear, transparent and objective bearing in mind the limited resources of small suppliers. We would also support a time limited process to ensure that a final Code of Practice can be agreed by Summer 2013.

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?

In our experience, the TPIs who work with the non-domestic market don't normally work with the domestic market. Whilst there may be common clauses within the Code of Practice, we would prefer the process and the issues to be kept separate.

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