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Dear Ms van Rensburg

**The Retail Market Review: Updated Proposals for Businesses**

I am pleased to attach Energy UK's response to Ofgem's consultation on the Retail Market Review: Updated Proposals for Businesses. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2962 or [alun.rees@energy-uk.org.uk](mailto:alun.rees@energy-uk.org.uk)

Yours sincerely

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# Ofgem's Retail Market Review: Updated Domestic Proposals

## Energy UK response

21 December 2012

### 1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. Energy UK has over 70 companies as members that together cover the broad range of energy providers and supplies and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.
- 1.2. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for both residential and non-domestic consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer protections, trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.
- 1.3. These principles underpin Energy UK's response to Ofgem's Retail Market Review: Updated proposals for businesses. This is a high level industry position; our members may hold different views on individual issues. We look forward to working with Ofgem over the coming months as they finalise these important protections.

### 2. Executive Summary

- 2.1. Energy UK's members are committed to delivering improvements for Non-Domestic customers. Within this group of customers, Energy UK's role as a trade association relates to micro-businesses. In this regard, we would highlight the progress that we have made in drawing up voluntary standards for back-billing micro-business customers in conjunction with ICOSS and stakeholders. The standards, which any supplier can adopt and several of whom have gone further, include a pledge not to back-bill these customers beyond three years for electricity and 4/5 years for gas, where the supplier is at fault.
- 2.2. Energy UK wholeheartedly supports the main aims of Ofgem's non-domestic proposals, which is to ensure that business customers are able to get the best deal from the market and do not have to spend unnecessary time managing their energy accounts.
- 2.3. Please see a summary of Energy UK's views on Ofgem's specific proposals below:
  - a) The definition of "Micro Business Consumers" in respect of the proposed expansion of SLC 7A needs to be targeted at appropriate organisations and practical to implement. Our members' views differ on the right balance to strike between these two important considerations. However, Energy UK believes that larger organisations with multiple sites,

some of which (the sites) may fall within the criteria individually, should not be encompassed by the definition. We therefore suggest that the wording is adjusted to make such exclusions clear.

- b) Energy UK agrees with Ofgem's proposal to mandate contract end dates on bills for consumers covered by SLC 7A, and that the last termination date should be included alongside. However, the level, of support amongst members varies. Should Ofgem proceed on this basis, reasonable implementation timescales will be required.
- c) It is not appropriate for Energy UK to comment on the terms on which contracts may be terminated. Our members will provide individual responses.
- d) Energy UK agrees that, at this stage, it is not necessary to make further changes to the licence conditions with respect to the objections process. However, we recognise that industry processes could be improved and the evidence shows that suppliers are willing to be proactive in this area.
- e) Energy UK believes that the Standards of Conduct (SOCs) could be the most significant reform of the whole RMR package in terms of the benefits that they could bring to consumers, both by improving customer service and promoting trust in the market. We would support their introduction, provided that Ofgem establishes an appropriate enforcement approach.
- f) Energy UK considers that it would, overall, be preferable if Ofgem was able to regulate Third-Party Intermediaries (TPI)s directly. Should it not do so, Energy UK agrees with Ofgem's proposal to develop a single Code of Practice for non-domestic TPIs. Energy UK would like to register interest in participating in the TPI working group.

### **3. Expansion of SLC 7A to a new small business definition**

- 3.1. Ofgem is proposing to expand SLC 7A protections to businesses that meet one or more of the following criteria:
  - a) an annual consumption of electricity of not more than 100,000 kWh;
  - b) an annual consumption of gas of not more than 293,000 kWh; or
  - c) fewer than 10 employees and an annual turnover or annual balance sheet total not exceeding 2 million Euros (this measure would remain unchanged).
- 3.2. Energy UK recognises that there is no easy answer to what the appropriate definition of a small business should be when considering the expansion of these protections. The use of multiple criteria can provide a richer picture of the purchasing power of a particular organisation, but can be complex to deploy in practice. Ofgem therefore needs to strike a balance between simplicity and targeting.
- 3.3. Energy UK's members have different views on how to best strike that balance. However, they do agree that the new definition should not encompass larger companies with smaller sites and public sector organisations who purchase their energy centrally, for whom these protections will not be appropriate owing to their purchasing power. We would therefore urge Ofgem to adjust the wording accordingly. This could also be done by adding an additional clause that sets out the conditions where a customer would not meet the criteria. We would also point out that, if multiple criteria are used, the protections may be better targeted if all the criteria were necessary for the protections to apply (i.e. by changing the "or" to "and"). We believe that there may be a case for revisiting this suggestion, and if so it would need to be done via consultation.

### **4. Information on bills**

- 4.1. Energy UK supports the provision of clearer and simpler information via supplier communications. We believe that this is important to help customers to effectively engage with their energy usage, their product choices, their supplier and the market as a whole.
- 4.2. Energy UK agrees with Ofgem's proposal to mandate contract end dates on bills for consumers covered by SLC 7A, and that the last termination date, where one applies to the product, should be included alongside. However, the level of support amongst members varies. Should Ofgem proceed on this basis, reasonable implementation timescales will be required.

- 4.3. We would also urge Ofgem to be mindful that adding regulatory requirements for information on bills and other communications risks exacerbating the perception that they are complicated and difficult to understand. In this regard, we would reiterate our general view that suppliers are best placed to define the wording, design and format of their communications.

## **5. Objections**

- 5.1. Energy UK supports Ofgem in taking action where the objections procedure is being used illegitimately, so as to encourage initial engagement, improve the switching experience and increase trust in the industry. Energy UK also supports efforts to improve the quality of information when providing reasons for objections. However, in line with the Energy Retail Association (ERA)'s response to the February consultation, Energy UK believes that the publication of objections information could cause unjust and misleading reputational damage to companies and therefore agrees with Ofgem that no further changes to the licence conditions are necessary at this stage.
- 5.2. Energy UK also agrees that industry processes could be improved to alleviate the current issues with the objections process. We hope that Ofgem agrees that the evidence shows that the industry is willing to be proactive in this area. For example, as agreed with Ofgem, energy suppliers, via the MRA and SPAA are taking forwards a review of the Debt Assignment Protocol process flows (MAP 13) with a view to streamlining and improving the customer experience.

## **6. Standards of Conduct**

- 6.1. Energy UK believes that the Standards of Conduct (SOCs) could be the most significant reform of the whole RMR package in terms of the benefits that they could bring to microbusiness consumers, both by improving customer service and promoting trust in the market.
- 6.2. Energy UK applauds Ofgem for recognising that the effect of the SOCs partly depends on how they are enforced, and for its commitment to establish (and consult on) its approach prior to introducing the SOCs into the supply licence. After assessing the relative merits of different enforcement options, we conclude that the appropriate criteria against which compliance with the SOCs should be measured are:
  - a) Whether a reasonable person would adjudge a supplier to have been intent on complying with the SOCs; and
  - b) Whether the supplier took "reasonable steps" to implement them.
- 6.3. Energy UK also remains of the view that two-stage enforcement would be the right process. However, we recognise that its marginal benefits may diminish if Ofgem's discretion in interpretation is reduced. Therefore, Ofgem would be more justified in not implementing the former (two-stage enforcement) if it relinquishes control over the latter (interpretative discretion).
- 6.4. Energy UK also strongly recommends that:
  - a) The way in which the SOCs are enforced is established as a formal written policy to which Ofgem must adhere, and that the enforcement regime and SOCs are established in parallel, with the commencement date absolutely clear;
  - b) Ofgem makes some adjustments to give suppliers reasonable time for implementation;
  - c) Ofgem is cautious in the way it measures success of the SOCs, given the broad range of factors that contribute to trust in the energy market; and
  - d) Ofgem and suppliers work together in communicating the SOCs to ensure that their messages are clear, positive and complementary.
- 6.5. For further detailed comments on the Standards of Conduct, please see our response to the Updated Domestic Proposals, submitted on 21 December 2012, which applies equally to the non-domestic proposals. In terms of additional points, we would strongly urge Ofgem to clarify its policy intent where it states that the non-domestic SOCs apply to "billing, contracts and change of supply". There is a significant element of subjectivity in this terminology, and depending on interpretation could elicit quite different responses from regulated companies.

## 7. Third Party Intermediaries

- 7.1. Energy UK agrees that, should it not regulate TPIs directly, Ofgem should develop options for a single Code of Practice (the code) for non-domestic TPIs. TPIs are an important part of the market; we believe that a single code would help ensure that all participants' practices are both fair and transparent, and that it builds consumers' trust in them.
- 7.2. With respect to the status of the code, the framework in which it would sit, and who should be responsible for monitoring and enforcement, we believe that the answers to these questions should be informed by the following two principles:
  - a) Parties responsible for regulating behaviour of TPIs must be able to ensure compliance; and
  - b) Small and micro-business customers should receive comparable protections, irrespective of which TPI they use.
- 7.3. If a single code was created, Ofgem may be able to ensure compliance by providing, through a licence condition, that suppliers are only able to use accredited TPIs. Most of our members consider that this would be a sensible way forward, since it would help meet the principles above. However, one of our members suggests that imposing such a requirement on suppliers would be unnecessary, because the Standards of Conduct would ensure that suppliers only use TPIs whose practices are of an appropriate standard.
- 7.4. Some of our members consider that Ofgem should be responsible for enforcing and monitoring the code, whereas others would prefer an independent panel, such as is seen under the Trading Standards model. However, all agree on the key principle that the oversight body should be independent and impartial.
- 7.5. Energy UK considers that it would, overall, be preferable if Ofgem was able to regulate TPIs directly. However, we recognise that Ofgem would first need to understand more about the market, including domestic TPIs, and the options available to them. Energy UK therefore warmly welcomes Ofgem's decision to launch a wider, parallel review of the regulatory framework for TPIs more generally. We believe that this is the right thing to do, particularly because Energy UK, like Ofgem, expects the importance of TPIs as an interface between consumers and the energy companies to grow. In the meantime, we support Ofgem's ongoing efforts to enforce the Business Protection from Misleading Marketing Regulations (BPMMSs), where appropriate.