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1 May 2013  
Sent by email to [rmr@ofgem.gov.uk](mailto:rmr@ofgem.gov.uk)

Dear Jonathon,

**Corona Energy response to Ofgem's consultation on "The Retail Market Review – Final non-domestic proposals"**

Thank you for providing the opportunity for Corona Energy to respond to the final non-domestic proposals under Ofgem's Retail Market Review.

Corona Energy (CE) is a Shipper and Supplier of natural gas to the non-domestic market. Our customers include small businesses as well as larger industrial and multi-site customers. Corona Energy are also a Supplier to a large part of the public sector.

Outline of our response is divided into 2 parts:-

Part 1 - Corona Energy's response to the final non-domestic proposals under Ofgem's RMR  
Part 2 - Comments made in our previous letter dated 4 January 2013 added in the Appendixes which we believe should be reiterated.

**Part 1-**  
**The state of the non-domestic market**

It should be noted, that the non-domestic gas market is one if not **the** most competitive portion of British energy markets. High levels of customer mobility between Suppliers and lower retail margins are clear evidence of this.

Relative to domestic customers, non-domestic customers are more active in monitoring the competitiveness of all of their business costs including energy, are more informed about the energy market, and are better placed to negotiate competitive terms. The use of brokers to inform customers about the market is a factor that contributes to these market characteristics.

It is CE's view that these market characteristics show that the non-domestic market is working and therefore does not require significant alteration. This should translate into a regulatory approach which only intervenes with the market when there is a clear and compelling justification for doing so.

Any deviation from such an approach will increase the risk and costs associated with operating as a Supplier in the non-domestic GB gas. While suppliers that benefit from large domestic customer bases that are largely price inelastic can pass through such costs to that domestic customer base, smaller entities without a large domestic portfolio will be either driven from the market or deterred from entering the market in the first place.

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Like in any market there are some players that do not always act properly, meaning that some customers on occasion may suffer some detriment. It is our view that in such circumstances non-domestic customers are likely to switch supplier, seek legal recourse and where a systemic issue is identified, Ofgem can act by enforcing current regulation.

CE also appreciates that there are certain customers in the non-domestic market that behave like domestic consumers and therefore may require some additional protections such as recourse to the Ombudsman. It is important that these additional protections remain appropriate to the customer group to which they apply.

Similarly, Ofgem must continue to properly differentiate between domestic and non-domestic customers. The main players in the domestic market all benefit, to some extent, from price inelastic domestic customer bases and very large market shares in those regions within which they operated in advance of liberalisation and in which they continue to be dominant.

This dominance, coupled with the fact that domestic customers are not as used to budgeting and dealing with contracts and suppliers as businesses, means that domestic customers require a greater level of regulatory protection than non-domestic customers. Ofgem must be aware of this at all time, when seeking to introduce new regulations into the non-domestic market.

It is our view that some of the proposals outlined in the RMR are disproportionate measures. We feel that they will place significant cost on market participants and introduce significant uncertainty without bringing any commensurate benefit to business consumers. It should be noted that consumers will ultimately have to pay for the costs to industry associated with implementing the proposals. This includes the cost of creating a significant compliance framework that will be required to document and record vast tracts of Suppliers' activities to show adherence to the Standards of Conduct simply to spell out for compliance sake many of the things that Suppliers are already doing.

Given that Ofgem has a legal duty to act proportionately we would like to take this final opportunity to call on Ofgem to reconsider some of its RMR proposals.

### **Revised definition of micro-business**

As stated above, CE believes that there may be a case for very small businesses being offered some further information and/or prompts relating to their energy contracts. It must be noted that there are costs related to these communications. In light of these costs, which will ultimately have to be borne by gas customers, these additional measures and requirements must only apply to those customers who require them.

The expansion to the microbusiness definition proposed, amounts to an expansion in the gas consumption component of the microbusiness definition of 50%. This is a significant expansion. Operationally, CE feels that it will be able to deal with the expanded definition. However, we are very concerned that this definition may drift further in the future.

We are also concerned that the type of regulation that has been implemented in the domestic sector is increasingly being applied to the non-domestic sector despite the fact that customers are significantly better placed to engage with energy companies on equal terms.



### **Access to redress**

We have little to add to our previous comments in relation to this section and refer you to Appendix A for CE comments and our previous responses.

### **Contract rollovers and extensions**

Continuity of gas and electricity supply is critical to the well-being of many business customers. Given the importance of energy supply it has become common practice for contracts to be drafted to allow for a contract's continuance beyond the initial fixed period of the contract – commonly 12 months.

If triggered, the new contracted period will be for a fixed period – typically 12 months. The commencement of this new contracted period allows the customer's gas Shipper to purchase most of the gas that will be required by this customer over the second fixed period. Given that it is more cost effective and lower risk for Shippers to purchase gas over a longer period it means that the Shipper and Supplier are able to offer the customer more competitive prices. This means that the certainty that the second rollover period provides is beneficial for customers, shippers and suppliers in providing certainty.

In light of the importance of a continual gas supply for all businesses across the country, it is not possible currently for a customer's gas supply to be discontinued after the fixed period of their contract. This means that if a contract was not capable of running for a further period beyond its initial phase, a customer would have to be charged for gas consumed through other means. This means relying on a deemed contract.

Under a deemed contract, or any similar arrangement, there would not be certainty over the period that a customer was to be under contract with a supplier. Such a lack of certainty means that the Shipper does not have the same degree of certainty to purchase gas in advance. The need to purchase gas over shorter timeframes, coupled with the unpredictability of the gas market require a risk premium to be built into deemed contracts. It is likely therefore that deemed prices are always going to be higher than contracted prices.

There is also a significant increase in bad debt risk for customers with a deemed contract. This is because Suppliers do not necessarily have all the correct details for customers on deemed contracts, nor do customers on deemed contracts necessarily stay with a Supplier for a long period. All these factors result in deemed contract prices which are higher than contracted prices.

For the reasons set out above any abolition of so-called "contract rollovers" would have the impact of increasing customer bills. This would therefore result in customer detriment.

It is CE's view that the current situation is preferable. Currently, Suppliers give customers full notice of the terms of extended period of their contract under Licence Condition 7A. This means that the customer has full notice and visibility of the terms under which they are contracting. It is our view that many customers appreciate the option to re-contract on similar terms. It is also our view that customers appreciate the security provided by the 12 month extension period.

Any uncertainty introduced by rules altering the ability of suppliers to offer contract extensions will remove an option that many customers appreciate having and would have the impact of customers going on to more expensive deemed contracts. Such contracts are more expensive as the Shipper

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will face a degree of risk and higher costs associated with the purchase of gas on the customer's behalf.

We believe there is a significant risk that as some customers are rolled due to lack of interaction with their Supplier these same customers will be slow in dealing with deemed contracts and will consequently end up with higher energy bills in aggregate due to the higher prices associated with deemed contracts even if those contracts are shorter in time than fixed term 12 month contracts.

CE believes any of analysis of this situation needs to consider carefully the impact on total energy bills before any changes can be contemplated.

CE notes OFGEMs intention to issue a call for evidence shortly.

### **Contract End Dates and Cancellation date on bills**

We would also like to make the following comment about the wording of the licence condition relating to these measures.

It is our view from detailed conversations with several Ofgem representatives that it is Ofgem's intention with these proposals to place these dates on communications that the customer is receiving regularly. In the case of CE, the relevant document that the customer receives is referred to as an invoice and the customer receives the invoice monthly as a request for payment. It is our view that it was **not** Ofgem's intention to capture communications that the customer receives only occasionally in addition to the monthly bill or invoice.

The wording of the licence condition as currently drafted requires the dates in question to be placed on "statements of account". CE sends a document titled "statement of account" to the customer when we are pursuing customers for late payment. When we send such a "statement of account" the customer continues to receive their regular monthly invoices. It has become clear from conversations with Ofgem that it is not Ofgem's intention to make us include the dates on this document sent on an ad-hoc basis as well as on the invoice which is sent more regularly.

The wording of the licence condition must change to reflect Ofgem's intention. If the wording remains unaltered it will potentially require CE to invest double the amount of time and money in amending its systems to place the dates on two different sets of documents.

It is not clear to CE what the purpose of 7A.10B(c) in the draft licence condition. It seems to us that there is little purpose in placing a latest notice date in relation to a contract that cannot be extended anyway. If the contract cannot be extended it will expire by the effluxion of time anyway and therefore serving any kind of notice to terminate will be completely superfluous. CE would be grateful for some clarification over this.

Please refer to Appendix B for some of CE's previous comments and our previous responses. CE is still concerned that there is no clarity over which end date should be used where there are consecutive contracts agreed between a Supplier and a customer. It seems to us that dates should relate to the last time a customer can terminate or transfer away even if this relates to a customer contract that has yet to commence operation.

CE is currently working with its IT providers to ascertain the costs associated with either scenario but has not yet reached a view as to which is preferable from a cost of implementation position



## **Standards of Conduct**

CE is still concerned about these proposals and refer's OFGEM to its previous comments set out in Appendix C.

The use of concepts such as "fair", "transparent" and "all reasonable steps" are very subjective and open to interpretation. What is considered "fair" by a Supplier, who understands the vagaries of the deregulated market place, is likely to be very different to a customer. Indeed it is likely any two customers will have differing opinions of these matters.

Suppliers develop processes that work for all their customers. Customers view only their individual positions. By OFGEM's own admission enforcement is likely to focus on systemic failings rather than individual complaints. The majority of complaints will therefore likely to go to the Ombudsman.

CE believes that complaints will increase without any significant benefit to customers because there will be more individual complaints despite there being no evidence of systemic failures. Suppliers will need to deal with these complaints which will increase costs and ultimately prices. In addition there will be a large increase in monitoring and training costs to ensure Suppliers can demonstrate working in accordance with the Standards of Conduct.

CE believes it would be preferable to target specific activities that are causing customers concerns rather than introduce subjective concepts that are open to interpretation.

## **Objections to customer transfer**

Please refer to Appendix D for CE comments.

## **Third Party Intermediaries**

Please refer to Appendix E for CE comments.

## **Conclusion**

Across all of the proposals we ask for a proportionate approach to implementation and enforcement. This means that the regulator and Supplier should be able to work collaboratively for the good of the consumer.

If you have any questions on this response please contact [peter.olsen@coronaenergy.co.uk](mailto:peter.olsen@coronaenergy.co.uk).

Yours sincerely,

Peter Olsen<sup>1</sup>  
Head of Regulatory Affairs  
Corona Energy

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<sup>1</sup> Note that as this response is being submitted electronically the signature will not appear on the document but please consider the document to be signed by Peter Olsen.



## Part 2- Appendix

### **Appendix A - Access to redress**

CE does not have a high number of cases advance to Ombudsman. CE has a good record of the Ombudsman agreeing with the way we have handled disputes. We do have concerns about an increase in the number of Ombudsman disputes that we may have to deal with as a result of any expanded jurisdiction for the Ombudsman. This will mean that companies that have a better grasp of their legal rights and access to legal advice and representation will be benefitting from a method of dispute resolution which is designed for companies and individuals who do not have such things in place.

### **Appendix B - Contract End Dates and Cancellation date on bills**

While this proposal may seem simple there are a number of scenarios that need to be catered for. For example, confusion will be created where some customers have agreed two contracts to run consecutively. The contract end date may well be largely irrelevant to such a customer given that at the end of the contract they will enter into a second contract which they will be bound to adhere to under English contract law. Such confusion will drive customer contacts that are costly for CE to deal with and reduce customer satisfaction.

### **Appendix C - Standards of Conduct**

CE notes that Ofgem has proposed to introduce the standards of conduct for “small businesses” and only for matters relating to billing, contracting, and customer transfers.

CE thinks that such an approach is duplicative of other pre-existing regulatory and legal provisions and is therefore unnecessary.

Billing and contracting activities are already comprehensively covered by SLC7A and statutory and common law provisions of contract law. Customer transfers are comprehensively covered by SLC14 and SLC14A. Ultimately, if a Supplier is in breach of these licence conditions Ofgem already has scope to take enforcement actions. Similarly, if a Supplier is in breach of contract a business customer is likely to seek redress under the express and implied terms of the contract.

The SOCs introduce a very significant degree of uncertainty into the market. While certain larger players can absorb and deal with such a risk this is not possible for non-domestic operators without major domestic portfolios or such large balance sheets. Such uncertainty is so significant that it will act as deterrent to new entrants to the market – an outcome contrary to the policy goals of Government and Ofgem.

Because each of the areas being addressed by the Standards of Conduct is already regulated by other legal and regulatory provisions, the benefit of the measures to the consumer will not outweigh the significant cost and risk outlined above. In a proportionately regulated market the proposals would not be introduced.

### **Appendix D - Objections to customer transfer**

Objections have been a consistent problem for the industry for a number of years. As Government and the regulator rightfully have sought to build a vibrant and competitive market the objections



process, and the abuse of that process, has been a significant barrier to Suppliers winning new customers.

It is vital that Ofgem continues to do its utmost to pursue enforcement actions against any entity abusing the objections process.

#### **Appendix E - Third Party Intermediaries**

CE would also like to offer the following thoughts on how regulation of TPIs may interact with Supplier's licences in the future. It may be that over time TPI regulation develops in such a way that it would no longer be appropriate to apply certain aspects of the supply licence to contracts when a broker is acting as agent, given the expertise they bring with them and that many provisions in TPI and energy suppliers' regulation may end up being duplicative. This is, however, a consideration that is only relevant over the medium term which must await knowledge of the detail of any TPI regulation.