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**The Renewable Energy Company Ltd (Ecotricity) Response to the  
Retail market Review, Final Non-Domestic Proposals**

Dear RMR Team,

**Introduction**

Ecotricity is an independent renewable supplier and generator with over 70,000 gas and electricity customers, around 7,000 of which are non-domestic. As an independent supplier the RMR is of significant relevance to us. We support any initiative that will make the energy market more transparent and accessible to consumers, including businesses. We welcome the step up in work with respect to regulating third party intermediaries and the continued monitoring of the objections process abuse. However, we remain concerned about potential regulatory risks with respect to the introduction of the Standards of Conduct to the Licence Conditions and the price risk with respect to Standard Licence Condition (SLC) 7A.3.

**Micro-business protections under SLC 7A: Preventing Termination of Micro-business contracts**

We are very disappointed that Ofgem did not decide to amend SLC 7A.3 to allow suppliers to include a term enabling them to terminate a fixed contract in the event that a micro-business customer grows to the extent that it needs a half hourly meter. The fact that this may be a relatively rare occurrence is not a reason to prevent suppliers from protecting themselves from potentially high cost where it does occur. We request that Ofgem reconsider this.



We would strongly advocate that Ofgem also reconsider and clarify its position on SLC 7A.3 overall. Suppliers must be allowed to increase the price of power where a customer's consumption varies significantly from that given at sign up. When suppliers offer fixed term contracts, we purchase the amount of power that we estimate the customer will use for the period of the contract in advance. The Estimated Annual Consumption (EAC) is based on the customer's historic consumption. This enables us to offer a fixed price to the customer without putting ourselves at risk. If the customer's consumption is significantly higher we will need to purchase additional power to supply it. This power will typically be more expensive and for this reason we must have the ability to increase our prices to cover this.

Ofgem states that suppliers will be allowed to agree mutual contract variations with customers. It is not clear whether this would include a situation where, prior to the start of the contract, suppliers and customers explicitly agree that, in the event of a significant deviation from the stated EAC, the supplier will be able to increase the price. If this is not allowed; or if it is only allowed where the higher price must also be agreed at the start; then micro-business customers will suffer. Faced with this increased price risk and no flexibility to respond to it; many suppliers may take the decision not to offer fixed contracts to micro-business customers. Alternatively, they may only offer them at very high prices. This clause may therefore result in an overall decline in the fixed contract market for micro-business. Note that the inability to cover increased costs by adjusting the price; could result in significant losses for suppliers. This is especially risky for independent suppliers, who face additional liabilities in terms of trading collateral.

It should also be noted that it is not just instances of fast growth that might lead to a customer having a significantly higher consumption than the EAC given at sign up: metering errors can also cause this. We are particularly concerned about instances where an error in a meter means the existence of a 10X multiplier is not recorded. In such a situation the customer would have used, and would continue to use, ten times their recorded consumption. The metering error may have been in existence for several years prior to the customer switching to their current supplier but only discovered on meter change half way through their fixed contract. With the roll-out of smart metering we expect discoveries such as this to substantially increase.

### **Micro-business protections under Standard Licence Condition 7A: Information on Bills**

Ecotricity appreciates the clarifications that Ofgem has made since the October 2012 consultation. We welcome the confirmation that the Micro-business definition applies to customers rather than sites and that the requirement to put contract end dates on micro-business customer bills will only apply to fixed contracts.



We would advise a further clarification on the new licence condition 7A 10.B. In reference to the requirement to put a last termination date on the bill the draft condition states:

*"where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it does not have the ability to extend that contract for a further fixed term period:*

- (i) the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and*

At the end of a contract which is not automatically extended, the customer would be on a rolling tariff which can be left at any time. It is therefore not clear what situations this clause would apply to. In email correspondence Jonathan Lines at Ofgem clarified that this applies where a supplier requires notice despite not having an automatic rollover and that it refers only to notice with respect to the contract, not with respect to supplier transfers. This must be made clear in the drafting.

### **Reducing Barriers to Switching and the Objections Process**

As stated in our October response, Ecotricity believes that current regulations covering transfers are sufficient. We therefore welcome Ofgem's decision not to change any regulation, but to continue to monitor compliance with existing requirements. We also welcome the decision not to rely on industry data and we are pleased that you have taken on board our concerns with regard to the inadequacy of Xoserve and ECOES data.

We would like to reiterate the importance of ensuring that any presentation of objections figures does not unfairly represent independent suppliers. As noted in our previous response, a small number of valid objections from an independent supplier might appear high as a percentage of its total customer base. In particular, a valid objection to a single customer with several hundred meters would substantially increase the number of objections registered by an independent supplier and result in a distorted view of its practices. Therefore, it is important to consider how such a misleading impression could be avoided when implementing any reporting requirement.

### **Standards of Conduct**

As outlined in our previous response and our response to the Final RMR Domestic Proposals we already apply the Standards of Conduct (SOC) and support the principles behind them. We pride ourselves on our customer service and ensure that customers are treated with honesty and respect. Our written information is clear, simple and accurate. When we say we will call back, we do.

Nonetheless, we remain concerned about the regulatory risk that including the SOC in the licence conditions poses. Although Ofgem will be providing guidance and has outlined the factors it will take into account when investigating a potential breach; there remain many uncertainties and much is left to interpretation.



For example, in the draft guidance Ofgem states that an example of "honesty" and "transparency" would be giving all relevant information in response to a customer's query, even where this does not favour the supplier. Whilst it is clear that deliberately misleading customers by withholding information would be non-compliant, there may be situations where information has not been deliberately withheld, but simply not considered relevant. The view of what is relevant to a particular query may vary between individual customers, supplier representatives and the Regulator. The fear of being found in breach of the SOC could lead suppliers to give too much information, which would simply lead to customer confusion.

The general risk of being "guilty until proven innocent" with respect to the SOC's could lead to a removal of discretion and flexibility from customer facing staff, which would result in an overall decline in customer service.

In addition, proving compliance will in itself be a high cost, particularly for independent suppliers. Although Ofgem states that it would take account of company size in relation to audit trails and documentation, it is not clear how much documentation Ofgem would expect. We will inevitably need to increase our paperwork, not in order to serve customers better; but merely to prove we already serve our customers well.

We believe that there are more effective ways of ensuring suppliers treat their customers fairly. This could be achieved through the implementation of a "best service table" showing information such as customer complaint levels, as reported to Ofgem. Perhaps even the setting of limits, in terms of complaints per thousand customers that would be acceptable under the proposed SOC.

We support Ofgem's decision to narrow the scope of the SOC, with its focus only on micro-business customers in relation to billing, contracting and transfers. This reduces the scope risk to overarching standards to all customers in all communications. As noted above, however, the risk would still be significant.

### **Third Party Intermediaries (TPIs)**

We welcome Ofgem's increased efforts to regulate TPIs and the multi-pronged approach. We strongly support Ofgem's efforts to gain powers under the Business Protections from Misleading Marketing Regulations to directly regulate TPIs. Under indirect regulation, suppliers have a high regulatory burden but do not have the means to control the behaviour of TPI agents in any meaningful sense. We support the introduction of a code of practice for TPIs, but do not believe that this alone will be sufficient to resolve the problem of mis-selling.

## Conclusion

In conclusion we welcome the clarification of the proposed amendments to SLC 7A, but believe that this needs to be further clarified in relation to last termination dates where there is no rollover. We support Ofgem's decision not to increase regulations around customer transfers and its continuing monitoring of the market.

We have strong concerns about the effect of SLC 7A and would strongly advise Ofgem to review it and consider the potential risk to suppliers and deterioration of fixed contracts for micro-businesses. We also remain concerned about the regulatory risk of the SOC; the cost of showing compliance; and the potential unintended consequence of a reduction in customer service standards.

We welcome any further contact in response to this letter. Please contact Emma Cook on 01453 769301 or [emma.cook@ecotricity.co.uk](mailto:emma.cook@ecotricity.co.uk).

Yours sincerely,



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