

Louise van Rensburg
Ofgem
9 Millbank
London
SW1P 3GE

Sent via e-mail: rmr@ofgem.gov.uk

1 May 2013

The Retail Market Review – Final non-domestic proposals

Dear Ms van Rensburg,

I am pleased to attach Energy UK's response to Ofgem's Retail Market Review – Final non-domestic proposals consultation. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2963 or daisy.cross@energy-uk.org.uk

Yours sincerely

Daisy Cross
Policy and External Relations Executive

The Retail Market Review – Final non-domestic proposals

Energy UK response

1 May 2013

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 consumers. We are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and independent 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 high-level principles underpin Energy UK's response to Ofgem's Retail Market Review – Final non-domestic proposals. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

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: 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. However, our members feel that the timescales for making complex system and process changes are unrealistic, and we request that Ofgem considers allowing more time for the implementation of the amended supply licence conditions. Our members also have concerns around the drafting

of some of the licence conditions relating to Standards of Conduct, which are detailed in the body of this response.

3. Standards of Conduct

3.1. In its previous consultation Energy UK concluded that the appropriate criteria against which compliance with the Standards of Conduct (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.

Energy UK is disappointed that Ofgem has not used these criteria, nor explained why it has dismissed them as options. In general, we expect to see a consideration of the relative merits of each option within the Impact Assessment, which we cannot find in this case.

3.2. Energy UK believes, considering a positive outcome for Ofgem would be suppliers embedding the principles of the SOCs into their business processes and management reporting, that the implementation timescale for the SOCs is unrealistic for it to be beneficial. Energy UK calls for the standards to be implemented alongside the extension of the micro business definition (March 2014), to take account of implementation timescales for other policies, multiple internal system changes and parallel process reviews.

3.3. Our members would appreciate clarification around how micro businesses will be defined (i.e. clarification of scope) before the non-domestic SOCs are introduced into the supply licence.

3.4. Our members have concerns around the wording of the Proposed Guidance for Standards of Conduct (Appendix 5). Certain elements of the drafting lack clarity and make it difficult for suppliers to be certain that their business practices are compliant with the SOCs. For example, terms such as ‘taste and decency’ and ‘aggressive and rude tone’ can be subjective, open to interpretation and could either lead to an excessively cautious approach to SOCs from suppliers, or expose them to regulatory risk.

3.5. In its recent open letter on non-domestic debt and disconnection¹ Ofgem clarified its view that non-domestic customers do not require the same protections as domestic customers, and that the nature of the detriment in non-domestic cases is different to that of domestic customers as equivalent issues of vulnerability and fuel poverty do not exist. However, in its definition of ‘appropriate’ in the Proposed Guidance Ofgem refers to vulnerability in non-domestic consumers. While there is clear merit in protecting vulnerable domestic customers, the very concept of a vulnerable business makes little sense. In view of this, Energy UK calls for Ofgem to develop separate guidance for Standards of Conduct which relate specifically to non-domestic customers.

¹ <http://www.ofgem.gov.uk/Sustainability/Cp/Ewbc/Documents1/Non-dom%20disconnection%20openletter%2020-12-2012.pdf>

- 3.6. Energy UK welcomes Ofgem's inclusion of a staggered enforcement process, although our members would prefer an explicit staged approach to be used. Energy UK would appreciate clarity on exactly how the proposed enforcement process would work in practice.
- 3.7. Energy UK believes that, to ensure fairness, avoid regulatory risk and enhance accountability, an appropriate appeals mechanism should be in place. This process should include the ability to refer decisions to an appeals body that is independent of Ofgem. Energy UK will provide further views on this in response to Ofgem's enforcement review.

4. Standard Condition 7B - Customer Objective

- 4.1. Regarding the drafting of 7B.3, Energy UK believes that it is imperative that Ofgem amends the drafting to ensure that actions that are wholly appropriate and justified, but may be to the detriment of a customer and the interests of a licensee, are not unintentionally prohibited by the Standards of Conduct. For example, an unintended consequence of this drafting could be that suppliers are unable to object to indebted customers switching, as doing so would be advantageous to the supplier (it is easier to pursue outstanding debts) and would lead to detriment for the customer, with the customer potentially paying higher prices with the current supplier than they would if they switched. We therefore urge Ofgem to amend point b) to read: "give rise to undue detriment to the Micro Business Consumer".

5. Standard Condition 7B - Compliance with the Standards of Conduct

- 5.1. Energy UK would like Ofgem to reconsider the prevailing condition in clause 7B.6 (Compliance with the Standards of Conduct). We argue that, where possible, specific conditions should take precedence over those which are comparatively less specific, clear or more subjective. Therefore we would like to see paragraph 14.2 become the prevailing condition. Giving a principle precedence over a prescriptive rule risks creating an unacceptable level of regulatory risk for suppliers, since it is clearer how to comply with the latter than the former. As a more general point, Energy UK would consider it to be poor regulatory practice if the supply licence was self-contradictory.

6. Standard Condition 7B - Designated Activities definition

- 6.1. Members would like to see clarification of the 'Designated Activities' definition under the proposed licence condition. Some activities which are not licensable, and not covered in the definition, are not explicitly excluded, so could arguably still be captured (but should not be). For instance, supplier delivery of the Energy Company Obligation (ECO) is not a licensable activity, but may still be captured by the definition.

7. Revising the definition for micro business energy customer

- 7.1. Energy UK agrees with Ofgem's position that protections for business should be targeted at those who need it most, and urges against a creeping definition which could be detrimental to those who would benefit most from the protections by taking focus and resources away from this group.
- 7.2. Energy UK is disappointed that Ofgem has not followed its suggestion to re-draft the licence condition to explicitly exclude organisations with multiple sites where some of the sites may fall

within the criteria individually. We believe that the ambiguity in the proposed drafting could potentially result in larger organisations being encompassed by the definition which would prevent smaller business and not-for-profits from accessing the support they need.

- 7.3. Members would like clarity on what suppliers should do in the scenario where a customer splits their sites across multiple suppliers. To some suppliers, the customer may look like a micro business; to others, they may look like a non-micro business. This may lead to inconsistency in treatment, communication and cost allocation, for example a customer may legitimately be told that they can seek redress from the Ombudsman by one supplier, but not by another. Ofgem may want to consider an SLC 7A “opt-out” for customers in this scenario, so the customer has the option to choose to be defined as non-micro business across all sites.
- 7.4. Currently, if a dual fuel customer falls under the existing micro business definition for either gas or electricity, then they fall under the definition for both fuels. Ofgem’s extension of the micro business definition is fuel-specific e.g. the extended gas consumption criteria is only referred to in the gas licence. This means that a customer can be treated as a micro business and a non-micro business concurrently. Energy UK calls for Ofgem to clarify that this is its intention with regards to its decision not to refer to both consumption criteria in both the gas and electricity supply licences.

8. Contract end dates

- 8.1. 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.
- 8.2. As stated in our previous response 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.

9. Objections to transfer

- 9.1. As set out in our previous response, Energy UK supports Ofgem in responsibly monitoring objections to transfer, and taking action where the objections procedure is being used illegitimately, and supports efforts to improve the quality of information when providing reasons for objections. However, in line with our previous consultation, Energy UK believes that the publication of objections information could cause unjust and misleading reputational damage to companies and agrees with Ofgem that no further changes to the licence conditions are necessary at this stage.
- 9.2. Energy UK also agrees that industry processes could be improved to alleviate the current issues with the objections process. Suppliers are actively engaging in this area, and Energy UK’s Microbusiness Group is taking relevant work forward.

10. Third Party Intermediaries

- 10.1. 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 fair, honest and transparent, and that it builds consumers’ trust in them.

10.2. 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.

10.3. 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.

10.4. 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.

10.5. Energy UK considers that it would, overall, be preferable if Ofgem was able to regulate TPIs directly. Energy UK has been supportive of 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. We have been supportive of Ofgem seeking enforcement powers over TPIs through Business Protection from Misleading Marketing Regulations (BPMMRs).

10.6. As stated in our response to Ofgem's consultation on its seeking enforcement powers over TPIs, Energy UK feels that a timeline on how Ofgem plans to take its work on TPIs forward would be valuable.