



Jonathan Lines
Ofgem
9 Millbank
London
SW1P 3GE

E.ON UK plc
Westwood Way
Westwood Business Park
Coventry
West Midlands
CV4 8LG
eon-uk.com

Steve Russell
T 02476181356
F

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Dear Jonathan

Retail Market Review – Final non-domestic proposals

Please find attached our response to the above consultation.

Yours sincerely

Graham Kirby
Regulation Manager

E.ON UK plc
Registered in
England and Wales
No 2366970

Registered Office:
Westwood Way
Westwood Business Park
Coventry CV4 8LG

Ofgem Consultation on the Retail Market Review – final non-domestic proposals

Response by E.ON

Executive summary

We support the final proposals overall, but have three areas of substantial concern.

The definition of Micro Businesses

1. We support the proposal to expand regulatory protections to a wider group of SME customers, but believe the proposed wording leads to an anomaly that large electricity customers may be treated as Micro Businesses for electricity as a consequence of their gas usage. This would constrain electricity offers inappropriately. The Electricity and Gas Regulated Providers (Redress Scheme) Order 2008 addresses this issue by explicitly requiring separate consideration of electricity and gas consumption in determining if a customer is a Micro Business consumer for the purposes of the redress scheme. We propose a similar approach is taken for treatment of non-domestic customers under SLC 7A. We show how this can be done in our detailed comments.

Standards of Conduct

2. We support Ofgem's ambition to raise standards in the energy market and through our ongoing RESET programme we have demonstrated our commitment to play our part. However, we are concerned that the wording of the proposed Standards of Conduct could introduce regulatory uncertainty in two areas;
 - i. where a supplier is carrying out its activities legitimately in compliance with existing licence conditions but which could lead to detriment to customers.
 - ii. Where the introduction of Standards of Conduct override an existing licence condition, notably the case with paragraph 7B.6 which explicitly raises the requirements of paragraph 14.2 (transfer objections) to be "Fair".We propose in our detailed comments how this uncertainty should be removed.

Implementation timetable

3. The changes required to implement the proposed licence condition will involve billing and sales systems changes, process changes (including in our case removal of opt out from auto rollover) changes to letter fulfilment (to accommodate a single notice for opt out and termination), product changes to permit termination by a customer at

any time as well changes to terms and conditions. This is a considerable challenge which will potentially be required around the Christmas period. The periods immediately before and in the couple of months after Christmas are also ones with high call centre traffic (coincident with high contract renewal volumes). We urge Ofgem to reconsider their planned timetable and put back the implementation of the revised Standard Condition 7A to at least mid-March 2014.

Detailed Comments

Expanded Definition of Micro Business

4. Within the policy document Ofgem make clear that the application of the licence condition is at company level not premise level. The current definition is unclear how businesses should be treated where they have multiple sites and can create an anomaly where the business has significantly different consumptions for electricity and gas. It would not be in large customers' interest to be treated as a Micro Businesses for their electricity consumption because this could limit the products a supplier may make available to them. The proposed definition of Micro Business does not tackle this issue and in fact exacerbates it by introducing fuel specific consumptions levels. The Electricity and Gas Regulated Providers (Redress Scheme) Order 2008 addresses this issue by explicitly requiring separate consideration of electricity and gas consumption in determining if a customer is a Micro Business consumer for the purposes of the redress scheme. We think a similar approach should be taken for treatment of non-domestic customers under SLC 7A.
5. The proposed modification to the licence condition of the definition of Micro Business is fuel specific whereas the previous definition through its reference to The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 meant that a customer supplied with electricity could still be treated as a Micro Business if their consumption for gas fell below the relevant threshold within the Order. To avoid confusion we propose that the proposed definition of a Micro Business is altered as below to take account of the two issues:

"Micro Business Consumer" means a Non-Domestic Customer:

*(a) which is a has the meaning given to "relevant consumer" **across all its premises** (in respect of premises other than domestic premises) for the purposes of in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268) (the Order);*

or

***[Electricity licence]** (b) which has an annual electricity consumption of not more than 100,000 kWh **across all its premises**;*

or

***[Gas licence]** (b) which has an annual gas consumption of not more*

than 293,000 kWh across all its premises.

For the purposes of paragraph 7A only, where a Non-Domestic Customer is a relevant consumer under the Order, the "relevant consumer's" annual consumption of gas and electricity shall be treated separately for the purpose of determining if a Non Domestic Customer is a Micro Business Consumer.

Standards of Conduct

6. We support Ofgem's desire to raise standards in the energy supply industry but are concerned that the wording of the Standards of Conduct is deficient in two areas. It is perfectly possible that a supplier could be carrying out legitimate activities which give rise to the possibility of detriment to customers. For instance, where a supplier objects to the transfer of a customer who is in contract it could lead to the customer paying a higher price for energy than would have been the case if he had been able to accept the alternative offer. We believe that this issue can be addressed by the addition of the word "undue" to SLC 7B.3(b) as follows;

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions:

- (a) significantly favour the interests of the licensee; and*
- (b) give rise to a likelihood of **undue** detriment to the Micro Business Consumer.*

7. We don't agree with clause 7B.7 under which the Standards of Conduct are said to override the prescriptive detailed provision of 14.2 (customer transfer objections). It is wholly unclear what scenario this is trying to cover and quite unsatisfactory that compliance with one licence condition should put a supplier at risk of non-compliance with another. We have no objection to the Standards of Conduct placing additional requirements, such as of transparency, but this does not need to be said. We believe 7B.6 should be struck out.

Implementation timetable

8. We recognise the potential benefits that the Standards of Conduct should bring to customers and therefore acknowledge Ofgem's desire to implement at the earliest opportunity. In our response to the October 2012 consultation we expressed our reservations about such an early application given the breadth of the Standards of Conduct. We are therefore disappointed that Ofgem has not chosen to follow either of the options we suggested (additional guidance on the regulatory approach to enforcement or a simple reasonable endeavours test to comply for the first two years) for reducing regulatory uncertainty.

9. We accept we may be more impacted by the changes proposed by Ofgem than many suppliers. This is because in our renewals process we distinguished between opting out of auto rollover and contract termination. However, this is fully compliant with the prevailing licence condition. We support the changes Ofgem propose to the renewal process because it will simplify matters for customers, but it is a major change. It affects our sales systems and processes, our sales and renewal letters, our products and our SME terms and conditions. This is on top of the changes that we need to make to our bills. The timetable proposed by Ofgem, with implementation only 206 days after Ofgem's final decision is challenging and could potentially coincide with the Christmas holiday period. Traditionally the periods immediately before and in the couple of months after Christmas are also ones with high call centre traffic (coincident with high contract renewal volumes). To help limit the possibility of inconvenience to customers and reduce call waiting times we ask that implementation of the 7A requirements are delayed until at least mid- March.

Minor Changes to the drafting of the modified SLC 7A.

10.

Clause	
7A.10A	<i>7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, the licensee must provide the information specified in paragraph 7A.10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.</i>
7A.10B	<i>7A.10B The specified information is:</i> <i>(a) the date the fixed term period of a Non-Domestic Supply Micro Business Consumer Contract is due to end;</i>
	<i>(ii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Non-Domestic Supply Micro Business Consumer Contract) in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies;</i>