

## **RMR March 2013 Ofgem consultation**

### **RWE npower response 23 April 2013**

This note and the attached spreadsheet constitute our response to the above consultation.

#### ***Importance***

The changes being proposed by RMR are without doubt the most important and far-reaching changes to the retail supply of energy since privatization and the introduction of competition. It is therefore vital that the process is properly conducted so that:

1. regulatees understand what they are being asked to deliver and
2. the regime is stable and not constantly being tweaked to fix flaws in drafting.

The alternative is higher delivery costs which ultimately affect customers. In addition, new entrants are likely to be deterred by a regime characterized by regulatory uncertainty.

#### ***Transparency***

Against the above background, we have a number of concerns about the conduct of the RMR process. We asked for a workshop with stakeholders to iron out licence drafting and to confirm licensees understanding of requirements before publication of the next draft licence conditions. This request went unheeded. The impression is that speed of implementation is more important than the quality and transparency of the proposals. Not surprisingly, the standard of drafting which was published at the end of March was extremely poor. The draft licence conditions are replete with errors, inconsistencies and complexities which make it impossible to follow what is being proposed. (See our attached spreadsheet commentary on the legal drafting which documents a large number of drafting issues). Consequently, it is often impossible to comment definitively. Equally important, it is difficult to progress implementation of system changes as these usually depend on understanding precise requirements.

#### ***Probe precedent***

In the Probe, Ofgem sought to tidy up drafting errors in its statutory consultation without a full consultation. It justified this approach on the grounds that the amendments were trivial. The concern is that Ofgem will believe that it can follow a similar approach with RMR. Based on the number of flaws in the March draft, this is unlikely to be the case unless Ofgem takes the time to properly engage with stakeholders in a transparent way to explain its proposals and work with them to resolve drafting errors before publishing its statutory consultation.

## ***CSS precedent***

We are also mindful that when Ofgem markedly changed its CSS proposals in 2012, it took the view that it needed to issue a full follow-up informal consultation before going to statutory consultation. We believe this precedent could be very relevant to the circumstances which now prevail in respect of RMR.

The attachment to this response comprises a spreadsheet which identifies issues clause by clause. We have attempted to categorize our points as follows:

- Implementation or operational difficulties
- Important clarification of policy intent required
- Issue of disagreement
- Drafting ambiguity
- Drafting error or poor drafting

We have produced this list as a constructive contribution to taking RMR forward and would welcome the opportunity to go through it with Ofgem. It is not exhaustive. Many of the points raised in our response to the previous consultation continue to apply.

## ***Statutory duties***

In making these observations and recommendations, we note that Ofgem has a statutory duty to have regard to best regulatory practice including transparency. The latest draft licence conditions could hardly be more opaque.

We would like to distinguish our criticisms of the process so far from our view of the staff who have tried to be co-operative. Our sense is that they are being asked to deliver too much too quickly.

## ***Key points***

The remainder of this note records some of the key points identified through our review of the March package.

## ***White label***

We welcome the delay in applying the proposals to White Label and the invitation to make the case for derogations. However, the benefits of the deferral are undermined by persisting with the requirement for suppliers and White Label affiliates to provide best tariff information on a broadly defined basis.

## ***Dual Fuel Discount (DFD)***

The basis on which a dual fuel discount must be offered is unclear from the consultation and licence drafting.

One interpretation, consistent with Ofgem's proposed information requirements to dual fuel accounts is that suppliers have freedom to set the terms on which customers who take two fuels are eligible for the DFD. This would enable suppliers to relate the DFD to cost savings arising eg from operating the supplies as one account.

An alternative interpretation would be that, if a DFD is offered, it has to be paid to any customer who takes two fuels. Under this interpretation, we would for example have to pay the DFD to a customer with two accounts who takes one fuel by PPM and the other by DD and for whom we achieve no cost savings. This interpretation could also prove difficult to operationalize. For example, we cannot provide a PPM customer a DFD via a credit to their account.

We seek urgent confirmation that the DFD will be payable on the first interpretation above.

### ***Extant fixed term contracts at RMR go live***

The treatment of extant fixed term contracts at RMR go live is unclear from the consultation and licence drafting.

Major issues would arise if Ofgem requires the terms of extant contract to be brought into line with RMR tariff structure and simplification rules:

- i) There would be a breach of contract with customers on contracts whose terms are fixed until the end of the period;
- ii) We would need to send out LC23 notices to allow for the possibility that a customer might be worse off under RMR than current terms even though we would aim to minimize any impact;
- ii) There would be the issue of what, if any, compensation should be paid to customers adversely affected;
- iv) These factors are likely to undermine customer trust, contrary to the objectives of RMR;
- v) The need to apply RMR structures to extant Fixed Term contracts could not be implemented by December 2013 given the steps involved and other activities.

Requiring extant fixed term contracts to adopt RMR tariff structures would present major difficulties. Retrospective regulation such as this is widely understood to fail the regulatory best practice test. In this case, it would certainly fail the proportionality tests of the Electricity and Gas Acts.

We seek urgent confirmation that Ofgem will not seek to apply RMR tariff structures to fixed term contracts extant at RMR go live.

### ***Interaction of fixed term rules and discount rules***

22C.9 prohibits adverse variations to any term of a fixed term contract. This would include adverse changes to;

- Dual fuel Discounts

- Online Account Management Discounts
- Surcharges
- Payment Method Differentials
- Bundled Product prices
- The Discount element of bundles
- Reward Point Discounts

However, all of these elements of charging are subject to requirements that the terms are the same throughout Britain and are the same monetary amount throughout Britain (the equal charging rules - 22B.5, 22B.6, S22B.2, 22B.7, 22B.15, 22B.15 and 22B.23).

The result is a Catch 22. If we increase any of these for evergreen products, but maintain the charges in fixed products we will satisfy the fixed term rule, but breach the equal charging rule. On the other hand if we change the fixed term product price at the same time as the evergreen price to satisfy the equal charging rules, we necessarily breach the fixed term rule. The conclusion is that we don't have any fixed term products or we never change the prices of any of the above tariff elements.

## ***Complex Metering Arrangements***

There are a number of tariffs in the electricity industry historically driven by the promotion of electric heating in the 70s & 80s. For npower this amount to c50,000 customers. Such tariffs have many variants but broadly consist of a cheaper night rate &/or heating rate. The period applicable to the cheaper rates can cover different time periods e.g. 7 hours, 8 hours, 10 hours. These cheaper rates are usually provided via a related MPAN & it is this specific situation where we believe that the suggested arrangements around 4 core tariffs do not work as intended. The heating equipment in customer premises is specifically tied to both the tariff & the meter. Therefore changes to the product structure under RMR could easily make the heating equipment redundant, having far reaching impact on customers. We are sure that, in implementing the principles of RMR, it is not Ofgem's intention to make such heating equipment inoperable however we believe that the current drafting of SLCs may force unintended consequences.

Those tariffs which introduce an extra time period via a related MPAN will all fall into the 'other' category. This category could therefore cover many different time pattern regimes as outlined below. In order to comply with the 4 core tariffs rule, we would have to merge a number of these time pattern regimes resulting in the inefficient operation of the customers heating equipment.

A further malign consequence is that we would have no scope to offer fixed term contracts for any of these time pattern tariffs as we will have used up the available slots with evergreen tariffs. However, since these customers, in particular, have higher than average energy bills due to the nature of utilising electric heating they may particularly value the opportunity to fix their price for a period.

### **Tariff Description Falling into “Other Time of Use” Category**

7 - 8.5 hours OP

9 - 11 hours OP

11.5 - 12.5 hours OP  
13 or more hours OP  
8 - 10.5 hours OP + Weekends  
11 - 12.5 hours OP + Weekends  
13 or more hours OP + Weekends  
8 - 10.5 hours OP + Summer  
11 - 12.5 hours OP + Summer  
13 or more hours OP + Summer  
8 - 10.5 hours OP + Weekends & Summer  
11 - 12.5 hours OP + Weekends & Summer  
13 or more hours OP + Weekends & Summer

A further issue is that, whilst Ofgem has set out that suppliers can only have 4 core tariffs per meter type; two rate, three rate, DTS & Other meter switching times can be driven by either a mechanical clock or a radio teleswitch. Consequently, there will be an overlap between tariffs that fall into the DTS categorisation & the two rate/three rate/other categories. Thus Ofgem is unintentionally limiting the number of tariffs available in this segment.

.Our conclusion is that Ofgem needs to investigate the implications of its meter regime rules in more detail before firming up the categorization.

## **Guidance**

These proposals markedly increase the use of guidance. As such, guidance is an important part of the overall package. We would expect the guidance to be available well before suppliers are required to form final views about the acceptability of the package.

When will the guidance be available topic by topic?

## **Marketing**

Whilst Ofgem has reduced the extent of prescription on marketing materials to some extent, we still have issues with some of the proposals. Some of the headline points are set out below.

The requirement to put the savings message on the front of the bill confuses its purpose and detracts from the main point of interest to customers, namely: "What do I owe?" It therefore contradicts Ofgem's objective of clear and simple information. More generally, Ofgem's layout does not always follow a natural flow. For example, details of current tariff and cheapest tariff naturally sit together, but do not under Ofgem's proposals. Our research suggests the flow of information as follows:

- 1) Payment – how much you need to pay and when.
- 2) Your energy details/breakdown of payment
- 3) About your tariff

We also believe the heading “Could you pay less?” adds to the confusion. It potentially leads the customer to believe the communication is about the prospect of reducing the current bill. We are considering alternatives and will respond to the invitation to make proposals shortly.

The extent of the overlap between the material presented on the bill and annual statement could undermine the effectiveness of both documents for their distinct prime purposes.

We believe customers need an introduction to the use of TCR – We would like Ofgem to lead this by issuing a national press release on behalf of all energy supplier advising consumers what we have been asked to do.

Ofgem and npower have a common objective in developing well informed and engaged customers and we look forward to the opportunity to share with Ofgem the results of further research in this area.

### ***Security Deposits***

Security deposits are not charges and are not covered by the RMR materials.

We seek confirmation of our understanding on this point and specifically that RMR is not intended to restrict the freedom of suppliers to determine security deposits on a case by case basis beyond the extent to which security deposits are already regulated.

### ***Bundles and discounts***

The rules around bundles and discounts are central to RMR and to the extent of the restrictions on the freedom to compete.

Regrettably, the rules in this area are particularly fraught with errors and inconsistencies to the point where it is impossible to understand what is proposed. To cite just two examples, there are two different definitions of “Discount” in the definitions section. And the same clauses are used to describe rules for Bundles as for Discounts even though a Bundle is only a Discount if it is provided free (for example a free TV). In other circumstances (eg where the TV is provided at a cheaper price than for a standalone sale), separate rules are required to describe the restrictions on the pricing of the Bundle and for the restrictions on the Discount created by the Bundle. Several of the examples on page 50 of the consultation document appear inconsistent between themselves and with the legal drafting.

Substantial effort is needed to bring clarity to this area before proceeding to statutory consultation. We strongly advocate an interactive workshop with stakeholders.

### ***Collective switching***

As currently drafted, suppliers have the responsibility to ensure that any collective switching scheme in which they participate satisfies the definition in the draft licence conditions.

This is neither efficient nor as effective as if the sector is directly regulated by Ofgem.

What is Ofgem's stance on providing approval (or otherwise) to collective switching schemes and what are its reasons?