



Jonathon Lines
Retail Markets Research
Ofgem
9 Millbank
London
SW19 3GE

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

lois.wares@sse.com
01738 456410

1st May 2013

Dear Jonathon

The Retail Market Review – Final non-domestic proposals

SSE welcomes the opportunity to provide comment on Ofgem's final proposals in respect of its non-domestic Retail Market Review.

We are committed to delivering improvements for business customers and support Ofgem's objective to help business customers get a better deal and increase competition in the energy market. As a result, we are largely supportive of the reforms Ofgem is proposing to introduce as a result of its Retail Market Review and the extra clarity and protections they will bring business customers.

Whilst we understand and agree with the policy intent behind Ofgem's proposed Standards of Conduct (SOC) and believe that the standards are consistent with the way we currently run our business, there is still some uncertainty regarding Ofgem's proposed approach to enforcement. We would expect further increased dialogue and co-operation between Ofgem and suppliers under a principles-based approach to enforcement.

We will continue to work with Ofgem to help develop a Common Code of Practice and better monitoring of the TPI market and understand the significance these changes could have for ensuring that customers' interests are safeguarded across the market.

Please find our detailed response to Ofgem's final proposals attached. We have also provided in the annex, some suggested amendments to the licence drafting of standard licence condition 7A which, for the purposes of clarity, we hope Ofgem will consider.

Please contact me if you wish to discuss any of these issues or the points raised in the annex to this response.

Yours sincerely

Lois Wares
Regulation

Revising the definition for micro business energy customer

As set out in our response to Ofgem's October 2012 Updated Business Proposals, we believe that the implementation of SLC 7A has led to an improved service being delivered to micro business customers. In particular, our experience of these requirements in practice suggests that the new licence condition has resulted in improved customer understanding of their contract and the renewal process. We already deem customers to be micro business if we are in any doubt as to whether they fall within the current micro business definition. For this reason, we welcome Ofgem's proposal to expand the definition of SLC 7A, and the enhanced protections this will bring to a wider range of business customers.

Access to Redress

We agree with the policy objective, that all micro businesses, including those in scope as a result of Ofgem's proposals, should be able to access complaints redress via the same route as currently protected micro businesses. With Ofgem's decision to continue to refer to businesses within the expanded scope of SLC7A as 'micro businesses', we think it is important that the relevant legislative change is sought to amend the Redress Scheme Order to match the new consumption criteria to the expanded definition under SLC7A. Until this legislative change has been achieved, we are willing to become signatory to a voluntary agreement with the relevant redress bodies and to make this clear in all relevant customer facing material.

Although this agreement will be voluntary, we think it is important that all licensed suppliers become a signatory in order to ensure a certain level of consistency across the market. Micro businesses who are covered by the expanded scope of SLC7A should not be at risk of receiving differing levels of access to complaint redress between different suppliers if some suppliers choose not to become signatory to the voluntary agreement. This would result in a negative experience for the customer, would reduce customer confidence in the market, and could result in reduced switching if the customer is uncertain about the services they will receive from each supplier. If suppliers do not become signatory then in our view they would be working against the policy objective of the expanded definition and also the Standards of Conduct.

Contract and notice period end dates on bills

As detailed in our response to Ofgem's October 2012 Updated Business Proposals, we are willing to include contract end dates and the last termination date on our bills. We believe that this should lead to improved customer understanding of contracts and the renewal process giving them better ability to act at the appropriate time.

We welcome Ofgem's recognition of the different needs of business customers and that it is not proposing to prescribe how this information is displayed on the bill, other than to ensure it is expressed in plain and intelligible language and in a prominent position. We also recognise that this change is in line with the Standards of Conduct and Ofgem's intention for principles based regulation.

Transposing the proposals into licence conditions

We have suggested some amendments to the licence drafting of SLC 7A, paragraphs 10A, 12A and 12B for the purpose of clarity. Our proposed changes do not alter the effect of the licence condition and we hope that Ofgem will consider amending the wording in the final notice, formally directing implementation of the licence condition amendments.

Please see our proposed amendments in the attached annex.

Allowing termination notice to be given at any time

We currently allow our micro business customers to give a notice to terminate from the beginning of their contract (or where the contract includes a fixed term, from the end of that fixed term period). We also currently accept a micro business customer's notice not to automatically rollover their contract in lieu of their notice to terminate so we are willing to accept this proposal, as it reflects our current level of service to customers.

Review of automatic roll-over of contracts

We are firmly of the view that Ofgem's review into whether or not to allow automatic roll-over of micro business contracts should be postponed until the new processes under SLC7A have been implemented and sufficient time has passed to assess whether they have achieved the policy intent.

Ofgem's Impact Assessment for the final non-domestic proposals highlights that the problems business customers encounter are lack of clarity around when their contract ends, the renewal notice period, and the window for terminating their contract. We understand that this could lead to business customers being rolled on to further fixed term contracts when perhaps this was not their preferred option. We believe that the extra protections which have been proposed by Ofgem under SLC 7A, specifically the obligation to include the contract end date and clarify the final termination date on the customer's bills, and removing tight contract termination windows by allowing micro business customers to submit their termination notice at any time during the contract up to the Relevant date, could be an effective solution to these perceived problems.

Giving micro business customers this additional information should provide the transparency they need to manage their contracts easily, particularly when it comes to contract termination and renewal. We therefore think it would be proportionate of Ofgem to review the impact these final proposals have before taking further action to consult on the altogether ban of automatic rollovers. Allowing a ban of automatic rollovers could lead to unintended customer detriment, as rather than having a choice, as they do now, customers will be placed onto deemed contracts by default and could be exposed to higher prices than those they would pay if their contract was rolled over, due to the uncertainty for the supplier that the customer could leave at any time. Ofgem has indicated in its consultation that energy is not always the top priority for smaller businesses so these deemed prices could go unnoticed by the customer for long periods of time, leading to detriment to the customer and more dissatisfaction than if the customer had been rolled over for one year on lower rates, as they can be now.

We also note that this review is not consistent with the recently published intent to amend the Energy Bill with a provision that contract roll overs for micro businesses should be limited to 30 days. This suggests that the default after 30 days would be to place the customer on deemed contract rates.

We think it is important to understand the policy intent behind the provision for automatic contract roll-overs before any decisions are made to alter their duration or terminate them altogether.

Implementation of extra protections under SLC 7A

We would be willing to work with Ofgem to help customers understand how automatic rollovers work and how Ofgem's proposed protections under 7A will give them better ability to manage their energy contracts. Customers' will only benefit from these additional protections if they are given the knowledge to be able to interact in the market. This could be achieved

better if all stakeholders work to communicate clearly to customers the changes that are being made to ensure that they are fully understood and that they are realised in practise

Standards of Conduct

We continue to believe that the proposed SOC are consistent with how we run our business, with our approach as a supplier, and with our Building Trust initiative. As a supplier we are committed to delivering improvements to our non-domestic customers and would like to highlight the progress we have made in committing to voluntary industry standards, such as our commitment not to back bill micro business customers beyond one year, where we are at fault. This goes beyond the voluntary standard which was drawn up by EnergyUK.

We think it is important for Ofgem to amend the drafting of 7B.3 to ensure that actions which are undertaken for the best interest of the supplier and which are appropriate and justified are not unintentionally prohibited by the SOC even where they may be to the detriment of the customer. For example, upon contract renewal, if a micro business customer's credit position changes in a manner which would make them by default, a customer of high risk, the supplier could request a security deposit from the customer. This decision could be considered to be to the detriment of the customer (financially) but favour the interests of the supplier and other customers. With Ofgem's current drafting of 7B we are concerned that this could be considered a breach of the SOC. We think it is important for Ofgem to identify that where supplier decisions are justifiable they should not be considered a breach of the SOC. For this reason we think the word "significantly" should be replaced with the word "unduly" in 7B.3 (a).

Ofgem's approach to enforcement

Ofgem has recognised that applying the SOC is a process which will evolve over time. Ofgem must be mindful that embedding the SOC into practice at all levels of a supplier's organisation will take time to be fully reflected in all of its documented processes.

Ofgem's 'high level' vision of the processes it expects suppliers to consider when implementing the SOC will involve reviews of internal processes and policies and where appropriate, the development of new processes. Any new policies and processes will then have to be effectively rolled out and embedded at all levels of the organisation. Ofgem should recognise that if carried out effectively, this will be an area of continuous development for suppliers.

We continue to note that Ofgem is not proposing to implement a staged approach to enforcement but that it "would usually speak to a supplier before taking enforcement action." We continue to believe that a two-staged approach would be the best way for Ofgem to take a proportionate approach to enforcement. We do not see this approach as an opportunity for suppliers to avoid enforcement action but rather see it as an opportunity for Ofgem to work with suppliers to help successfully deliver the SOC to the benefit of customers. We would expect increased dialogue and co-operation between Ofgem and regulated licensees under a principles- based approach.

SOC guidance provision

Whilst we welcome the clarity the proposed guidance has brought when interpreting the SOC, we do not believe it is necessary to include such prescriptive guidance to support the licence condition. As a principle, the SOC should be drafted in a clear and concise manner which can be easily interpreted without the need for guidance. They should be clear to anyone who has not been closely involved in the RMR policy debate and should not present a barrier to new entrants. We therefore believe the introduction of examples of what Ofgem would consider to be 'appropriate' or 'professional' behaviour moves away from the intention to deliver principles based regulation.

Third Party Intermediaries (TPI)

We have been attending Ofgem's working group since its establishment at the beginning of the year and we are continuing to work with the group to develop the contents of a Common Code of Practice for TPIs.

We support Ofgem's work towards better monitoring of the TPI market and continue to believe that Ofgem should mandate all TPIs to be accredited and for suppliers to only work with those who are accredited. In our view, the most effective means of ensuring that customers' interests are safeguarded would be for Ofgem to be granted the power to enforce the Business Protection from Misleading Marketing Regulations (BPMMR). We recently expressed our support for this in our response to Ofgem's open letter dated 4 February 2013.

Annex

We have suggested some amendments to the licence drafting of SLC 7A, paragraphs 10A, 12A and 12B for the purpose of clarity. Our proposed changes do not alter the effect of the licence condition and we hope that Ofgem will consider amending the wording in the final notice, formally directing implementation of the licence condition amendments.

Modifications to standard condition 7A

Information on Bills etc

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 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.

7A.10B The specified information is:

(a) the date the fixed term period of a Non-Domestic Supply Contract is due to end;

(b) where in accordance with that Micro Business Consumer Contract, that Contract may be extended for a further fixed term period:

(i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract); and

(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 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; and

(c) where in accordance with that Micro Business Consumer Contract, the licensee 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

(ii) a statement to the effect that this is 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.

Termination of Micro Business Consumer Contracts *which do not include a fixed term period*

7A.12A Without prejudice to any notice period that complies with paragraph 7A.11, in relation to any Micro Business Consumer Contract that does not include a fixed term period, the licensee must ensure that the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Termination of Micro Business Consumer Contracts *which include a fixed term period*

7A.12B In relation to any Micro Business Consumer Contract which includes a fixed term period, the licensee must ensure that:

(a) a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business



Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and
(b) without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed term period, a Micro Business Consumer is not subject to a further fixed term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.