



Fiona Cochrane-Williams
Consumers & Competition
Ofgem
9 Millbank
London
SW1P 3GE

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Email to: DomesticRetailPolicy@ofgem.gov.uk.

Dear Fiona

Statutory Consultations on the introduction of SLC 32A: Power to direct suppliers to test consumer engagement measures

EDF Energy agrees with the main focus of the CMA remedies, to increase the level of customer engagement. Additional steps are necessary to prompt engagement, particularly for those who have not made an active choice for long periods of time and regular communications can be an effective way to prompt customers to engage in the energy market. Clearly the effectiveness of these communications has varied between suppliers in the past. It is therefore important to robustly identify, test and implement communications across suppliers to ensure that they are equally effective.

We have already begun working with Ofgem on trials of communications associated with the customer database remedy and agree that a licence condition is required to ensure all suppliers participate in these trials in the future. We are concerned, however, that the current draft licence condition does not fully reflect the intent expressed in the open letter on selection criteria, which seeks to ensure that participation in trials is proportionate and targeted appropriately.

The open letter on selection criteria explains that Ofgem will examine each trial on a case by case basis and that the burden of each trial will be proportionate to the suppliers asked to participate in them, considering the characteristics of each supplier's customer base (such as the level of disengaged customers). We fully support this intent as the resources and timescales required for different trials can vary enormously, and each should be judged on its own merits and targeted where the greatest levels of disengagement occur.

The current draft of the licence condition does not fully reflect the intent expressed in the open letter as it does not require Ofgem to test the proportionality of the requirements it places on suppliers. In the appendix to this letter we make several proposed amendments which need to be incorporated to bring consistency between the licence condition and selection criteria.

EDF Energy
Barnett Way
Barnwood
Gloucester GL4 3RS
Tel +44 (0) 1452 656235

edfenergy.com

*EDF Energy plc
Registered in England and Wales
Registered No. 2366852
Registered office: 40 Grosvenor Place,
Victoria, London SW1X 7EN*

Thank you for the opportunity to comment in this consultation and should you wish to discuss any of the issues raised in our response or have any queries, please contact Toby Allen on 07875 114310, or myself.

This letter may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Delamare".

Paul Delamare
Head of Customers Policy and Regulation

Appendix - Proposed Licence amendments

Condition 32A. Power to direct suppliers to test consumer engagement measures

Power of direction

32A.1 For any purposes connected with the Authority's consideration of measures or behaviours which may impact on domestic consumer engagement ('consumer engagement measures'), the licensee must comply with a direction issued by the Authority in respect of Relevant Matters for Standard Condition 32A.

32A.2 The Authority may give a direction issued under paragraph 32A.1 where it considers that the issuing of the direction is proportionate and would not prejudice, to an unreasonable degree, the commercial interests of the licensee.

32A.23 The licensee is not required to comply with a direction issued pursuant to 32A.1 unless the Authority has given the licensee at least 1 month's prior Notice.

32A.34 A direction issued under paragraph 32A.1 may include a requirement to comply with any reasonable instructions from the Authority or a third party agent appointed by the Authority for the purposes of conducting any test of consumer engagement measures.

Provision of information

32A.45 The licensee must provide the Authority (or such other person as specified by the Authority) with information specified by the Authority in relation to matters that it reasonably considers are relevant to:

(a) the Authority's consideration of whether to issue a direction pursuant to paragraph 32A.1; and/or

(b) the licensee's compliance with any direction issued pursuant to paragraph 32A.1.

32A.56 The Authority may direct the licensee to comply with paragraph 32A.54 by providing to the Authority (or such other person as specified by the Authority) information reasonably required:

(a) in a particular form or medium by a particular date such date being within a reasonable period of time after receiving such a direction;

(b) in a particular form or medium at such reoccurring intervals of time as the Authority considers appropriate; and

(c) of any description specified by the Authority, including any documents, accounts, estimates, returns, records or reports and data of any kind, whether or not prepared specifically at the request of the Authority.

32A.76 The licensee is not required to comply with paragraph 32A.45 if it could not be compelled to produce or give the information in evidence in civil proceedings before a court.

Compliance with this condition

32A.78 The licensee is not required to comply with paragraph 32A.1 until the Authority has published relevant criteria for the selection of one or more licensees to conduct testing (including through Randomised Controlled Trials) of any consumer engagement measures that are the subject of a Direction issued in accordance with 32A.1.

Termination of this provision

32A.9 This condition will cease to have effect on [xx 2022].

Definitions for condition

32A.810 For the purposes of this condition:

'Relevant Matters for Standard Condition 32A' means any or all of the following:

(a) a requirement to test or evaluate (including through a Randomised Controlled Trial, where the Authority considers it appropriate) any

consumer engagement measures in a manner and time frame reasonably prescribed by the Authority (including on the basis of the Authority's Specification for Testing), and to provide information to Domestic Customers in a manner and time frame specified by the Authority;

(b) where appropriate, a requirement to submit an implementation plan to the Authority for approval;

(c) a requirement not to comply with any licence conditions which are relevant to the subject matter of this condition to such extent and subject to such conditions as the Authority may direct; and

(d) a requirement to provide the Authority (or such other person as specified by the Authority) with information relating to the results (and the underlying data) of the testing of any consumer engagement measures in the manner and time frame reasonably specified by the Authority.

'Randomised Controlled Trial' means a form of consumer research (which is statistically robust for measuring behavioural impact) for Domestic Customers which is for the purposes of testing one or more consumer engagement measures relevant to the subject matter of this licence condition and includes two or more randomly assigned customer groups from the pool of eligible participants (which may be determined and specified by the Authority) in circumstances where:

(a) at least one of those groups are not subject to the consumer engagement measure; and

(b) all of the customer groups are comparable (including on the basis of the randomised selection) but for the consumer engagement measure(s).

'Authority's Specification for Testing' includes detail on some or all of the following:

Design

- the objective(s) of the testing;

- the details of the consumer engagement measure(s) (and any variants) to be tested;
- the testing methodology (including, but not limited to, the approach to randomisation and maximising the equivalence of groups and the proposed sample size);
- the testing of outcomes and how they will be measured;
- the proposed timetable;
- any planned piloting activity; and/or
- any supplementary research or follow up analysis to gain a better understanding of the behavioural impact.

Implementation

- the identification of third parties who will be involved in delivering the proposed specification for testing and clarity around roles and responsibilities;
- the details of any proposed supplier-initiated activity that might have an impact on the testing;
- proposed approach for monitoring (including possible arrangements for independent moderation) and quality assurance; and/or
- the approach to dealing with ethics and consumer protection issues, including how any possible consumer detriment will be identified, monitored and addressed should any issue be identified.
- Analysis and evaluation of the results
- criteria and approach to evaluate and analyse the results of the testing; and/or
- data to be shared, consideration of format, precise content, file types and data security.