

# **Investigation of EDF Energy plc pursuant to Part 8 of the Enterprise Act 2002 for potential breach of the Consumer Protection from Unfair Trading Regulations 2008– Ofgem’s decision to close the investigation**

## **1 Introduction**

- 1.1 This document explains Ofgem’s decision to close its investigation into whether EDF Energy plc (EDF) may have breached the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), and in particular, Regulation 3(4) read together with Regulation 6(1) of the CPRs which prohibit commercial practices which amount to misleading omissions.

## **2 Background**

- 2.1 Ofgem investigated a fault with the operation of EDF’s Interactive Voice Response (IVR) telephone system and its interface with EDF’s billing system which resulted in some customers who provided their own meter readings through the IVR system being overcharged or undercharged.
- 2.2 EDF’s IVR system allows customers to submit an own meter read at any time of the day or night without the need to speak to an individual agent.
- 2.3 Ofgem received a complaint from a customer alleging that when the customer submitted an own read into the IVR system that was higher than the estimated read for which the bill was issued, all of the additional units were allocated to the end of the billing period. Where there had been a price rise during the billing period, this resulted in all of the increase in consumption being charged at the rate following the price increase.
- 2.4 This was in contrast to the option of providing meter readings to a customer services operator whose systems meant that extra consumption was apportioned across the whole billing period.
- 2.5 Ofgem considers that there should have been no difference between the two approaches – they should both have apportioned additional units across the whole of the billing period so that some units were charged at the lower pre-increase price and the remainder at the higher, post-increase price.

## **3 Ofgem’s Investigation**

- 3.1 In order to establish the relevant facts, Ofgem made informal queries with EDF, issued a series of formal information requests to EDF pursuant to section 225(2) Enterprise Act 2002 to EDF, and held several meetings with EDF.
- 3.2 Ofgem investigated whether EDF may have breached Regulation 3(4) read together with Regulation 6(1) of the CPRs. These regulations prohibit commercial practices which amount to misleading omissions, in other words which omit or hide material information and as a result cause, or would likely cause, the average

consumer to take a transactional decision he would not otherwise have taken. Ofgem was concerned that consumers may have taken decisions to use the IVR system but without EDF having informed them of the financial consequences of doing so, especially when compared to them providing meter readings directly to EDF's customer service operators.

3.3 Pursuant to this investigation, Ofgem established the following from the information provided by EDF:

- the fault with EDF's IVR system appears to have originated when EDF's systems were integrated following the merger between London/Sweb and Seeboard in October 2003;
- EDF were not aware of this fault with its system until the consumer and Ofgem raised this issue;
- the fault existed from 2003 until EDF remedied it in April 2010;
- the impact on EDF's customers depended on:
  - whether there was a price increase or decrease in the relevant billing period; and
  - whether the customer reported (via the IVR system) higher or lower consumption than that estimated by EDF;
- depending on the above, the customer could both gain financially, or suffer a loss, when providing a meter reading using the automated IVR system;
- between 2003 and April 2009, based on EDF's figures around 100,000 EDF customers suffered a financial detriment while as many benefited financially; and
- based on EDF's figures, the total detriment such customers suffered amounted to around £170,000 (£200,000, adjusting for accrued interest).

#### **4 EDF's actions**

4.1 EDF rectified the problem with its IVR system on 29 April 2010 and has taken steps to ensure it will not arise again. As a result, the IVR system now follows the same process to produce a revised bill that is used by a customer service agent – apportioning any additional units across the whole billing period.

4.2 Following Ofgem's investigation, EDF has committed to ensure that all customers who were adversely affected financially by the fault are provided with adequate compensation.

4.3 EDF will compensate its customers who were financially disadvantaged as a result of the fault with its IVR system. This will include a) the cumulative impact from successive price changes (adding up only where customers have been overcharged, and not including any undercharging; and b) accrued interest, calculated on the outstanding sum at the prevailing Bank of England Base Rate at the time of the overcharging + 0.5% and calculated up to the point when compensation is paid.

4.4 Customers will be compensated in the following way:

- existing customers will receive a credit on their next bill equivalent to the detriment they suffered;
- for former customers who suffered a detriment of £3 or more, EDF will write to the customer's last known address asking the customer to get in touch to claim a refund. EDF will wait for three months for the customer to respond, following which, if still unclaimed, EDF would add the amount to the payment being made to its Energy Trust Fund; and
- any customers who are concerned they may have been affected and who have not been reimbursed should contact EDF, who will reimburse them if it satisfied they were affected. EDF will be issuing a press statement which includes a telephone number which such customers should telephone.

4.5 As part of this compensation package, EDF will not recover any monies from customers who have benefited financially from the fault with the operation of its IVR system

## **5 Ofgem's Decision**

5.1 On the basis that:

- EDF rectified the problem in April 2010 and has taken steps to ensure it will not arise again;
- EDF has agreed to compensate consumers who suffered loss with a compensation package which appears reasonable;
- Ofgem's enforcement powers in respect of breaches of the CPRs extend to seeking a court order or formal undertakings that the conduct giving rise to the breach will not happen again, and EDF has taken steps of its own volition to ensure the problem will not happen again,

Ofgem has decided to close its investigation into whether EDF may have breached the CPRs, and in particular, Regulation 3(4) read together with Regulation 6(1) which prohibit commercial practices which amount to misleading omissions.

**Ofgem**

**16 August 2011**