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18th December 2017

Dennis Berg
Consumers and Competition
Ofgem
9 Millbank
London
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Dear Mr Berg,

Protecting consumers who receive back-bills – Statutory Consultation

I am writing in response to the above consultation which asks for views on Ofgem's back-billing proposals and draft licence conditions.

Haven Power is part of the Drax Group and is the 5th largest non-domestic electricity supplier by volume. We currently supply around 28,000 and 18,000 MPANS in the SME and I&C sectors respectively.

In January 2017 Haven Power became a signatory of Energy UK's Voluntary Standards for backbilling of microbusiness energy customers. In line with the Standards, we committed to limit any backbill to three years where the supplier is at fault. We also committed to review our position annually with a view to limiting microbusiness backbills to 12 months by the time the mass Smart meter rollout was well underway.

Question 1: Do you agree with our assessment of the consumer harm? Both for domestic and microbusiness consumers?

We agree the market has changed significantly since the Voluntary Standards were introduced, resulting in a number of Suppliers not being signatories. We believe consumers should be afforded a minimum level of protection, regardless of which energy supplier they choose, and this lack of consistency across the market has the potential to create distrust. Broadly speaking, we agree with Ofgem's assessment of consumer harm and acknowledge that evidence provided by both Citizens Advice and the Ombudsman denotes poor standards in some sections of the market, but we would question whether there is sufficient data relating to microbusinesses to conclude that business customers are suffering a similar level of detriment and thus should be treated the same as domestic consumers.

Question 2: Do you agree with the way we are proposing to implement a backbilling limit and the other effects of our proposed licence modification?

It is unclear whether Ofgem's intention is to strengthen the Voluntary Standards by enforcing them under licence or whether a harder line is being proposed with a shift in the burden of proof. Although current voluntary arrangements hinge on supplier fault, it is widely accepted that the customer has a role to play in supporting timely and accurate bills. The policy intention outlined in Appendix 2 of the consultation document suggests that the customer would not be considered at fault if they fail to notice they are being billed on estimates or do not respond to requests from their supplier to submit meter readings. This appears to be at odds with EUK's Voluntary Standards for backbilling microbusinesses which state that, where the customer has fulfilled their responsibilities, suppliers will limit any backbill. Responsibilities outlined include providing meter reads in order to receive accurate bills and taking steps to find out who is supplying a property when the customer moves in or out. The Standards make it clear to the customer "it is your responsibility to ensure your supplier knows your details".

Moreover, the proposed licence condition will prohibit backbilling beyond 12 months unless the customer behaves unlawfully or prevents physical access to the meter. We are concerned that this approach could have unintended consequences. It is unlikely to encourage customers and TPIs to provide meter readings or contact their supplier promptly when moving in or out of a building if they sense that ignoring these responsibilities will result in them not having to pay for energy consumed beyond 12 months. Contrary to increasing accurate billing ahead of the Smart meter rollout, this type of signal has the potential to stimulate behaviour which may have the opposite effect.

We would welcome Ofgem clarifying the customer's responsibilities to provide up to date information and access to meter reads, and thereby better align the licence prohibition with the current Voluntary Standards, which were carefully designed with customers' best interests at the heart.

Question 3: Do you agree with our assessment of the costs to suppliers?

We do not agree with the assessment of costs to suppliers and are surprised and disappointed to see that Ofgem has reached its conclusion without carrying out an impact assessment and with what appears to be minimal consideration for the differences between domestic and microbusiness consumers. The latter having the potential to accrue larger debts which, when written off, will have a significant financial impact on non-domestic suppliers.

We intended to voluntarily introduce a 12 month backbilling limit when Smart meters had reached reasonable penetration across the market, in order to allow us time to resolve long running disputes and issues with inherited traditional meters. If the proposed licence condition is implemented within 56 days of decision, we anticipate being exposed to material financial write-offs.

It should be noted that backbilling can be disaggregated into two pots – unbilled and rebilled. We accept that suppliers are largely able avoid long periods of not billing a customer (i.e. 'unbilled'). But suppliers have little, if any, control over re-issuing historic bills with corrected details (i.e. 're-billed'). Rebilling can arise due to unknown and unforeseen meter errors or where we're not made aware of a change of occupancy – these reasons regularly generate rebills, of amounts greater than the original invoice, for periods greater than 12 months.

In addition, if Ofgem intends to raise the threshold for proving customer fault, as the policy intent suggests, and shift the burden towards suppliers to take additional steps in order to prove customer fault, there will without doubt be an increase in operational and system costs to suppliers. In some cases suppliers rely on customer reads, for example unmanned churches, businesses undergoing renovation or operating

seasonally or outside business hours. If customers are discharged of any responsibility, the supplier's role becomes more onerous which increases their cost-to-serve.

The costs imposed by this licence restriction, whether due to revenue foregone or increased operational costs, will ultimately be borne by all consumers.

We would also question Ofgem's conclusion that the impact on innovation is expected to be minimal. Some challenger suppliers offer cheaper tariffs where customers are expected to provide regular meter readings thereby reducing the cost-to-serve which can be passed on to the consumer.

Question 4: Do you agree with the proposed implementation period?

We strongly disagree with the proposed implementation period. We acknowledge notice was given of Ofgem's minded-to position in April 2017, but the open letter did not indicate the extent to which the proposed new licence condition may differ from existing Voluntary Standards. If suppliers are expected to go to greater lengths to obtain meter readings and to determine the occupants of a property, then internal processes and systems for most suppliers will require updating to ensure compliance.

As the consultation highlights, a large number of new and diverse suppliers have entered the market since 2007. It is a relatively complex market with a significant volume of concurrent regulatory and industry change and realistic implementation times will vary across suppliers. Suppliers who have been operating for a relatively short period of time and/or have not been signatories to the Voluntary Standards, could be facing costly system modifications in addition to an already challenging programme of change. To give equal consideration to all suppliers in the market, we feel a unilateral implementation deadline of 9 months from Ofgem's decision date would be fair.

Thank you for giving us the opportunity to present our views. Please contact me should you wish to discuss anything in this response further.

Yours sincerely,

June Mallett
Regulation Manager