



12 December 2017

ICoSS response to Backbilling statutory consultation

The Industrial & Commercial Shippers & Suppliers (ICoSS) is the trade body representing the majority of the GB non-domestic energy market. Our members, who are all independent Suppliers, in total supply in excess of three quarters of the gas and half the electricity provided in the highly competitive non-domestic market. Please note our response only considers the proposed changes as they impact the non-domestic market.

ICoSS is seriously concerned regarding the proposed new licence condition imposing an effective ban on backbilling microbusiness customers more than 12 months, except when the customers has been “*obstructive or manifestly unreasonable.*” We believe that these proposals will have a substantial negative impact on the energy market.

The new license condition has two main impacts; firstly, it imposes a blanket 12 month limit on the length of a backbill. The market has been moving towards a 12-month limit in the microbusiness sector for some time. Nearly a dozen non-domestic suppliers subscribe to a one year backbilling limit, representing a substantial proportion of the market. It should be noted that when the joint standards were launched in 2013, the general backbill limit was much longer; 3-4 years for gas and 3 years for electricity. This demonstrates the effectiveness of the voluntary standards and the value that some suppliers have placed on being seen to be customer focused as they have voluntarily subscribed to higher standards over time. It can also be seen as a positive indicator of how principles based regulation (in this case the Microbusiness Standards of Conduct) can drive positive outcomes for consumers, avoiding the need for prescriptive legislation. We are therefore concerned that the imposition of a blanket one year term will destroy these positive features of the microbusiness sector.

Though we are concerned over a blanket 12 month restriction, of far greater negative impact is the other main change proposed; substantial restriction in the circumstances in which a customer can be pursued to pay for energy they have used more than 12 months in arrears. Ofgem’s proposal that the customer should not be backbilled if not at fault is a significant departure from the current standard contained





in the EUK/iCoSS backbilling standards where the supplier has to be not at fault. This is an important difference as in many cases fault is difficult to determine or the fault is due to a third party (meter operator, contractor at the site, etc.). These outside factors are either under the control of the customer (such as contractors) or are something that the suppliers cannot influence. Smaller suppliers in particular have no control over large former monopoly meter providers, being as they are the junior party in the relationship.

In any event, the licence drafting does not in our mind deliver the intent of Ofgem's proposals in 2.14 of its consultation document. The phrase "*obstructive or manifestly unreasonable behavior*" places an extremely high level of proof on the supplier to demonstrate such behavior. It also means that the customer can clearly be at fault (through negligence or carelessness in damaging metering equipment for example) and it is not clear that they either "*obstructive or manifestly unreasonable*" in these cases.

As we have indicated we have serious concerns regarding this proposal. It will reduce an area of competition in the market by imposing uniformity on backbills, hit smaller suppliers hardest who will not be able to pass through these costs as easily and result in the costs of all other customers who do not benefit from any backbilling issues rise to cover these costs. We also anticipate an increase in meter visits and contacts from the supplier to ensure that a clear record of a lack of cooperation from the customer is built up.

Looking more widely, we have seen a recent drive towards highly prescriptive regulation by Ofgem in recent months, with new licence conditions proposed not only on backbilling, but also on statutory warrants, in addition to new prescriptive standards being proposed on Erroneous Transfers. This does not seem to be in line with the proposed aim of relying on principles-based regulation (which the current voluntary standards regime does) and we feel that Ofgem needs to have the confidence in the market to treat customers fairly if principles-based regulation is going to work.

Please feel free to contact me if you wish any of this further.

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