

Disclosure Room Undertakings: Adviser

DOMESTIC GAS AND ELECTRICITY ACT (TARIFF CAP) 2018: STATUTORY CONSULTATION

UNDERTAKINGS GIVEN BY [Name of Adviser] REGARDING ACCESS TO DISCLOSURE ROOMS CONTAINING RELEVANT MATERIALS

WHEREAS

- (1) The Domestic Gas and Electricity (Tariff Cap) Act 2018 ("**Act**") places a duty on the Gas and Electricity Markets Authority ("**Authority**") Office of Gas and Electricity Markets ("**Ofgem**") to modify the standard supply licence conditions so that they include conditions that impose a cap on all standard variable and default rates that may be charged by holders of supply licences for the supply of gas or electricity under domestic supply contracts. Before making any modifications under the Act, the Authority will consult such persons as it considers appropriate on the minded to position for the methodology to be used for the purposes of the cap.
- (2) On 29 August 2018, the Authority gave notice of its intention to open a disclosure room in order to disclose certain confidential data underlying its final proposals. This notice invited interested parties listed in section in 4(a)(d) of the Act and any other party which the Authority determined in its absolute discretion as likely to be affected by the proposed modification (each an "**Interested Party**") to submit expressions of interest to access the Disclosure Room by 4 September 2018.
- (3) The Authority published its Default Tariff Cap: Statutory Consultation under the Act on 06 September 2018 ("**Statutory Consultation**"). This consultation seeks views on the Authority's minded to position for the proposed methodology for the introduction of a cap on all standard variable and default rates, and with regard to the Authority's proposed licence modifications.
- (4) The Authority will disclose the underlying data set out in Schedules 1 and 2 of this Undertaking in the form described in Schedules 1 and 2 of this Undertaking ("**Disclosed Material**"), which may be amended from time to time by the Authority, by means of disclosure rooms located at the offices of Dentons United Kingdom and Middle East LLP ("**Dentons**") at One Fleet Place, London EC4M 7RA from 17 September 2018 until 3 October 2018 (inclusive) ("**Disclosure Rooms**"). A reference to the Disclosed Material in these undertakings includes a reference to any part of the Disclosed Material. The

Disclosed Material is confidential and of a highly commercially sensitive nature. In the event that an Interested Party not in the sample data set seeks access to the Disclosure Rooms for its advisers, the Authority will provide a fully anonymised version of the materials set out Schedule 1 and/or Schedule 2 where applicable.

- (5) The Authority considers that the Disclosed Material includes information caught by the prohibition on disclosure in section 105 Utilities Act 2000 ("**UA 2000**"). The Authority may disclose such information in a manner consistent with the 'disclosure gateways' contained in section 105 UA 2000.
- (6) Access to the Disclosure Room and the Disclosed Material is provided for the sole purpose of allowing external legal and/or economic advisers of the Interested Party ("**Firms**"), who have given written undertakings acceptable to the Authority (the "**Firm Undertakings**"), on behalf of the Interested Party who has also given written undertakings acceptable to the Authority (the "**Interested Party Undertakings**"), to review and understand the Disclosed Material, and to prepare submissions and representations to the Authority's Statutory Consultation (the "**Permitted Purpose**").
- (7) Access to the Disclosure Rooms will be granted to, and only to, a partner, member, employee and/or consultant employed or engaged by an Authorised Firm representing the Authorised Interested Party ("**Advisers**"), who has given written undertakings acceptable to the Authority (the "**Individual Undertakings**"). An Interested Party approved by the Authority being an "**Authorised Interested Party**"; a Firm approved by the Authority being an "**Authorised Firm**"; an Adviser approved by the Authority being an "**Authorised Adviser**"; and an Authorised Interested Party, Authorised Firm and Authorised Adviser being an "**Authorised Participant**"). For the avoidance of doubt, the Authorised Participants will include the partners, members, employees and consultants of the Authorised Interested Parties and Authorised Firms. The Interested Party Undertaking, Firm Undertaking and Individual Undertakings together being the "**Undertakings**".
- (8) The arrangements for obtaining the Authority's approval for access to the Disclosure Room, and for giving Undertakings are as follows:
 - a. notice of interest in attending the Disclosure Rooms (a "**Notice of Interest**") must be given by the Interested Party by email by at the latest 10am on the Working Day before the desired attendance ("**Access Date**") to Retailpriceregulation@ofgem.gov.uk (copied to katie.barker@dentons.com));

- b. the Authority may approve access as requested in the Notice of Interest provided that if the Disclosure Rooms' attendance limit has been reached, access may not be granted at the requested time but an alternative day and time may be offered;
- c. subject to the Authority's approval in accordance with sub paragraph (b) above, (if not already provided) by 12pm on the Working Day before the Access Date all relevant executed Undertakings must be provided to (and received by) the Authority; and
- d. before any person is granted access to the Disclosure Rooms, confirmation in writing must be obtained from the Authority that it has approved the executed relevant Undertakings,

Working Day is any day of the week, Monday to Friday, on which Dentons' offices are open (and excludes public or bank holidays).

An Authorised Adviser who has been granted access to the Disclosure Rooms in accordance with this paragraph (8) is an "**Authorised Attendee**".

- (9) Attendance is limited to ten Authorised Attendees representing each Authorised Interested Party, with no more than two Authorised Attendees representing an Authorised Interested Party being permitted access to the Disclosure Rooms at the same time.
- (10) The Disclosure Rooms are to operate in accordance with the Disclosure Room Rules which are annexed to this Undertaking and subject also to the Firm Undertaking and the Individual Undertaking.
- (11) Disclosure, or removal from the Disclosure Rooms, of the Disclosed Material other than in accordance with this Undertaking, the Firm Undertaking and the Individual Undertaking is not permitted without the Authority's express prior written consent. Breach of any Undertaking may result in the Authority:
 - a. terminating the Authorised Attendees' access to the Disclosure Rooms and refusing the Authorised Participants access to any subsequent disclosure room or confidentiality ring run by the Authority, whether relating to the Permitted Purpose or any other matter; and
 - b. where relevant, referring the breach to the Authorised Participant's regulatory body which may decide to take disciplinary action in relation to the breach.

Section 105 of the UA 2000 makes it an offence to disclose information other than in a manner that is consistent with the UA 2000. The Authority considers that any further disclosure of the Disclosed Information for anything other than the Permitted Purpose, would be a contravention of the UA 2000.

NOW THEREFORE

I, [*Name of Adviser*] [*Job title*] at [*Name of Firm*], who has been engaged by [*Name of Interested Party*] in consideration for being granted access to the Disclosure Rooms undertake to the Authority in my own name:

General

1. To abide by the Disclosure Room Rules which are annexed to this Undertaking.
2. To use the Disclosed Material for, and only for, the Permitted Purpose.
3. To hold the Disclosed Material in strict confidence and not to transmit, communicate or otherwise make available in any manner the Disclosed Material to any other person (being a "**Non-Authorised Person**") except:
 - a. any other Authorised Attendee of [*Name of Interested Party*]; or
 - b. a member of the Authority's or Dentons staff,
4. Save as provided in paragraph 8, 9 or 10 not to make any electronic or non-electronic copy in any format of the Disclosed Material.
5. Save as provided in paragraph 8, 9 or 10 not to remove the Disclosed Material from the Disclosure Rooms.
6. Save as provided in paragraph 8, 9 or 10 to ensure that any analysis I undertake, or any document I prepare, which contains or refers to the Disclosed Material or which derives wholly or partially from the Disclosed Material, or any knowledge I obtain in the Disclosure Rooms, is not used, disclosed or made available in any way to:
 - a. any Non-Authorised Person;
 - b. enable or assist any Non-Authorised Person to gain an understanding of the Interested Party's position or potential future position in any market

relative to any other market operator (other than relative to a market wide benchmark).

Except where the Adviser has the express, and prior, written consent of the Authority.

7. To notify the Authority immediately if I become aware of or suspect that there has been a breach of:
 - a. this Undertaking;
 - b. any Undertakings given by another Authorised Adviser of [*Name of Firm*];
 - c. the Disclosure Room Rules; or
 - d. any Undertaking given by any other person.

Disclosure Room Report

8. That while I may, in order to facilitate the Permitted Purpose, prepare in the Disclosure Rooms, with one or more Authorised Attendees of [*Name of Interested Party*], an interim report ("**Interim Report**") which may contain the Disclosed Material and, separately, a final report ("**Final Report**") which may contain the Disclosed Material (each a "**Report**") and which may (as stated below) be removed from the Disclosure Rooms, I will ensure:
 - a. a Report does not include or refer to any Disclosed Material that is/relating to:
 - i. values which are calculated based on other supplier data, including values which are reported as lower quartile values or averages;
 - ii. values for modelling assumptions contained within the non-pass-through SMNCC model, whether based on supplier data or based on other information, which were not previously reported in the public domain;
 - iii. values for intermediate outputs created by advisers, based on the non-pass-through SMNCC model. This restriction does not include the values of the SMNCC itself;
 - iv. individual suppliers' wholesale market operations for both gas and electricity models. This includes values relating to individual suppliers' historical imbalance levels on a daily or aggregated basis (from, or

- based on data from, Elexon and Xoserve), and suppliers' transaction costs;
- v. wholesale market data that is obtained under commercial agreements or as part of a specific data sharing agreement. Specifically, this refers to data Ofgem has purchased from ICIS Energy (forward wholesale prices) and from NETA Reports/EnAppSys (imbalance costs); or
 - vi. Specific data points provided for system data series' provided by Elexon or Xoserve. This only refers to the data itself, and does not restrict referring to the source or data series by name.
- b. a Report is no longer than is reasonably necessary for the Permitted Purpose;
 - c. any working files used to perform analysis referred to in a Report are saved on the laptop provided in the Disclosure Rooms;
 - d. only one copy of the Report is removed from the Disclosure Room, subject to the procedures in sub-paragraph (e) except that :
 - i. An Interim Report may be taken into a breakout room used for internal discussion (as permitted in the Disclosure Room Rules);
 - ii. on two occasions during the period when the Disclosure Room is open and prior to removal of the Report, one copy of a draft of the Report may be removed from the Disclosure Room, subject to the procedure in sub-paragraph (e);
 - e. prior to removal of a Report (including an Interim Report from the Disclosure Rooms), a request for removing the Report along with a copy of the Report is provided to an employee of the Authority for inspection, and is removed from the Disclosure Rooms only after the Authority has confirmed in writing to the Authorised Attendee of [Name of Interested Party] that the Report has been prepared in accordance with sub-paragraphs (a) to (d). The Authority will endeavour to approve the request for removal of the Report by the end of the next Working Day after receiving the request;
 - f. prior to removal of the Final Report from the Disclosure Rooms and no later than 5.30pm on 3 October 2018, the Final Report is provided to an employee of the Authority for inspection, and is removed from the Disclosure Room only after the Authority has confirmed to the Authorised Attendee of [Name of Interested Party] that the Final Report has been prepared in accordance with sub-paragraphs (a) to (d).

9. That once a Report has been removed from the Disclosure Rooms, I will ensure:
- a. the Report is used for, and only for, the Permitted Purpose (which may include the preparation of one or more submissions to the Authority);
 - b. any copies of the Report or the Disclosed Material contained or referred to in the Report I make is solely for my use or for the use of the Interested Party or its other Authorised Participants for the Permitted Purpose and in accordance with this Undertaking;
 - c. I will keep secure at all times:
 - i. the Report;
 - ii. all copies of the Report prepared by or provided to me; and
 - iii. any report, submission or other document prepared by or provided to me which contains or refers to the Disclosed Material, (together "**Relevant Material and Documents**") including in a manner which means the Relevant Material and Documents are not accessible to any Non-Authorised Person.
 - d. any submission I prepare containing or referring to the Disclosed Material is submitted to the Authority separately from any other submission on behalf of [*Name of Interested Party*] and highlights any Disclosed Material.
10. That while I may, in order to facilitate the Permitted Purpose, share a non-confidential version of the Report with the Interested Party and its other Authorised Participants, I will not share any such document until written confirmation has been obtained from a member of the Authority's staff that the restrictions in paragraph 6, have been complied with (including by making the necessary redactions) in relation to that document.
11. That while I may share a general, non-confidential summary of the Report with [*Name of Interested Party*], to facilitate the Permitted Purpose, I will ensure that:
- a. The non-confidential summary of the Report does not include or refer to any Disclosed Material that is relating to:

- i. values which are calculated based on other supplier data, including values which are reported as lower quartile values or averages
- ii. values for modelling assumptions contained within the non-pass-through SMNCC model, whether based on supplier data or based on other information, which were not previously reported in the public domain
- iii. values for intermediate outputs created by advisers, based on the non-pass-through SMNCC model. This restriction does not include the values of the SMNCC itself.
- iv. individual suppliers'/shippers' daily and aggregate imbalance levels. Daily "Party imbalance data" for gas and electricity are provided by Xoserve and Elexon, respectively. We calculate aggregate levels based on this data.
- v. individual suppliers' transaction costs for both gas and electricity.
- vi. wholesale market data that is obtained under commercial agreements or as part of a specific data sharing agreement. Specifically, this refers to data Ofgem has purchased from ICIS Energy (forward wholesale prices) and from NETA Reports/EnAppSys (imbalance costs).
- vii. Industry sensitive information provided by Xoserve. Specifically, this relates to the data items listed below. This is in addition to the supplier/shipper specific data from Elexon and Xoserve highlighted in point "iv." above.
 - Domestic seasonal annual load profiles
 - Domestic weighted adjusted annual load profiles
 - Supply point AQs; and

- b. The non-confidential summary of the Report does not enable or assist any Non Authorised Person to gain an understanding of another Interested Party's position or potential future position in any market relative to any other market operator (other than relative to a market wide benchmark) and in particular does not reveal

12. That save as provided in paragraph 13, within 5 Working Days of the relevant concluding event, we will:

- a. return to the Authority or destroy the Relevant Material and Documents or, where the Relevant Material and Documents are in electronic form and their destruction is not possible, return them to the Authority or render them permanently inaccessible to any person from any computer system, disk or device so that they are not readily available to any person; and

- b. where the Relevant Material and Documents are destroyed or rendered inaccessible, inform the Authority of the manner of the destruction or rendering inaccessible.

The relevant concluding event is:

- i. if there is an appeal against a decision of the Authority to modify the standard supply licence conditions so that they include conditions that impose a cap on all standard variable and default rates that may be charged by holders of supply licences for the supply of gas or electricity under domestic supply contracts in which [Name of Party] is a party or is intervening, the conclusion of the appeal;
- ii. if there is no such appeal, the expiry of the period for bringing such an appeal, or
- iii. if [Name of the Firm] ceases to advise [Name of Party] in relation to the statutory consultation or appeal before the event specified by (i) or (ii), we ceasing to advise [Name of Party] in relation to the Investigation or appeal.

13. That while the Authorised Advisers of [Name of Firm] may retain one copy (between them) of the Report and any submission or other document containing the Disclosed Material if it is required to comply with [Name of Firm]'s professional indemnity insurance policy or any applicable law, legislation or court order, I will ensure that:

- a. the copy is stored securely in accordance with the undertaking in paragraph 9;
- b. the Authority is notified of the retention within 5 working days of the relevant concluding event specified by paragraph 12(i) or (ii); and
- c. the Authority is consulted as far as practicable prior to any disclosure of the copy under [Name of Firm]'s professional indemnity insurance policy or any applicable law, legislation or court order.

PROVIDED THAT

The above undertakings shall not apply to any part of the Disclosed Material that:

- i) belongs or relates solely to the Interested Party or to the Interested Party's business and which does not include any confidential information belonging to, relating to or deriving solely or partially from any other party;
- ii) is information that has previously been disclosed by the Authority to [Name of Party] in the context of the implementation of a cap pursuant to the Domestic Gas and Electricity (Tariff Cap) Act 2018;
- iii) at the time of disclosure is in the public domain or subsequently comes into the public domain, except through breach of this Undertaking, or any Undertakings given by [*Name of the Interested Party*] or any its other Authorised Participants; or
- iv) is required to be disclosed by law, legislation or court order, as long as, and unless prohibited by law, legislation or court order, we consult with the Authority as far as practicable prior to the proposed disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

AND IN AGREEMENT THAT

This Undertaking and the Disclosure Room Rules shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these undertakings and the Disclosure Room Rules.

[*Name of Interested Party*] has given full and informed consent to the terms of these undertakings and the Disclosure Room Rules, including the restrictions placed upon [*Name of Adviser*] on the disclosure of information by this Undertaking.

.....
[*Name of Individual*] [*Job title*] [*Name of Adviser*]

SCHEDULE 1

Smart Metering Costs

- a. An individual supplier-specific version of the data and executable model underlying the calculation of the non-pass-through Smart Metering Net Cost Change (SMNCC) will be made available. This model includes:
 2. 2017 Annual Supplier Report (ASR) data, or where relevant, supplier-specific adjustments made to the raw ASR data used for the calculation of the SMNCC (for the relevant supplier only)
 3. Blank data is provided for other supplier-specific ASR responses i.e. advisers will not be able to see the adjustments made to other supplier's information, but will be able to view comments where adjustments had been made.
 4. Average inputs derived from the adjusted ASR data
 5. Calculations performed to determine the Non-Pass-Through SMNCC, including supporting modelling assumptions (e.g. optimism bias)

- b. A supplier-specific version of the data and executable model underlying the calculation of the smart metering roll out profile as used in the smart metering model will be made available. This model includes:
 2. Supplier-specific domestic rollout estimates for 2016, 2017, and the forecasted rollout for 2018 to 2020 (for the relevant supplier only).
 3. Blank data is provided for other supplier's roll out profiles
 4. Forecast roll out profile for 2018, based on a volume weighted average of supplier profile forecasts
 5. The rollout value used for 2020. The projected roll out profile for 2019 is calculated based on the 2018 supplier forecast average and the modelling assumption used for 2020.
 6. The estimate of the average proportion of the supplier installation workforce which is formed of insourced staff, based on the six largest suppliers.
 7. The estimate of the increase in installation productivity based on supplier forecasts between 2017 and 2018.

SCHEDULE 2

Wholesale model

- a) A model detailing Ofgem's assessments of the additional direct fuel allowances for electricity, as well as replication of the calculation for the core direct fuel allowances, will be disclosed:
- i) Reference Price (Seasonal Hedge): Ofgem's assessment of the market-wide seasonal electricity 'hedge' for summer 2017 and winter 2017. These are based on the 6-2-12 model using ICIS Energy's assessment of baseload and peakload forward contract prices. This calculation is also reflected and published in Annex 2 of Ofgem's licence condition publication ("Wholesale cost allowance methodology").
 - ii) Seasonal to Monthly Shaping: Following on from the previous step, this is Ofgem's market-wide assessment of the costs incurred by suppliers to re-hedge seasonal wholesale power contracts into monthly wholesale electricity contracts. This is for baseload and peakload prices (70/30 split). Prices are from ICIS Energy and are taken from 2014 - 2017. Monthly demand (Elexon) is based on seasonal demand divided by six.
 - iii) Monthly Peak / Baseload to Hourly Shape: This is Ofgem's market-wide assessment of the costs suppliers incur re-shaping monthly baseload and peakload electricity contracts into hourly Day Ahead contracts. Hourly Day Ahead prices (N2EX) are based on historical Day Ahead price data (01/01/2015 to 31/03/2018). Demand values for the intraday profile is based on an Elexon profile for 01/04/2017 to 31/03/2018.
 - iv) Estimated cost of re-hedging on day-ahead market: This is Ofgem's market-wide assessment of the cost of re-hedging Day Ahead hourly contracts as new market information becomes available at the Day Ahead stage (eg new weather forecasts) on a daily basis. The cost of re-hedging is based on the change in price from the Month Ahead (ICIS Energy) contract price to the Day Ahead price (N2EX). Demand changes are based on the difference between PC1 - 10yr net and PC1- Actual Net (Elexon).
 - v) Allowance for Imbalance: This is Ofgem's market-wide assessment of supplier electricity imbalance costs assuming the previous steps above have been undertaken. Prices are based on the absolute difference between System Buy Price (Elexon) and Day Ahead price (N2EX) over April 2016 - March 2018, for each half hour. The volumetric element is based on the average imbalance levels (Elexon) of a sample of suppliers over the same period.
 - vi) Allowance for Transaction Costs: Ofgem's assessment of a market-wide transaction cost based on supplier-specific information submitted to Ofgem as part of the Default Tariff Cap: Policy Consultation process.

- b) A model detailing Ofgem's assessments of the additional direct fuel allowances for gas, as well as replication of the calculation for the core direct fuel allowances, will be disclosed:
- i) Reference Price (Quarter Hedge): Ofgem's assessment of the market-wide quarterly gas 'hedge' for summer 2017 and winter 2017. These are based on the 6-2-12 model using ICIS Energy's assessment of forward contract prices. This calculation is also reflected and published in Annex 2 of Ofgem's licence condition publication ("Wholesale cost allowance methodology").
 - ii) Quarter to Monthly Shaping: This is Ofgem's market-wide assessment of the costs suppliers incur re-shaping quarterly gas contracts into monthly contracts. Monthly contract prices (ICIS Energy) are based on historical Day Ahead price data (01/01/2014 to 31/03/2018). Demand values for each month are directly converted using the relative (normalised) monthly consumption observed in the Domestic Annual Load Profiles from Xoserve for 01/10/2016 to 30/09/2019.
 - iii) Estimated cost of re-hedging on Day Ahead market: This is Ofgem's market-wide assessment of the cost of re-hedging monthly contracts to Day Ahead contracts (eg new weather forecasts) on a daily basis. The cost of re-hedging is the cost of Day Ahead contracts (ICIS Energy) multiplied by the change in volume requirement. The change in volume requirement is the difference between the Domestic Annual Load Profile from Xoserve pre- and post-weather adjustment factors.
 - iv) Estimated imbalance costs: Finally, this is Ofgem's market-wide assessment of supplier gas imbalance costs assuming the previous steps above have been undertaken. Prices are based on the absolute difference between SMP Buy or Sell (Xoserve), and Day Ahead prices (ICIS Energy) over April 2016 - March 2018. The volumetric element is based on the average imbalance levels (Xoserve) of a sample of suppliers over the same period.
 - v) Estimated Transaction Costs: Ofgem's assessment of a market-wide transaction cost based on supplier-specific information submitted to Ofgem as part of the Default Tariff Cap: Policy Consultation process.