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**Way Forward on the introduction of Supplier Guaranteed Standards of Performance for Switching, and consultation on a Statutory Instrument to bring them into force.**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, storage, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy welcomes Ofgem's decision to delay the implementation of Guaranteed Standards for 21 day switching (for non-erroneous transfer switches), the occurrence of erroneous transfers (ETs), and delays to final bills. As set out in our response to the policy consultation in July 18, and as Ofgem has acknowledged in this decision, the causes for such incidents are subject to a significant degree of complexity, often in part due to existing industry processes.

We have some concerns regarding the standards that will be implemented by the draft Statutory Instrument. The requirement placed upon suppliers to pay £30 for each of the standards set down by this decision is disproportionate, especially in cases where a supplier may be required to make multiple payments for events that are not within its control. For example, where a timescale cannot be met without a response from a different supplier. Ofgem acknowledged this issue in the decision:

*2.30. However, we recognise that creating Guaranteed Standards where an automatic compensation payment by a supplier is triggered by an event for which that supplier is not wholly responsible has the potential to create unintended consequences and perverse incentives.*

Where it is not possible for suppliers to address a delay, Ofgem's intent to incentivise good performance is blunted. For example, where a supplier does not meet the standard timescales, but is not liable to make a payment, Ofgem states this exemption is appropriate where:

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*2.47 ... a supplier has failed to meet a Guaranteed Standard for reasons which are genuinely outside its control and the supplier has exhausted all options available to it to meet the Guaranteed Standard.*

For two of the proposed ET standards (described as B and D in the decision<sup>1</sup>), a delay to meeting these timescales can be wholly out of a supplier's control. In our experience, the significant majority of failures to meet these timescales are due to other suppliers' lack of response to industry flows, and subsequent escalations. These escalation procedures are set out by industry codes and agreed procedures<sup>2</sup>. It is feasible, and common, that a supplier can wholly adhere to these processes and still fall foul of the proposed standards. In dismissing this scenario as a valid exemption, Ofgem asserts in paragraph 2.48 that:

*One of the aims of the Guaranteed Standards is to improve communication between suppliers to resolve erroneous switches, and we consider that this places an appropriate incentive upon both suppliers.*

Guaranteed Standards should not be put in place that punish compliant behaviour from suppliers; i.e. where one party complies and the other does not, both should not receive equal treatment. Additionally, if the compliant supplier is also the contacted supplier, they are likely to incur a £60 penalty for being unable to meet the 20 working day timescale of both standards, while the non-responsive supplier will only pay £30. This runs in direct opposition to Ofgem's position stated in paragraph 2.30 (see above). The non-compliance of another supplier, which cannot be mitigated by the compliant supplier, should be included as an exemption, in line with Ofgem's decision: '*Where it is not practicable for the supplier to meet the standards of performance due to exceptional reasons beyond the supplier's control*'<sup>3</sup>.

For Standards B and D, described above, Ofgem states in paragraph 2.6. '*There is a different substantive purpose behind the two Guaranteed Standards and therefore we consider that it is appropriate that both are implemented*'. Ofgem recognises that notification to the customer is dependent on the agreement in the same paragraph. In all cases where agreement is not reached in 20 working days, the subsequent notification standard will be failed automatically. Therefore, the combination of these standards requires a £60 payment from a single supplier (the 'contacted supplier', by standard D), for what is materially one event from a customer's perspective. This is disproportionate (especially if this contacted supplier has been wholly compliant in all respects), and exceeds the equivalence to the existing Guaranteed Standards, the starting basis for the £30 payment level.

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<sup>1</sup> Whereby, suppliers must agree whether an ET has occurred within 20 working days, and (as a separate standard) the contacted supplier must inform the customer of the outcome within 20 working days.

<sup>2</sup> Master Registration Agreement Agreed Procedure 10 (MRA MAP 10) and Supply Point Administration Agreement (SPAA) Schedule 10.

<sup>3</sup> Way Forward on the introduction of Supplier Guaranteed Standards of Performance for Switching, and consultation on a Statutory Instrument to bring them into force, paragraph 2.50. in reference to retaining existing GS exemptions.

In the Approach to Impact Assessment on Introducing Switching Compensation, Ofgem provided rationale to support the £30 payment level based upon average costs:

*3.14. According to Ofgem's 2016 data, supplier pre-tax margin amounts to 8.1% of a dual fuel bill, or £91, on average. A £30 payment of automatic compensation for one of the Guaranteed Standards for a gaining supplier or a £15 payment by a losing supplier would therefore have a significant impact on the profitability of each customer.*

This data does not reflect Ofgem's calculations for the Default Tariff Cap. In the cap overview, Ofgem has set the cap level to include<sup>4</sup>: EBIT (profit) at £20, Headroom at £12. This £32 total is significantly lower than the £91 equivalent value used by Ofgem to qualify the payment level for these standards. The issue is compounded if a supplier is liable for £60 (as a combination of standards B and D), which as we stated above, can be unavoidable.

We agree the payment level for compensation should be appropriate to incentivise good performance from suppliers, and compensate customers for poor outcomes. However, the rigid application of a £30 payment value will far exceed a reasonable level of compensation for a significant proportion of events related to the proposed standards.

Ofgem states the £30 level was adopted as a proxy value, based upon continuity with the existing Guaranteed Standards:

*3.13. We have limited evidence on the actual value of the detriment suffered. We are therefore proposing to use the value of compensation payments under the existing Guaranteed Standard scheme.*

The existing Guaranteed Standards most directly relate to appointment failures and payments from Distributors (DNO) for power outages. The only practical linkage from these events, to the standards referred to in this decision, is their implementation via the common Statutory Instrument. The loss of service (as an outage to the supply of electricity or gas) to a property is likely to cause more significant customer detriment than, for example, 'a customer receiving a repayment of a credit balance of £10 fifteen days after the issuance of a final bill'<sup>5</sup>. We recognise that inconvenience and detriment still exists which should not be ignored. However, the scenarios relevant to the proposed standards do not endanger continuity of supply, nor require a customer to take time off from work to resolve.

In the Impact Assessment for this decision, paragraph 1.12. Ofgem states 'A typical *ex gratia* payment was of 'between £10 and £50', although one supplier did make a standard payment of £20 for delayed switches'. This is also referred to as '£20 - £50' in

<sup>4</sup> Default Tariff Cap – Overview. Table 5 (page 39)

<sup>5</sup> Ofgem - Approach to Impact Assessment on Introducing Switching Compensation, paragraph 3.2.

the decision paragraph 2.53. Ofgem's use of this data as support for the payment level does not recognise that suppliers will apply an ex gratia which is appropriate for the detriment experienced, and are unlikely to offer £30 for a short delay with minimal impact on the customer.

We recognise that Ofgem does not aim to precisely reflect a specific cost or customer detriment in setting the payment level. However, it should be noted the original Guaranteed Standards payment level was based on 'data set and calculations used for DNOs under the RIIO-ED1 price control'<sup>6</sup>. This basis is not relevant to a delayed credit balance, therefore maintaining continuity with DNO GS payment levels appears arbitrary, given that Ofgem originally employed this figure as a simple 'proxy value'. Ofgem should consider starting this requirement with payment levels set at a reasonable level, balanced to the likely detriment. Ofgem can, via market monitoring, establish what first year benefits this has accrued, and adjust this level accordingly, prior to the implementation of Faster Switching.

We urge Ofgem to be mindful of the significant regulatory change in Quarter 1 2019 when proposing an implementation period of only two months. For example, the implementation of the Default Tariff Cap, Supplier-Customer Communications, Switching Programme and Retail Energy Code (REC), and the commencement of the staged build of the Energy Customer Database. Rushing to implementation could result in uneven outcomes across the market, risking confusion and detriment to customers. In the Decision paragraph 2.56, Ofgem concludes that as the proposed standards largely reflect existing requirements (by Supply Licence, Industry Code or Energy Switch Guarantee), minimal system changes are required. This underestimates the complexity of applying an automated payment scheme for these events.

In the Impact Assessment, paragraph 1.22. Ofgem notes the significant variance between supplier implementation cost estimates, derived from the disparate system architecture employed by suppliers. This is not necessarily an indicator of the opportunity to reduce inefficiency, as Ofgem asserts. Systems of differing complexity are required depending on the supplier's approach to customer relations management. To reiterate our answer to Question 30 from the previous consultation, the automatic allocation of payments to customers is a complex technical challenge, especially when this payment is triggered by an industry event, like a switch or an ET. Ofgem must allow an appropriate period for testing and assurance measures to ensure customers receive good and consistent outcomes, and implementation is stable and sustainable.

Our detailed response to the draft Statutory Instrument is set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Gavin Anderson on 07852 948087 or myself.

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<sup>6</sup> Supplier Guaranteed and Overall Standards of Performance - statutory consultation and proposals – December 2014

I confirm that this letter and its attachment 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**

## Attachment

### Way Forward on the introduction of Supplier Guaranteed Standards of Performance for Switching, and consultation on a Statutory Instrument to bring them into force EDF Energy's response to the draft Statutory Instrument

EDF Energy's comments regarding the draft Statutory Instrument:

- 3- 6D (4)  
*For the purposes of paragraph (3), where a supplier is to issue the refund by cheque, the cheque is to be treated as refunded when it is received at the postal address provided by a customer.*

This is inconsistent with the Posting Rule, established under English common law, In this context, notification should be said to have been completed when the cheque has been posted. First-class post and second-class post is deemed to have been delivered two and four business days after posting. Suppliers are unable to mitigate when a delivery is completed. A customer is not required to take any additional steps or otherwise respond or accept the refund to complete receipt of the refund.

The Guaranteed Standards should be clear that the completion of sending the refund via cheque represents completion of this criteria.

- This principle should be applied to the requirement to provide confirmation to the customer of the outcome of the suppliers' ET investigation as per 6B.3 (a) and (b), whereby the supplier is deemed to have provided notification to the customer when the written confirmation is dispatched.
- This clarification should replace relevant references in 5- (2) (7A) and (7B)(b). As it stands, the completion of the standard is either beyond the suppliers control (in terms of the point the communication is received), or significantly reduces the available time for a supplier to complete the action required (to less than the period allowed in other regulation) as detailed in this decision and consultation. This would be a significant distortion of the proposed standard.
- Additionally, we note the exclusion (7B)(b)(i) is made up of two criteria, which should be taken separately:

*'the supplier can demonstrate that the cheque was issued within a reasonable time to meet the individual standard of performance but the customer provided the supplier with an inaccurate or incomplete postal address;*

A supplier's demonstration that issuance was completed in a reasonable time is separate to a customer providing an inaccurate postal address, and should, in itself, constitute compliance with the standards.

- For 6D Credit balances, and throughout the proposed Statutory Instrument, the term 'customer' remains undefined. In the overarching Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015, 'customer' is defined in (7)(2) as follows;

*"customer" means any person who is supplied or requires to be supplied with gas conveyed through pipes or with electricity at premises which that person owns or occupies;*

This definition does not meet the requirements for refunding a credit balance. This will currently capture unnamed 'Owner/Occupiers' to whom a cheque cannot be issued. Ofgem must clarify the usage of the term 'customer' throughout this Statutory Instrument to ensure it is appropriate for all the standards.

- For 6B Investigation of erroneous transfers, clarification is required as to which supplier will be regarded as the 'notified supplier' if the customer contacts both suppliers (as is common) to resolve a potential ET.
- For 6B(3)(a) – it should be clarified that the written confirmation is to be provided to the customer.

**EDF Energy**  
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