

19 February 2021

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Dear Team,

Ofgem Forward Work Program 2021-22

Thank you for the opportunity to comment on the above consultation. This letter is not confidential.

Utilita Energy Limited (Utilita) is a smart prepayment energy supplier, specialising in providing an excellent smart service to a previously poorly served market sector. We have been installing smart meters for our customers since 2008, and SMETS meters since 2013. Our portfolio is around 95% prepay customers, and of those approximately 90% have smart meters operating in smart mode.

We welcome the commitment to enhance the use of data and wider digitalisation to support the Government's Net Zero ambitions. Particularly for domestic energy consumers, having better a better understanding of energy use, usage patterns and key drivers of consumption is an essential element of the green recovery and decarbonisation strategies, especially when combined with smart meters and open-source data.

Commercial energy consumers can realise the same benefits, with the money saved on energy bills allowing for investment back into the business, stimulating wider positive economic effects.

We also welcome the commitment to support wider deployments of electric vehicle charging infrastructure, heat pumps and heat networks. This will require greater cooperation between private and public sector organisations, especially local authorities and holders of social and affordable housing stock, and we look forward to further engagement with Ofgem and other delivery partners to drive these initiatives forward.

We would like to see further information about Ofgem's Transformation Programme, particularly in respect of where Ofgem expects lighter-touch regulation. We would also welcome early transparency on potential forms of deregulation, or indeed more stringent oversight of some parts of the industry. An early view of thoughts in this area, for example by greater use of Working Papers, the draft replacement guidance of the now-retired Regulatory Stances document, and industry governance in general would be welcome.

In respect of the introduction of the Green Gas Levy, we support the intention to provide support for the decarbonisation of the energy system. However, we do not believe that levies on energy bills are the most appropriate approach to funding such support policies.

Using energy bills to account for the costs of national policies aimed at supporting the transition to a low carbon economy has a distorting impact on the market and will affect the most vulnerable consumers disproportionately, particularly those who pay for their energy by prepayment meter.

Levies on energy bills place all the risk of mutualisation or non-payment upon suppliers and by proxy their customers through rising charges, with the generators and network companies taking on no risk under the scheme. Therefore, we believe the Green Gas Levy will be better funded through a network charge. Utilising network charges would allow for a quicker and more accurate application of a volumetric approach and allow a simpler route for annual reconciliation.

We also suggest that the costs of the levy should flow through the gas transmission charges. By taking this route, the charges will be fairly distributed to all parties, and incur the lowest administrative and accounting charges, both in terms of levy collection and scheme administration by the regulator. The use of network charges will also reduce the complexities of flowing the charges through the price cap and so reduced the risks of further destabilising the supply market.

We believe there should be a further review of the potential impacts the levy may have on suppliers' existing or future plans to supply greater proportions of green gas, particularly where the levy is imposed on a per meter basis, rather than on a volumetric basis, as the current proposals may inadvertently incentivise the wrong behaviours, with suppliers supplying greater proportions of green gas over the costs of natural gas.

We submitted the above representations to BEIS as part of their Green Gas Levy consultation in November 2020 and would welcome clarity on the position of Ofgem in respect of whether the GGL will be ready to launch without further consultation with industry.

We would also welcome consideration of further reforms to the green tariff market, particularly in respect of REGOs.

The Renewables Obligation (RO), Feed-In Tariff (FiT) and Contracts for Difference (CfD) schemes account for nearly one quarter of electricity bills. Together they directly support additional renewable electricity generation, accounting for a little over 50% of all electricity supplied. These schemes have been the primary driver of growth in UK renewable electricity generation and are paid for by all customers.

The commercial construct of guarantees of origin such as REGOs work well. They create a fluid market and a transparent, traceable paper trail. However, they almost work too well, and this is their flaw.

Customers are unable to claim that any electricity they consume comes from renewable or low carbon sources unless that consumption is matched with a REGO, even if they have already paid for it through the afore-mentioned subsidies. Utilita believes this is inequitable and results in market distortions.

We propose that the MWh supplied under RO, CfD and FiT come with REGOs attached at no additional cost. If suppliers do not want them, they should be able to trade them. To increase the renewable electricity content beyond this, suppliers could buy more REGOs. These additional REGOs would largely reflect unsubsidised, additional renewable generation. A proportion could be unwanted REGOs from suppliers. Either would still reflect additional green generation.

It is likely that the resulting price of REGOs would increase somewhat, especially if wholesale prices for renewable electricity do not have parity with electricity from fossil fuel sources. This would reflect the true cost of renewable electricity. As net zero is incrementally realised, the REGO price would self-cannibalise, by the law of diminishing returns, until 100% of UK electricity comes from renewable sources and REGOs become redundant.

We think this is a simple solution which would require only minimal changes to Ofgem's current processes of administering REGOs and FMD. It would require no additional obligations on suppliers and is more equitable for customers. It would also remove the market distortions and reduce green washing.

There would be some additional administrative burden to calculate the subsidised MWHs from the constituent schemes, but these are not complex and are based on inherent data.

We believe the principle of coupling guarantees of origin with subsidies for suppliers to subsequently keep or trade should be employed across emergent low carbon technologies including but not limited to green hydrogen, blue hydrogen with Carbon Capture, Utilisation and Storage (CCUS), biomethane and biomass with CCUS.

We also look forward to the publication by BEIS of the agreed framework for Warm Home Discount Scheme Year 11, as well as the consultation on the multi-year settlement for Warm Home Discount from Scheme Year 12 onward. We would welcome any steps Ofgem can take to encourage early publication of these key documents to allow suppliers to fully plan and cost administration of the scheme with sufficient time before they are due to be launched.

We would like additional information on the additional expenditure alluded to for distribution networks, new power generation and the deployment of low carbon technologies as part of the circa £10 billion of additional Net Zero expenditure over the next five years, particularly in respect of the role of suppliers in funding these works and when it might be incorporated into price cap calculations.

We welcome the commitment to establish a full chain flexibility programme and look forward to publication of the Smart Systems and Flexibility Plan 2.0, particularly in relation to EV charging, vehicle-to-grid services and demand-side flexibility sources for domestic heat.

We continue to support the smart meter rollout as we agree smart meters offer consumers the best overall service as well as proactively contributing to reduced energy consumption. The simplest way to decarbonise remains reducing overall usage and we see smart meters and the wider smart infrastructure as an essential component of the push toward Net Zero.

This is supported by having a competitive energy retail market which facilitates easy and rapid switching for consumers. We look forward to more information on Ofgem's proposals on collective switching principles and the broader faster switching programme.

We would also like further detail on the 'sources of consumer harm and detriment' alluded to in the Future of Retail section of the draft FWP: *"Examining market dynamics in the light of COVID-19, seeking to identify and address any new and enduring sources of consumer harm and detriment."* Addressing potential causes of consumer harm remains a priority for Utilita and we would welcome additional information on the wider impact of COVID-19 on the retail industry.

However, we do have significant concerns about the proposals made in the Microbusiness Strategic Review Consultation in October 2020.

We support a number of the proposals set out in principle. However, the diverse range of proposals means the cost of implementing them would be significant and would add layers of complexity to energy supply processes increasing consumer costs and reducing competition. We are concerned that the methods of implementation set out for the majority of proposals will not be workable in practice, and we believe more sustainable solutions can be found through this consultation. We believe a second consultation will be required – on a more refined set of proposals – to deliver benefits to microbusiness consumers economically and efficiently.

We do not support the proposal to implement regulation of the broker and TPI sector via suppliers. If brokers are to be regulated, then a bespoke framework should be designed and implemented which is fit for purpose. Regulation via a third-party is resource-intensive to implement and almost impossible to enforce effectively.

We disagree with the proposed licence drafting of the definition of “Broker” which currently seeks to apply to all brokers, regardless of whether the supplier has a valid commercial agreement or accepts referrals from them. We do not believe this is Ofgem’s intent and seek additional clarity on this.

Where brokers act on behalf of a supplier and receive commission for that referral, we agree that suppliers do have an obligation to ensure that the sale was carried out fairly and compliantly. We do not agree that suppliers should be held accountable for the conduct of brokers that they do not work with or accept referrals from. It will not be possible for a supplier to impose obligations on a broker they have no relationship or commercial agreement with.

There is also little penalty or incentive on a broker acting contrary to the supplier’s licence conditions to change their behaviour, other than the licensee may choose not to contract with them. This approach risks burdening suppliers with licence conditions that are beyond their ability to comply with. Where Ofgem seeks to impose such an obligation, there must be an element of acting “with all reasonable steps” to ensure suppliers are not unfairly penalised.

Particularly concerning are the proposals which seek to require suppliers to apply retrospective changes to pre-existing commercial contracts with third parties. These contracts have been negotiated in good faith and have been agreed between both parties. Seeking to implement amendments to pre-existing terms by this route may well be subject to legal challenge and would be expected to lead to significant financial and legal consequences for suppliers.

On this basis we do not believe that it is reasonable to seek to impose changes to existing contracts without the express consent of the contracted parties. It is also not clear where the legal basis or precedents for these proposals are found.

In addition to the points above, it is not apparent how an energy supplier can be expected to supervise and direct operating procedures of an independent business as is proposed. We also believe that imposing such a requirement would not result in improved outcomes for microbusiness customers as the additional complexity for the suppliers will ultimately be reflected in prices.

We would urge Ofgem to work closely with BEIS and consumer groups to design and implement a bespoke framework for regulation of the brokerage industry, independent of suppliers and with its own stand-alone enforcement provisions.

We would be happy to discuss these points in more detail in an in-person discussion if you wish to do so.

Yours sincerely,

By email

Alison Russell
Director of Policy and Regulatory Affairs