



Tempus Energy Supply Ltd.

31 Oval Road

Camden NW1 7EA

Ofgem

Retail Markets,

9 Millbank, London SW1P 3GE

14 March 2016

Dear Mr Ramdarsham, Ms Schoenemann,

Please see below the **Tempus Energy Supply Ltd** (Tempus) response to Ofgem's consultation on the future of retail market regulation ('RMR').

About Tempus Energy

Tempus Energy ('Tempus') is a technology company and an innovative, new electricity retail supplier. Tempus was established to make energy systems more efficient through capturing the value of under-utilised assets using demand-side flexibility technology. Tempus has developed technology to shift real-time consumption patterns to optimise trading on the electricity market within each half-hour, leading to cheaper electricity prices for the company and its customers, while also helping to balance the overall electricity system. Importantly Tempus is demonstrating that through the use of demand-flexibility in liquid, transparent and competitive wholesale markets, where prices reflect actual scarcity and network stress, we can create a market-based approach to integrating more intermittent renewable energy onto the grid and therefore combat climate change through market-based solutions.

Response to Ofgem's future RMR consultation

Tempus welcomes Ofgem's intention to revisit the way it regulates energy suppliers in GB through the future RMR consultation. As Ofgem points out the energy market is undergoing a transformation in order to be able to deliver on the energy 'trilemma' goals society, government and industry have agreed on. At the same time technological innovation has taken over and has transformed most other industries leaving the energy sector still behind with a 20th Century model. The imminent smart meter rollout (which some suppliers such as Tempus have already begun) will create a plethora of opportunities for new and niche products and services that make use of data and lower customers' bills while improving the overall customer experience. For this reason Tempus fully agrees that a regulatory framework for the energy market of the future is needed as it is suppliers that will necessarily lead the transformation. This future regulatory regime will indeed need to embrace a more principles based

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approach and be less prescriptive in order to encourage more innovation and competition. By doing so we will ultimately be achieving the trio of energy goals we have set while ensuring customers are protected. In other words the regulatory regime needs to be future proof and not in need of constant piecemeal updates.

Tempus would also like to point out that as part of this regulatory review, and also considering Government's wider review of energy market regulation (such as through the draft energy bill), that it would be wise to create more certainty around Ofgem's responsibilities and powers in relation to DECC's. Tempus finds that Ofgem already has many powers that are often left unused (such as those set out in Article 3A of the Utilities Act 2000) due to uncertainty over the parameters of Ofgem's autonomy in exercising its functions under the EU Third Energy Package. In particular it is not clear how Ofgem's obligation not to seek or take instructions from Government should be reconciled with the various powers of veto reserved by the Secretary of State over Ofgem's decisions (e.g. Section 11A of the Electricity Act 1989).

For there to be a move towards principles-based regulation, there will first need to be an agreement on what these principles are. Tempus would propose the below principles on which to base the new, flexible regulatory framework.

- Achieving the best value for both existing *and* future customers through maximising opportunities for competition.
- Encouraging customers to be 'smart' energy consumers and providing choice in products available to those customers (i.e. smarter customers not just dumbed down tariffs).
- Ensuring cost-efficiency through clear price signals and requiring suppliers to empower customers to benefit from those price signals through demand side measures.
- Full transparency of pricing in both the wholesale and retail markets, whether through bilateral contracts or through an open exchange (though ideally the latter).
- Standardisation of terminology to enable customers to compare different tariffs (while not limiting options available to customers).
- Recognising that customers are not a homogenous group and should not be treated as such. We especially need to revisit the current narrow interpretation of universal supply obligation to enable bespoke supply offers to particular categories of customer.
- Flexibility to allow suppliers that want to innovate to do so, and at times through niche offerings rather than through mass scale solutions (i.e. technological neutrality in the types of solutions, including Smart Meters that suppliers feel deliver value).
- Mandatory settlement on actuals to accompany the mandatory smart meter rollout to ensure customers receive the full benefit of the rollout without further action required on their part.
- Protecting all customers from abusive practices (including transparency and meaningful information on behalf of suppliers) while not limiting choice.
- Simple, easy to read licence conditions and industry codes to allow for new market entrants to easily enter the market and not face unnecessarily high market barriers.

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- Ofgem should have the power to enforce all of the above without intervention from the industry (notwithstanding the existing procedures for industry to intervene).

Tempus believes that the future Supply Licence should clearly set out and strongly enforce the above principles, whilst giving suppliers discretion over the most effective and efficient way of achieving the obligations in light of their particular business models. Regulation should enable outcomes-focused business practices that foster innovation and genuine competition whilst still protecting vulnerable customers.

In terms of reviewing and updating the Licence, Tempus agrees that this should be done in a phased manner based on priority sections. Ofgem has raised SLC 25 as a priority section. Of course sales and marketing to domestic customers will need to be re-assessed in light of the CMA Preliminary findings, however on the face of it this section is one of the more principles-based conditions already. Therefore Tempus would be keen to understand from Ofgem more about the sorts of practices that are occurring in breach of the condition and why the existing enforcement regime is not sufficient to cover this. On the other hand, Tempus would strongly recommend that SLC 22 and SLC 22B are also reviewed as a priority. We consider the EU obligation of universal supply to mean that every customer is entitled to an electricity supply, *not* that innovative suppliers offering niche deals (for example for customers with electric vehicles or demand flexible customers) need to offer these deals to all customers. Being overly restrictive risks causing confusion for customers as suppliers are forced to offer supply to customers who are not suitable for the product, which undermines the purpose of the EU requirement and creates unnecessary burden for innovators. This point is expanded on in Section 4.

Tempus has answered the questions set out in the consultation document in groupings under the sections below.

1. Reforming the rulebook

As highlighted above, Tempus fully supports Ofgem's proposal for a move towards a principles-based and more flexible method of supplier regulation. This will naturally reduce the need for formal derogations as each supplier's actions will be judged against the outcomes Ofgem has set, and suppliers will be free to choose how to meet such outcomes. Tempus would agree that some sections of the licence may need to be more concrete than others, such as conditions transposing EU law as the interpretation of EU law should not be left to individual suppliers but to Government which is ultimately responsible. However, where such rules remain there should be clear and streamlined procedures to challenge such prescription where they act as hurdles to delivering genuine value and innovation.

Tempus would recommend that in addition to the existing definition of "treating customers fairly" that Ofgem consider reflecting the principles upon which the new Licence is based on (as proposed above) which are all about ensuring the customer gets the best deal. Of course the best way to ensure that suppliers are fair to customers is to ensure that suppliers do not have conflicts of interest, such as owning both generation and retail businesses. By owning large (mainly fossil-fuel) generation assets, suppliers are not being fair to customers as they are incentivised to sell customers power during the

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peak periods and not help them use less energy and shift energy consumption away from peak periods. This model also has well-known detrimental implications for the liquidity of the wholesale market, reducing competition and subsequently leading to higher retail prices for consumers.

2. Operating the rulebook: engagement and monitoring activities

Tempus welcomes the views put forward by Ofgem regarding the creation of a collaborative approach of engaging and monitoring the market alongside suppliers through an environment built on trust. It is a necessary element of principles-based regulation that there would need to be more open conversations between suppliers and Ofgem to ensure that outcomes are being met and principles are being respected.

In order to deliver on the above, indeed Ofgem will need to spend more time understanding the business models of each supplier, particularly as the new regulation and market changes will encourage even more innovative suppliers to enter the market. It should be an easy process for new, small suppliers with small (or even no) regulatory teams to enter the market. For this reason perhaps Ofgem should set up a dedicated team for liaising with such suppliers.

3. Operating the rulebook: compliance and enforcement

Tempus is in agreement with Ofgem about how to implement a compliance and enforcement regime in a principles-based regulatory framework. In addition Tempus agrees with the attributes Ofgem has put forward in guiding its enforcement vision. If suppliers are to be entrusted with interpreting their supply licence obligations on a purposive basis, there will need to be clarity over what would happen should Ofgem disagree with that interpretation. It is imperative that suppliers are able to discuss plans with Ofgem in an informal and timely manner, rather than taking a leap of faith and then being faced with retrospective enforcement action. Failure to enforce the new licence in a dynamic way could lead to an overly cautious approach that would stifle supplier innovation.

4. Managing the transition effectively

Tempus agrees with Ofgem's proposed approach that a phased transition is best considering the changes being proposed. This will enable all licenced participants as well as the regulator itself to get to grips with the new principles-based regulatory framework. However priority areas should be addressed as a matter of urgency. The sector is changing rapidly and technology solutions that can make a positive impact on consumers are already here. We should not delay the restructuring of retail market regulation any longer in order for customers to be able to reap those benefits in the immediate future. As part of the phasing approach, Tempus would suggest that Ofgem hold frequent workshops, consultations and importantly bilateral meetings with suppliers (especially with small suppliers) to explain the proposed changes in detail.

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As part of the phased approach, sections of the supply licence need to be prioritised. The sections that need prioritisation need to be agreed on with the industry. The criterion for assessing prioritisation would surely be whether particular sections are stifling innovation and competition to the detriment of consumers. Based on this reasoning, Tempus would urge Ofgem to consider SLC 22 and SLC 22B as priority sections. SLC 22 and 22B contain three items in particular that are currently causing Tempus and other innovative suppliers significant problems in bringing their innovations to market, namely the universal supply obligation, the limit of four tariffs and the ban on cash-backs and cash discounts (outside of dual fuel discounts).

SLC 22 contains a Universal Supply Obligation (USO) which in theory aims to protect domestic customers against suppliers cherry-picking desirable customers. Tempus fully comprehends the rationale for protecting customers against such supplier behaviour but believes that there are less prescriptive ways through which to achieve consumer protection and through which to deliver value to customers. Tempus has been in frequent communication with Ofgem regarding this matter and has argued that it does not believe all suppliers need to be obliged to offer universal service where they have a niche offering that is suitable to a certain type of customer and they apply this offer with an objective methodological approach. As Tempus has argued, allowing innovative suppliers to bring solutions to the market that will help consumers using objective criteria to distinguish between types of consumers *is* in line with the objectives of the EU Electricity Directive (in particular Article 36 and 37) and the Energy Efficiency Directive. In this situation by following the letter of the law it would in effect mean following EU law if we approach the legislation with a purposive interpretation. For this reason, moving to a principles-based regime will only help to bring forward innovations that help consumers save money while ensuring their protection through outcomes focused regulation.

Tempus understands that Ofgem has stated that where licence conditions are derived from EU requirements it would need to explore with Government on a case-by-case basis the extent to which any prescription could be replaced by a principles-based rule. Tempus appreciates that as Government is ultimately responsible for the transposition of EU law it should play a role where licence conditions derive from EU law. As the USO has its roots in EU legislation, Tempus would welcome a discussion with both Ofgem and Government about how best to achieve a solution whereby innovative, niche solutions are allowed to flourish and offer value to consumers while at the same time ensuring the highest level of consumer protection.

SLC 22B contains elements that are in urgent need of reform, and at least one of these items has been recognised by the CMA as an Adverse Effect on Competition (AEC). Ofgem's Simpler Tariff Choices introduced a limit on the number of tariffs a supplier can offer domestic customers (four) in order to avoid confusion and allow for easier comparison between tariffs. However, in an age where technological innovation and behavioural change is giving rise to the uptake of products such as heat pumps and electric vehicles, suppliers need the flexibility to be able to offer more than four tariffs. Limiting the number of tariffs unnecessarily limits consumer choice. This cap was rightly identified by the CMA as an AEC in particular as it is the smaller, more innovative suppliers trying to break into the market that are likely to want to offer more customer choice. Nevertheless, by moving to an outcomes-focused regulation Ofgem will still be able to ensure that tariffs are not confusing and detrimental to

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consumers. Tempus believes that as long as choices are clear and comparable, limiting options available is *never* in the best interests of customers.

Furthermore, SLC 22B contains a prohibition on suppliers offering any form of cashbacks or cash-discounts outside of the permitted dual fuel discounts. Tempus finds that this prohibition limits suppliers wanting to share the benefits with its customers. For example, at Tempus we are keen to offer our customers a flexibility bonus which essentially rewards customers for going over an above their agreed flexibility plan in terms of shifting their demand into cheaper price periods. This is an excellent way to educate and incentivise customers to embrace demand flexibility and smart meters as something that everyone can benefit from. However, under the current conditions this type of offering despite clearly being in the customer's interest, is prohibited.

As it has been demonstrated the evidence for prioritising SLC 22 is compelling and Tempus would urge Ofgem to consider it within the first phase of its regulatory review.

5. Exploring priority areas for reform

As highlighted in detail above, Tempus finds that SLC 22 and SLC 22B should be prioritised as a key section of the Supply Licence in urgent need of review. Tempus does not disagree that SLC 25 would also need to be reviewed in the immediate term as part of Ofgem's move towards a principles-based regulation. Tempus believes that SLC 25 is already principles-based but this needs to be investigated and enforced in a more dynamic manner.

In conclusion, Tempus sincerely welcomes Ofgem's review of the regulatory regime governing energy suppliers and would welcome the opportunity to discuss the particular issues we have outlined.

Yours sincerely

Sara Bell

CEO, Tempus Energy Supply Ltd.

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