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Dear Steve

Prepayment meters installed under warrant: final proposals

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, 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 is fully committed to supporting customers who fall into arrears. Through a series of activities (including outbound dialling, messaging and letters) we actively encourage customers to engage with us. This allows a supportive discussion to understand their circumstances and reach agreement on a mutually acceptable repayment plan. Where these actions are unsuccessful, and where appropriate, it becomes necessary to utilise the Pre Warrant Visit (PWV) and Warrant process to install a prepayment meter. Each customer reaching this stage is assessed individually so that their individual circumstances can be taken into consideration.

Where PWV and Warrant visits take place, all interactions with customers are opportunities for us to once again assess circumstances and agree the most appropriate repayment plan and method with a customer. As is evidenced in our regular Social Obligations Reporting, we ensure that repayment rates are set at a level that considers the customers' affordability and ability to pay.

We are supportive of Ofgem's aim of ensuring a more consistent approach regarding the level of charges faced by customers who enter the warrant process. However, we do not agree that the suggested approach is the best option to achieve this.

As outlined in our response to Question 3, the unintended consequences the suggested approach will bring for the majority of customers, outweigh the protections that Ofgem is seeking to introduce for a narrow subset of customers. We believe that there are more effective mechanisms Ofgem could use to achieve the same aims, whilst reducing or removing the unintended consequences.

We welcomed the 20 October stakeholder event hosted by Ofgem, and felt this was a useful exercise to share views. Suppliers proposed alternative measures which could achieve Ofgem's aims in more a proportionate manner.

These measures include:

- Utilising existing powers under 'Safe and reasonably practicable to install a PPM' (rather than the prohibition licence condition proposed).
- Introduction of a new Ability to Pay Principle which mandates waiving all or some of the warrant fees, on a case by case basis, according to relevant vulnerability (rather than introducing the overarching prohibition licence condition).
- Introduce a principle of cost reflectivity in warrant charges (rather than the flat cap proposed).
- Implement the Proportionality Principle as proposed specifically for debt and warrant charges (excluding the Transfer Objection clause).
- Utilise the existing Standards of Conduct 'make it easy for customers to contact you' requirement to ensure customers are able to engage early within the process, therefore reducing the amount of customers entering the warrant process.

We have some concerns regarding the drafting of the proposed licence condition. The terms 'severely traumatised' and 'severely financially vulnerable' are terms which have not previously been utilised within the licence. It could be considered more appropriate for Ofgem to use the existing definition of vulnerability as provided in their Consumer Vulnerability Strategy. This enables suppliers to consider both the propensity to be impacted, and the scale of impact, on a case by case basis. If the aim is to ensure a more consistent approach by suppliers regarding this prescriptive licence requirement, then we recommend Ofgem add definitions of such terms to the licence in section one, or there is a real risk of adding uncertainty and confusion as to what the regulatory expectation is.

Our detailed responses are 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 Denise Willis on 07875 119946, or myself.

I confirm that this letter and its attachment may be published on the Ofgem website.

Yours sincerely,

Head of Customers Policy and Regulation

Attachment

Prepayment meters installed under warrant: final proposals

EDF Energy's response

Question 1: Do you agree with the outcomes intended as a result of our policy detailed in paragraph 2.4?

Outcome: Installation of PPM under warrant are used as a last resort.
We agree that Prepayment Meters (PPMs) installed through the warrant process are to be avoided wherever possible, and we attempt to recover debt utilising a proportionate approach to debt recovery and customer agreement before resorting to warrant proceedings. However, we believe that disconnecting the customers supply for non-payment is the last resort action, rather than installing a PPM under warrant. A key outcome should be to ensure that such disconnections only take place as a last resort.

Outcome: Suppliers do not impose high costs, and make their charges and processes more consistent and transparent.
We agree that costs for warrant activities should be reflective of the cost of the activity undertaken. We do not seek to profit from this activity. This is to ensure that customers are both incentivised to contact us early to resolve any payment difficulties, without being penalised by unnecessary high fees.

However, we do not agree with the proposed solution of a flat cap to achieve this. We believe the unintended consequences of this outweigh the potential benefits and that there is a more effective way to deliver the same outcome, as detailed in Question 3.

We note that paragraph 2.8 of the final proposals states that charges are for "*application, execution, and installation of a PPM under warrant*". Therefore, we request confirmation that Ofgem agree a pre- warrant visit is still a chargeable activity which falls outside of the proposed cap on warrant cost, provided that it is still proportionate to costs and the amount of debt chased.

We also request clarity on whether Ofgem intend these provisions to apply to warrants obtained for non-payment, which result in other outcomes, for example disconnection. We provide further detail on this in our response to Question 6.

Outcome: Consumers in the most vulnerable situations are protected, from both costs and process which would exacerbate harm.
We review all vulnerability on a case by case basis, and therefore agree that some fees may be waived where individuals have a relevant vulnerability. However, we need to ensure this is proportionate to the objective of encouraging customers to engage with the process earlier to avoid the warrant process and associated fees.

We always consider customers' ability to pay, follow the PPM Principles, and the 'safe and reasonably practicable' guidance to ensure that we are confident that a PPM is the most suitable option for the customer to use prior to installation.

We do support the Ofgem's aim of protecting customers in the most vulnerable situations. However, we do not agree that the proposed solution is the most effective way to do this, as the unintended consequences will be felt by the whole customer base, including those customers Ofgem seek to protect by it. We set out these unintended consequences in response to your Question 3 below.

Questions 2: Do you agree with our preferred option as detailed in paragraphs 2.8 to 2.11?

We do not agree that the proposed solution is the most effective way to achieve Ofgem's aims, and may do greater harm to the whole customer base than the benefit it seeks to deliver to a narrow subset of customers. We set out the potential unintended consequences of your proposals in Question 3 below.

Prohibition proposal

We do not believe that Ofgem should introduce the proposed prohibition on exercising warrants where it would be severely traumatic to that customer. If introduced this proposal is introduced, it could encourage 'won't pay' customers. It also has the potential to increase the volume of customers on 'free supply' if suppliers are prevented from installing a PPM or disconnecting on a warrant.

Suppliers are unlikely to know the extent to which customers would be severely traumatised by this action, as these are customers who have not engaged with suppliers, despite numerous attempts to resolve their debt issues (hence entering the warrant process). If this proposal is taken forward, then we believe the following words should be included in the licence; "where vulnerability is known."

We don't believe that a new licence condition prohibiting charging all warrant fees in certain circumstances is required. Suppliers already have similar obligations under the Ability To Pay Principles. It would seem more appropriate for Ofgem to introduce a new Ability To Pay Principle which states that "suppliers will waive all or some of the charges in respect of any costs associated with a Relevant Warrant". This would set the expectation that suppliers should waive these fees on a case by case basis, as appropriate, which delivers Ofgem's aim.

If Ofgem does introduce a specific licence condition, or chooses to update the Ability to Pay Principles, we request clear definitions in section one of the licence on any terms which include 'severe'. Severe financial vulnerability is likely to account for the majority of customers who have progressed to the latter stages of debt collection, and who have

refused to engage with our many attempts to contact them to resolve their debt issues. The proposed drafting of the licence condition would therefore, appear to prevent suppliers recouping the costs of warrant activity for most customers who enter the warrant process. We therefore request that "severe financial vulnerability" is clearly defined in licence by Ofgem.

This requirement also does not benefit from including the words "which would be made worse by charging them any costs associated with a Relevant Warrant." If a customer has a severe financial vulnerability, then any further charges are going to make the situation worse, therefore these additional words are not necessary. We also note that this requirement is described slightly differently in section 2.25 of the final proposals consultation, with customers who are already vulnerable being prevented from additional charges which would adversely impact them.

We therefore propose that if these terms are used, either as a licence requirement, or new Ability to Pay Principle, they should be included as defined terms in section one of the licence on what would be considered 'severe'. We also believe Ofgem should make it clear that this relates to any existing financial vulnerably. Alternatively, Ofgem should use the existing Consumer Vulnerability Strategy approach, and enable suppliers to consider both the propensity and the scale of impact, on a case by case basis.

Draft Price cap

Given the existing legislative and regulatory framework, we question whether a cap on charges is necessary or legitimate. Suppliers are permitted to recoup any charges relating to the installing PPMs from customers directly, therefore a cap may not be the most effective way to meet both Ofgem's aim of protecting customers from excessive costs, whilst still permitting suppliers to recoup charges incurred.

Further, as currently drafted, the requirement would appear to result in different outcomes for customers who are supplied by the same supplier for both fuels. If a customer was supplied by two separate suppliers for gas and electricity, then the maximum amount that could be passed on would be £200 or £300 per year. If a dual fuel supplier has cause to initiate a warrant on both fuels, even if at different times in the same year, then the maximum they can pass across is £100 or £150 per year. This would appear not to be fair for customers or suppliers.

Proportionality Principle

We agree that the proportionality principle is fair and reasonable, and that costs should be reflective of the debt owed. However, as set out in our response to Question 5, we have concerns regarding the widening of this principal to cover other obligations such as transfer objections.

We also have some additional comments regarding the drafting of the proposed licence conditions as set out below:

- 28A.4 - in terms of the detailed drafting – the use of the words "original amount in (b) is unclear. As 'the charges' are set out, we suggest the wording is amended to "…in the context of the charges the licensee is seeking to recover."

- 28A.5 – any extension of the period should be subject to consultation. Therefore, the paragraph should be amended to "…the Authority specifies a later date, following consultation, by publishing a statement…"

Question 3: Do you have views on any further unintended outcomes which could be realised in addition to the risks outlined in paragraphs 2.47-2.50?

We have considerable concerns regarding the unintended consequences, as set out below. We believe there is a more appropriate and proportionate solution, which still delivers the aims Ofgem outline, and we set these out at the end of this question.

Prohibition Principle

We agree with your assessment that any unrecovered costs experienced through applying the debt process would ultimately be smeared across the whole customer base, including those vulnerable customers that these proposals seek to protect.

It would also be reasonable to assume that the additional costs have been underestimated by Ofgem and will be greater than £8.9m. There is a high probability that the prohibition requirement, as currently drafted, may act as a disincentive for customers to engage with suppliers to resolve their outstanding balance before it reaches the warrant stage. This requirement may result in advice being provided by third parties or via informal channels to suggest customers should not engage with their suppliers, and if they do not, then the supplier will have to write off any warrant charges. This is not in individual or wider customers' best interests, and will increase suppliers' cost of bad debt.

The impact of this can be specifically seen within the water industry, who are restricted from disconnection activity. As a result of this, in 2015 the cost of bad debt added £21 to every customer's bill[1], including vulnerable customers.

Due to the suggested cap, the charges may no longer be as prohibitive to customers. This could result in more customers progressing to the warrant visit stage rather than engaging with us, or resolving the issue earlier in the process. Customers may consider the additional period of non-payment as more beneficial than the additional costs which would be incurred by them progressing to the warrant visit stage.

[1] http://www.ofwat.gov.uk/wp-content/uploads/2015/12/prs_web20151201affordability.pdf

As stated previously, we are concerned about the introduction of the new terms 'severely traumatised', and 'severely financially vulnerable'. Unless these are clarified this may result in different approaches being taken by suppliers who have different risk appetites. For instance, suppliers might take the approach that the customer needs to confirm in writing that they would not be severely impacted. Other suppliers who feel this is inappropriate are then commercially disadvantaged. This again, is likely to increase the estimation of any socialisation costs.

Draft Price Cap

Suppliers who do not currently charge, or charge less than the suggested cap may face commercial pressure to increase their charges and always charge the maximum permitted in order to offset any additional costs.

The cap does not take into account the large costs that suppliers face for non-standard warrant activities for wilful non-payment, i.e. unlawful trespass and access. These may involve greater charges for additional dog handlers etc, but as currently drafted the provisions do not allow these additional charges to be recouped, even if these are charges are affordable to those customers.

Customers may chose not to engage with suppliers as early in the debt process, if the charges are felt to be affordable. For example, a customer may choose to delay engagement and effectively use the additional warrant process time as a 'payment holiday'. It is better for customers to engage with us early to find a solution.

Proportionality Principle

We are largely satisfied that the proportionality principle is an effective mechanism for ensuring customers are not disadvantaged by suppliers' large warrant and debt process costs. However, we do not support the inclusion of a wider remit for this proposal and do not agree that it should relate to Transfer Objections. The consultation for Supplier Objections regime closed in July 2016, with no revisions to licence conditions. We do not believe that implementing a change in this way necessarily follows the principles of good regulation.

Proposed alternative solution

We believe that there is a more effective solution, which achieves the same aims, whilst reducing or removing the unintended consequences. We set out our suggested proposals below.

- Utilise Safe and Reasonably Practicable requirements

Ofgem already provide guidance on what constitutes Prepayment only where 'Safe and Reasonably Practicable'. Within this guidance it states that suppliers must act properly and proactively when considering a customer's ability to pay. It also states that suppliers should treat each individual case on its merits when deciding if a PPM is appropriate for a

customer. We believe that Ofgem should utilise their existing powers under this guidance rather than implementing the prohibition licence condition proposed.

- Update Ability to Pay Principles

The Key Principles for ability to pay already contain a requirement that suppliers should understand the individual customer's ability to pay, and that repayment rates should be based on these circumstances. We believe that Ofgem could introduce a new Principle to mandate waiving all or some of the warrant fees, on a case by case basis, according to relevant vulnerability, rather than introducing the overarching prohibition licence condition. This would achieve the same aim as the draft prohibition on charging relevant fees.

- Cost reflectivity in warrant charges

Ofgem could introduce a principle of cost reflectivity in warrant charges, rather than the flat cap proposed. This would allow suppliers to pass on any relevant charges to customers as appropriate, whilst enabling suppliers to recoup all non-standard warrant activity charges (i.e. unlawful trespass and access sites) where the customer can afford them, but is wilfully avoiding payment.

- Proportionality Principle

Implement the Proportionality Principle as proposed specifically for debt and warrant charges (excluding the Transfer Objection clause).

- Standards of Conduct

Ofgem already has powers under Standards of Conduct to ensure it is easy for customers to contact us. We believe that this requirement already includes making it easy for customers are able to engage early within the process.

Therefore, we believe that Ofgem already has the powers it needs to deliver the aims of supporting vulnerable customers from excessive warrant charges. If Ofgem has identified any instances of concerns with the approach of individual suppliers, then we would suggest that these are more appropriately addressed with those suppliers. We believe that implementing the new set of 'broad brush' proposals is likely to do more harm to all customers, including those it seeks to protect.

Question 4: Do you agree that the cap should be applied when the warrant process is not completed and that no further detail is necessary? (See paragraph 2.55)

Fees should be applicable at the time the cost has been incurred by us. Therefore, if a warrant has been sought, and we have undergone the expense, then the fee should be added to the debt.

On the occasions where a customer is repeatedly using the debt collection process as a way of delaying payment until they reach the warrant stage (i.e. multiple warrants in the same annual period), we believe that the full costs incurred should be applied, even if the customer subsequently agrees a repayment plan. If a cap is introduced, then it is appropriate that the cap is exceeded on these occasions, in order that any charges incurred can be recouped.

Therefore, we do not agree that the cap should be applied in all cases where the warrant process has not completed. We request Ofgem do consider adding further detail to this requirement to cover scenarios such as these.

We would however, consider a customer's circumstances on a case by case basis. If it was not appropriate to add the full charges to their debt, because they had engaged and agreed a repayment plan before the warrant had been executed, we would consider reviewing the amount recharged.

Question 5: Do you agree with the proposals for a new debt path proportionality principle (as detailed in paragraphs 2.59 to 2.66), in that this would not be limited to warrant activities and would require costs and actions relating to ALL debt recovery activities (including transfer objections) to be proportionate? Do you have any views on unintended consequences of this broad scope?

We do not agree that this licence condition should be extended to cover all debt recovery activities, i.e. transfer objections. The objections regime has recently undergone a lengthy consultation period which resulted in no changes to the current licence requirement. Extending the requirement to cover objections (and other activities) does not appear to align with the government's Better Regulation principles and lacks transparency.

Introducing the proportionality principle may result in low energy users incurring small debts annually, which then escalate over a number of months or years before the debt level is significant enough to create the incentive for them to engage. This may mean that they are indebted for longer due to long repayment plans.

As above, there is also the potential for the additional costs to be redistributed across the remainder of the customer base (those customers not in debt) to ensure costs incurred by suppliers are recouped.

Question 6: Do you agree with our definition of "under warrant" to mean a warrant that would authorise the installation of a PPM. Do you have any views on unintended consequences of this narrow scope?

The warrant is issued to gain access to our metering equipment rather than specifically to install a PPM. The title of the proposed condition states "Warrants relating to Pre-

payment Meters" and then in square brackets "and other supplier actions to recover debts". This implies the current drafting would also apply to warrant visits which result in a different outcome (e.g. where the supplier disconnects the meter).

The definition of "Relevant Warrant" states "a warrant pursuant to paragraph 23(2)(c) of Schedule 2B to the Gas Act 1986 and paragraph 7(4) of Schedule 6 to the Electricity Act 1989. This provision also covers warrants to disconnect the premises for non-payment of debt.

Given your question above, we are now unclear whether Ofgem intend these provisions to only apply to warrants which result in the installation of a PPM. We request further clarity on this.

In any event, we believe that costs associated with the disconnection of a meter for non-payment should also be recoverable by suppliers. Ofgem should consider the unintended consequences provided in response to Question 3 to also relate to warrants which result in disconnection.

EDF Energy
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