



By email only

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Dear Mark,

E-Serve Supplier Performance Report (SPR) - Consultation

Please find npower's response to the above consultation. We are happy for it to be placed on Ofgem's website.

Yours sincerely

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Regulation

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Annex - Supplier Performance Report (SPR) – consultation

Question 1: Do you agree with our analysis that shows that publishing the SPR will promote the interests of consumers? Please support your answer.

In general, information that helps consumers in being better able to engage with the energy market and inform their decision making is to be welcomed, and it is something we support. We also agree that engendering a culture of compliance is important, alongside an efficient and effective use of resources. In stating these truisms, however, there are, in relation to the SPR, a number of elements that need to be considered. We deal with these, below.

Publishing potentially sensitive commercial information

Ofgem refers to section 35 and 48 of the Gas and Electricity Acts, respectively, in allowing it to publish any information it thinks fit in promoting the interest of consumers, taking account of any prejudicial effect on an individual or body.

In the context of the proposed SPR, section 105 of the Utilities Act 2000 (UA); the Freedom of Information Act 2000 (FOIA); and the Environmental Information Regulations 2004 (EIR) are also relevant, as these pieces of legislation also provide a framework for and prescribe (and proscribe) what information can be released.

Section 105 of the UA deals with information disclosure and applies a general proscription on releasing anything relating to an individual or business obtained under certain parts of the gas and electricity acts, and various energy acts. However, this is subject to carve-outs for prescribed circumstances and organisations and when information can be provided.

Ofgem is able to disclose information where: *'..it is made for the purpose of facilitating the performance of any functions of the Secretary of State, the Authority, the Council or the Competition Commission under the 1986 Act, the 1989 Act, section 184 or 185 of the Energy Act 2004, sections 41 to 43 or section 100 of the Energy Act 2008, Part 2 or section 28 of the Energy Act 2010 or this Act;'*

In the consultation document, Ofgem refers to its *'..general statutory duties as energy regulator...to act in the best interests of energy consumers.'* While it is not spelt out in the document, we assume that this includes *'..the principal objective to protect the interests of consumers [wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity] [in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas so conveyed.]'* (the Principal Objectives)¹

The FOIA and EIR both give people the right to request recorded information held by public authorities. As a government department, Ofgem qualifies as a public authority. The FOIA's provisions are predicated on there being a general right of access to information held by public authorities; that act being designed to help people get a better understanding of how the former carry out their duties and make decisions, subject to the necessary safeguards being put in place.

In terms of those safeguards, Ofgem has to be sure and demonstrate that there is a public interest in publishing this information (with the public being interested, an added, but not necessarily defining factor legally – see below and in our response to question 5). A public interest consideration gives both comfort to suppliers and Ofgem that the provisions of the legislation above have been taken into account and that the information is beneficial to consumers. While this is implied by the consultation, there is no explicit reference to the public interest being considered nor any such test undertaken. Our

¹ Section 3A of the Electricity Act 1989 and section 4AA of the Gas Act 1986

concern is that in publishing what can be considered sensitive information, without it being confirmed as being in the public interest, this may set an important and unwelcome precedent.

Related to this is the Principal Objectives' definition of consumers, which '*includes both existing and future consumers.*' In the case of the schemes covered by the SPR, it's not clear who the consumers are who are meant to benefit from its production and proposed publication. Is it all consumers (in the widest sense), regardless of whether or not they are supplied by those suppliers covered by the report? In which case, those consumers who are supplied by other suppliers can be no more than potential consumers and they may or may not have an interest in the report. Is it only those consumers of affected suppliers? Is it recipients of payments from the schemes covered by the report? Or is it bill payers of affected suppliers, including those who benefit from the scheme? Ofgem has to consider who its target audience is.

Consumer interest

Another related element is whether publishing this information will actually benefit consumers (however defined).

In Ofgem's Forward Work Programme, there is no specific reference to the SPR, rather the references are to each SPR component scheme's individual reporting requirements.² In addition, Ofgem states that: '*Consumer research shapes our regulatory interventions and ensures that the consumer voice is heard when we are considering policy options. In the coming year we will continue to put consumers at the heart of our regulation through more innovative, diverse and ambitious consumer research We will look to understand the priorities, views and experiences of a wide range of energy consumers, including vulnerable consumers and businesses. The high quality consumer data and insight that we provide will complement other approaches such as economic analysis and market monitoring, to ensure that policy is driven by evidence that will withstand public scrutiny.*'³

We would be interested to learn what consumer research has been undertaken to support publication of the SPR; in particular are there aspects of the environmental and social support schemes about which consumers have indicated that they would be keen to have more information? Most research typically indicates that price and general customer service are the key elements that influence consumers' decisions on choice of supplier, rather than compliance per se of schemes which are both heavily prescribed and already tightly regulated.

In short, have consumers specifically indicated (or been asked) whether or not they are interested in suppliers' compliance activity?

Schemes' supporting guidance

Suppliers' compliance with various schemes can depend on interpretation of the underlying legislation; to this extent, guidance from Ofgem is important. However, it has to be noted that such guidance has sometimes been produced close to or after the commencement of a scheme; this can cause some difficulty in ensuring compliance if a different interpretation to a scheme's component has been applied and this has to be amended. Where this occurs, there should be some recognition in the scoring and any underlying narrative

Impact on affected suppliers

Suppliers are already acutely aware of their responsibilities vis a vis compliance. Ofgem recognises that publishing data in this area has to be done carefully. Ofgem proposes only to publish SPR data for those suppliers participating in all of the schemes, the rationale appearing to be that to do so for other suppliers will complicate information presentation. Given that the purpose of the exercise is to engender an even more compliant culture and to increase consumer engagement in the energy market, to exclude some suppliers surely gives an incomplete picture of this aspect of supplier performance. It is hoped that this will be addressed over time.

² [Ofgem Forward Workplan 2016-17](#) - Chapter 6

³ Ibid - paragraph 3.9

Principles-based regulation (PBR)

Ofgem believes that PBR can deliver better outcomes for consumers rather than detailed prescriptive rules about how companies should run their businesses. It puts greater responsibility on suppliers to deliver what customers want while continuing comprehensive consumer protection and engendering innovation.

While Ofgem still sees a continued role for prescriptive rules, where appropriate, we wonder, in the case of complying with the schemes covered by SPR, if there is scope to apply a PBR approach? Is a prescriptive approach to compliance itself increasing the costs to run the schemes, with suppliers needing to put resources around processes to ensure they meet the rules, these being solely for the purposes of the SPR? Has Ofgem undertaken any form of cost-benefit analysis or trade off in taking the approach being posited, compared to one under PBR in applying a general principle of compliance with the schemes, particularly in the light of the costs to suppliers in complying with them in following Ofgem's guidance? As Ofgem states: *'Suppliers pass on their costs for meeting their scheme obligations to their customers. The more efficiently the schemes operate, both for the suppliers and for us as administrator, the better value they will be for consumers.'* In reducing the costs of compliance (without reducing the level of customer protection), this will, self-evidently, be beneficial to all parties.

Question 2: Do you agree with this method of scoring and the definitions we are proposing? If not, what alternatives do you suggest?

As set out in the answer to question 1, above, Ofgem needs to be clear in its reasons for publishing SPR, and how this may meet any wider consumer appetite for information. As we have said above, it is by no means the case that consumers will use the SPR reports as a key decision-making tool to aid switching supplier.

If the intention of publishing SPR is to improve E-Serve standards within the industry, then we would also welcome how communication could be improved between Ofgem and suppliers to drive these standards, and rectify any current issues based on informal monitoring.

It's also unclear whether limiting publication of the SPR (only to 11 suppliers taking part in all the schemes) fully addresses the intention to allow consumers to be more informed across all suppliers, in all schemes. To highlight only those suppliers' performance which take part in all the schemes subject to this consultation perhaps gives a partisan view. Again, it is hoped that this will be addressed moving forward.

As Ofgem recognises, non-compliance can involve how much a supplier has deviated from any guidance that it has issued. If that guidance is ambiguous and thus open to interpretation, then we would expect Ofgem to recognise this and err on the side of caution before attributing any score.

The scoring matrix set out in Appendix 1 of the consultation document is extremely detailed, but even so, we wonder if, given the diversity of the schemes, it can accommodate the differences in each?

Turning to individual category headings (we comment by exception).

- *Compliance with overriding scheme obligations*

There needs to be more granularity to reflect the nuances in each scheme's rules. For example, in the case of the Government Electricity Rebate, this allows for exceptions where a payment isn't delivered within the payment window. Yet it would appear that exceptions could be classed as non-compliance and possibly score 4 for an affected supplier.

- *Deadlines*

Conversely, under this heading, the severity ratings from 3 to 0 uses phrases such as ‘*High chance..*’; ‘*Significant chance..*’, ‘*Minor chance..*’, and ‘*Low chance..*’ of deadlines being missed. How will these distinctions be drawn between each and measured in practice? Will they be based purely and solely on the impacts they have as set out in the matrix?

- *Governance*

Given that Ofgem is scoring non-compliance (as opposed to compliance), how, for example, will administrative or clarificatory queries from it - which can arise after data are submitted - be dealt with? Will these be counted as non-compliance in any way? If so, this would seem unfair if, once dealt with, there is no further action required by either Ofgem or the supplier involved (so, for example, there doesn’t have to be any resubmission of data).

- *Financial loss*

Who are the ‘scheme participants’ for the purposes of this exercise? Suppliers, consumers, recipients or bill payers, generators (in the case of FiT), all the aforementioned?

- *Level of Escalation*

It isn’t clear, but it’s assumed the staff referred to are those of the relevant suppliers and not Ofgem.

- *Time required to resolve*

We question the inclusion of this as the time taken to resolve is co-dependent on both supplier and Ofgem interaction. Suppliers should not be penalised where there is delay outside of their control.

Regarding the scoring of non-compliance, we agree that a maximum as opposed to a cumulative approach is the better of the two, although it can skew the focus overly towards major infractions (by ‘dampening down’ the impact of the frequency of minor ones). As well, while Ofgem has eschewed including market share (which may give some ‘depth’ to the data), for simplicity’s sake, this may balance out the proposed scoring’s limiting effect.

Question 3 - Do you agree with the data we plan to publish?

Clearly there is a balance to be struck between comprehensively representing any involved scoring methodology and presenting these data in such a way that is both meaningful and easy to understand. As stated above, the maximum score approach does highlight more serious infractions; these are then represented graphically. Regarding the presentation of data, the mock-up charts shown in the Appendix perhaps simplify the complicated criteria used to derive the scoring, to an extent that some acuity is lost in comparing performance. Perhaps some more supporting narrative could explain matters.

Ofgem has highlighted consistency in reporting, but has said that it will not include all suppliers in the same summary chart (paragraph 3.8). Ofgem further says that it will only show data for all suppliers which participate in all of the schemes listed (paragraph 3.9). Are the suppliers referred to in paragraph 3.8 a subset of those in paragraph 3.9 or the same (11) suppliers referred to in the latter paragraph? Viewers of the data need to be clear what they are being presented with and relating to which suppliers.

The raw data that Ofgem plans to publish appears to cover all suppliers and not just those taking part in any of the SPR schemes (or all of the SPR schemes – it’s not clear). This may be confusing in juxtaposition with the graphs if they (the graphs) represent only those suppliers participating in all the schemes.

Question 4 – Do you agree with our proposed timings of publication?

We agree with the proposal to report data on incidents starting since October 2015, as although Ofgem has been collecting information in this format since 2014, this has been subject to refinement, and, therefore, would not be 'fit for purpose' for this earlier period.

Ofgem proposes to update the SPR every quarter. For some of the schemes subject to the Report (for example, the Renewables Obligation and the Warm Home Discount), the periods of activity occur at the same specific points during the year - perhaps some events occurring only once a year. Quarterly reporting, all things being equal will, therefore, show little or no movement quarter on quarter. In these instances, perhaps reference to such limited activity ought to be made clear in any supporting narrative.

Ofgem proposes to allow suppliers two weeks prior to publishing the data to raise queries. However, Ofgem has not said what it will do should a query fail to be resolved within that time. Will publication go ahead without that supplier's data? If so, this will give an incomplete and prejudicial picture. What happens in cases where a query may have an impact across all suppliers? Will the publication be delayed until the problem is resolved?

Question 5 – Do you have any comments on the SPR webpage we propose?

A balance needs to be struck between finding an effective method to highlight compliance, avoid unnecessary costs, and present information to consumers to better inform them in any decision to switch supplier. We offer two suggestions for consideration regarding the proposed webpage

- I. Would Ofgem consider publishing the number of visits to the website and whether or not these are discrete 'hits' (as opposed to multiple ones from the same entity or individual). Also, there should be the ability for users of the site to provide regular feedback or be surveyed on its usefulness. The first would provide a high-level indication of the SPR's popularity and wider value; the second to allow Ofgem to refine matters and address any points of concern and to drive potential improvement.
- II. The SPR is predicated on the basis of supplier compliance and getting them to '*..meet their obligations as efficiently as possible..*'. And '*As suppliers pass on the costs of the schemes to their customers, we believe it is right that consumers are fully aware of how well different suppliers meet the scheme requirements.*'. In order to provide stakeholders with as complete picture in this regard, Ofgem may wish to consider highlighting examples of best practice in meeting their obligations. In so doing, this could benefit all suppliers and ultimately consumers of the scheme(s) in question. Presentationally, how best practice might be shown would need careful thought, but may be worth consideration for future development.