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10 November 2017

Dear Jemma

### **Statutory consultation for a vulnerable customer safeguard tariff**

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 believes that healthy and robust competition is the best way to serve customers' needs over the long term. We therefore welcome Ofgem's continuing work to promote customer engagement and make it easier to switch tariffs and suppliers.

We recognise the need for additional protections for vulnerable customers who are less able to engage, which is why we supported the CMA's introduction of a temporary price cap for prepayment meter customers. We also announced as part of our latest tariff change that we would be giving a rebate of £100 this winter to all our SVT customers who are in the core Warm Home Discount (WHD) group.

We are willing to accept the use of the current PPM cap methodology to set the level of the safeguard tariff and WHD to determine eligibility, on the understanding that this will only be for a limited time and for the limited number of customers stated. We do not agree with the comment in the impact assessment which states that if 'designed appropriately' extending the PPM cap will achieve Ofgem's supporting objectives, such as minimising market distortions and minimising unintended consequences. For example, the use of the WHD results in customers who are supplied by smaller suppliers or have gas only accounts and are eligible for the cap not receiving the protection of the cap or the payment of the discount. This is a very poor outcome for those customers and a further distortion of competition in the market.

In parallel to implementing its current safeguard tariff proposals, and prior to extending the price cap to further vulnerable customers, Ofgem should commence a review of the PPM methodology and replace it as soon as possible. As a minimum, this review should include:

- The development of a more robust benchmark of costs and method for updating costs

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- the setting of clear criteria for identifying who is eligible - the WHD scheme has flaws in this respect
- Ensuring all those eligible receive protection, while not adding to existing distortions in the market. This would require all suppliers to be included in the scheme
- setting a cap level that allows efficient suppliers to earn a fair margin

We would welcome the opportunity to work with Ofgem to design a suitable mechanism. In the meantime, we will work to implement this 'first phase' of protection for vulnerable customers. We have identified the following issues with the current drafting of the licence condition that need resolving:

- The requirement to implement a price cap for a customer identified as eligible within 30 days creates a conflict with licence condition 23, and potentially a poor customer experience, in some circumstances
- The current wording implies backdating protection for a customer prior to them being identified as eligible. This doesn't seem to be the intent as described within the main consultation documents
- The definition of relevant customer references eligibility criteria, which in the case of the WHD broader group would include many more customers than are in receipt of the WHD, which is the stated intent

Further details and proposed amendments 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 Toby Allen, on 07875114310, or myself.

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

A handwritten signature in blue ink that reads 'Paul Delamare'.

**Paul Delamare**  
**Head of Customers Policy and Regulation**

## **Attachment**

### **Financial protections for vulnerable consumers**

#### **EDF Energy's response to your questions**

It is now clear, after more than six months of operation of the CMA's PPM cap, that the mechanism for setting the maximum charge contains serious weaknesses. The price level does not accurately reflect the costs of supplying PPM customers.

The benchmark for the PPM cap and update mechanism were deliberately unsophisticated. The update mechanism excludes some costs and makes crude adjustments for others which do not reflect the costs for individual customers. The CMA said this approach balanced the need for accuracy with the burden that would be placed on Ofgem to administer it, in the context of a temporary cap for a limited number of customers. The vulnerable price cap, which we note Dermot Nolan has said may be required for 10-15 years, needs a robust mechanism.

It is clearly not in the interests of vulnerable customers or suppliers if it becomes a competitive disadvantage to supply energy to customers defined as vulnerable.

Using the Warm Home Discount for establishing eligibility is also a concern, as gas customers who have gas and electricity accounts with different suppliers and customers who are supplied by smaller suppliers, or did not apply in time to be part of the broader WHD group, will not receive protection.

While the approach will be capable of rapid implementation, and minimise the administrative burden and cost of implementation, it will not meet Ofgem's other stated objectives to: minimise unintended consequences and market distortions; complement [the] wider market reforms by maintaining an incentive for consumers who are able to, to engage; and ensure that suppliers with efficient costs can compete.

Ofgem must seek to replace the PPM cap methodology as soon as possible to ensure that all the objectives are met.

A new benchmark will be required, based on a bottom up analysis of costs, including pass-through elements not under a supplier's control, such as all subsidies and government policy costs (e.g. EII exemptions, ECO and SMART). The benchmark will need to be updated frequently with a mechanism by which Ofgem and Suppliers are able to settle any disputes, by referral to the CMA.

Eligibility for the cap needs to be based on clear common criteria applied by all suppliers, with customers identified through data matching, to ensure all customers who are eligible receive protection regardless of the supplier they choose.

We would be happy to work with Ofgem to design a suitable mechanism.

Our detailed comments on the proposed standard licence condition drafting can be found below.

## 1. SLC28AA.15

This paragraph requires an identified relevant customer to become subject to the requirements of SLC28AA.1 30 days after being so identified. Some customers who become subject to the cap may experience a disadvantageous unilateral change to their terms and conditions. In such instances, a supplier under SLC 23 is required to give notice 30 days in advance of any such contractual change. The notice required under SLC23.3 is very prescriptive and requires a number of system processes to be performed prior to a relevant notice being created and sent out to customers. Consequently, the time required to perform such activities would result in the requirements of SLC28AA.15 being incompatible with a supplier's obligation under SLC23.3.

We believe that the new SLC28AA.15 should include drafting that 'waives' the requirement for 30 days advance notice under SLC23.4 and replaces it with a requirement to send such notice 30 days in advance or as soon as reasonably practicable.

Potential Drafting:

SLC28AA.XX

For the purposes of paragraph 28A.15 and 28A.16 the requirements in paragraph 23.4(a) of standard condition 23 shall be replaced with a requirement to give Notice at least 30 days, or as soon as reasonably practicable, in advance of the date in which such variation will take effect.

## 2. SLC28AA.15 / SLC28AA.1

As currently drafted, where a relevant customer has been identified within a Charge Restriction Period, the requirements of SLC28AA.1 will apply 30 days from such point. However, the requirements of SLC28AA.1 require that Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge **at all times during the Charge Restriction Period**. This would result in retrospectively applying the cap to a period before the customer had been identified.

We believe the drafting should be amended so that the cap on charges only applies for the period which commences 30 days from the point a relevant customer has been identified.

Potential Drafting:

SLC28.15

.... The Obligated Licensee must comply with paragraph 28AA.1 of this condition such that the aggregate Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge, from the date which is 30 days after the Relevant 28AA Customer was identified

### **3. SLC28AA.18 – Definition of Relevant 28AA Customer**

As set out in Schedule 2 of the consultation document, Ofgem’s overall policy intention is to apply price regulation to domestic customers which have previously received, or currently receive, the Warm Home Discount. We note the emphasis on customers who receive the discount. However, the definition of relevant customer uses criteria that involves customers meeting eligibility criteria as opposed to being eligible and receiving the discount. We believe such drafting is inconsistent with Ofgem’s policy intent. The inconsistency is particularly relevant in respect of the WHD Broader Group which operates on a first-come first-served basis and therefore potentially results in eligible customers not being accepted and receiving the discount.

We believe the drafting should be amended to appropriately reflect the policy intent. This involves amending the criteria set out in subsection (iii) and (iv) and inserting wording that links meeting eligibility criteria and receiving actual payment under the Regulations.

**EDF Energy**  
**November 2017**