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Statutory consultation: Domestic supplier-customer communications rulebook reforms

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 supports Ofgem's work to replace the current domestic supplier customer communications rules with a more principles-based framework which allows for greater use of new and more innovative communications.

However, we would welcome Ofgem further relaxing prescriptive constraints in a number of areas, such as allowing additional tariffs to be featured in disadvantageous unilateral variation notice and statement of renewal terms in addition to cheapest tariff messaging. Maintaining the current restrictions will act as a barrier to engagement for customers by restricting the tariff shown to only the cheapest tariff available. Suppliers should have flexibility to show additional tariffs relevant to the customer's individual characteristics and preferences.

We are opposed to Ofgem moving to publish regulatory requirements through directions, as such requirements should be subject to a formative consultation process. This allows for views and impact assessments to be published and decided upon in a transparent manner. Reliance on directions would result in a less stable regulatory environment and a less transparent regulatory framework for new market entrants to understand and interpret. Rules which are applicable to all licence holders should form part of the supply licences.

We note that paragraphs 2.21 and 2.22 of the statutory consultation provide clarification about 'providing' information. We recommend that Ofgem does not introduce ambiguity into the legal drafting of the licences, and propose that where providing information regarding how to access information meets Ofgem's policy intent, then such language is used within the licences.

EDF Energy welcomes the proposed relaxation of what information is provided alongside cheapest tariff messaging. However, we recommend that Ofgem consults on changes to the prescriptive definitions of Relevant and Alternative Cheapest Tariff, which would allow the featured tariff to take into account factors in addition to estimated annual costs. Greater innovation will mean that viewing Domestic Supply Contracts in terms of cost alone will preclude customers from being informed of a tariff which may be better for them overall, but may not be the absolute cheapest available.

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 Kevin Hammond on 07875 113 467, or myself.

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

Yours sincerely,

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

Paul Delamare
Head of Customers Policy and Regulation

Attachment

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EDF Energy's response to your questions

Q1. Is a direction required to enable suppliers to make changes to existing fixed-term contracts? If yes, please:

(a) Provide examples of specific clauses in your T&Cs.

(b) Provide suggestions for drafting to achieve our policy intent (paragraphs 2.37-2.41).

Yes. Ofgem should allow suppliers to vary specific clauses within existing Fixed Term Supply Contracts, to be able to change the timing of when they provide a customer with the statement of renewal terms.

The terms of our Fixed Term Contracts precisely require that we provide a domestic customer with the statement of renewal terms between 42 and 49 days' in advance of their fixed term tariff ending.

As an example of a relevant contractual term, clause 4.7 of the terms of our 'Simply Fixed' tariffs¹ is drafted to reflect the current prescriptive licence condition requirements of 22C.4(a):

"4.7 Between 42 and 49 days before the end date we'll write to remind you that your Simply Fixed tariff is ending."

Ofgem is able to facilitate this through the exception to compliance with condition in paragraph 22C.10:

"22C.10 The licensee is not required to comply with standard condition 22C to such extent and subject to such conditions as the Authority may from time to time direct."

The terms of our Evergreen Contracts precisely require that we provide a domestic customer with 30 days' advance notice of any disadvantageous unilateral variation, as specified by the current drafting of paragraph 23.4(a), and requirement to reflect this in our contractual terms in 23.9 and 23.9A.

¹ [edfenergy.com/sites/default/files/r1180r883.pdf](https://www.edfenergy.com/sites/default/files/r1180r883.pdf)

Clause 4.2 of our Standard (Variable) terms and conditions² would prevent us from providing the customer with less than 30 days' notice of a disadvantageous unilateral variation:

"4.2 We are allowed to change all terms of supply at any time. Any changes will apply from the date we publish them on our website. However if the change puts you at a disadvantage, we'll give you at least 30 days' written notice (a 'variation notice') unless clause 4.5 applies." [clause 4.5 reflects our powers to change the customer's payment method].

Alternatively, Ofgem could explicitly state that it would not consider that sending the statement of renewal terms outside of the 42 to 49 day window to be a disadvantageous variation for a customer on an existing Fixed Term Supply Contract, and that varying the 30-day requirement would not be disadvantageous to a customer on an Evergreen Contract.

Q2. Are there any other consequential amendments to the licences that we haven't proposed in annexes 1-2 that you consider would be needed in light of our proposed changes?

We have identified a number of drafting errors within annexes 1 and 2:

- 23.9A(b) and (c) should be the other way around.
- 23.9A(d) references 31I.3(b), which does not exist.
- 31F.9(a) references 31H.5(d), which does not exist.
- 31F.15 the definition for Relevant Change is in the wrong place.
- 31H.2, a space missing where it states the licensee "musttake" into account that Domestic Customer's characteristics and current Tariff's features.

There is an error in 31I.5(c) for both the electricity and gas draft licence conditions "*changes to the Principles Terms*" should read 'changes to the Principal Terms'.

There are incorrect references to 'electricity' throughout the gas supply licence drafting, for example:

- 31F.8
- 31G.5(a)
- 31I.4(c)
- 31H.6
- 31H.7

Q3. Do you agree that our proposals reflect our policy intent relating to encouraging and enabling engagement?

² edfenergy.com/sites/default/files/standard_variable_r891.pdf

We agree that the proposals reflect Ofgem's policy intent to encourage and enable engagement.

Regarding Ofgem's policy intent for continuing to make informed tariff choices, EDF Energy welcomes the proposed relaxation of what information is provided alongside cheapest tariff messaging.

However, we recommend that Ofgem consults on changes to the prescriptive definitions of Relevant and Alternative Cheapest Tariff, which would allow the featured tariff to take into account factors in addition to estimated annual costs. Greater innovation will mean that viewing Domestic Supply Contracts in terms of cost alone will preclude customers from being informed of tariff which may be better for them overall, but may not be the absolute cheapest available.

For example, a customer may have informed us that they do not want to have a smart meter installed at their premises, but will receive multiple cheapest tariff messages advising them of savings related to smart meter only tariffs. While this would meet the prescriptive rules for providing the customer with cheapest tariff messaging, it would not meet Ofgem's policy intent to enable engagement. Greater innovation is likely to make similar scenarios more common.

Q4. What are your views on our proposal to move the rules around engagement prompts into a direction separate from the licences? (paragraphs 3.35-3.36)

We do not support Ofgem's view that cheapest tariff messaging rules should move into a direction in the future. We are firmly of the belief that such requirements should be subject to Ofgem's consultation process, which allows for views to be published and decided upon in a transparent manner.

Reliance on directions would result in a less stable and transparent regulatory framework for new market entrants and existing suppliers to understand and interpret. We recommend that rules which are applicable to all licence holders should form part of the supply licences and not sit in additional directions.

While Ofgem considers that issuing a direction would help future-proof its rules "in a more agile and dynamic way" (statutory consultation, paragraph 3.36), this will cause the regulatory framework to become unstable and introduce uncertainty as to what mid to long term investments can be made.

Q5. Do you agree that our proposals reflect our policy intent relating to assistance and advice information?

We support Ofgem's policy intent and licence modifications relating to assistance and advice information.

Q6. Do you agree that our proposals reflect our policy intent relating to Bills and billing information?

We agree that the proposals relating to bills and billing information reflects Ofgem's policy intent.

Q7. Do you agree that our proposals reflect our policy intent relating to contract changes?

We agree that Ofgem's proposals relating to contract changes reflects the policy intent. However, Ofgem should remove the prohibition on including contract change notices separately to marketing material, where this aligns to a customer's preferences, i.e. where the customer has opted into receiving marketing communications.

While we understand from paragraph 6.7 that Ofgem does not want important messaging to be 'lost', the Standards of Conduct require that important information is given appropriate prominence. We note that in paragraph 3.33 (relating to the Tariff Information Label), Ofgem shares this view "... *We remind stakeholders that the Standards of Conduct require suppliers to ensure that important information is given appropriate prominence...*".

We recommend Ofgem removes the prohibition on marketing material to allow suppliers to signpost tariffs to customers outside of the relevant or alternative cheapest tariff.

We note that paragraphs 2.21 and 2.22 of the statutory consultation provide clarification about 'providing' information. We support Ofgem's view that it can be appropriate to signpost customers to the Principal Terms of their current tariff.

However, we recommend that Ofgem does not introduce ambiguity into the legal drafting of the licences, and propose that where providing information regarding how to access information meets Ofgem's policy intent, then such language is used within the licences.

**EDF Energy
October 2018**