

Domestic Supplier-Customer Communications Rulebook Reform: Statutory Consultation

18 October 2018

Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests £12bn annually, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry view in response to Ofgem's consultation; Energy UK's members may be best placed to answer certain questions and provide evidence directly. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK continues to fully support and welcome the move away from prescriptive licence conditions to a principles-based regulatory regime. In general, the proposals put forward by Ofgem in this Statutory Consultation will enable consumers to benefit from more innovative and creative communications to boost engagement with how they use energy and engage with the wider energy market.

If Ofgem decides that suppliers T&Cs necessitate a direction to allow changes to be made to fixed-term contracts sooner, any such direction should be limited to allowing suppliers to make changes, rather than compelling those changes.

In relation to customer engagement messages, the full scope of Ofgem's proposal to move such rules into a separate direction is not particularly clear to us at this stage and we would therefore welcome further engagement with Ofgem on this issue. However, on the face of it, Energy UK sees no positive case for moving the rules around engagement prompts out of the licences and into a separate direction. Such a move would undermine the transparency of Ofgem's decision making process and the ability of stakeholders to provide valuable feedback as to any potential decision's impact upon both suppliers and consumers. It is also important to note that customer engagement messaging was a particularly contested area of the CMA's proposals following its Energy Market Investigation. Therefore, careful consideration is needed of any policy development in this area. This means that such rules should be the subject of the proper consultation and appeal process afforded by the Supply Licence modification process.

Finally, while we welcome Ofgem's clarity as to its rationale for retaining specific language in the principles such as 'In writing' and 'Provide', Energy UK believes that this opportunity could be utilised to modernise the language in order to future-proof the reforms for as yet untried innovations in customer communications.

Question Responses

Question 1: *Do you consider that a direction is required to enable suppliers to make changes to existing fixed-term contracts, so that those customers can benefit from our rule changes sooner? If yes, please:*
(a) provide examples of specific clauses in your T&Cs that would require such a direction (suppliers only); and/or
(b) provide suggestions for how the scope of the direction should be drafted to achieve our policy intent (set out in paragraphs 2.37-2.41 of this document).

Energy UK's members will respond individually to question 1(a) to provide necessary details.

If Ofgem decides that a direction is required to enable suppliers to make changes sooner to existing fixed-term contracts, then Energy UK believes that any such direction should be in line of the overarching policy intent of Ofgem's reforms. In particular, the direction will need to be limited to enabling suppliers to alter existing fixed-term contracts and in no way compel suppliers. Compelling suppliers to make changes would undermine the intent of allowing suppliers to make communication decisions in the best interests of their customers.

Question 2: *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?*

Energy UK has not identified any other consequential amendments to the licences that Ofgem have not proposed. However, we would like to highlight a number of drafting errors within annexes 1 and 2 that will need to be rectified:

- **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.
- **(Annex 2 only) - 31H.2**, a space missing where it states the licensee "musttake" into account that Domestic Customer's characteristics and current Tariff's features.
- **31H.4(e)** references 31G.8 incorrectly. Instead, it should reference 31.G.7.
- **SLC 31I.5(c)**, "principles" should be "principal".

Question 3: *Do you agree that our proposals reflect our policy intent relating to encouraging and enabling engagement?*

Energy UK agrees that Ofgem's policy intent is generally reflected in the proposed Encouraging and Enabling Engagement principles.

We note that reform of the Cheapest Tariff Message is outside of the scope of this work. However, Energy UK is concerned that the proposed text for standard condition 31F.6 may place additional prescription on the provision of the Cheapest Tariff Message in instances where the name of a Dual Fuel Tariff is in fact the same for both fuels. Where this is the case, requiring suppliers to have to provide two separate statements that specify the name of the gas Tariff and the name of the electricity Tariff separately could inadvertently limit innovative and engaging communications. The current drafting of standard condition 31F.6, therefore, goes beyond the current requirements to provide the Cheapest Tariff Message separately for Dual Fuel Accounts, as set out in standard condition 31A Schedule 1.11 and 1.12, that exist solely for Bills and Statements of Account. We believe suppliers should continue to have the ability to provide the Cheapest Tariff Message for Dual Fuel Accounts in an aggregated form for all other communications, including the Statement of Renewal Terms and Price Increase Notices.

Question 4: *What are your views on our proposal (set out in paragraphs 3.35-3.36) to move the rules around engagement prompts into a direction separate from the supply licences?*

Energy UK is concerned that the proposal to move the rules around engagement prompts out of the licences and into a separate direction would undermine the transparency of Ofgem's decision making process. In particular, such a move could remove the requirement for open consultations and the associated licence modification appeals process. Introducing changes in supplier communications without prior consultation would result in insufficient review being given to the policy proposals, risking unintended consequences not being duly considered that risks future customer detriment. This is particularly important given the scale of concern around some proposals in this area as part of the CMA Energy Market Investigation.

In addition, the proposal could undermine proposed new customer communication principles, giving Ofgem the powers to reverse back to prescription with little prior notice. With the risk that such a proposal would make the regulatory framework more complicated and less user-friendly, it would not meet principles of good regulation and could create uncertainty around possible future prescriptive changes to the communications rulebook. Such uncertainty could limit the benefits of the new principles and the innovations that suppliers are willing to undertake due to the impact this uncertainty may have on investment decisions on the required communications systems or design changes.

Question 5: *Do you agree that our proposals reflect our policy intent relating to assistance and advice information?*

Energy UK agrees that Ofgem's proposal for its Assistance and Advice Information principle reflects its policy intent.

Question 6: *Do you agree that our proposals reflect our policy intent relating to Bills and billing information?*

Energy UK welcomes the clarity given on Ofgem's rationale for its decision to keep the wording of 'In writing' and 'Provide'. However, Energy UK believes that Ofgem should be using this reform as an opportunity to modernise the language used in order to future-proof the licence conditions to ensure that suppliers are confident in innovating with customer communications while meeting the underlying principles Ofgem seek to retain.

As noted in our Policy Consultation response, Energy UK is concerned that the continued use of such prescriptive-sounding language could result in suppliers making risk-adverse interpretations. There is a risk that this could place unintended restrictions on innovation to the detriment of consumers and be counter to the intent in moving to principles-based regulations. To limit the possibility of risk-adverse interpretations having an impact upon innovation as much as possible, Ofgem should consider the need for clear language as part of these reforms and any further moves towards principles-based regulation in the future.

Question 7: *Do you agree that our proposals reflect our policy intent relating to contract changes?*

Energy UK agrees that Ofgem's proposal for its Contract Changes principle reflects its policy intent.

Energy UK supports Ofgem's proposals to retain prescription for the 'Switching window' in the short to medium term. However, we think the requirement should be revisited once Faster Switching is implemented. The prescription that *'the window starts when the Statement of Renewal Terms is sent, or 49 days before the end of a fixed-term contract, whichever is earlier'* risks hindering innovation and could cease to be reflective of when a customer would benefit from Statement of Renewals Information. Therefore, Energy UK proposes Ofgem revisit this particular regulatory timing requirement by 2021 and reviews whether 49 days is still the most optimal reference point.

If you would like to discuss the above or any other related matters, please contact me directly on 020 7747 2931 or at steve.kirkwood@energy-uk.org.uk.