

James Crump, Senior Manager
Faster and More Reliable Switching
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Email to: SwitchingCompensation@ofgem.gov.uk.

1 November 2019

Dear James,

Supplier Guaranteed Standards of Performance for Switching: Consultation on introduction of further Guaranteed Standards and Automatic Compensation

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 around five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy broadly agrees with Ofgem's proposals as stated in this consultation. We welcome Ofgem's decision to bring forward several points of agreement from the working group sessions, demonstrated by these revised standards. The details of Ofgem's proposals in this document reflect the switching scenarios which can affect domestic customers, and acknowledges the responsibility, and ability, of suppliers to mitigate customer detriment.

However, with regard to Standards A and E, for 21 day switching and final billing, further consideration of specific exemption scenarios is necessary to prevent customer detriment.

The impact of the consecutive bank holidays at Christmas and Easter on completing a switch within 21 calendar days has previously been accepted by Citizens Advice, and signatories to the Energy Switch Guarantee, following extensive consultation. By failing to provide an appropriate exemption for the short delays (most often, a single day) to switches caused by these public holidays, Ofgem risks causing other scenarios of customer detriment; including erroneous transfers. We have addressed this in our response to Question 6.

We welcome Ofgem's decision to include an exemption from final billing within six weeks, where a customer is in 'formal dispute' with their supplier, regarding the charges on their account. However, this should be broadened to acknowledge additional customer-led scenarios relating to disputed charges which align with the principle of Ofgem's exemption. We have provided further explanation in our response to Question 14, and recommendations on statutory instrument drafting later in the attachment.

Ofgem must consider the significant and growing role of price comparison websites (PCW), auto-switching services, and other third party intermediaries, with respect to domestic customer switches. These parties facilitate a significant proportion of domestic customer switches, 54% in 2018¹, and have a responsibility to ensure customer detriment is prevented. Ofgem should consider how best to impose standards upon these parties to protect customers. If sufficient consumer protection and accountability cannot be delivered by changes to the Confidence Code, Ofgem must consider introducing mandatory regulation, or expanding existing regulation to capture the activities of PCWs.

Our detailed responses, and recommendations for changes to the Statutory Instrument drafting, 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 Gavin Anderson or myself.

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

Yours sincerely

A handwritten signature in black ink that reads 'R. Beresford'.

Rebecca Beresford
Head of Customers Policy and Regulation

¹ Ofgem 'State of the Energy Market' 2019 Report, para 3.21.

Attachment

EDF Energy detailed response.

Q1. Do you agree with our assessment that the likely costs and logistical difficulties of implementing an allocation of compensation on a case by case basis would be likely to outweigh the benefits?

Q2. Do you agree that gaining suppliers only should bear responsibility for making compensation payments under Guaranteed Standard A? If not, why not?

Yes, we agree with the above points.

Q3. Do you agree that measuring Guaranteed Standard A from the receipt of sufficient information to ensure that a contract has been entered into by the customer and to identify the relevant meter points to which the switch relates allows enough opportunity for a gaining supplier to effectively validate the switch? If not, why not?

PCWs are the largest single route to market for domestic customers. Ofgem's 'State of the Energy Market' 2019² report highlighted that in 2018, 54% of domestic customers used a PCW to switch. In the same report, Ofgem notes that auto-switching services are rapidly expanding³, as many established PCW brands are entering this market. Over the last two years, Ofgem has instructed suppliers to cooperate with these businesses, despite some misgivings regarding how customers can make informed choices with such default switching arrangements.

Where a PCW is the main party interacting with a customer, the measurement from 'receipt of sufficient information' should not commence until the point the necessary switching data is delivered by the PCW to the supplier. Individual suppliers are constrained in their ability to impose a sanction (in the context of a commercial contract), or negotiate more stringent contractual requirements on a unilateral basis, where this data may be delivered late. Ofgem should recognise the market power PCWs possess as the predominant route to market, and the competitive pressure this places on suppliers when negotiating commercial arrangements with these parties. Suppliers have limited ability to enforce behaviour on PCWs.

To address this Ofgem should include provisions related to the timely delivery of this data in the Confidence Code, and align the point of measurement in this standard with that requirement. Ofgem must ensure the responsibility to ensure good customer outcomes is borne proportionately by all parties with whom consumers interact, and who hold a commercial interest in switching. If this cannot be delivered through changes to the Confidence Code mandatory regulation for these intermediaries is required.

² Ofgem 'State of the Energy Market' 2019 Report, para 3.21.

³ Ofgem 'State of the Energy Market' 2019 Report, para 3.22.

Q4. Do you agree that gaining suppliers will be able to measure when sufficient information is received for the purposes of reporting on Guaranteed Standard A? If not, why not?

Q5. Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard A? If not, why not?

Yes, we agree with the above points.

Q6. Are there any other reasons for failing to complete a switch within 21 days which could warrant an exemption from paying compensation under Guaranteed Standard A?

We broadly agree with Ofgem's statement⁴ that '*21 calendar days constitutes an adequate period of time for a supplier to complete a customer switch*', and agree with the proposed wording of Standard A. However, we do not support Ofgem's decision that the occurrence of bank holidays does not constitute a valid reason for a delay⁵. We recommend Ofgem includes a limited exemption for the occurrence of consecutive bank holidays at Christmas and Easter, where these gather closely around or adjacent to a weekend (i.e. Christmas and Easter), and prevent the occurrence of three working days after the cooling off period. This exemption has been implemented by Citizens Advice as part of its domestic Energy Supplier Rating, and in the relevant key performance indicators for the Energy Switch Guarantee, following extensive consultation.

For most of the year a 21 calendar day measure is an adequate period to complete a registration, and indeed, individual bank holidays will not prevent a timely registration. However, at Christmas and Easter, where bank holidays and weekend days can form up to four consecutive non-working days, registration within 21 calendar days will not allow for the full registration cancellation period, this will stop suppliers from preventing erroneous transfers, if the notification of such is received after the 14 day cooling off period. It is essential that the cooling off period is followed by three working days prior to the Supply Start Date (SSD). If a supplier does not make provision for this period of working days, its ability to prevent erroneous transfers, or otherwise action a contract cancellation requested by a customer, will be curtailed.

For both electricity and gas, a short window is afforded to suppliers after the cooling off period to withdraw a registration request, where an erroneous transfer or other reason is discovered that requires the cancellation of the contract. For electricity, this Registration Withdrawal window closes on the second working day prior to the SSD (SSD -2)⁶, for gas, the corresponding Confirmation Cancellation window closes on the third working day prior to SSD (SSD-3)⁷. These

⁴ Consultation document, para 4.23

⁵ Consultation document, para 4.28

⁶ Master Registration Agreement (MRA v.12.3), para 15.16.

⁷ Uniform Network Code (UNC v.5.35) – Transportation Principal Document – Section G: Supply Points, para 2.8.1(c).

short periods provide for the MPAS Provider⁸ or Gas Transporter to withdraw the registration and complete the necessary dataflow notifications (see Figure 1 in the Appendix).

Where a switch is delayed beyond 21 days due to consecutive bank holidays intervening at the end of the switching period, the switch most commonly completes the following working day (day 22). To balance the marginal detriment of a single day's delay, against the more significant customer detriment of an otherwise preventable erroneous transfer, it is clear the prevention of the latter should be the higher priority⁹.

Ofgem is familiar with these functional arrangements, as the basis of quicker switching, and the beginnings of the Faster Switching programme Target Operating Model¹⁰. We note this functionality will be entirely repealed by Faster Switching arrangements from July 2021¹¹. To create an interim regulatory change to industry switching arrangements so close to the delivery of major transformative changes would be disproportionate and inefficient.

Without a limited exemption for this scenario, suppliers cannot comply with the proposed standard A (in these cases) without compromising compliance with Licence Condition 14A.11 which states '*Where the licensee becomes aware, prior to starting to supply electricity at a premises, that it does not have a Valid Contract for the supply of electricity to that premises it shall take all reasonable steps to prevent its Transfer Request from having effect*'. Ofgem must allow for the scenario described above, or risk undermining this licence condition, and the consumer benefit which has underpinned the development and implementation of these Guaranteed Standards since 2017¹².

Q7. Do you agree that suppliers implementing the Debt Assignment Protocol should not be exempt from making compensation payments if they fail to complete a switch within 21 days? If not, why not?

Yes, provided Ofgem's intent is to measure the start of the 21 calendar days from the resubmission of the registration request i.e. when the transfer of the debt has been agreed between the relevant suppliers and the subsequent resubmission of the registration request is made by the new supplier.

In this case, we expect registrations under the Debt Assignment Protocol to align with the exemption 2c) for Standard A; '*This regulation does not apply where the supplier transfer cannot*

⁸ MPAS Provider – a Distribution Business party acting in the capacity as the provider of Metering Point Administration Services for Metering Points in its Distribution System.

⁹ As EDF Energy has noted in previous consultation responses, financial detriment for a day's switching delay will consistently be less than £1 (in terms of savings lost from a cheaper tariff rate). Additionally, customer's expectations could be managed by messaging at the point of contract agreement, around the period where these consecutive bank holidays at Christmas and Easter.

¹⁰ Ofgem – 'Moving to reliable and fast switching' Target Operating Model and Delivery Approach v2 – November 2015, para 4.11.

¹¹ Consultation document, para 4.47.

¹² Dermot Nolan, Ofgem: Open letter – 'Creating Incentives to improve switching performance'. Dec 2017.

be completed because - the customer's current supplier objects to the supplier transfer'. As such, the principle will align with Licence Condition 14A.4 'Where a condition in paragraph 14A.3 applies the Supplier Transfer must be completed as soon as reasonably practicable and, in any event, within 21 days of the date on which the condition ceases to apply (or, if more than one condition applies, when all relevant conditions cease to apply).

The resubmission date provided by the new supplier (via a valid Confirmation of Customer Debt Transfer data flow¹³) is the correct point for the 21 days to restart, providing the losing supplier removes its objection to a switch. We request confirmation of this position from Ofgem in its decision.

Q8. Do you agree with our proposal that responsibility for compensation under Guaranteed Standard C should be borne by gaining suppliers only? If not, why not?

Q9. Do you agree that the trigger for making a compensation payment under Guaranteed Standard C should be the agreement between suppliers that a switch was undertaken with no valid contract in place? If not, why not?

Q10. Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard C? If not, why not?

Yes, we agree with the above points.

Q11. Are there other reasons under which a supplier should be exempted from making a compensation payment under Guaranteed Standard C?

Ofgem should consider providing further clarity regarding exceptions to Standard C, where a supplier is required by compliance with industry codes to register an otherwise unregistered/shipperless meterpoint. In such instances registration of the meterpoint will usually proceed without a valid contract initially in place. Where Ofgem considers that an erroneous transfer is a transfer of a customer's supply-point from one supplier to another, without a valid contract in place, this should not include the registration of a supply-point which does not have a supplier (though it may have historically had a supplier who has subsequently withdrawn).

Please provide confirmation that these events will not be captured by the proposed Standard C.

Q12. Do you agree that responsibility for compensation for issuing a final bill after six weeks should be borne by losing suppliers only under Guaranteed Standard E? If not, why not?

¹³ For electricity, the 'MRA MAP 13 – Procedure for the Assignment of Debt in Relation to Prepayment Meters' designates this data flow as the 'D0308'. For gas, the 'Supply Point Administration Agreement (SPAA) Schedule 9 - Assignment of Debt in Relation to Prepayment Meters Agreed Procedure' equivalent designation is 'G0808'.

Q13. Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard E? If not, why not?

Yes, we agree with the above points.

Q14. Are there any other reasons for failing to issue a final bill within six weeks which warrant an exemption from paying compensation under Guaranteed Standard E?

Yes. We welcome the inclusion of the exemption to Standard E where; (7E) a) *there is an ongoing formal dispute between the old supplier and the customer, regarding billing that customer*. This exemption recognises that there are occasions where it is not in a customer's interest to issue a final bill due to disputed data. However, this exemption should be expanded to include scenarios where a supplier is required to dispute a final meter reading, at the customer's instigation, or in their clear interest.

The current drafting and policy intent (as expressed in the consultation document, Paragraphs 4.84 and 4.85) is too narrow. As currently written it excludes scenarios where the old supplier is acting on behalf of a customer, when disputing an inaccurate meter reading with another supplier. Where a supplier is acting in the clear interest of a customer, this should not be considered a failure against the standard.

Failure to appropriately acknowledge this scenario may create a perverse incentive for some suppliers to avoid raising disputes, to avoid the financial penalty caused by a necessary delay to final billing. Additionally, where a gaining supplier receives a dispute from a losing supplier, it could seek unfair competitive advantage by causing a delay which would confer a financial penalty on the counterparty supplier.

Ofgem cites Licence Condition 27.17¹⁴ in reference to the responsibility of suppliers to '*take all reasonable steps to send a final Bill or statement of account of the Domestic Customer's account within 6 weeks*'. While we agree with the relevance of this condition to the standard, we note the measure all reasonable steps is arguably not fully reflected by the proposed exemptions. Where a supplier is able to reasonably determine a meter reading received from another supplier to complete final billing for a customer is wrong, it would not be reasonable for that supplier to knowingly bill to the inaccurate reading to meet the six week deadline. By disputing the reading with the new supplier, the supplier is following the principle of Licence Condition 21B.1 whereby '*If a Customer provides a meter reading to the licensee that the licensee considers reasonably accurate, or if the Electricity Meter is read by the licensee, the licensee must take all reasonable steps to reflect the meter reading in the next Bill or statement of account sent to the Customer*'. Additionally, the old supplier will be protecting the customer from a potential future bill shock from a 'catch-up' bill, should a subsequent accurate reading prove significantly higher.

¹⁴ Consultation document, para 4.74

These kinds of customer-driven scenarios, which necessitate a supplier to dispute a meter reading, clearly align with the principle of the proposed exemption, and are in the customer's interest. It is important that speed of billing is not prioritised over accuracy, to the extent that suppliers are penalised for taking appropriate steps to protect customers and disincentivised from challenging inaccurate data.

A majority of change of supply readings will be received by the old supplier in the second week following the Supply Start Date (SSD)¹⁵, and as such, a dispute can be raised by an old supplier to correct these readings early in the six weeks. But, this will not always be the case. Some disputes require significant investigation to resolve in the customer's interest. We note Ofgem will have visibility of the volume of cases this exemption is applied against via the regulatory reporting which accompanies these guaranteed standards. As such, we expect Ofgem will provide keen oversight to ensure suppliers are applying this proposed exemption in good faith.

Q15. Do you agree with our assessment that it would not be proportionate to implement an open-ended requirement to pay compensation for enduring issues of detriment? If not, why not?

Yes, we agree with the above points.

Q16. Would changing reporting requirements to allow Ofgem to collect data on the time taken to issue final bills or repay credit balances present a significant additional cost when compared with the current requirements?

No. While the inclusion of additional reporting elements would mean at least a nominal cost increase, we do not expect the provision of time to resolution data as described would be prohibitive.

Draft Statutory Instrument

Please find additional comments regarding the Statutory Instrument drafting below:

Standard A - Obligation to complete a supplier transfer

3) *Where this regulation applies the new supplier must complete the supplier transfer –*
a) *within the period of 21 days beginning on the day of receipt by the new supplier of sufficient information to –*

This should be amended to state (to the effect) '*...sufficient information to ... reasonably conclude a valid contract exists, including;*' - 3)a) 1) and ii).

¹⁵ For electricity this is based on the relevant timescale for data collectors set down in BSC Procedure 504 - Non-Half Hourly Data Collection for SVA Metering Systems Registered in SMRS.

This will better reflect standard of 'all reasonable steps' required by Licence Condition 14A.10, and acknowledged by 14A.11 which recognises an ongoing duty on the part of the registering supplier to attend to the validity of the contract. Furthermore, the suggested wording above reflects the Licence Condition 14A.12 definition of a 'valid contract' which is similarly duplicated (in effect) by the proposed drafting of 3)a) 1) and ii). This change is without prejudice to the requirement set down by Standard C 3) whereby a new supplier must make a standard payment upon the occurrence of an erroneous transfer.

Failure to acknowledge the balance of risk in the wording of the statutory instrument could result in a disincentive for suppliers to proceed with registrations where even stringent validation cannot provide 100% certainty of a valid switch.

Standard E - Provision of a final bill

3) Where this regulation applies a supplier must within 6 weeks of the supplier no longer having responsibility for the supply of electricity or gas, issue the customer's final bill.

Rather than only stating '*...no longer having responsibility*', the wording of this standard should also include within six weeks of '*...the termination of the contract to supply electricity or gas to the customer's property*'.

This phrasing still meets Ofgem's intent to capture various contract end scenarios, including change of tenancy, but accommodates other contractual scenarios and reflects Licence Condition 27.17. For example; where a customer may continue an existing contract at a new property by merit of a term of that contract, where continuity of billing arrangements doesn't require a final bill to be issued.

Additionally, by commencing the six week period from the '*termination of the contract*', the standard is more consistent with Licence Condition 24.1(b), whereby a supplier must end a contract for reason of a change of tenancy by the end of the second working day after the point of notification (where notification of the event is not provided until after it has occurred).

New Exemptions

(7D) A new supplier is not obliged to make an additional standard payment under regulation 8(3) following a failure to make a standard payment under regulation 8(2) after failing to meet the individual standard of performance under regulation 6A or [Standard C], where –

a) the new supplier has no contact details for the customer who has been transferred from one supplier to another without a valid contract, and that supplier can demonstrate that it has used reasonable endeavours to obtain contact details for that customer in order to make the standard payment; or

Provision a) should apply where the new supplier has '*...incomplete or inaccurate contact details...*' for the customer...after using reasonable endeavours to obtain '*...sufficient contact details...*'.

This better reflects the extent of the parameters of the subsequent exemption b), and will avoid scenarios where only partial or inaccurate contact details are available which are insufficient to allow a supplier to render a payment (where the standard does not relieve the requirement to make the payment within the prescribed timescale).

(7E) The old supplier is not obliged to make a standard payment following failure to meet the individual standard of performance under regulation [Standard E] whereas there is an ongoing formal dispute between the old supplier and the customer, regarding billing that customer;

(7E)(a) there is an ongoing formal dispute between the old supplier and the customer, regarding billing that customer;

This draft exemption should be amended to reflect:

'...there is an ongoing formal dispute between the old supplier and the customer, regarding billing that customer, or the old supplier considers that a meter reading provided by the relevant agent to conclude the customer's final billing does not reflect a reasonably accurate evaluation of the customer's usage during the relevant period of supply at the relevant premises, based upon either data provided by the customer, or obtained by the old supplier pertaining to the customer's consumption, at the customer's instruction'.

In relation to (7E), where;

b) the customer did not provide a postal address to issue the final bill to and the old supplier had no alternative electronic address to issue the final bill for that customer;

c) the final bill was issued by the old supplier but not received by the customer because the customer provided the old supplier with an inaccurate or incomplete - i) postal address, where the final bill was issued by post; or ii) electronic address, where the final bill was issued by electronic communication.

We ask Ofgem to acknowledge that where a bill has been issued by a supplier (within the appropriate timescale), but it has not been received by the customer due to the criteria of b) or c), the supplier will not be aware that this is the case, as such this is not measurable and should not be included in subsequent reporting.

EDF Energy
November 2019



Appendix

Fig 1.

Day	0	Calendar days 1 to 14	15	16	17	18	19	20	21
Typical Electricity Registration	Contract Sign Date	Cooling-off period	Working Day	Working Day	Working Day	First SSD (@ 00:00)			
	Reg Start	Registration Withdrawal window			Last Day	SSD - 1			

Day	0	Calendar days 1 to 14	15	16	17	18	19	20	21
Typical Gas Registration	Contract Sign Date	Cooling-off period	Working Day	Working Day	Working Day	First SSD (@ 05:00)			
	Reg Start	Cancellation Confirmation window		Last Day	SSD - 2				

Day	0	Calendar days 1 to 14	15	16	17	18	19	20	21	22
Registration affected by consecutive non-working days	Contract Sign Date	Cooling-off period	Bank Holiday	Saturday	Sunday	Bank Holiday	Working Day	Working Day	Working Day	First SSD (@ 00:00 or 05:00)
	Reg Start	Cancellation Confirmation window					Last Day	SSD - 2		
		Registration Withdrawal window							Last Day	SSD - 1