Hi

I am emailing with respect to your consultation on third party intermediaries in the energy market.

This email was originally sent to 'NonDomesticConsumers@uregni.gov.uk', but I received a bounceback, so just wanted to flag this to you, and would be grateful if you could acknowledge receipt of this email and confirm that it will be passed on.

These replies are being sent on behalf of a consortium of small-scale generators who were impacted by certain breaches of contract / licence breaches that occurred over the course of 2023 / 2024 (and may still be ongoing in respect of other small-scale generators), which form the context within which these replies are shared.

We would be happy to engage with the Regulator to discuss these replies, if further clarity is required.

1. Do you agree with our proposed strategic aim, objectives and scope in relation to this TPI project?

Yes

2a. Do you think development, publication and promotion of relevant Retail TPI information on the UR's website would be beneficial to consumers?

Not particularly. Naturally only a very small number of consumers, typically people who have already experienced issues, or those with deep involvement in the industry, will ever review information on the UR's website, so the reach is likely to be limited and not meaningful.

2b. Do you suggest any alternative or additional methods of sharing this TPI information with non-domestic consumers?

Nothing that would not likely be disproportionate from a costs perspective, e.g. mailshots etc.

3a. Would you consider enhanced monitoring and reporting (including i) regular supplier information submission and ii) a programme of engagement) to be beneficial in ensuring that consumers are adequately protected?

Yes.

3b. Should a regular supplier information submission be voluntary or implemented through a licence requirement?

Implemented through a licence requirement – otherwise meaningless.

3c. Can you suggest any alternative methods of monitoring and reporting TPI activity?

No.

3d. Would it be beneficial for the TPI information gathered by UR to be anonymised and published (in addition to being used internally by UR for market monitoring)?

Not particularly.

4a. Are you of the view that TPI commissions being published would increase levels of transparency and benefit consumers?

Yes, Ofgem have adapted some balanced requirements for suppliers and implemented some new requirements recently in their SLC which we feel strike a sensible balance, and would not involve UR re-inventing the wheel in terms of its own compliance measures.

4b. Which publication format should be used for Third Party Costs:
- i) consumer bills and on request
Limited value in itemizing on customer bills, as by that stage a purchasing decision has already been made. On request is different. Ofgem adopted this approach.

- ii) a customer's Principal Terms and upon request

Yes

- iii) both i and ii

No

- iv) another publication?

No

4c. Which publication cost structure would be most beneficial to consumers:
- i) any sum for contract duration
- ii) sum per unit
- iii) combined (both i and ii)?

(i) and (ii) to make the information meaningful for consumers who may not appreciate how many units they are likely to consumer, or in the case of small scale generators, generate, over a typical contract term. Suppliers should only be obliged to give a best estimate of (i) given pricing uncertainty and that suppliers cannot be expected to model customers consumption or supply profile.

4d. What changes to billing systems—or wider systems and processes—would be required in order to enable the provision of TPI commission costs on bills? What level(s) of transparency would these changes enable?

No comment.

5a. Do you agree with the exclusion of the potential measures (4–6) for the reasons described above?

Yes.

5b. Are there any alternative measures, not discussed, that you think should be considered? If so, please provide a description.

Yes, whilst we believe the market registration code already provides for this to some degree, there are some significant issues for micro-small-scale generators currently in terms of their ability to switch between suppliers, in that one supplier needs to expressly agree to release a generators' MPRN to another supplier if they want to change supplier.

We feel that that leaves small-scale generators exposed, because it means they have to go to court to compel a supplier to move an MPRN in circumstances where, for example, they aren't getting paid by the supplier.

The concern would be that smaller scale suppliers or new market entrants could exploit the above and basically use generators to support their cash flow, in the knowledge that such generators are "locked in" to them until such point as they choose to release them.

In cases involving suppliers who didn't have a lawful basis to hold those MPRNs, small-scale generators are left having to seek recourse in the high court, which is an expensive and cumbersome remedy, which we expand on further below.

Having the option of being entitled to switch, and putting the impetus on a supplier to challenge that, in the case of small-scale generators, would redress that balance, again addressed further below.

6. Are you aware of any issues or concerns impacting micro/small-scale generators through their arrangements with TPIs? If yes, please specify.

Yes, the UR will be very aware of these concerns and issues *[REDACTED]*, and it is very surprising that these are not noted or referred to in the consultation, given that they form a significant part of the context within which (we assume) this consultation is taking place and clearly evince clear failures in the current marketplace mechanisms (or the degree to which they are proactively enforced by the Regulator), which would not be addressed by the measures contemplated in the consultation.

[REDACTED]

7. Do micro/small-scale generators require regulatory protection when engaging with TPIs in the energy market in Northern Ireland? Please provide any information to support your answer.

Yes, the measures proposed in the consultation would not address the issues referred to at 6 above.

In short, *[[REDACTED]* TPIs acting as agents to contract on behalf of small-scale or micro generators, who typically have much more industry experience or knowledge than those generators, are capable of deceiving smaller scale generators *[REDACTED]* by offering fixed pricing or opaque pricing mechanisms without pricing visibility.

There are a number of potential mechanisms that the Regulator should consider to properly address this:

1. **Prohibiting Agency Agreements for Small-Scale Generation:** Introducing a licence obligation on suppliers not to contract micro / small-scale generation through TPIs ***acting as commercial agents*** would be one mechanism, as whilst brokers could source or negotiate PPAs for small-scale generation, ultimately suppliers would be obliged only to enter into direct contracts with the generators themselves (differentiating a “broker” engagement here from a “commercial agent” engagement).

   Any commission payable to brokers could be directly set out on those contracts, so that there would be full transparency, with failure to do so being a breach of licence for which the supplier (as a regulated entity subject to UR oversight and capable of being fined 10% of total turnover) would then be liable.

2. **More Rigorous Enforcement of Existing MRC Provisions:** In the current MRC NIE Networks is obliged to notify generators if their offtake nomination is being switched between licensed suppliers. *[REDACTED]*

   This means generators who have engaged through a TPI are able to be effectively switched between suppliers without their knowledge or approval. The UR taking steps to more rigidly require NIE Networks to adhere to this (existing) obligation, and ensure that direct contact details for generators are collected as part of a generator nomination (so that generators can be notified directly), might result in additional transparency (without an undue regulatory burden on NIE Networks).

   Amending the current MRC to require generators’ express consent for switching under such circumstances would provide even more protection (see comments above re. the mismatch at present in terms of the respective positions of generators and suppliers in this regard).

   Additionally, the existing MRC contemplates that suppliers must have a contract with a generator to nominate their MPRN. *[REDACTED]*

   [REDACTED].

3. **Considering the Current Mechanisms for Supplier Switching**: As noted above, under the current MRC arrangements, suppliers have an effective veto over the switching of small-scale

generation between suppliers. This issue goes beyond TPIs, and effectively means that suppliers (including bad actors) are able to veto any change proposed to another supplier.

That leaves a situation where the only option a small scale generator who is not being paid for their power has in terms of effecting that switch is to bring legal proceedings *[REDACTED]* to effect a switch. Realistically that mechanism is beyond the cash resources available to most small scale generators, unless acting as a co-ordinated consortium, and in cases where a supplier is facing financial difficulties, would mean that in the period of time within which the generator sought recourse, they would effectively be dealing with an insolvent supplier.

Considering implementing either some separate mechanism for generators to raise urgent disputes with the Regulator and making appropriate amendments to licence conditions for suppliers would be one possible way of resolving this issue, but would likely require a separate consultation.

Reversing the power dynamics by virtue of an amendment to the MRC, that permitted generators to switch by placing a nomination (which suppliers could then challenge) would be another such mechanism (as noted above).

8. If you answered yes to Q7, what regulatory protections do you feel would benefit micro/small generators in Northern Ireland? Please provide examples to support your answer where necessary.

See above at Q7, which addresses the generators' views on this issue.

9. Do you think that any of the potential measures outlined in Section 3 in relation to Retail TPIs could or should be considered for application to Wholesale TPI operations? Please provide any information to support your answer.

No comments.

Thanks