

# Measures to Enhance the Operation of the Small Business Energy Market

Decision Paper  
September 2018



# About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Compliance and Network Operations, Finance and Network Assets, Wholesale, Retail and Consumer Protection and Corporate Affairs. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

## Our Mission

Value and sustainability in energy and water.

## Our Vision

We will make a difference for consumers by listening, innovating and leading.

## Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

# Abstract

Protecting consumers is at the heart of the Utility Regulator's (UR) role and promoting measures to enhance the effectiveness of competition in the Northern Ireland (NI) energy markets is an integral part of delivering our statutory duties. This paper sets out the decision on the proposals to build transparency and trust in the competitive market for small business customers in electricity and gas.

In 2016 the UR published its final decision paper for the Power NI 2017 Electricity Price Control. This saw the removal of the price control from the remainder of Power NI's small business electricity customers. In parallel, the CMA energy market review in GB noted some issues and concerns around the detrimental impacts on small businesses of some aspects of the energy market. These new measures are aimed at making energy markets work even better for small business customers in NI.

Whilst there is still price regulation for small business gas consumers we envisage these new measures will apply to the small business gas market nonetheless, as we are of the view they will not interfere with, but rather enhance, the gas small business market and can co-exist with price regulation.

In October 2017 the UR consulted on the potential measures in the electricity and gas small business markets that will help to make sure competition is as effective as possible for the customers in these sectors. Most of the measures which were consulted upon already exist for domestic consumers and are therefore not novel.

This paper sets out the decisions in relation to the measures consulted upon. The licence modifications to implement the decision will be issued in due course.

# Audience

Consumers and consumer groups; industry; and statutory bodies.

# Consumer impact

Small business consumers will see the benefit of a new set of measures with the aim of enhancing the operation of the small business energy market. The direct consumer impact of this will be in relation to the type of measures which are being implemented e.g. measures in relation to contract clauses and clarity in relation to deposit requirements. The new measures will not directly affect price. However, they may affect the level of deposits and exit fees for example.

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# 1. CONTEXT

- 1.1 Protecting consumers is at the heart of the Utility Regulator's (UR) role and we pursue this, where appropriate, through promoting effective competition in the Northern Ireland (NI) energy markets. The UR operates to ensure consumers are adequately protected in these markets through fostering transparent and effective competition, alongside regulation if that competition is not deemed effective enough to adequately protect consumers. We also seek to make the competitive energy markets work as well as possible.
- 1.2 The measures which will be implemented as a result of this project will have a positive impact on both customers and the market itself. We are of the view that the measures will help stimulate the market and as such will benefit everyone both operating and participating in the market. This project represents a progressive step forward in the development of the retail market for small business customers in NI.
- 1.3 In October 2017 the UR published its consultation paper "Measures to Enhance the Operation of the Small Business Energy Market"<sup>1</sup>. This paper set out a number of proposals which the UR believes will make the small business energy market more transparent, making it easier for small business customers to engage in the market and therefore stimulate competition.
- 1.4 The October 2017 paper was issued in the context of the previous Power NI price control which saw the price deregulation of the remainder of the small business market. The UR also engaged with small business representatives which identified areas where they felt that the energy market for small business could be enhanced to make transparency and competition more effective. In addition to this, the CMA energy market

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<sup>1</sup> <https://www.uregni.gov.uk/news-centre/consultation-measures-enhance-operation-small-business-energy-market>

review in GB noted some issues and concerns around the detrimental impacts on small businesses of some aspects of the energy market.

- 1.5 It is important to note that the market improvements which will be implemented as a result of this decision paper already exist for domestic customers in our energy markets, so are not novel.
- 1.6 The outcomes of this project will sit alongside other important measures which the UR has implemented such as Retail Energy Market Monitoring (REMM) to ensure, as best we may, that retail energy markets are working to the benefit of consumers now and into the future.

### **Project to Date**

- 1.7 The UR published an Information Paper in May 2017 which laid out the context for the project, key project considerations, and the timetable in which we aim to complete it.
- 1.8 Subsequent to the publication of the information paper, the UR held a stakeholder roundtable at its office on 21 June 2017. There were presentations by Ofgem, CCNI and UR followed by roundtable discussions in groups. The discussions covered current issues in the small business energy market such as transparency of the available tariff offerings to potential customers; availability of terms for customers; and issues around deposits (level and time they are held for).
- 1.9 As stated above the consultation paper was issued in October 2017 and the roundtable discussions helped inform the options for consultation in that paper.
- 1.10 This decision paper has taken the views expressed in the responses to the consultation paper into consideration when drawing conclusions on whether individual proposals should be implemented or not.

## About this document

- 1.11 The purpose of this document is to set out the UR's final decisions in relation to the options which were consulted upon.
- 1.12 Following the issue of this decision paper, we envisage that there will be a phase of licence modifications and implementation for suppliers.
- 1.13 The document is structured as follows:
- Section 2 discusses the decision regarding the scope of coverage for the measures;
  - Section 3 examines the areas for improvement in the small business energy market and the outcome of the various stakeholder engagement;
  - Section 4 outlines the measures proposed in the consultation and the stakeholder feedback received on these as well as the UR final decisions on each of the measures;
  - Section 5 provides a summary of the measures consulted upon and the UR decision on them;
  - Section 6 outlines the next steps for this project.
- 1.14 The UR received 11 written responses to the October 2017 Consultation paper. The network companies for gas and electricity were also asked for specific responses with regard to the potential for a prepayment solution in those two markets. These are also discussed as part of the feedback from stakeholders. Non-confidential submissions were received from the following organisations:
- Consumer Council Northern Ireland (CCNI);
  - Power NI;
  - SSE Airtricity;
  - Electric Ireland;



- Energia;
- Firmus Energy Supply;
- Federation of Small Business (FSB);
- PNGL;
- Firmus (network);
- SGN; and
- NIE Networks.

A copy of each respondent's full submission have been published as annexes to this paper and can be found on our website – [www.uregni.gov.uk](http://www.uregni.gov.uk).

### **Equality considerations**

1.15 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- ii. men and women generally;
- iii. persons with disability and persons without; and
- iv. persons with dependants and persons without.

The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.

1.16 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.

- 1.17 In order to assist with equality screening of the proposals contained within this review, the UR requested that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals outlined in our October 2017 consultation.
- 1.18 In our consultation, the UR asked the following questions regarding our equality considerations:

***Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?***

## **Feedback and UR comments**

- 1.19 In relation to question 1, a small number of respondents addressed this question specifically.
- 1.20 CCNI state that it will have a positive impact from an equality legislation perspective. Electric Ireland echoed this view.

## **UR Comment**

- 1.21 The feedback received from the respondents who specifically answered this question would suggest that any impact which occurs as a result of the implementation of these measures will be positive.

***Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.***

## **Feedback and UR comments**

- 1.22 Similarly to question 1, the feedback received from the respondents who specifically answered this question would suggest that any impact which occurs as a result of the implementation of these measures will be positive. In relation to question 2, both CCNI & Electric Ireland stated that they don't believe the proposals need to be modified.

## **UR Comment**

- 1.23 The feedback received from the respondents who specifically answered this question would suggest that the proposals don't need to be refined with regard to equality considerations.

## 2. SCOPE

- 2.1 This section of the paper discusses the scope of customer coverage for the measures and the respondents' feedback to the proposals on scope.

### Consultation Proposal

- 2.2 The consultation paper set out define what 'small business' would cover. To help with this, the UR used the definitions set out by the CMA for a 'relevant sector' for the scope which their small business measures in the GB energy market would cover.
- 2.3 In this context, for electricity we proposed that the scope for the measures and proposals should cover those small I&C customers who fell within the latest tranche of electricity price deregulation (i.e. 0 – 50MWh users). This would also align with the CMA definition of the relevant segment for electricity.
- 2.4 In relation to gas small I&C customers the consultation paper noted that there is still price regulation in this energy market sector. Currently the threshold for the price regulation applies to those customers up to 73.2MWh. Whilst not all of the enhancement measures may be relevant in the context of the customers who are still currently price regulated we proposed in the consultation that the scope should include those small I&C customers up to 73.2MWh (where the measure is relevant). Again, this would be in line with the CMA relevant segment definition for gas.
- 2.5 The consultation paper asked respondents if they agreed that this should be the scope of coverage for any measures implemented.

**Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?**

## Feedback and UR comments

- 2.6 CCNI referred back to their response to the Power NI SPC 2017 where they stated that SPC17 could benefit consumers: by providing a platform to consider and introduce measures aimed at small businesses that help minimise and avoid some of the risks inherent to unregulated retail markets. Given that the last price control removed regulation from this group of customers in electricity it is appropriate that the measures encompass this group of customers. CCNI also welcome that it broadly covers the same segment in the gas market.
- 2.7 Electric Ireland and Energia agreed that the scope of the project was appropriate.
- 2.8 SSE Airtricity stated that they generally agreed with the proposal for the scope of coverage of the measures. However, they did highlight:
- “that small premises that are part of a larger commercial group e.g. mobile phone retailers, banks, high street shops etc. should be excluded from the definition of small I&C as they would normally go to tender for their energy supply contracts and would have stronger negotiating powers than standalone single site businesses.”*
- 2.9 They also were of the view that interval meters should not be covered by these measures.
- 2.10 Power NI stated that even if the customers fall within this scope this does not mean that the business is small or in some way vulnerable. They also cautioned against the ‘one size fits all’.

## UR Comment

- 2.11 With regard to the SSE comment that small premises who are part of a larger entity should not be covered by these measure the UR agrees with this. We envisage that the measures will cover single entities who fall

within the scope proposed but will not cover single entities with multiple sites who in aggregate use more than the thresholds of 50MWh in electricity and 73.2MWh in gas.

- 2.12 In relation to Power NI's points, whilst they were not supportive of how the scope was derived they offered no alternative as to how the scope may be defined.

## **UR Decision**

- 2.13 The scope of coverage of the measures will be as consulted upon being 0 – 50 MWh for electricity and up to 73.2MWh for gas small business customers.
- 2.14 To ensure consistency for reporting, supply meter points should be categorised into the customer groups based on the Annual Quantity (AQ) of each supply meter point. This will align with the current REMM reporting parameters.
- 2.15 The measures will not cover small premises who are part of a larger entity which in aggregate use more than the thresholds or customers with interval meters.

### 3. THE SMALL BUSINESS ENERGY MARKET & STAKEHOLDER ENGAGEMENT

- 3.1 This section of the decision paper discusses the issues which were identified by the engagement with stakeholders prior to the consultation being issued.
- 3.2 The issues identified were discussed in the consultation paper and respondents were asked if they agreed with the issues outlined and highlight if there were other issues which had not been identified.
- 3.3 The issues which were highlighted and discussed included:
- tariff transparency;
  - rollover contracts;
  - levels of deposit required;
  - time period deposits are held for;
  - being offered contractual terms.

#### **Tariff Transparency**

- 3.4 Customer representatives were clear and insistent that there is a problem with the lack of price transparency in the market and a resulting lack of engagement by small business customers.
- 3.5 This lack of transparency can result in a customer being unable to establish whether they are on a good tariff deal or not without approaching a number of suppliers individually and obtaining a quote from each of them. This is as opposed to the tariffs being available on the supplier website or on a

third party website e.g. a price comparison site as is they currently the case for domestic customers.

- 3.6 Comparability can also be an issue even if multiple quotes are obtained, as they may be displayed in different ways. Many small businesses don't have the resource to dedicate the time required to finding the best deal for them.

### **Automatic 'rollover' of contracts**

- 3.7 Rollover contracts exist where a customer's existing contract comes to an end and they are moved on to another contract which would 'lock' them in to another fixed term contract. It would also be likely that exit fees would be incurred as the customer would in effect be breaking a contract.
- 3.8 Customer representatives and suppliers were of the view that this type of contract should not exist and was a barrier to competition. Currently it does not appear to be an issue in the NI market. However, stakeholders were keen that it should be discouraged or prohibited to ensure it does not become a feature of the market in the future.

### **Deposits**

- 3.9 The discussion in the area of deposits covered a number of different elements such as the level of deposit required and the length of time a deposit should be held for.
- 3.10 It was agreed that it was acceptable that a supplier could ask for a deposit however the amount should be deemed as reasonable in the circumstances of the case. There was considerable debate in relation to how long a deposit should be retained for.

### **Duty to offer terms**

- 3.11 Customer representatives supported a duty to offer terms obligation (akin to that in place for domestic customers) in principle and ideally would like to



see a non-discrimination clause. They also made the point that a duty to offer terms is not a protection if the price and T&C's are onerous or unfavourable. This has been the experience of some small business customers.

- 3.12 Suppliers were of the view that the company has the right to do business with whom they choose. They also pointed out that there was no evidence of small businesses not being offered terms.

### **Customer Engagement/Education**

- 3.13 This part of the discussion looked at possible reasons why small business customers were not engaging in the market and perhaps switching was not as widespread as it should be. Particularly, if there were any issues with the market that stakeholders felt were impacting upon customer engagement.

### **Brokers**

- 3.14 The use of brokers was highlighted as an issue by stakeholders. Suppliers and customer representatives were both concerned about an increased presence of brokers in the NI market.

### **Consultation Question**

- 3.15 The consultation paper asked respondents if they agreed with the issues identified in the consultation paper and if there were any other issues they would like to highlight.

**Q4. Do respondents agree with the issues highlighted in Section 4 – if not please provide explanation/rationale as to why?**

## Feedback and UR comments

- 3.16 CCNI stated that they agree with the issues highlighted in Section 4 of the UR consultation and also referenced their 2017 research in which many of the same issues were highlighted. In particular they noted that tariff transparency was of particular concern from the conclusions of their research. They stated that over 3/4 of respondents were of the view that they should be contacted in advance of the end of their contract to negotiate a new one and remind them of their right to switch. CCNI's research also found that respondents thought that deposits should be reasonable and that they were concerned that in some cases no terms were offered unless a deposit were paid.
- 3.17 Electric Ireland agreed with all the issues which were highlighted albeit not all were of equal importance.
- 3.18 Energia stated that they 'recognised' the issues highlighted but did not agree that all needed regulatory intervention:

*"Businesses also have a responsibility to seek out the best value deals and products that are suitable to them. Much like in other sectors this will always require some time and energy on the behalf of the customer to seek out a suitable deal. This is a fundamental principle of a competitive market where suppliers differentiate themselves from competitors by offering a range of products, differentiated by price and quality of service."*

## UR Comment

- 3.19 We note CCNI support for the issues covered in the paper.
- 3.20 With regard to Energia's point that customers should seek out the best value deals, we agree. However, the information should be easily available to them to do so, and it currently is not provided by suppliers. This inhibits their ability to find the best deals.

- 3.21 The majority of stakeholders who specifically answered this question agreed with the issues highlighted in the consultation paper.

## UR Decision

- 3.22 As stakeholders mostly agreed with the issues highlighted in the consultation paper these do not need to be amended.
- 3.23 The consultation paper also asked stakeholders if there were any other issues which they thought were important but which had not been highlighted in the paper.

**Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?**

## Feedback and UR comments

- 3.24 CCNI identified a number of issues which weren't included in the UR's consultation list. These included lack of knowledge in relation to meter type and tariffs resulting in a customer often not being on the most appropriate tariff. They stated that they believed it was due to a lack of consistency on how suppliers gathered and utilised consumption data. CCNI were also of the view that fixed term contracts were an issue as they stopped customers switching freely. CCNI also suggested that standard formats should be used on bills to display tariff rates. In addition they indicated that a 'cooling off' period would be appropriate for small business customers.
- 3.25 Electric Ireland did not identify any additional issues which they thought should be considered.
- 3.26 SSE Airtricity stated that they would like to see further analysis done on the market to establish how it is made up and how many of the customers in it are part of a larger group. They reiterate their earlier view that these should be removed from the scope of coverage.

3.27 Power NI argued:

*“By prescriptively regulating in this area, the UR is mandating uniformity and eroding any competitive service advantage which a supplier has worked to achieve. This represents a direct interference in the market by the UR and Power NI would suggest that this is counterproductive to the stated aims of this work and is inconsistent with the UR’s statutory duty to promote competition.”*

3.28 They also went on to state:

*“Such intervention cannot be justified by the argument that this is a consumer protection activity if the UR has not identified the consumer harm nor assessed whether their actions protect the consumer from it.”*

## UR Comment

3.29 In relation to SSE’s comment, as previously stated we agree that the coverage of any measures should be for single entities which fall within scope and not for a customer which is part of a larger group.

3.30 We do not agree with all of Power NI’s comments. We have been clear from the outset of this project that it is not about customer protection. Rather, the measures which were proposed in the consultation paper are about enhancements to the market and the effectiveness of competition in the small business market. We are of the view that enhancements which will increase transparency will make it easier for customers to engage in the market. This in turn should increase competition in the market. Therefore, this project directly contributes to our statutory duty to promote effective competition.

3.31 With regard to CCNI’s comments ‘cooling off’ periods are covered later in this paper. Fixed term contracts are likely to mean that the supplier has committed to hedges/purchase of energy based on the fact that a customer

will remain for a fixed period of time. We are of the view that fixed term contracts are appropriate given the supplier financial commitments in relation to wholesale energy purchased in advance for example. However, the T&C's should be clear on the length of the contract the customer is agreeing to. They can also provide price certainty for a known period of time so customers can budget appropriately. In relation to their comments on meter type knowledge and the collection and utilisation of consumption data we are of the view that this is an issue that would be best addressed through customer education measures.

- 3.32 In terms of uniform formats on bills, this was examined as part of the UR project on energy bills and statements. The second consultation paper<sup>2</sup> stated that the format of I&C bills would be removed from the code of practice:

*“With regard to the requirements for the format of non-domestic bills and statements we have decided to remove this entirely from the code of practice. We acknowledge that many non-domestic customers have very different billing requirements than domestic customers and suppliers understand these very well.”*

- 3.33 To clarify, the Code of Practice for non-domestic bills & statements does require supply companies to display certain information on a bill/statement (i.e. consumption, tariff information and supplier details etc.) but the format of how this is displayed is at the discretion of the supplier.

## UR Decision

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<sup>2</sup> <https://www.uregni.gov.uk/consultations/second-consultation-new-supplier-code-practice-energy-bills-and-statements>

3.34 Based on the above discussion and consultation responses, no additional or new enhancement measures have been added to the current list for consideration.

## 4. MEASURES

- 4.1 This section of the paper details the measures which were proposed in the consultation paper. It examines the stakeholder responses to these measures.
- 4.2 These measures were developed using a wide range of sources: taking into account lessons from similar customer experiences in GB, the views expressed by small business representatives during the consultation phase of the latest Power NI price control, as well as those put forward by small business and industry at the stakeholder roundtable event. The aim of each of the measures which were laid out for consultation is to enhance the operation of the small business energy market in NI. These measures are not to remedy any particular harm per se, but rather are positive and proactive measures to improve the operation of the small business market. As noted previously, they already exist in the domestic market and are not novel.
- 4.3 The October 2017 paper consulted upon a number of measures which are discussed below along with stakeholder responses to them.

### **Measure 1 – Tariff Transparency Requirement on Suppliers to publish tariff rates including their acquisition and retention rates for small business customers.**

- 4.4 The consultation paper proposed that suppliers should be obligated to publish their small business tariffs on their website. A key concern amongst stakeholders was the lack of tariff transparency in the small business energy market. This is deemed to make customer engagement more difficult and the ability of customers to make informed decisions more difficult.

- 4.5 In terms of how a measure around tariff transparency would be implemented, the consultation paper pointed to the GB market. Any measure could take a similar form to that proposed by the CMA in the Energy Market Investigation (Microbusinesses) Order 2016. This area is covered by Article 3 and Article 4 of the Order. Article 3: “***Obligation to disclose Required Price Information to Relevant Micro Business Customers***”

Stakeholders were asked for their views on this measure.

**Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.**

## Feedback and UR comments

- 4.6 CCNI stated that the lack of transparency creates a barrier to switching and the time taken to get quotes leads to a reliance on brokers. Their research indicated that small businesses did not welcome this reliance on brokers. They also stated:

*“This lack of transparency in pricing is a factor preventing the development of a switching culture in NI. The Consumer Council believes that publishing small business electricity and natural gas tariffs or providing an online price comparison tool would enable small business consumers to get the best deal from the retail energy market.”*

- 4.7 CCNI’s also indicated that their own research showed that small businesses would like tariffs to be published. Furthermore, CCNI are planning to develop an online comparison tool which will require access to



small business tariffs. If suppliers are obligated to publish these tariffs then this will help facilitate the development of this tool.

- 4.8 Electric Ireland were supportive of increasing transparency of tariffs and that all suppliers should share this information on their website. They stated:

*“Whether it should take a similar format to that required in GB should be the subject of consideration and we agree with the approach in GB where the licensee has flexibility when ensuring that the Tariff Information Label is displayed.”*

- 4.9 Energia were not supportive of this measure. They stated that contracts were bespoke and to put this type of information on their website would mean administrative burden.

- 4.10 Firmus energy (Supply) Ltd (FESL) supported the implementation of this measure

*Firmus energy agrees that as far as possible suppliers should provide transparent price information on their website. Firmus energy notes that the presence of the regulated tariff encourages other suppliers to publish their tariff information, and where this is the case the same level of transparency is provided to consumers as that required under the GB Energy Market Investigation (Microbusinesses) Order 2016 Article 3 “Obligation to disclose Required Price Information to Relevant Micro Business Customers”.*

- 4.11 SSE stated that, in their view, the most appropriate way for customers to take advantage of the competitive market is for them to engage directly with suppliers to ensure they get the most appropriate tariff for them in the context that they could be offered a bespoke contract:

*“Suppliers may offer add-on products to offers so, by comparing tariffs alone, customers may be losing out on more beneficial products for their*

*business if they are restricted to comparing tariffs rather than the full product offering”*

4.12 SSE did not agree with the proposal, stating that they were of the view that it would be difficult to display the information. They also argued that as tariffs change frequently there is no guarantee that a rate that a customer will see on a particular supplier’s website will still be available if they return to the site after assessing other suppliers’ offerings.

4.13 Similarly Power NI were not supportive of this measure adding that there was no evidence to support the statement that lack of transparency was preventing customers engaging in the market and that if there was transparency it wouldn’t necessarily result in greater engagement. Power NI make the point that switching rates in the market over the past number of years has been reasonably high suggesting that customers are engaging meaningfully in the market.

*“Energy suppliers actively seek the direct interaction with the customer by quoting offers. This is a commercial business environment and bespoke tariffs are offered. Fuel prices move on a daily basis and flat standard tariffs, (largely due to a chronic lack of liquidity and the authorities’ failure to create a properly functioning forwards wholesale market) are a thing of the past.”*

4.14 The Federation of Small Businesses (FSB) support the provision of transparent tariffs so that small businesses are equipped with the appropriate information. They stated:

*“Our research found that Northern Ireland had the sixth highest electricity prices in Europe for ‘very small’ business customers – our typical businesses. Most business consumers in this category in Northern Ireland were found to be paying around 10% more for electricity than their peers in other parts of Europe and the UK. For these users, energy is the second largest cost, so the need to have easy access to transparent prices and*

*tariff structures is essential to assist the most vulnerable firms to reduce this aspect of their overheads.”*

- 4.15 FSB set out their recommendations in relation to transparency of tariffs In their 2016 Assembly Manifesto which included:

*“Empower small businesses to compare different electricity contracts and tariffs by compelling the suppliers to publish easily understood and compared information”*

- 4.16 They went on to state:

*“Having easily understood and comparable information from the competing energy suppliers would enable small businesses to work out their best energy deal. Crucially, it would also serve to provide benchmarks against which offers and renewals options could be easily assessed.”*

## UR Comment

- 4.17 We are encouraged that several suppliers supported the proposal, and recognised its need and benefits to the market. In terms of the comments made by Energia, it would seem unlikely that every small customer receives a bespoke offer as opposed to various tariffs which would be offered to groups of small business customers, albeit that these tariffs would likely change weekly. In terms of input Energia currently publish free daily energy gas reports on their website, which would itself have an administrative burden.
- 4.18 With regard to SSE’s comment in relation to the availability of tariffs we don’t view this as an issue. With price transparency, comparisons of all offers could be done very quickly, in a timescale where prices are unlikely to change. If prices did change another comparison could be done. However, the point that SSE make must surely be true today yet they

advocate customers approaching suppliers by phone. Hence the issue is no different or worse if tariffs are published.

- 4.19 We do not agree with Power NI's comment on the lack of evidence. As previously indicated both CCNI and FSB have stated that the lack of transparency in tariffs is a major concern for their members.
- 4.20 We do agree with Power NI's argument that the lack of liquidity in electricity, which leads to many of the contracts offered to small businesses being basically "pass through" i.e. the price varies with the movements in the electricity wholesale market, might make meaningful information difficult to publish. This is because there may be some difficulty in comparing pass through tariffs with those that are fixed in price for a period of time. However, this should not justify industry taking an approach of doing nothing in terms of providing transparency to small business customers.

## UR Decision

- 4.21 The UR believes that price transparency is a fundamental requirement for effective competition in the small business energy market. It already exists for domestic customers through published domestic tariffs. Since the publication of the consultation paper CCNI have progressed a project which will expand their current domestic price comparison website to encompass small business customers also. This development is welcome and has an impact on the decision that the UR was minded to take regarding this measure at this point. It appears that suppliers have been broadly supportive of CCNI's project to date.
- 4.22 The CMA stipulated in their Order:

*"Retail Energy Suppliers must disclose the Required Price Information in the Prescribed Format promptly to each Relevant Micro Business Customer on its Website or on one or more Third Party Online Platforms."*

- 4.23 A price comparison website should make it easier for potential customers to find the best energy deal. It will mean visiting one website with a centralised information source on pricing.
- 4.24 In this context, **at this point in time** we will not implement licence conditions which mandate price transparency. This is on the basis that suppliers voluntarily committed to provide their pricing information to CCNI (or another third party provider) with their small business tariffs for publication. As highlighted above the CMA stipulated that the transparency can be achieved by providing information on the suppliers own website or through a third party. The UR is of the view that an industry response to customer needs is preferable to a regulatory intervention. It appears that there is potential that the goal of tariff transparency for small businesses may be achieved via this industry action and would thus obviate the need for direct regulatory obligations.
- 4.25 However, we will monitor this situation closely to determine if the information provided fulfils the transparency requirements we envisaged in the consultation.
- 4.26 After a period of 12 months, we will proceed with licence modifications to mandate tariff transparency if we are not satisfied that the level of transparency being provided is adequate and similar to that in GB and commensurate with the CMA order, which was the original intention of the UR in the consultation issued in 2017. These licence modifications, if required, would therefore be a direct follow on from the consultation process already undertaken and this decision paper.

## **Measure 2 – Deposits – clarity on how these are set by suppliers.**

### **Suppliers should publish how they calculate deposits on their websites**

- 4.27 Stakeholders were asked for their views as to whether suppliers should provide clarity on how deposits were calculated and to publish this on their website.

**Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why.**

## **Feedback and UR comments**

- 4.28 CCNI were supportive of this measure. They stated:

*“Consumer Council believes all consumers would benefit from consistent information from suppliers on how they determine when and at what amount they require a deposit to be given.”*

- 4.29 Electric Ireland were also supportive of suppliers providing this type of information on their website:

*“Electric Ireland would support providing information on websites in relation to our policy for determining deposits for our customers. Deposits for customers relate to expected consumption and consequently customer bills.”*

- 4.30 Energia stated that suppliers are ‘best placed’ to determine the level of deposits. They also stated:

*“Energia is open to providing a high level overview of our deposit requirements, however, this should be limited to an overview of the requirement as the details of specific deposits should be appropriately calculated on case-by-case basis.”*

- 4.31 FESL stated that the level of deposit required was based on a credit check of the customer and the annual consumption forecast. Information could be published on this but indicative deposit estimates *“would not be appropriate”*.
- 4.32 SSE stated that they had no issue with providing high level deposit criterion requirements on their website and noted that a similar measure has been recently implemented in the ROI market for non-domestic customers.

## UR Comment

- 4.33 The majority of stakeholders, including several suppliers, were supportive of providing clarity on how deposits are calculated for various customers. There were some caveats around providing specific deposit estimates.
- 4.34 We are of the view that suppliers should provide this information as stated in the consultation and that this will aid transparency for customers. This will give potential customers clarity on how a supplier determines the level of deposit they will pay. We are the view that this type of information will have a **positive** impact on the market if it is readily available and easily accessible to potential customers encouraging customer confidence and trust in the market and suppliers.

## UR Decision

- 4.35 The UR has decided that suppliers should provide information on their website around deposit requirements and how they are determined for a customer.

### Measure 3 – Level of deposits & length they are held for

- 4.36 This measure focuses on what is a ‘fair’ level of deposit for a supplier to ask for and, if a deposit is taken, how long should it be retained. The issue of deposits focused mainly on how much a supplier should ask for given concerns that it could be set so high as to be prohibitive. The UR proposed that deposits should be based on calculating what 3 months consumption would be for the potential customer. We also stated that we were of the view that deposits should not be held for any longer than 12 months. Stakeholders were asked for their views on this.

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

### Feedback and UR comments

- 4.37 CCNI were supportive of these proposals stating:

*“Suppliers should set deposits at a reasonable level to avoid taking advantage of the small business or limiting, in practical terms the choice of supplier available to small businesses, and in particular those small businesses that are deemed a higher risk.”*

- 4.38 They went on to state that they were of the view that the requirement should be even more specific and:



*“...sets at three months consumption the upper limit that suppliers can request as a deposit, rather than simply suggesting that three months consumption is reasonable. We believe small businesses would benefit from the certainty and consistency that this requirement would provide.”*

4.39 CCNI stated that from their research they have determined that the refund of deposits is a source of discontent for customers mainly because of uncertainty around when they can claim the deposit back. They have suggested that deposits could potentially be returned on a risk basis. The deposit should be returned in an agreed time and should be stated in the contract.

4.40 Electric Ireland stated:

*“Security deposits should reflect the risk and exposure with the deposit amount required being based on the approximate electricity consumption and should generally equate to the forecasted value of two bills.”*

4.41 In relation to the length of time a deposit should be held Electric Ireland were in agreement that this should be finite if there was a good payment history. They stated:

*“Yes, but subject to credit status of the customer and their payment record, security deposits will be automatically credited to the account following the 14-month anniversary of all payments being made in line with agreed credit terms.”*

4.42 Energia stated that they were generally supportive of setting a deposit at a 3 month bill level:

*“Energia are supportive of a general deposit threshold of 3 months but suppliers must be able to assess their exposure to risk and apply greater deposits in certain circumstances.”*

- 4.43 With regard to the length of time deposits should be held for, Energia stated that stipulating that they could only be held for 12 months would increase risk to suppliers. Energia review customer's credit risk and will refund deposits where they no longer present a risk.
- 4.44 FESL agreed that 3 months consumption with the deposit returned after 12 months was appropriate. However:

*"firmus energy note that the rate of debt is higher within the customer group that have had their deposit returned than the group of customers whose deposit continues to be held by firmus energy. This would invariably negatively impact upon the low firmus energy's levels of bad debt."*

- 4.45 SSE stated that they agreed that deposits should be set at a reasonable level however should not be capped at 3 months:

*"Suppliers should have the right to set reasonable level security depending on the credit risk determined during the supplier's credit checking of a customer."*

- 4.46 They also agreed 'in general' that deposits should be held for a finite amount of time however were of the view that the supplier should be able to make the decision as to whether it was appropriate to retain the deposit after 12 months.

- 4.47 SSE went on to discuss the alignment with domestic customer arrangements and the fact that changing the small business terms to mirror these could result in customers pushing to extend their credit terms. The proposal allows the domestic customer the return of their deposit if they have made payment within the 28 day credit terms over the previous 12 months. SSE stated:

*"Credit terms offers to business customers are generally shorter than 28 days and therefore SSE Airtricity is concerned that some customers may*

*push their credit terms to 28 days knowing that they will still be entitled to the return of their deposit.”*

- 4.48 Power NI were supportive of the level of deposit being set at a maximum of 3 months and being returned (subject to payment history) after 12 months to reflect the conditions in domestic licences.

## **UR Comment**

- 4.49 We note that several suppliers agreed with capping deposit amounts, and UR are of the view that a deposit which covers 3 months of forecast consumption should be adequate to cover the supplier's risk. This will allow sufficient time to assess if a customer is likely to become a debtor. This should also allow a small business access to attractive contract conditions if the suppliers risk is balanced by a fair deposit.
- 4.50 With regard to SSE's comment on mirroring the current domestic licence condition and the fact that this may lead to a situation where small business customers attempt to push their credit terms to 28 days knowing that they will get their deposit back, we are of the view that any new condition in the licence pertaining to small businesses can state that those customers must still adhere to the specific credit terms stipulated within their terms and conditions.
- 4.51 Most respondents have said they would return the deposit if they deemed the credit risk had reduced or after a set period of time as explained by Electric Ireland. However, we do understand that it may be the case that the risk has not sufficiently diminished after 12 months (even with a record of payment) to return the deposit and the supplier must assess the risk at the time.

## UR Decision

- 4.52 Most respondents were supportive of the 3 month consumption threshold for setting the deposit level. As stated above, we are of the view that this should address the risk for suppliers and therefore we have decided that deposits should be set at a reasonable level and this should be a maximum of 3 months consumption (based on the monthly average for a full year to address seasonality).
- 4.53 We are aware that the risk of non-payment could still exist after the 12 months and that a small business can run into difficulty at any point even after a good payment history. There is also great disparity between businesses in terms of the credit risk they pose with some industries being known as a greater bad debt risk. If this risk is not mitigated by holding a deposit there is the potential that suppliers would charge a higher unit rate to mitigate it. As highlighted above some suppliers do return the deposit after this period but usually there is a reassessment of the credit risk at this point.
- 4.54 In this context, and in conjunction with the decision to mandate a maximum level of deposit, we are minded to not implement a decision which requires suppliers to return a customer deposit after 12 months.
- 4.55 We are not advocating that deposits are retained indefinitely but are of the view that ensuring that the level of the deposit is not prohibitive will help balance the risk between the supplier and the customer (so that should it need to be retained it should not be overly onerous on the customer). We have the concern that, were we to mandate that deposits have to be returned, that it may have an unintended consequence of creating a group of customers who are unable to obtain reasonable terms or that suppliers will not want to contract with those small businesses it sees as high credit risk if they cannot hold a deposit to cover possible future non-payments.

- 4.56 Suppliers can make the choice as to whether they wish to retain the deposit and also whether they wish to ask for a deposit which is less than 3 months. This provides them with enough competitive latitude to tailor their offers and differentiate themselves from other suppliers.
- 4.57 Therefore our decision is that deposits should be set at a maximum of 3 months consumption (based on the monthly average for a full year to address seasonality) and that it is up to the supplier to determine when the deposit can be returned to the customer. The restriction of the deposit to 3 months should ensure that even if the deposit is held for the entire time the customer is with the supplier, this will not be overly onerous and strikes a fair balance between protecting the customer and allowing the supplier to cover its risk.
- 4.58 The decision regarding this measure shall be implemented through the licence modifications process. The licence condition will be similar to the domestic customer licence condition contained in 27a of the electricity supply licence and 2.22 of the gas supply licence. However, any new licence condition will not reference a specific 28 day credit period. Rather it will reference payments being made within the terms and conditions agreed by the customer as part of their contract.

#### **Measure 4 – Rollover of contracts**

- 4.59 This issue was discussed and as highlighted previously it does not currently appear to be an issue in the NI market. However, stakeholders were of the view that it should be discouraged.
- 4.60 The consultation proposed that this should be dealt with through the implementation of licence conditions similar to those which exist for domestic customers. These are within Condition 27 in the electricity supply licence and Condition 2.18 in the gas supply licence. This would prohibit a supplier from extending the contract term beyond the agreed fixed period.

As such, the customer would be free to switch as soon as their contract term was complete.

- 4.61 Stakeholders were asked if a similar licence condition should be introduced for small business energy customers.

**Q10. Do respondents think that there should be a formal requirement on licensees which disallows the rollover of a contract (similar to that currently provided for domestic customers)? If so please provide a clear rationale as to why.**

## Feedback and UR comments

- 4.62 CCNI were of the view that rollover contracts themselves were not the issue rather the terms under which they are rolled over. They also pointed to the rules recently introduced by Ofgem where suppliers have to send a letter 60 days in advance of the contract ending along with tariff information.

- 4.63 Electric Ireland linked this measure with continuation of supply:

*“We do not agree as customers could be left without energy supply where they have not responded to reminders from their energy supplier.”*

- 4.64 Energia were also supportive of the proposal to disallow the rollover of a contract but in the context of a rollover contract which lasted 12 months. This would imply that Energia are of the view that there is justification of rollover of contracts for shorter periods of time.

- 4.65 FESL agreed with the proposal to disallow the rollover of energy contracts for small business energy customers:

*“Firmus energy would welcome the extension of Licence Condition 2.18 to also cover small business customers. This would prevent suppliers from*

*rolling over contracts without notifying the customer of their right to terminate.”*

4.66 SSE were also supportive of this proposal:

*“SSE Airtricity agrees that there should be a formal requirement in licences that disallows rollover contract with lock in clauses similar to that currently provided to domestic customers.”*

4.67 They stated that rollover contracts could lead to a negative customer experience and prevent them engaging in the market and getting the best deal.

## UR Comment

4.68 We are encouraged that most respondents supported the proposal. We do not agree with Energia that a rollover contract should only be disallowed in the context of a 12 month contract. If under a contract, there is any period of time during which a customer is prevented from switching by the supplier after the customer’s fixed term period has expired, it can be considered a rollover contract. Once the customer’s contract term has been completed they should be free to move at whatever point they choose to engage with the market, without a notice period or requirement to pay an exit fee.

4.69 Given the majority of stakeholders support this measure we are of the view that this measure should be implemented in the way proposed in the consultation paper by putting a licence condition in place. We believe this covers any concerns highlighted by stakeholders.

4.70 Furthermore, disallowing the rollover of contracts will not result in a loss of physical supply, which appears to be suggested by Electric Ireland. The supply will carry on and be accompanied by a continuation of the current contract (but with no ‘lock in’ features such as notice period or exit fee). However it will not be permitted that the customer be moved to another

contract with a fixed term, or to another fixed term under the existing contract with 'lock in' features for that fixed term, without the customer's explicit agreement.

- 4.71 We are of the view that this measure will have a positive impact on the market and ensure that if a customer does not engage with their supplier prior to the end of their current fixed term contract they are not unjustly penalised by being locked in for a further period of time, with potentially unfavourable terms. If customers are locked in after their initial contract period has expired this would undoubtedly frustrate the market and stop customers engaging. We want to ensure this does not become a feature in the NI market.

## **UR Decision**

- 4.72 The UR has decided, based on stakeholder feedback, that a licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place.
- 4.73 The decision on this measure will be implemented through the licence modification process for this project.

## **Measure 5 – Exit Fees**

- 4.74 The UR consultation paper acknowledged that there was a rationale for the existence of exit fees, in the context that the supplier may already have committed costs for the customer for the duration of their contract. It did however point to the need for these to be reasonable.
- 4.75 The consultation paper proposed that this issue could potentially be dealt with in the same way as for domestic customers. This is also dealt with under Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences. These conditions state that any exit fee must be approved by the UR.



- 4.76 In this context the consultation paper proposed that exit fees should be set at a reasonable level and that this level (or the derivation/calculation of the level) should be approved by the UR.
- 4.77 Stakeholders were asked for their views as to whether they agreed that exit fees were justifiable and if they should be approved by the UR.

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation/calculation of the level) is approved by the UR?**

## Feedback and UR comments

- 4.78 CCNI stated that they were not against exit fees but identified a number of conditions they thought were essential if there were to be exit fees. These include the customer being aware of the fee and that it fair and reasonable.
- 4.79 They also referenced the Consumers Rights Act which sets out a framework for exit fees. They also reference the Ofgem requirements that mandate a 60 day renewal letter be sent to the customer before the expiry of the contract and that there are no exit fees within that 60 day period.
- 4.80 Electric Ireland stated that there should be exit fees to deal with the forecasting and hedging risk.

*“The removal of exit fees would provide customers with the opportunity to leave contracts without regard to the consequential costs their early departure impose on suppliers and could result in the addition of risk*

*premiums penalising all customers even those who don't choose to switch in advance of contract expiry."*

- 4.81 With regard to the UR approving the level of exit fee they were not supportive:

*"The level of exit fees are set by suppliers to manage their costs associated with administration, hedging, risk and loss of profit arising from early departure of customers within the terms of a contract. These level of these fees are inherently regulated by the business requirement to be competitive in the market and should not need to be mandated."*

- 4.82 Energia stated that in their view exit fees were justifiable in the context of a customer breaking their contract could result in losses for suppliers. They were even of the view that they were justifiable in a limited rollover contract scenario such as 3 months.

- 4.83 With regard to the level of exit fee Energia were clear that these should be set by suppliers and they also stated that they are clear in their T&C's what the level of exit fee is. They were of the view that competition played a role in ensuring exit fees were not onerous:

*"Furthermore, early exit fees may play a part in competition with customers reluctant to engage with suppliers who apply unreasonable exit fees."*

- 4.84 FESL agreed that reasonable exit fees were justifiable. With regard to the level of these they stated:

*"Firmus energy note that exit fees already form part of some supplier's terms and conditions and would welcome further detail regarding the Utility Regulator's proposal that it take part in the approval of exit fees."*

4.85 SSE were also of the view that exit fees were justifiable where a customer had entered into a contract with a supplier. With regard to the level of the exit fee SSE refer to the UR Marketing Code of Practice and Sales checklist within this. This list stipulates that the customer is made aware of any penalties should they not meet the terms of the contract. The customer will therefore be aware of the exit fee and that they themselves can determine whether it is reasonable or not. They did not agree with the proposal that the level of exit fees should be approved by the UR.

### UR Comment

- 4.86 The majority of stakeholder feedback stated that exit fees were justifiable and we agree with this in principle given that suppliers will have made financial commitments (in terms of hedging) based on retaining the customer for the contract period. However, we are of the view that they must not be punitive and must be set at a level which is proportionate, justifiable and reflective of the cost to the supplier of providing the fixed term contract.
- 4.87 The level of exit fee for each customer could be specific to them at the time of contract commencement and is likely to move on a constant basis for each new customer. Therefore, it would not be practical for the UR to approve these on an individual basis.
- 4.88 We see merit in the point made by SSE in that a customer will see the exit prior to signing up to the contract and therefore will be aware of the penalty before committing to the contract.
- 4.89 We do not agree with Energia's point that exit fees could be justified in a rollover contract scenario. We are clear that rollover contracts should not have exit fees as by imposing an exit fee it would essentially lock a customer in for a period of time.

## UR Decision

- 4.90 The UR has decided, based on stakeholder feedback, that a licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place.
- 4.91 This will mean that exits fees can exist but must be set at a level which is proportionate, justifiable and reflective of the cost to the supplier of providing the fixed term contract. However, taking into account the fact that an exit fee could be customer specific and the practicality of approving individual fees we have decided that there will not be a mandate that exit fees have to be approved by the UR. Suppliers must be able to justify their level of exit fee ex post if an issue or dispute arises to demonstrate their compliance with the “proportionate and justifiable” obligation. In the context of compliance with this obligation we may also consider carrying out ‘spot checks’ whereby we ask suppliers to show the calculations behind their exit fees, or indeed ‘deep dive’ if an issue arises with an individual supplier on an ongoing basis.
- 4.92 The decision on this measure will be implemented through the licence modification process for this project.

## Measure 6 – Prepayment Meters for small business customers

- 4.93 As indicated in the consultation paper, discussions with stakeholders indicated that prepayment meters for small business customers could help address concerns in relation to the level of deposits as it offered protection for suppliers against bad debt and that there wouldn’t be the need for a security deposit upfront. In addition to this, business customers may be able to budget their energy costs more appropriately and it removes the risk of unexpected or unusually large bills.
- 4.94 The UR also highlighted that in discussions with the gas and electricity network companies that there were indications that there may be practical

issues with this. We also indicated that it may be the case that it could be implemented in one type of energy market but not both.

4.95 Stakeholders were asked for their views on this.

**Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?**

## Feedback and UR comments

4.96 CCNI were supportive of this measure and stated:

*“The Consumer Council calls on the UR to engage with the electricity and gas industries to assess the feasibility and potential cost of introducing PPMs for the small businesses market.”*

4.97 Electric Ireland were supportive of this highlighting that such a meter would be particularly beneficial to a start-up business. However they did highlight the difficulty around the availability of these meters.

4.98 Energia were supportive assuming a viable technical solution could be found.

4.99 FESL highlighted that they were of the view that there were a lot of practical considerations in the context of a prepayment solution for small business gas customers:

- *prepayment meters are not manufactured in sizes greater than U6. However, approximately half of small business customers use meters larger than U6.*
- *incomplete switching can occur with the use of prepayment meters. This creates a larger debt risk to suppliers given the higher consumptions associated with business users*

- *it would be difficult for suppliers to calculate and apply the relevant tax rate and the climate change levy*
- *prepayment top-ups are limited to £49 per single transaction which is not suitable for business customers with higher consumption*

4.100 They also stated that there could be a barrier to competition and limit customer choice. Suppliers who do not currently service the domestic market would have to make a significant investment to enable prepayment functionality. FESL were of the view that there isn't a demand for prepayment meters in the small business gas market with their own experience being only one or two enquiries per year.

*"Given the lack of demand and the difficulties outlined above regarding implementation, firmus energy does not believe prepayment meters would enhance the operation of the small business market."*

4.101 SSE were supportive of the proposal to introduce prepayment meters for small business energy customers. However they did highlight that it should be on the basis that there was the demand for this type of meter:

*"We would support their introduction provided there is sufficient demand by the sector for the solution. In recent years SSE Airtricity piloted a PPM meter for small business customers in the Republic of Ireland and found that that there was no demand for the meter."*

4.102 They also voiced concerns around meter tampering, highlighting that unrecorded consumption would likely be more significant than with a domestic meter. They were also of the view that this type of customer is more mobile than a domestic customer and can move to avoid paying debt.

4.103 Power NI were supportive of the proposal to implement a prepayment solution for small business customers:

*“Power NI has advocated for the introduction of the prepayment infrastructure to the SME market for some considerable time. The functionality provided by the existing infrastructure brings considerable benefits to both domestic customers and suppliers alike; and the current percentage of the domestic market availing of the system is testament to that. Customers value the budgetary control and flexibility offered by the prepayment solution and unfortunately to date, SMEs have not had this option.”*

4.104 They also stated that a significant number of their customers have told them that they would avail of it should it become available.

4.105 As stated in the consultation we asked the network companies to submit a specific response in relation to the proposal for a prepayment solution for small business customers. The three gas network companies: PNGL, Firmus energy and SGN each submitted a response along with NIE Networks from the electricity perspective. The full responses are held in VII, IX and X.

4.106 PNGL in their response highlighted that the UR decision should:

*“balance the operational viability issues with any perceived consumer benefit”*

4.107 They also highlight a number of potential issues in relation to tariffs which could potentially make it difficult to have a prepayment solution for gas customers. These included the varying VAT levels and Climate Change Levies (CCL) paid by business customers as compared with a domestic customer, with VAT being included in the tariff.

4.108 PNGL stated that there is a logistical issue to consider in that prepayment meters are received by them pre-programmed for the commissioning supplier in Belfast (SSE Airtricity). The customer can change supplier after a period but would initially be signed up to SSE Airtricity. Currently I&C

customers are offered a choice of supplier from the outset and this initial restriction may be seen as an issue.

- 4.109 They have also expressed the view that they would need to change a lot of the existing processes:

*“To date the majority of Gas Suppliers have chosen to operate in the I&C sector only. If prepayment metering were to be extended to the I&C sector and Gas Suppliers were allowed to offer (i) credit meters only; or (ii) credit and prepayment metering, PNGL would have to revise many of its market procedures including its market entry process, I&C sales and new connection procedures as well as undertake system development to facilitate each Gas Supplier’s participation in the market.”*

- 4.110 The change to processes would also have a cost impact for the network company.
- 4.111 Suppliers who currently operate in the I&C market only would also need to change their processes to accommodate prepayment meters. An example of this being putting in place contracts with paypoint to allow customers to top-up. They also outlined issues such as the cost of the prepayment meter and the likelihood that the business would incur the cost of changing from a credit to prepayment meter. Other issues were also noted, such as limit on the number of cards held per meter and ability to top up if an outlet is closed given that gas top up cannot be done online in the way that electricity can.
- 4.112 SGN made similar points to PNGL, detailed above. They also highlighted the increase in calls due to no gas requiring site visits and increased maintenance with prepayment meters.
- 4.113 Firmus energy stated that they were of the view that there was little demand for prepayment meters:



*“In our ten years of operation this has never prevented a connection to the network from proceeding. Resultantly we do not believe a significant demand for prepayment meters exists within the small business market. Additionally, historical evidence indicates we have received no more than one or two enquiries per year relating to prepayment meters for business customers”*

4.114 Firmus energy also stated that prepayment meters could be a barrier to entry and therefore impact upon competition:

*“Those Suppliers that do not have a domestic offering would have to invest in systems development in order to facilitate a prepayment option for small business customers. This would include the arrangement of agreements with prepayment facilitators (e.g. PayPoint / Siemens). Such agreements may be disproportionately costly for suppliers to implement with only a small number of customers to service.”*

4.115 NIE Networks submitted their response in the context of prepayment meters for small business electricity customers. NIEN highlighted a number of areas which would need to be considered in relation to a prepayment solution for small business customers. A specific new DUoS tariff would need to be developed for small business prepayment premises. There are also considerations around the type of property that would be suitable for a prepayment meter. NIEN provided examples of meter points which fall into the 0 – 50MWH category that would not be viable such as ATM machines and NI Water sites phone masts.

4.116 Other property viability considerations include:

- Premises requiring continuous supply for security alarms, IT equipment, fridges etc;
- Premises with a domestic residence on the first floor; and

- Premises with Lift access.

4.117 Considerations such as those outlined above do reduce the amount of customers that a prepayment meter would be an option for. NIEN indicated that the option for a small business customer would likely need to be assessed on a case by case basis.

4.118 There will be also be IT costs on both the network and supplier sides. The cost and availability of the meter may also impact the decision to offer a prepayment meter to small business customers.

## UR Comment

4.119 The majority of the feedback on this measure in relation to the electricity market was in support of it and the advantages it could bring to both suppliers and to customers. NIE Networks have highlighted a number of important considerations which need to be made before any decision was taken to implement an electricity prepayment solution for small business customers. We are of the view that a full feasibility assessment should be carried out.

4.120 We understand the issues which have been highlighted by the gas network companies and that given the scale these may not be surmountable. It is also worth noting that the infrastructure in gas is significantly different and a large number of the suppliers offer I&C contracts only and as such do not currently have the prepayment infrastructure in their business in the same way as those who currently provide service to the domestic gas market. The prepayment meter infrastructure is not as advanced or flexible in the gas market (compared with electricity) and in all likelihood will require a much more significant investment to make it viable. This investment would be spread across a relatively small number of customers making it much less cost effective than an electricity prepayment solution.

## UR Decision

- 4.121 The UR has decided, based on stakeholder feedback, that the potential for an electricity prepayment meter for small businesses should be fully examined. Therefore, this proposal should be referred to the industry working group (CDA) for more detailed discussion and development.
- 4.122 The decision for gas is that, due to the scale of the gas market and the problems highlighted across network companies and suppliers, it is not appropriate pursuing it further in the context of gas small business customers at this time. Given the likely financial investment required and the smaller number of customers to fund such a financial outlay we are not minded to propose it through the equivalent industry group in gas. However, we may consider such a measure at a later point.

### Measure 7 – Other Potential enhancement measures

- 4.123 The consultation paper explored other potential options aligned to those which are afforded to domestic customers.

#### Measure 7(a) 'Cooling Off Period'

- 4.124 This measure is in place for domestic customer and allows for a period of time by which they have the right to cancel/withdraw from the contract.
- 4.125 This is covered under Condition 27 of the electricity supply licences and Condition 2.18 in gas supply licences.
- 4.126 The consultation paper acknowledged that there could be practical implications for this measure if it was to be implemented in the small business energy market. This would include issues such as supplier committed costs for energy.
- 4.127 Stakeholders were asked for their views on this and how they would practically see it working.

**Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.**

## **Feedback and UR comments**

- 4.128 CCNI were supportive of this and reiterated their view that small business energy customers share many of the characteristics of domestic customers. They stated that through their 2017 engagement with small businesses that they had heard accounts of excessive pressure to make decisions. They were of the view that it could operate in the same way that the domestic cooling off period does.
- 4.129 Electric Ireland were not supportive of this proposal. Energia echoed this, highlighting that there was a financial risk to the supplier with a cooling off period.
- 4.130 FESL stated that they agreed consideration could be given to this but reiterated what other stakeholders have highlighted that there could be a financial liability to the supplier in this scenario. The UR should provide clarity on how such a measure could work taking into consideration the supplier liability.
- 4.131 SSE did not agree with this proposal and did not think it should be extended from domestic customers to small business customers. They went on to highlight:

*“Once a business customer contracts with a supplier for energy that supplier will then procure energy on the assumption that the customer will remain with the supplier for the specified length of the contract. If business customers were afforded the right to withdraw from contracts all customers would end up covering the cost of this provision.”*

- 4.132 SSE stated that the introduction of a cooling off period would also mean a change to market processes and systems and were of the view that this was not justifiable.
- 4.133 Power NI were of the view that it was beyond the remit of the UR to introduce a cooling off period for small business customers in the context of consumer protection law, which has not been extended to small businesses.

## UR Comment

- 4.134 Whilst there was some support for a cooling off period for business customers there wasn't any suggestion as to how this could work in practical terms such as where a supplier has committed to energy contracts on the basis that a customer has signed up.
- 4.135 We appreciate that this measure would be a benefit to small business energy customers however cannot adequately balance the risk that such a measure could potentially bring to suppliers.
- 4.136 In addition to this, contractual 'cooling off' periods are a matter for consumer protection law. The domestic electricity 'cooling off' period requirement within the supplier licence are a reflection of such legislation i.e. even if it was removed from the licence, suppliers would still have to afford a domestic customer the 'cooling off' period as it is a legal requirement to do so. This is not the case for the non-domestic market.

## UR Decision

- 4.137 The UR has decided that a cooling off period should not be introduced for small business customers at this time.

### **Measure 7(b) Transparency of T&Cs:**

- **Obligation to inform customers if their T&Cs change**
- **21 day notification of price changes**
- **Notification of any fixed term contract periods coming to an end**

4.138 The consultation paper proposed that there should be more transparent with a number of sub measures outlined above. In relation to domestic customers, this is another area which is dealt with under Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences.

4.139 The consultation paper highlighted that an enhancement measure such as this gives transparency and as such gives the customer all the information required to make an appropriate decision. This has the potential to encourage engagement and as such stimulate the market.

### **Feedback and UR comments**

4.140 CCNI were supportive of this measure stating that anything which can encourage engagement in the market and therefore switching is something which should be encouraged.

4.141 Electric Ireland were also supportive of this proposal.

4.142 Energia, were of the view that this would be expensive and there were also logistical considerations around capturing the correct customers.

*“The difficulty in automating the above notices combined with the issues in consistently capturing customers below the 50MWh threshold means that the implementation of this proposed requirement would be costly with a significant lead in time.”*

4.143 FESL were supportive of this proposal stating:

*“As a responsible supplier firmus energy welcomes the proposal to introduce an obligation to inform customers of a change in their terms and conditions, a 21 day notification period for price changes and notification regarding the end of a fixed term contract. This will help ensure all suppliers follow good practice as they undertake customer interactions.”*

- 4.144 SSE stated that if there was a ‘significant’ change to a customer’s T&Cs then they should be notified. SSE inform customers in advance of their fixed contracts ending which contains the renewal rate and the non-contract rate. SSE went on to give the view that the notification should be given 4 – 10 weeks in advance of contract end. In relation to those customers who were not in contract, their process is to notify of a price change by including it in the customer bill (they do not indicate if this is in advance of a change taking place). In this context, they stated that those customers who were not in contract should not get a separate notification.
- 4.145 Power NI were slightly less supportive of these measures in the context of believing it eroded competitive advantage for those suppliers who had worked hard to provide excellent customer service, of which customer communication is a key part.

## UR Comment

- 4.146 This requirement for notifications to the customers of any changes in T&Cs will greatly enhance the level of protection that small business customers have in comparison to today. It will not only prompt them to engage with their own supplier or switch, but will also allow them to see price or T&C changes before they occur and act accordingly. It will also echo similar protections afforded to domestic customers in terms of transparency of T&Cs.

- 4.147 As stated in the consultation paper we are of the view that anything which can increase transparency in the market has the potential to increase customer engagement and therefore potentially stimulate competition.

## UR Decision

- 4.148 The UR has decided, based on stakeholder feedback, that a licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place.
- 4.149 This will mean that there will be more clarity for small businesses around their T&C's.
- 4.150 The decision on this measure will be implemented through the licence modification process for this project.

### Measure 7(c) Mandatory statement on bills stating that the customer may not be on the cheapest tariff

- 4.151 This proposal was as a result of another piece of work carried out by the UR in relation to the New Supplier Code of Practice on Energy Bills and Statements.
- 4.152 Under Principle 4: *"customers will be made aware if there are cheaper tariffs available to them"* it was proposed that there be a mandatory statement on bills informing customers of this. It had previously been proposed that the statement should be on both domestic and non-domestic bills. However at the decision paper stage it was indicated, that it would apply to domestic bills only. Some of stakeholder feedback gave a firm view that the mandatory statement should also be included on a non-domestic bill. In this context, the decision paper indicated that it would be considered again as part of this project.



- 4.153 The consultation paper stated that a measure such as this would also enhance transparency and therefore help customers make informed decisions.
- 4.154 The consultation paper suggested that a statement similar to that due to be included in domestic customer's bills could potentially be used.
- 4.155 The decision paper for the Code of Practice on Bills and Statements finalised the content of the mandatory statement for domestic customers:

*"Thank you for choosing <supplier name>. We may offer other tariff options so please check our website <website details> or speak to one of our advisors <customer number> to find out if you are on the best deal for you. You may also change your <electricity/gas> supplier. Impartial advice and information about tariffs and switching can be found at [www.consumer council.org.uk](http://www.consumer council.org.uk) or by [phoning 0800 121 6022](tel:08001216022)."*

- 4.156 The consultation paper asked stakeholders for their views on this proposal.

**Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why.**

## **Feedback and UR comments**

- 4.157 CCNI were supportive of this inclusion on small business energy customer bills.
- 4.158 Electric Ireland did not express support for this measure in their response:

*"we would expect that business customers whether small or large will review available options in the market. This approach would be a departure from norms across all business sectors."*

4.159 Energia were also unsupportive of this as they were of the view that it could create confusion if customers are within contract. This could lead to an increase in costs due to calls from customers. They stated that if such a measure were to be implemented it should only be after a customers' contract has ended.

4.160 FESL were of the view that a mandatory statement on bills was not necessary:

*"The level of switching activity within the business customer market indicates that customers are aware of the range of suppliers and tariff options available to them."*

4.161 SSE were not supportive of this measure stating that it could create frustration and potentially lead to a customer breaking an energy contract and incurring an exit fee.

4.162 They also stated:

*"Businesses themselves do not have similar requirements to advise their own customers that other businesses may have similar products elsewhere or online. Therefore, we do not agree that a mandatory statement should be included on small business bills indicating that other tariffs may be available to them."*

4.163 Power NI were also unsupportive of this and referred to the 2017 consultation and the arguments made there and the subsequent decision not to include this statement.

## **UR Comment**

4.164 We are of the view that the proposal may create an expectation that the customer could switch in the middle of their contract and indeed may create confusion and frustration if they are unable to switch to a different tariff.

The small business representative groups made no comment to support this requirement or indicate it would be a benefit to their members. We are also of the view that Measure 7(b) which will provide clarity on T&Cs, such as when a fixed term is coming to an end or where a price is due to change, should help prompt customers to engage with their supplier or look around for other deals.

- 4.165 In addition to this, we are intending to undertake a piece of work in the context of licence compliance to investigate whether the recent addition of a mandatory statement to domestic bills has made a positive impact. We are also intending to carry out research in 2019/20 targeting business customers which will explore their views on the usefulness of implementing such a statement.

## UR Decision

- 4.166 Taking into account the potential issues which could be created with introducing such a statement and the implementation on measure 7(b), we have decided not to mandate a statement to be included in small business bills which indicates that other tariffs may be available to them at this time. We may revisit this at another point.

## Other potential measures

- 4.167 Stakeholders were also asked if there were any other measures which could potentially be implemented which had not been identified in the consultation.

**Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.**

## Feedback and UR comments

- 4.168 CCNI identified a number of areas where they were of the view that improvements could be made for small business energy customers.
- 4.169 They identified 'lack of knowledge about energy tariffs and meter types' they stated that suppliers should be gathering more information about customers (before a switch) to ensure they are put onto the best tariff (also meter type).
- 4.170 CCNI also stated that there should be a consistent format across suppliers for tariffs/unit rates and quotes. The issue of credit balances for business customers in the context of a SOLR event was also highlighted.
- 4.171 CCNI discussed Condition 14 & 15 of the current Power NI licence and the potential relevance of this in relation to setting terms which are onerous.
- 4.172 Electric Ireland did not identify any other additional measures for the regulator to consider.
- 4.173 Energia highlighted that in their opinion that Third Party Intermediaries (TPI) were becoming an issue in the NI market.
- 4.174 FESL did not identify any additional measures to be considered.
- 4.175 SSE suggested that the information should be published on customer data which would facilitate more targeted marketing as opposed to generic campaigns. This information should include:

*"MPRN, Meter Address, Use of System code, and Estimated Annual Consumption."*

## UR Comment

- 4.176 The issue in relation to credit balances for business customers in the event of a SOLR event was dealt with through the separate SOLR project. The

decision paper<sup>3</sup> was issued in December 2018 and stated that small business energy customers would not be covered in the event of a SOLR situation.

- 4.177 In the context of Condition 14 & 15 these no longer apply to Power NI for the 0-50MWh market as it is no longer price regulated – there is no requirement to seek a disapplication of this condition for these customers. In relation to onerous terms we are of the view that if other measures such as those around deposit levels and clarity of T&Cs will help alleviate some of the concerns CCNI have highlighted.
- 4.178 With regard to TPI's this is dealt with in a separate UR project "Third Party Intermediaries in the Non-domestic Retail Energy Market"<sup>4</sup>.
- 4.179 We agree in principle with SSE on their point around NIEN sharing customer data if it was available to everyone in the market. However, this has been discussed previously and as such we are aware that there would be data protections issues which would prevent NIEN implementing such a suggestion.

## UR Decision

- 4.180 As no other new or viable measures were identified by stakeholders we have decided that no other measures will be included in addition to those which were consulted upon.

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<sup>3</sup> <https://www.uregni.gov.uk/news-centre/decision-paper-electricity-solr-credit-balances>

<sup>4</sup> <https://www.uregni.gov.uk/news-centre/position-paper-published-third-party-intermediaries-non-domestic-retail-energy-market>

## 5. SUMMARY OF MEASURES & DECISIONS

5.1 This section of the paper provides a summary of the decisions for measures to enhance the operation of the small business energy market. Table 1 below details these.

Table 1 Summary of Measures and Related Decisions

| Proposal   | Decision  | Implementation Mechanism        | Timing   | Responsibility  |
|--|---|---------------------------------|--|---|
| Scope of Coverage for any measure to be implemented  | 0 – 50 MWh for electricity and up to 73.2MWh for gas small business customers.  | Licence condition coverage      | Q4 2018  | UR  |
| Measure 1 – Tariff Transparency Requirement on Suppliers to publish tariff rates including their acquisition and retention rates for small business customers. | The UR will not implement licence conditions which mandate price transparency at this point. This is on the basis that suppliers voluntarily committed to provide their pricing information to CCNI or another third party. We will review this periodically to establish if the transparency required is being achieved. After a period of 12 months, if this transparency is not achieved on a voluntary basis we will proceed with the licence modification in line with the | No implementation at this stage | Review position in 2019 which may result in licence modifications being issued based on this decision paper. | UR<br><br>The UR expects that suppliers will provide the required information to CCNI or another third party. |

|  |   |  |   |                  |             |
|--|---|--|---|------------------|-------------|
|  |   | consultation process and decision in this paper to ensure tariff transparency.   |   |                  |             |
|  | <b>Measure 2 – Deposits – clarity on how these are set by suppliers. Suppliers should publish how they calculate deposits on their websites</b> | Suppliers should provide information on their website around deposit requirements and how they are determined for a customer   | Licence modification – additional clause under the new equivalent to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers   | Q4 2018          | UR          |
|  | <b>Measure 3 – Level of deposits &amp; length they are held for</b>   | Maximum level of deposit 3 months forecast consumption. Deposits will not be required to be returned to customers after 12 months  | Licence condition similar to Condition 27a in electricity supply licences and Condition 2.22 in gas supply licences for domestic customers should be put in place.  | Q4 2018          | UR          |
|  | <b>Measure 4 – Rollover of contracts</b>  | Rollover of contracts not allowed customer will be able to switch immediately their initial agreed contract term has ended.  | Licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place.   | Q4 2018          | UR          |
|  | <b>Measure 5 – Exit Fees</b>  | Exit fees permitted and must be set at a reasonable level but no mandate that the UR must approve these. However, suppliers must be able to demonstrate that the level of their exit fees are proportionate and justifiable should an issue arise. | licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place (however no requirement for the UR to approve the level) | Q4 2018          | UR          |
|  | <b>Measure 6 – Prepayment Meters for small business customers</b>   | Electricity - taken forward for full feasibility assessment through Industry   | Electricity - if feasibility assessment outturns positive implementation will be  | To start Q4 2018 | UR/NIEN/CDA |

|   |  |  |  |         |     |
|---|--|--|--|---------|-----|
|   |  | forum  | co-ordinated by NIEN   |         |     |
|   |  | Gas – not taken forward but may be revisited   | N/a  |         |     |
|   |  |  |  |         |     |
| <b>Measure 7 – Other Potential enhancement measures</b> |  |  |  |         |     |
|   | <b>Measure 7(a) 'Cooling Off Period'</b>   | No 'cooling off' period  | n/a  | n/a     | n/a |
|   | <b>Measure 7(b) Transparency of T&amp;Cs</b>   | <p>Transparency of T&amp;Cs Measure to be implemented.</p> <ul style="list-style-type: none"> <li>• Obligation to inform customers if their T&amp;Cs change</li> <li>• 21 day notification of price changes</li> <li>• Notification of any fixed term contract periods coming to an end</li> </ul> | licence condition similar to Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences for domestic customers should be put in place | Q4 2018 | UR  |
|   | <b>Measure 7(c) Mandatory statement on bills stating that the customer may not be on the cheapest tariff</b> | No mandatory statement on bills  | n/a  | n/a     | n/a |



## 6. NEXT STEPS

- 6.1 This section of the paper outlines the next steps for the project.

### **Licence Modifications**

- 6.2 The next step in this project is to implement the measures for the enhancement of the operation of the small business energy market in NI.
- 6.3 For those measures which the UR has decided to implement, we will issue licence modifications for these in the coming months.

### **Prepayment meter solution**

- 6.4 As stated in Section 4, our decision is to proceed with a feasibility study for the implementation of a prepayment meter solution for electricity small business customers.
- 6.5 This should be carried out via the industry forum so that both suppliers and the network company can fully explore both the technical and practical viability of the solution.
- 6.6 We are the view that these discussions should start at CDA in Q4 of 2018.

### **Tariff Transparency**

- 6.7 We will monitor this situation closely to determine if the information provided (to CCNI or another third party provider) fulfils the transparency requirements we envisaged in the consultation.
- 6.8 After a period of 12 months, we will proceed with licence modifications to mandate tariff transparency if we are not satisfied that the level of transparency being provided is adequate and similar to that in GB.

## Annex I

### CCNI



**Response to the Utility Regulator  
Measures to Enhance the Operation of the  
Small Business Energy Market**

**December 2017**

## **1 Introduction**

- 1.1 The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (NI) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).
- 1.2 The Consumer Council welcomes the opportunity to respond to the Utility Regulator (UR) consultation on the Measures to Enhance the Operation of the Small Business Energy Market. The proposed measures are timely given that the Power NI Price Control for the 0-50MW segment of the Industrial and Commercial (I&C) market was removed in April 2017 and there is evidence that small businesses have not engaged actively with competition<sup>1</sup>.
- 1.3 The Consumer Council has a statutory role to represent the interests of business in Northern Ireland. We investigate energy complaints on behalf of small business and provide advice to them on the retail energy market. We also undertake research and engage with stakeholders to gain an insight into the experience of small businesses in the retail energy market and to identify issues that concern them.
- 1.4 We have used evidence from our research and complaints to comment on proposals the UR has put forward. This evidence has helped The Consumer Council identify other additional areas of the small business energy retail market that we believe could be improved and are not contained in the UR paper.

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<sup>1</sup> Source: UR Quarterly Transparency Report Q3 2017 and Questions 4 and 9 of Annex 1 of this consultation.

## **2 Executive Summary**

- 2.1 Many small business energy consumers share more characteristics with domestic energy consumers than they do with medium or large I&C consumers as evidenced by our research and complaints. As a result they require a similar level of consumer protection in the energy market. This view is also put forward by the Competition and Market Authority (CMA) in its Energy Market Investigation in 2016<sup>2</sup>. In NI this issue has taken on greater significance since the Power NI regulated tariff, which acted as a safeguard tariff for small business, was removed from the small business electricity sector in April 2017.
- 2.2 In NI domestic energy consumers are protected by a combination of a comprehensive regulatory framework and UK consumer law, notably the Consumer Rights Act 2015 (CRA 2015)<sup>3</sup>. However, small business consumers are not protected by the CRA 2015 and the regulatory licence conditions that apply to them provide less protection than those for domestic consumers. We believe that small businesses in NI require a strengthening of protection in the energy market.
- 2.3 We also recognise that if inappropriately applied, regulation can restrict competition and innovation- two things that we want to encourage in the small business energy market. Therefore we believe that regulation must be proportionate to the detriment caused and accept that for small businesses the response required may be different than that for domestic consumers.
- 2.4 Whilst we welcome this consultation by UR, it is too early to fully assess the impact on small businesses of the removal of the small business regulated tariff. We conducted initial research with small businesses. Although the sample size is small, the findings emanating from this research are indicative of the issues experienced by small businesses and provide useful insights.

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<sup>2</sup> CMA- Energy market investigation. Final report. 24 June 2016.

<sup>3</sup> [legislation.gov.uk/ukpga/2015/15/contents](http://legislation.gov.uk/ukpga/2015/15/contents)

More research needs to be undertaken with businesses and suppliers in NI and it would be useful to see an assessment of the impact of the remedies introduced by the CMA in 2016 in relation to small businesses in GB. Therefore we see this consultation as the start of an ongoing process and we will continue to work with the UR and the energy sector to make the energy market work better for small businesses in NI.

2.5 We have made a number of recommendations in our response to this consultation. A summary of these is listed below. We recommend:

- Introducing a requirement for suppliers to give 21 days' notice to their customers when they make changes to the Terms and Conditions (T&C), including tariff changes;
- Introducing a "cooling off" period during which a customer can withdraw from and cancel the contract;
- Introducing a requirement on suppliers to issue reminders to small businesses about their right to switch;
- Introducing a requirement on suppliers to publish their non-domestic tariffs online;
- That suppliers adopt a standard format for tariffs, unit rates and quotes to allow for easy comparison;
- That deposits for small businesses should be transparent and reasonable;
- Introducing a requirement for suppliers to send a renewal notice 60 days before the end of the contract and the banning of exit fees within that 60 day period; and
- A condition in the licence of suppliers prohibiting the use of "unduly onerous" contract terms.

2.6 The Consumer Council looks forward to working with the industry and stakeholders to implement these enhancements in a practical, effective and timely way.

### **3 Consultation questions**

3.1 The Consumer Council carried out research in 2017 with small businesses and not for profit organisations to gain an insight into their experience with the energy retail market and to identify key energy issues that concern them. The research involved the following:

- Face-to-face meetings with all the electricity and gas suppliers in NI;
- Face-to-face meetings with small businesses in Belfast, Lisburn, Craigavon and Downpatrick<sup>4</sup>; and
- An online survey in October and November 2017<sup>5</sup>.

3.2 We have used the findings from this research to inform our response to this consultation. Although the sample size from the survey is small, the findings emanating from this research are indicative of the issues experienced by small businesses and provide useful insights. Our response to the consultation questions is included below. A summary of the results from our online survey is included in Annex 1.

**Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?**

3.3 The measures proposed will increase the level of protection for small businesses and improve how the energy retail market operates. Therefore any potential impact from the perspective of equality legislation will be positive.

**Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality**

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<sup>4</sup> A total of eight interviews were carried out during November 2017.

<sup>5</sup> The survey received a total of 24 responses.

**provisions? If so, why and how? Please provide supporting information and evidence.**

- 3.4 Given that the proposals will benefit all small businesses in NI, we don't believe refinements are necessary.

**Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?**

- 3.5 The Consumer Council stated in its response to the UR consultation on the SPC17, Power NI Price Control 2017 that SPC17 could benefit consumers by "providing a platform to consider and introduce measures aimed at small businesses that help minimise and avoid some of the risks inherent to unregulated retail markets."

- 3.6 The Power NI Price Control no longer applies to the operations of suppliers in the 0-50MWh I&C segment of the market. As we will discuss in detail later, this segment of the market shares many characteristics with the domestic retail market. We therefore support the scope that UR proposes, as it is aligned with the segment of the market affected by the removal of the Power NI Price Control. We welcome the fact that it encompasses broadly the same segment of the natural gas I&C market to ensure the level of protection for small businesses here is consistent across electricity and gas.

**Q4. Do respondents agree with the issues highlighted in Section 4 –if not please provide explanation/rationale as to why?**

- 3.7 The Consumer Council agrees that each of the issues highlighted in section 4 has the potential to hinder the effective operation of the market and cause consumer detriment. The issues identified in Section 4 of the consultation were mentioned consistently in our 2017 research. We have outlined a summary of the findings of our research in relation to these issues below which



support their inclusion in the review. The findings of our research are included in Annex 1 to our response.

### Tariff transparency

- 3.8 Of the small businesses and not for profit organisations that responded to our online survey, seven out of 10 agreed or strongly agreed that suppliers should publish their tariffs online and that an online price comparison tool would make switching much easier. The Consumer Council Forward Work Programme 2017-2018 includes a project to develop an independent energy online comparison tool for small businesses in collaboration with the energy industry.

### Automatic “rollover” of contracts

- 3.9 Of those surveyed, three-quarters want their supplier to contact them before their contract ends in order to negotiate a new one and also to remind them about their right to switch.

### Deposits and duty to offer terms

- 3.10 Our survey of small businesses sought views on security deposits. Of those who responded, three-quarters believe that security deposits should be reasonable and only kept for a limited period of time. An additional concern is that suppliers' T&C typically state that they may refuse to supply a business if a deposit is not paid.

### Consumer engagement/education

- 3.11 Our engagement with suppliers and small businesses in 2017 highlighted that energy customers generally lack knowledge or understanding of electricity and gas issues. Furthermore small business switching rates are typically low, often

half the rate of domestic consumers<sup>6</sup>. Unfortunately only four out of ten respondents to our survey were interested in learning about switching. The Consumer Council will use the findings of the research to inform and tailor our “Switch and Save Campaign” for small businesses, in particular strengthening the partnership approach with small business and voluntary sector representatives and the energy industry.

#### Energy brokers

3.12 Energy brokers came up time and time again during our engagement with suppliers and business consumers. We will comment and provide evidence on this issue in our response to the UR current Call for Evidence on Third Party Intermediaries in the Non-domestic Retail Energy Market.

#### **Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?**

3.13 As well as examining the findings of our 2017 research, we have looked closely at the data and information from the energy small business complaints we have dealt with in recent years. These have highlighted a number of additional issues that are not listed in the UR consultation paper.

#### Lack of knowledge about tariffs and meter types

3.14 Information gathered from complaints suggest that small businesses are often not on the most appropriate tariff for the type of business activity they undertake. This is typically the result of business consumers’ lack of knowledge about meter types and tariffs, and lack of consistency amongst suppliers in gathering and utilising consumption data from customers.

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<sup>6</sup> 1.4% compared to 3.3% in Q3 2017 according to UR Quarterly Transparency Report 30 November 2017.

- 3.15 The financial detriment in this type of case can be significant and in most cases could have been avoided with improved data gathering by suppliers during the switching or change of tenancy process. We have proposed recommendations on this issue later in our response.

#### Fixed term contracts

- 3.16 Our discussions with suppliers highlighted that fixed term contracts are becoming the preferred product type for energy suppliers. For individual suppliers the benefits are clear:

- The customer is locked in with them for the duration of the contract; and
- They are able to accurately forecast demand and better manage their wholesale energy purchasing.

- 3.17 For consumers fixed term contracts are products that can:

- Help reduce energy bills by offering a discount on the standard variable rate; and
- Provide certainty on the cost of energy by fixing the unit rate for the duration of the contract.

- 3.18 However, this type of contract restricts a customer's ability to switch at will because they may be penalised for ending the contract early, (for example they may have to pay an early exit fee). Our engagement with small businesses in 2017 highlighted that some small businesses do not switch because they are tied to 12 or 24 month contracts.

- 3.19 Given the fact that fixed term contracts are becoming a feature of the energy retail market in NI, The Consumer Council believes that it is important that UR understands and addresses concerns around fixed term products that may restrict consumers' ability to switch or cause them to be tied to terms that

cause them detriment. The detriment typically arises because of a lack of clarity in the contract T&C and the way the terms are communicated prior to the contract commencing. In this respect small businesses share those characteristics of domestic consumers in not having the time, resources, knowledge or skills that enable them to make the optimum choice for the business, which can create an imbalance at the negotiation point between the consumer and the energy supplier.

- 3.20 For domestic consumers this imbalance is recognised and addressed through comprehensive consumer protection measures, primarily the CRA 2015 which requires that all terms are fair. However, the CRA 2015 does not apply to consumers acting wholly or mainly in the course of their business. Therefore, the small business sector is not covered by the CRA 2015 and requires its own set of specific protection measures. We make recommendations of specific measures later in this response.

#### Universal format for tariffs and unit rates in bills

- 3.21 Some suppliers have indicated to us that the industry does not use a consistent format to present tariffs and rates in non-domestic bills. It was suggested that the adoption of a standardised format of billing across all suppliers would make it easier to compare tariffs and offers.

#### Cooling off period

- 3.22 Unlike domestic energy consumers, small business consumers do not benefit from a cooling off period. Given that small businesses share many characteristics of domestic consumers in relation to the energy market, and the increased complexity of energy retail products we believe that the introduction of a cooling off period in this segment of the market would be beneficial to small businesses. We have commented further on this issue in our answer to question 14 of this consultation.

**Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.**

3.23 Lack of price/tariff transparency was the top concern for small businesses in our 2017 research. We note that Power NI removed the 0-50MWh small business tariffs from its website shortly after the regulatory requirement to publish them ended.

3.24 The Consumer Council believes that a lack of tariff transparency causes a detriment to small businesses, as it causes:

- An unnecessary barrier to switching which is reflected in lower switching rates in the 0-50MWh electricity small business market compared to the domestic<sup>7</sup> electricity market<sup>8</sup>.
- It increases the time required to get information on tariffs and generates an over reliance on sales agents or energy brokers, which according to our research is not welcomed by most small businesses here. Our engagement with electricity suppliers highlights that energy brokers are now moving into the smallest segments of the I&C market, whereas historically they only operated in the large I&C sector.

3.25 This lack of transparency in pricing is a factor preventing the development of a switching culture in NI. The Consumer Council believes that publishing small business electricity and natural gas tariffs or providing an online price comparison tool would enable small business consumers to get the best deal from the retail energy market.

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<sup>7</sup> Competition in the natural gas market is in its infancy, therefore a direct comparison is not appropriate.

<sup>8</sup> In Q1- Q3 2017, 5.1% of I&C electricity customers switched compared to 11.4% of domestic customers. Source: UR Quarterly Transparency Report Q3 2017

- 3.26 Our 2017 small business research included in Annex 1 of our response shows that almost seven out of ten small businesses who responded to the survey agreed that it would be useful if suppliers published their tariffs online. Therefore, The Consumer Council recommends that the UR requires suppliers to publish and keep up to date their 0-50/73.2MWh tariffs in a standard format that allows consumers to easily compare offers.
- 3.27 The Consumer Council Forward Work Programme 2017-2018 includes the development of an online energy price comparison tool for small businesses. Our research shows strong support for the tool amongst small businesses. Seven out of ten respondents to our online survey agreed or strongly agreed that an independent online energy price comparison tool would make switching much easier<sup>9</sup>. Only one respondent disagreed.
- 3.28 It would be helpful to the development of the tool if suppliers were required to publish their tariffs for this segment of the small business retail market.

**Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why.**

- 3.29 The Consumer Council has experience of investigating and advising small businesses on issues relating to security deposits. Suppliers have told us that the decision whether to require a deposit is based on a risk assessment of each individual business. Information from suppliers and our experience indicates that the requirement for a security deposit is more prevalent in sectors such as catering and hospitality which are deemed to be higher risk.
- 3.30 Given the dissatisfaction that the requirement for a security deposit can create generally and the potential barriers to switching that it can generate, The

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<sup>9</sup> See Annex 1 for more details.

Consumer Council believes all consumers would benefit from consistent information from suppliers on how they determine when and at what amount they require a deposit to be given. We therefore support a proposal for suppliers to give information on deposits on their websites.

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

3.31 Suppliers should set deposits at a reasonable level to avoid taking advantage of the small business or limiting, in practical terms the choice of supplier available to small businesses, and in particular those small businesses that are deemed a higher risk. Our 2017 research set out in Annex 1, shows that 74% of small businesses surveyed agreed that security deposits should be reasonable and only kept for a limited period of time.

3.32 On the basis of this evidence The Consumer Council supports this enhancement measure. However, we suggest that the requirement is more specific, and sets at three months' consumption the upper limit that suppliers can request as a deposit, rather than simply suggesting that three months consumption is reasonable. We believe small businesses would benefit from the certainty and consistency that this requirement would provide.

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

3.33 There is an indication from complaints made by businesses to The Consumer Council that deposit refunds is a source of dissatisfaction, largely because small businesses are not aware of when they can claim it back. The Consumer Council supports the establishment of a time limit for holding security

deposits. However, we do not have any evidence to support 12 months or a specific length of time.

3.34 A risk assessment based method could be used by suppliers which would require the return of the deposit following an agreed time period, (for example six months), of 'on time' bill payments. Whatever the time limit, it should be clearly stated in the T&C of the contract. Also, information about how long the deposit will be held should be provided by suppliers on their websites, as this will allow consumers to compare T&C across different suppliers before they enter into a contract.

3.35 To ensure that deposits are retained securely, offsets against non-payment of bills accurately recorded, and deposits returned in full and on time, suppliers should be required to demonstrate robust administrative systems.

**Q10. Do respondents think that there should be a formal requirement on licencees which disallows the rollover of a contract (similar to that currently provided for domestic customers). If so please provide a clear rationale as to why.**

3.36 Rollover contracts have proven to be detrimental to small businesses in the GB retail market by locking consumers on more expensive contracts<sup>10</sup>. Our 2017 research into the non-domestic energy retail market has identified that rollover contracts are becoming a feature of the energy retail market here too. This is a concern particularly given the low switching numbers and the removal of the Power NI regulated tariff as well as the fact that small businesses on these type of contracts usually end up paying more than if they negotiated with their supplier or switched to another supplier.

3.37 However, we are not convinced that the mechanism of a rollover contract is fundamentally wrong in itself. If contracts were not rolled over in some form,

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<sup>10</sup> Energy Market Investigation Final Report, CMA June 2016.



it is not clear what would happen to the supply of a customer who failed to engage at the end of a fixed term contract. If the customer's supply is to continue once the contract has ended they need to be billed on some terms, which may mean a deemed contract.

3.38 The fundamental problem, as seen in GB, is the terms that the contract is 'rolled over' to, and the communication and engagement between supplier and customer with regard to those terms. Consumers are usually moved to a tariff that is more expensive. This should not be allowed.

3.39 The starting point is what the terms of the original contract says will happen at the end of the contract and how these terms are communicated to the customer.

3.40 Examples of problems are that:

- Suppliers fail to notify small businesses that the fixed term contract is coming to an end;
- Suppliers do not take reasonable steps to contact the small business to negotiate a new tariff;
- Small businesses are not notified that they have been moved to a "rollover contract" or informed of the T&C; and
- The unit rate of rollover contracts are excessive.

3.41 These are issues that have the potential to produce detriment to small business consumers. We believe that introducing market enhancement measures to address the issues listed in point 3.34 would provide small businesses here with effective protection and information.

3.42 On 30 April 2015, Ofgem brought in new rules around small business contract terms<sup>11</sup>. One of the new rules requires suppliers to send a renewal letter to

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<sup>11</sup> <https://www.ofgem.gov.uk/consumers/business-gas-and-electricity-guide/understand-energy-contracts-businesses>

micro businesses 60 days before a contract ends. The renewal letter must include current prices, new prices and the annual consumption of the customer in order to make comparisons easier.

3.43 We recommend that the UR considers measures in line with those in GB.

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

3.44 The Consumer Council does not oppose contract exit fees in principle, provided they are clearly stated at the outset and they are fair and reasonable. The use of exit fees particularly along with fixed term contracts is a way that a supplier can seek to retain a customer in a competitive market. Whilst it does impose restrictions on the customer's ability to switch, if the consumer enters the contract with their 'eyes open' and the supplier provides an attractive unit rate even with restrictive terms, a savvy consumer could weigh up the benefits and act accordingly.

3.45 The key points are that:

- The customer is aware of the exit fee and is in a position to weigh up the pros and cons of the offer; and
- The terms of the exit fee must be reasonable and fair and not take advantage of the consumer or cause an imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

3.46 Domestic consumers are protected in respect of these points by the CRA 2015 which prevents a term being legally binding on a customer if it is unfair. The CMA provides guidance on what is unfair and this includes that the consumer easily understands what they are signing up to and any penalty for a customer to end a contract must take into account what the business will actually lose. It must not be excessive. The CMA states clearly in order for a term to be fair

it is important that the business, (being the energy supplier for the purpose of this consultation), must be up-front about important terms that have a significant impact on customers. The business may need to take extra steps to bring these types of terms to the attention of the customer before the contract begins.

3.47 As we have said already, small business customers share many of the same characteristics of domestic consumers in the retail energy market but do not have the same protection. Small businesses in NI need to enjoy a framework of legally enforceable rights that provides the same level of protection as the CRA 2015 does for domestic consumers.

3.48 The CRA 2015 does not prohibit exit fees but does have a strict principle based framework to ensure they are fair. The UR should introduce mandatory measures that ensure that these principles are seen in practice in the energy contracts used for small businesses.

3.49 The manner in which energy is supplied to consumer's means that there can be almost total disengagement between supplier and customer once the contract has commenced. In order to protect consumers from getting a bad deal due to this lack of engagement we do think that it is necessary to place specific requirements on suppliers to engage regularly, particularly when a contract is coming to an end and to restrict the right to prevent switching.

3.50 As previously stated, in 2015 Ofgem<sup>12</sup> introduced licence conditions for suppliers in relation to micro businesses requiring them to send a renewal letter out 60 days before the contract ends. However, Ofgem does not ban exit fees.

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<sup>12</sup> <https://www.ofgem.gov.uk/consumers/business-gas-and-electricity-guide/understand-energy-contracts-businesses>

3.51 We believe that the UR should replicate the Ofgem requirements for small business customers in NI. This would mean a 60 day renewal letter and no exit fees within that 60 day period. If it is applied to all suppliers and properly communicated it will not distort competition. We believe that this would allow the consumer the opportunity to research and consider their decision whether to switch or remain with its existing supplier, at the key point when the fixed term contract is coming to an end.

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR?**

3.52 The Consumer Council believes that suppliers T&C about exit fees ought to be fair and comply with the CRA 2015. The principles set out below are particularly important regarding exit fees:

- The level of exit fees must be transparent, communicated in advance and not be excessive; and
- There should be balanced rights and obligations between the supplier and the small business customer over exit fees.

**Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?**

3.53 Prepayment meters (PPM) have proven to be extremely popular with consumers in the domestic electricity and gas retail market. The cost to the consumer of a PPM is at least comparable if not cheaper than the price of all the standard variable tariffs available. Consequently a high number of

customers are choosing PPMs<sup>13</sup>. The evidence also shows that PPM customers are more likely to engage with the market and switch energy supplier<sup>14</sup>.

3.54 From a small business consumer perspective PPM's would provide the following benefits:

- Remove the need for security deposits;
- Increase the engagement of small businesses through regular topping up and consumption/credit checking; and
- Enable small businesses to manage their energy consumption more effectively.

3.55 This closer involvement with their energy use should result in more informed, savvy and empowered energy consumers that will engage with the retail market. PPM's will also enable small businesses to have greater control over their energy debt liabilities.

3.56 The Consumer Council believes that small businesses should have a choice of payment methods. We recognise that PPMs may not be appropriate for all small businesses. Our survey indicates that while a quarter of respondents said that a PPM would enable them to manage their costs better, almost half disagreed. However, those that want the option of a PPM should have it available to them.

3.57 Based on this evidence, The Consumer Council calls on the UR to engage with the electricity and gas industries to assess the feasibility and potential cost of introducing PPMs for the small businesses market.

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<sup>13</sup> In electricity 43.8% of all domestic electricity customers in NI have a prepayment meter and in natural gas in the Greater Belfast licence area 65% of domestic households have a prepayment meter, whilst in the Ten Towns licence area 89% of domestic customers have a prepayment meter. Source: UR Quarterly Transparency Report Q3 2017.

<sup>14</sup> In the domestic electricity market the combined share 56% of PPM customers have switched from the incumbent supplier (Power NI) whilst only 30% credit meter customers have done so. Source: UR Quarterly Transparency Report Q3 2017.

**Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.**

3.58 Domestic consumers benefit greatly from the protection that the cooling off period provides. It provides the consumer with the opportunity to reconsider the decision they have made at their own pace, having researched the issue and given it more thought. This supports and enhances the protection for consumers against marketing malpractice that the UR domestic Marketing Code of Practice provides.

3.59 Evidence that we have gathered through our engagement with small business in 2017 provided examples of local small businesses being subject to excessive pressure to make a quick decision. We have heard accounts of constant cold calling by telephone, and visits from brokers and sales agent to the business premises offering a range of products, such as insurance, broadband services as well as energy. We would like to reiterate the point that small businesses share many of the characteristics of domestic consumers. The Consumer Council believes that the area of marketing and sales is one where small businesses can be exploited and where they should be given the same level of protection that the regulatory framework provides to domestic consumers.

3.60 The Consumer Council believes that small businesses here would benefit from the introduction of a cooling off period. In theory this could operate in the same way it does in the domestic sector.

**Q15. Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.**

- 3.61 The 21 day notice requirement was introduced as part of the IME3 package aimed at increasing competition and enhancing consumer engagement in the domestic retail market.
- 3.62 Electricity domestic switching rates have been consistently higher than switching rates in the small business segment of the market. Therefore UR and the energy industry should consider any measure that may increase switching rates in the small business sector.
- 3.63 Based on this evidence, the introduction of a 21 day notice requirement for a change to businesses' T&C, and price would be a positive development for consumers that The Consumer Council would support.
- 3.64 Of the respondents to The Consumer Council small business online survey, all but one stated that they would like to be contacted by their supplier before their contract ends. We have stated earlier in our response that we would like to see the UR replicate the GB requirement for a renewal notice to be sent by the supplier 60 days before the end of the contract.

**Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why.**

- 3.65 The Consumer Council supports measures that help inform and educate small businesses about their right to switch or change tariff and how to do so.
- 3.66 Of the respondents to our 2017 survey, three-quarters stated that they would like to be reminded of their right to switch. Furthermore, anecdotal evidence from our complaints and the findings from our 2017 small business research suggests the following:

- Small businesses are not knowledgeable about meter types and how these, along with the type of activity and opening hours should determine the most appropriate tariff; and
- Small businesses can suffer significant financial detriment if their supplier does not put them on the appropriate tariff and meter type.

3.67 A statement from suppliers informing small businesses about other tariffs and meter types as well as the right to switch would be beneficial to consumers as part of a holistic package of resources and activities aimed at improving small businesses' knowledge of energy issues and increasing their engagement in the retail market.

**Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.**

3.68 In our response to Q5 of this consultation we outlined a number of additional issues not included in the consultation paper that in our view merit consideration by the UR. We have outlined below additional evidence and proposed remedies to address each of these issues.

#### Lack of knowledge about energy tariffs and meter types

3.69 When preparing this response we analysed data and evidence from the small business energy complaints we have received. We have identified that small business are not always on the tariff that is most appropriate for the activity of the business.

3.70 This is often the result of suppliers not having a process that systematically assesses the projected consumption patterns of new customers. This situation typically occurs in the event of a switch of supplier or change of tenancy taking



place. Consumers' lack of knowledge about meter types and tariffs is also a factor.

3.71 The Consumer Council believes that this is an issue that ought to be addressed. We have outlined two possible solutions and ask the UR to consider them. The Consumer Council will include information around this issue when we deliver our Switch and Save campaign. We propose that the UR introduce a requirement on suppliers to:

- Review and improve the information that they gather about small businesses before they complete a switch, a change of tenancy or a new connection; and
- “Take reasonable steps” to identify a new business’s consumption patterns<sup>15</sup> to ensure the small business has the most appropriate meter type.

#### Consistent format for tariffs, unit rates and quotes

3.72 We recommend the adoption of a consistent format across all suppliers to present tariffs and unit rates in non-domestic bills and marketing resources. The aim of this measure is to make it easier for small businesses to compare offers, which coupled with requirements to publish tariffs should improve price transparency and comparability. This could be progressed with suppliers as part of any follow on actions that result from this consultation.

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<sup>15</sup> The information required would include the business opening hours, type of activity and list of electrical equipment operated in the premises.

## Dealing with customer credit balances in the event of a Supplier of Last Resort (SoLR)

3.73 In our response to the recent UR consultation on Dealing with Customer Credit Balances<sup>16</sup> we expressed the view that the UR should extend the scope to small business customers of any measures which protect consumers on the return of outstanding credit balances in a SoLR event. We ask the UR to consider this enhancement measure as part of this project if it is not considered as part of the decision on the SoLR consultation.

## Prohibition of discrimination in supply

3.74 Condition 14 of Power NI's licence provides protection for small businesses by creating a 'duty to offers terms' and prohibits these terms from being 'unduly onerous'. However, this condition only applies if the supplier "is in a dominant position in a market for the supply of electricity."

3.75 Condition 15 of Power NI's licence contains provisions for the "disapplication" of Condition 14. Following the removal of the Power NI Price Control from the 0-50MW I&C segment of the market, we ask the UR to clarify if and when the disapplication of Condition 14 will take place for the 0-50MWh segment of the market.

3.76 We recognise that Condition 14 regulates issues that are typically associated with market dominance. However, The Consumer Council believes that some of the provisions set out in suppliers' Condition 14 would help address some of the issues identified in the UR consultation paper. In particular clause 14.3.c, which disallows Power NI from setting terms which are unduly onerous, would be a measure that could improve consumer protection on rollover contracts.

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<sup>16</sup> <https://www.uregni.gov.uk/consultations/supplier-last-resort-dealing-customer-credit-balances>

- 3.77 The Consumer Council believes that we have presented sufficient evidence that would warrant applying some of the clauses in condition 14, in particular 14.3.c, to all suppliers regardless of their market share. We ask the UR to consider this proposal.

#### **4 Conclusion**

- 4.1 The Consumer Council believes that small businesses in NI share many of the same characteristics as domestic consumers but they are not given the same level of protection in relation to electricity and gas.
- 4.2 The Consumer Council welcomes the UR proposals and sees them as a 'win-win' for small businesses and energy suppliers. We look forward to working with the industry and stakeholders to implement these enhancements in a practical, effective and timely way.

If you require further information or you wish to discuss any aspect of this response please contact Paulino Garcia on 02890 251645 or [Paulino.Garcia@consumercouncil.org.uk](mailto:Paulino.Garcia@consumercouncil.org.uk).

## **Annex 1. Key findings The Consumer Council Small Business Energy Consumer Experiences 2017**

### Survey findings

- 24 respondents;
- 54% were small businesses and 46% non-profit organisations;
- 21% of those surveyed have used an energy broker.

### Main survey questions

Q3. How much of a concern is your electricity compared to other issues affecting your business or organisation?

| ANSWER CHOICES  | RESPONSES |
|-----------------|-----------|
| Not a concern   | 16.67%    |
| Minor concern   | 37.50%    |
| Average concern | 25.00%    |
| Major concern   | 16.67%    |
| The Top Concern | 4.17%     |

Q4. Has your business or organisation ever switched electricity supplier?

| ANSWER CHOICES | RESPONSES |
|----------------|-----------|
| Yes            | 50.00%    |
| No             | 50.00%    |

Q5. If not, please the reason (s) why.

| ANSWER CHOICES                                      | RESPONSES |
|---|-----------|
| I'm satisfied with my current supplier              | 38.46%    |
| Comparing prices is too difficult or time consuming | 38.46%    |
| I don't know how to switch                          | 15.38%    |
| I'm tied to a contract with exit fees               | 0.00%     |
| Potential savings are not worth the hassle          | 15.38%    |
| My lights might go out                              | 7.69%     |
| Other (please specify)                              | 23.08%    |

Q8. When switching, how was the contact with electricity suppliers done?

| ANSWER CHOICES                                | RESPONSES |
|---|-----------|
| I telephoned suppliers                        | 45.45%    |
| I obtained quotes through supplier's websites | 0.00%     |
| Supplier called into my business premises     | 18.18%    |
| Supplier telephoned me                        | 27.27%    |
| Supplier wrote/emailed me                     | 27.27%    |
| Other, please describe                        | 18.18%    |

Q9 How often do you contact your electricity supplier?

| ANSWER CHOICES | RESPONSES |
|----------------|-----------|
| Never          | 19.05%    |
| Once a year    | 42.86%    |
| Once a quarter | 14.29%    |
| Monthly        | 23.81%    |
| Weekly         | 0.00%     |

Q10 What are the reasons for contacting your electricity supplier?

| ANSWER CHOICES                                    | RESPONSES |
|---|-----------|
| If I have a complaint                             | 10.00%    |
| When my contract is up                            | 25.00%    |
| To query my bill                                  | 50.00%    |
| If I have received an offer from another supplier | 0.00%     |
| My supply is off                                  | 15.00%    |
| To provide a meter reading                        | 45.00%    |
| Other (please specify)                            | 15.00%    |

Q11 Please state your level of agreement with the following statements.

|  | STRONGLY<br>DISAGREE | DISAGREE    | NEITHER<br>AGREE<br>OR<br>DISAGREE | AGREE        | STRONGLY<br>AGREE |
|--|----------------------|-------------|------------------------------------|--------------|-------------------|
| It would be useful if suppliers published their prices online  | 10.53%<br>2          | 5.26%<br>1  | 15.79%<br>3                        | 36.84%<br>7  | 31.58%<br>6       |
| An independent online energy price comparison tool would make switching much easier  | 5.26%<br>1           | 0.00%<br>0  | 26.32%<br>5                        | 31.58%<br>6  | 36.84%<br>7       |
| Electricity security deposits should be reasonable and only kept for a limited period  | 5.26%<br>1           | 5.26%<br>1  | 15.79%<br>3                        | 47.37%<br>9  | 26.32%<br>5       |
| It would be helpful if my supplier contacted me before my contract ends to negotiate a new one                                 | 5.26%<br>1           | 0.00%<br>0  | 0.00%<br>0                         | 42.11%<br>8  | 52.63%<br>10      |
| Before my contract ends I would like to receive a reminder about my right to switch to another supplier                        | 0.00%<br>0           | 0.00%<br>0  | 26.32%<br>5                        | 36.84%<br>7  | 36.84%<br>7       |
| I'm interested in learning more about switching  | 5.26%<br>1           | 21.05%<br>4 | 31.58%<br>6                        | 21.05%<br>4  | 21.05%<br>4       |
| Suppliers should make terms and conditions shorter and easier to understand  | 0.00%<br>0           | 10.53%<br>2 | 5.26%<br>1                         | 52.63%<br>10 | 31.58%<br>6       |
| It would be useful if all electricity suppliers had access to my business' contact details to help them promote their services | 21.05%<br>4          | 36.84%<br>7 | 15.79%<br>3                        | 21.05%<br>4  | 5.26%<br>1        |
| A prepayment meter would help me manage my energy costs better   | 36.84%<br>7          | 10.53%<br>2 | 26.32%<br>5                        | 15.79%<br>3  | 10.53%<br>2       |

Q12 State your level of agreement with the following statement: “It would be very useful to learn about...”

|                         | <b>STRONGLY<br/>DISAGREE</b> | <b>DISAGREE</b> | <b>NEITHER<br/>AGREE OR<br/>DISAGREE</b> | <b>AGREE</b> | <b>STRONGLY<br/>AGREE</b> |
|-------------------------|------------------------------|-----------------|--|--------------|---------------------------|
| Energy prices (tariffs) | 0.00%<br>0                   | 0.00%<br>0      | 15.79%<br>3                              | 73.68%<br>14 | 10.53%<br>2               |
| Security deposits       | 5.26%<br>1                   | 5.26%<br>1      | 47.37%<br>9                              | 36.84%<br>7  | 5.26%<br>1                |
| Rollover contracts      | 0.00%<br>0                   | 0.00%<br>0      | 36.84%<br>7                              | 42.11%<br>8  | 21.05%<br>4               |
| Contract exit fees      | 0.00%<br>0                   | 0.00%<br>0      | 21.05%<br>4                              | 57.89%<br>11 | 21.05%<br>4               |
| Terms and conditions    | 0.00%<br>0                   | 5.26%<br>1      | 36.84%<br>7                              | 31.58%<br>6  | 26.32%<br>5               |
| How to switch supplier  | 5.26%<br>1                   | 10.53%<br>2     | 26.32%<br>5                              | 31.58%<br>6  | 26.32%<br>5               |
| How to complain         | 0.00%<br>0                   | 5.26%<br>1      | 52.63%<br>10                             | 31.58%<br>6  | 10.53%<br>2               |
| Energy efficiency       | 0.00%<br>0                   | 0.00%<br>0      | 21.05%<br>4                              | 42.11%<br>8  | 36.84%<br>7               |





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## Annex II

## Power NI

# **Measures to enhance the operation of the small business energy market**

**UR Consultation**

**Power NI Response**

5 December 2017

## Introduction

Power NI welcomes the opportunity to respond to the Utility Regulator (UR) consultation entitled 'Measures to enhance the operation of the small business energy market'.

As the UR is aware, Power NI has fully engaged with the process to date and proposed a number of the solutions contained within the paper. It is important to recognise however that many of the issues discussed have no correlation to the removal of price regulation. Price regulation had a distortive effect on the marketplace and did not mandate any of the protective measures which are contained within this consultation.

Power NI is concerned by the implication that the electricity market is somehow not working in the interests of small businesses (SMEs). The UR appears reliant solely upon switching rates to determine that intervention is required. No substantive customer research has been undertaken nor has a particular problem been identified.

The UR has not determined what an optimum switching rate is, to characterise the current non-domestic switching rate as low is predicated upon comparing with it to either a comparable rate or a target, this has not been done. At this stage the only thing that can be accurately stated is the switching rate, it cannot be characterised as low, high or optimal.

Power NI would highlight the work undertaken by the Department for the Economy which summarised the cost priorities for businesses<sup>1</sup>. This report indicated energy is not a high priority item, therefore it would be logical to assume that it is an area of lower interest for businesses. If switching was at a disproportionately higher comparable level, that would indicate dissatisfaction with the marketplace. Small price differentials and a competitive market therefore conceivably could result in lower levels of churn.

There are undoubtedly enhancements that could be made to improve the products and services offered to customers. These areas alongside any potential anti-competitive measure are where Power NI believes the UR should focus.

## Specific Questions

The UR posed a number of specific questions within the Consultation Paper and Power NI has sought to deal with each in turn.

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<sup>1</sup> <https://www.economy-ni.gov.uk/publications/cost-doing-business-northern-ireland>

**Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?**

*Power NI response:*

No specific response.

**Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.**

*Power NI response:*

No specific response.

**Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?**

*Power NI response:*

Power NI notes that the UR is seeking to classify customers as small businesses by reference to their electricity consumption. Power NI suggests that consuming between 0-50MWh p.a. provides no description whatsoever about the business and it is incorrect to infer that low consumption means the business is small or in some way vulnerable. In addition, the Quarterly Transparency Report states that there are 60,000 customers; Power NI would argue that this is in fact 60,000 supply points and includes connections such as telephone signal masts, pumping stations, street lighting cubicles, wind turbine import, security huts and ATMs. In implementing prescriptive requirements the UR must be mindful that significant numbers of the 60,000 supply points are part of an in aggregate large consuming group. Prescriptive requirements risk unintended consequences as a 'one size fits all' approach is not appropriate for many customers.

**Q4. Do respondents agree with the issues highlighted in Section 4 – if not please provide explanation/rationale as to why?**

*Power NI response:*

Power NI notes that within the Consultation Paper, the UR asks specific questions in relation to each issue. Power NI has addressed each question in turn.

**Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?**

*Power NI response:*

Power NI has concerns in relation to the prescriptive nature of a number of the UR's proposals as well as the lack of substantive customer research undertaken. In a competitive market if a supplier provides poor customer service (for example, poor communication or pricing outcomes) the customer will switch to another rival provider. By prescriptively regulating in this area, the UR is mandating uniformity and eroding any competitive service advantage which a supplier has worked to achieve. This represents a direct interference in the market by the UR and Power NI would suggest that this is counterproductive to the stated aims of this work and inconsistent with the UR's statutory duty to promote competition. Such intervention cannot be justified by the argument that this is a consumer protection activity if the UR has not identified the consumer harm nor assessed whether their actions protect the consumer from it.

Generic questions in relation to customer research should be avoided; questions asking how strongly you agree with "it would be useful if suppliers published prices" are leading and clearly illustrate a predetermined agenda and desired outcome by the organisations asking the question. The UR should directly engage with customers in relation to the operation of the marketplace undertaking substantive research to identify issues, assess their materiality and determine outcomes. Small scale workshops on single topic areas, e.g. energy, will not provide adequate context as to the materiality of any identified issue to the business community.

**Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.**

*Power NI response:*

The UR states within the paper that the lack of published tariffs on a website is "preventing small business customers engaging meaningfully in the market" and that mandating suppliers to publish rates would "allow small business customers to take full advantage of the competitive market". Neither of these statements are supported by any evidence whatsoever. Power NI would go as far as to state that in fact small business customers are engaging meaningfully in the market, as evidenced by consistent switching rates over recent years and the ability of a new entrant (Go Power, for example) to rapidly grow market share across all segments of the market. This clearly contradicts the URs statements.

It is unclear as to why the UR believes it is essential that energy rates are published on websites when the vast majority of goods or services required to run a business are not published in a similar way. No explanation is offered as to why; the UR believes that businesses are capable of shopping around for essential stock, equipment, premises, support services etc. however contacting 5 energy suppliers for a quote is an excessive burden.

Energy suppliers actively seek the direct interaction with the customer by quoting offers. This is a commercial business environment and bespoke tariffs are offered. Fuel prices move on a daily basis and flat standard tariffs, (largely due to a chronic lack of liquidity and the regulatory authorities' failure to create a properly functioning forwards wholesale market) are a thing of the past.

As described by the Ofgem representative who presented at the UR's workshop, it is unclear what real benefit is achieved by such a mandate as suppliers will continue to encourage customers to engage directly with them. From that presentation it appears that in GB it is widely accepted that the published rate is simply an indicative price, similar to Recommended Retail Price (RRP) used in retailing and that customers need to engage with suppliers to negotiate a competitive deal.

**Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why**

*Power NI response:*

The provision of information on websites in relation to deposits can be accommodated should the UR conclude that it would be helpful. Power NI is not convinced that it will provide significantly benefit to individual SME customers as it will undoubtedly state that a supplier will reserve the right to require a deposit in individual circumstances.

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

*Power NI response:*

Power NI supports the requirement for a deposit to be reasonable and justifiable. Three months consumption is a provision of the current licence conditions in relation to domestic customers and interests of consistency and operational efficiency Power NI would support the same being applied to SMEs.

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time**

**payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

*Power NI response:*

The returning of a deposit after 12 months subject to payment history is again consistent with the current licence conditions in relation to domestic deposits. Power NI acknowledges the benefits of operational consistency and supports the proposal to apply the same drafting to SME customers.

**Q10. Do respondents think that there should be a formal requirement on licencees which disallows the rollover of a contract (similar to that currently provided for domestic customers). If so please provide a clear rationale as to why.**

*Power NI response:*

Power NI does believe that a formal requirement disallowing rollover contracts would enhance the operation and effectiveness of competition within the market. Unlike the cooling off period (which is discussed under a subsequent question) a contractual loophole exists which could frustrate competition.

In addition to the automatic rollover being disallowed, Power NI would also welcome the UR taking preventative action in relation to other contract extension practices which could frustrate competition. Notice periods even though contracts are ending and requirements to switch, for example, on the 1st of the month (preventing switching mid-month) provide disincentives to switching by making the process overly obtuse, alongside maximising the potential for the customer to pay out of contract rates before leaving.

The UR could consider a principle based provision in relation to the frustration of competition under which specific practices could be communicated as disallowed. This allows the licence not to be overly prescriptive while also affording the flexibility to deal with market changes.

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

*Power NI response:*

Power NI believes that exit fees are entirely reasonable when a customer has entered into a commercial contractual agreement with a supplier and wishes to effectively break that contract. A supplier may have committed to long term hedging contracts and/or offtake agreements which are reliant upon a retail demand profile. Should a customer be permitted to effectively walk away from a contractual commitment that leaves the supplier exposed to such costs without recourse.



Aside from the cost implication the question of exit fees is inherently linked to contract law. Should a customer enter into a contract then this is a legally binding agreement, the inclusion of an exit fee defines the consideration required to break that agreement. Any consideration by the UR to prevent this process, Power NI believes is ultra vires as it would seek to frustrate the laws of contract in an inexplicable and discriminatory manner.

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR?**

*Power NI response:*

Power NI believes that exit fees should be reasonable and that an 'unreasonable' fee would be subject to legal challenge by the customer without regulatory intervention.

The suggestion of regulatory intervention over and above the existing reasonableness test is fraught with complexity and risk. It is important to again be mindful that an exit fee is a means by which a supplier is facilitating the early termination of a contractual commitment. The fee will include recompense in relation to any hedges or other contractual commitments which the supplier has made reliant on the customer commitment. Commitments which will have different valuations over time dependent upon duration and 'mark to market' valuation movements. There will not therefore always be a simple 'one size fits all' approach.

**Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?**

*Power NI response:*

Power NI has advocated for the introduction of the prepayment infrastructure to the SME market for some considerable time. The functionality provided by the existing infrastructure brings considerable benefits to both domestic customers and suppliers alike; and the current percentage of the domestic market availing of the system is testament to that. Customers value the budgetary control and flexibility offered by the prepayment solution and unfortunately to date, SMEs have not had this option. A significant number of customers have told Power NI that should it become available it is an option they would wish to avail of. Clearly it would not be suitable to all SME customers however providing the choice would be an important market enhancement.

In addition the use of the prepayment solution in the SME sector would have important market benefits. Installing a prepayment meter means that no deposit is required (which potentially might be difficult for a start-up company to provide) and assists in the management of debt which is ultimately a cost to the entire industry and reflected in end user tariffs.

Power NI acknowledges that market system changes would be required to introduce this option however the customer and market benefit are such that it would be a worthwhile development.

**Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.**

*Power NI response:*

Contractual cooling off periods are a matter for consumer protection law. The domestic electricity cooling off period requirement within the supplier licence are a reflection of such legislation i.e. even if it was removed from the licence, suppliers would still have to afford a domestic customer the cooling off period as it is a legal requirement to do so.

It would therefore appear to be beyond the remit of the UR to impose a cooling off period for SMEs when the legislation in this area has concluded that it does not need to be extended to businesses. The UR should be mindful that consumer protection law covers all goods and services and given the legislature has not extended cooling off periods to businesses, it would be inexplicable as to why the UR would decide that energy should be an exception.

**Q15. Do respondents agree that small business customers should be given 21 days' notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.**

*Power NI response:*

Power NI believes good customer communication is central to the service proposition offered by suppliers to customers. While price remains the primary decision factor in relation to electricity supply, service is also extremely important and poor communication will result in a negative customer experience and encourage switching to a competitor. By mandating communication timeframes and effectively regulating communication the UR risks eroding competitive advantage of those suppliers who have worked to develop effective communications and excellent customer service. Power NI believes that such direct intervention should only take place when the UR has explicitly identified and has evidence of a specific harm taking place in the market. Power NI would however support a regulatory principle in relation to communication being included however without evidence of harm believes the prescriptive nature of the requirement being consulted upon has an adverse impact on the effectiveness of competition, especially service competition.

**Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicate that other tariffs may be available to them? If not please provide a clear rationale why.**

*Power NI response:*

The question of mandatory statements on SME bills was consulted upon and a decision not to include such a requirement was made by the UR in July 2017. It is somewhat surprising therefore that the UR is again consulting upon this before the Billing Code of Practice requirements have been implemented. Power NI is unaware of any landscape changes which would necessitate a change to the current regulatory decision.

To reiterate the arguments made during the Billing Code of Practice consultation process, non-domestic bills (including SMEs) are different from domestic bills as they can be (by their nature) more complex and contracts are a significantly larger feature of this market than the domestic market. The agreement to enter a contract has a time stipulation and prevents changes within that period. Such circumstances therefore render a mandatory statement such as has been proposed as ineffective, misleading and not applicable.

**Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.**

*Power NI response:*

Power NI would welcome the UR taking this opportunity to align the definition of SME within the Marketing Code of Practice for Business Customers.

Power NI notes that the UR has undertaken a separate exercise in relation to brokers in the energy market and will engage fully with that process.

## **Conclusion**

Measures to enhance the operation of the electricity market are to be welcomed, however the UR should distinguish between enhancements and prescriptive interference in the operation of the market.

Power NI considers items such as the development of a prepayment solution for SMEs as a clear example of an enhancement which would be welcomed by customers and suppliers alike. Such a development brings clear, identifiable benefits and increases the options available to customers.

Issues such as deposits, rollover contracts and exit fees are identified issues which harm both competition and the customer experience. In relation to those items, suppliers have highlighted them as a potential issue and it is entirely appropriate that the UR takes preventative steps.

As the UR will have noted from the answers above, Power NI has difficulty with the proposal in relation to tariff publication. While the UR has characterised the issue as 'transparency' Power NI view this as a question of customer engagement. Suppliers will always seek to have the direct engagement with the customer. Should publication become mandatory it is likely that that will only be to the benefit of commentators and those who wish to broker or run comparison websites. This reduces the interaction between suppliers and customers; an outcome Power NI strongly believes will be to the detriment of the effectiveness of the marketplace.

## Annex III

### SSE Airtricity

MEASURES TO ENHANCE THE OPERATION OF THE SMALL  
BUSINESS ENERGY MARKET

SSE AIRTRICITY RESPONSE TO  
THE UTILITY REGULATOR

2017

## INTRODUCTION

SSE Airtricity welcomes the opportunity to comment on the UR's consultation Measures to Enhance the Operation of the Small Business Energy Market. SSE Airtricity participated in the June 2017 stakeholder roundtable and found the discussion very constructive.

SSE Airtricity is the largest independent supplier operating in Ireland with almost 800,000 domestic and commercial customers on the Island of Ireland. We currently supply energy to over 20,000 business customers in Northern Ireland and offer tailored energy solutions to match those customers' business needs. We are committed to developing competition in Northern Ireland and to presenting its customers with choice and quality customer service.

## GENERAL COMMENTS

SSE Airtricity supports any enhancements that can be introduced to the energy market that will encourage customers to better engage with the market. Consideration must be given though to the cost of introducing those enhancements as customers will ultimately end up paying for them. SSE Airtricity is concerned that some of the proposals could have an impact on the hedging position of suppliers should the proposals proceed which would ultimately impact on customers. We have discussed these concerns in answering the specific questions below.

## RESPONSE TO SPECIFIC QUESTIONS

### Q3. DO RESPONDENTS AGREE WITH THE PROPOSALS FOR SCOPE OF COVERAGE BEING 0-50MWH FOR SMALL I&C ELECTRICITY CUSTOMERS AND 0-73.2MWH FOR SMALL I&C GAS CUSTOMERS?

SSE Airtricity generally agrees with the proposals for the scope of coverage however we suggest that some exceptions apply. We believe that small premises that are part of a larger commercial group e.g. mobile phone retailers, banks, high street shops etc. should be excluded from the definition of small I&C as they would normally go to tender for their energy supply contracts and would have stronger negotiating powers than standalone single site businesses. The same is true for Public Sector group organisations such as Health Trusts, Councils etc. We also suggest that small I&C customers with interval electricity meters be excluded from the definition as contracts agreed with these customers tend to be specific to the customer and would provide no meaningful comparison to other customers.

### Q4. DO RESPONDENTS AGREE WITH THE ISSUES HIGHLIGHTED IN SECTION 4 –IF NOT PLEASE PROVIDE EXPLANATION/RATIONALE AS TO WHY?

SSE Airtricity participated in the stakeholder roundtable hosted by the Utility Regulator. We support in principle the proposed CCNI “Switch and Save” campaign for small businesses. However, we would like more information on the campaign and the opportunity to provide feedback to the CCNI before it is launched.

We have comments below on some of the issues highlighted in Section 4.

### Q5. DO RESPONDENTS HAVE ANY OTHER ISSUES WHICH THEY WOULD LIKE TO RAISE WHICH HAVE NOT BEEN HIGHLIGHTED ABOVE?

SSE Airtricity would like to see further analysis done on the small business sector to assess the composition of the market i.e. how many small



businesses are part of a larger commercial group or Public Sector group organisation or Council compared to single site small businesses. We suggest that small businesses that are part of a larger commercial group or Public Sector group be removed from the definition of the small business sector along with the associated energy load so that the industry can better understand how many single site businesses exist in the SME sector. This would allow further analysis to be carried out on areas such as market share held by suppliers and identification of potentially disengaged customers that remain with the incumbent.

SSE Airtricity would also like to understand how engaged the UR expects the SME businesses to be. Once group customers are removed from the sector the savings in monetary terms may be relatively small in a business context.

**Q6. DO RESPONDENTS AGREE THAT SUPPLIERS SHOULD PROVIDE TRANSPARENT PRICE INFORMATION ON THEIR WEBSITE BY PUBLISHING TARIFF INFORMATION FOR SMALL BUSINESSES AND IF SO SHOULD THIS TAKE A SIMILAR FORMAT TO THAT REQUIRED IN GB? IF RESPONDENTS DO NOT AGREE PLEASE PROVIDE A CLEAR RATIONALE AS TO WHY.**

SSE Airtricity believes that the most appropriate way for small business customers to take full advantage of the competitive market is for the customer to engage directly with suppliers to ensure that they obtain the most appropriate product for their own specific business. Suppliers may offer add-on products to offers so, by comparing tariffs alone, customers may be losing out on more beneficial products for their business if they are restricted to comparing tariffs rather than the full product offering. Suppliers also offer bespoke contracts to some customers which may not be available to other customers. Therefore, SSE Airtricity does not agree that suppliers should provide transparent price information on their websites as we believe that it will be difficult to display the information in a meaningful way for business customers given the number of tariffs that would have to be displayed.

Additionally, tariff offerings for business customers change frequently, so there is no guarantee that a rate that a customer will see on a particular supplier's website will still be available if they return to the site after assessing other suppliers' offerings.

SSE Airtricity notifies business customers coming to the end of their fixed term contract of their proposed contract renewal rate along with the non-contract renewal rate. This allows customers the opportunity to shop around with a rate that is specific to their own business. We believe that if all suppliers communicated their contract renewal rate with the customer at the end of a fixed term contract, it would provide the customer with sufficient information to assess other offers that are available in the market at that time.

**Q7. DO RESPONDENTS AGREE THAT SUPPLIERS SHOULD PROVIDE INFORMATION ON THEIR WEBSITE AROUND DEPOSIT REQUIREMENTS AND HOW THEY ARE DETERMINED FOR A CUSTOMER? IF NOT PLEASE PROVIDE A CLEAR RATIONALE AS TO WHY.**

SSE Airtricity does not have any objection to publishing high level criteria that suppliers consider when setting deposits for small business customers. The requirement could be similar to the requirement that was recently introduced for non-domestic customers in the Republic of Ireland. In RoI, suppliers are required to have a fair, transparent and reasonable policy to determine the amount requested from customers as a deposit and for the refund of deposit. The policy must be available in an appropriate format to any person who requests it and a link must be provided from the suppliers' website to the place where this policy is stored.

**Q8. DO RESPONDENTS AGREE THAT DEPOSITS SHOULD BE SET AT A REASONABLE LEVEL AND THIS SHOULD BE 3 MONTHS CONSUMPTION? IF NOT PLEASE PROVIDE A CLEAR RATIONALE AS TO WHY.**

SSE Airtricity agrees that deposits should be set at a reasonable level. However, we do not agree that the level should be set at 3 months

consumption. Suppliers should have the right to set reasonable level security deposits depending on the credit risk determined during the supplier's credit checking of a customer. As a business, suppliers should have the right to manage risk levels and set deposit levels accordingly, as long as the supplier has robust credit checking processes in place.

**Q9. DO RESPONDENTS AGREE THAT DEPOSITS SHOULD BE HELD FOR A FINITE AMOUNT OF TIME AND THAT THIS SHOULD BE NO LONGER THAN A PERIOD OF 12 MONTHS (WHERE ON TIME PAYMENT RECORD HAS BEEN DEMONSTRATED OVER THE PERIOD)? IF NOT PLEASE PROVIDE A CLEAR RATIONALE AS TO WHY.**

SSE Airtricity agrees in general that deposits be held for a finite amount of time. However, we would like suppliers to have the ability to review the decision to return a deposit at the end of the 12-month period and for suppliers to have the option to retain the deposit should they have reasonable concerns that the customer remains a credit risk.

The paper proposes to align retention periods to domestic customers i.e. returned within 28 days where, in the previous 12 months, the customer has paid all charges demanded within 28 days of each written demand made. Credit terms offers to business customers are generally shorter than 28 days and therefore SSE Airtricity is concerned that some customers may push their credit terms to 28 days knowing that they will still be entitled to the return of their deposit. For this reason, we do not agree that the retention rates be aligned to domestic customers.

**Q10. DO RESPONDENTS THINK THAT THERE SHOULD BE A FORMAL REQUIREMENT ON LICENCEES WHICH DISALLOWS THE ROLLOVER OF A CONTRACT (SIMILAR TO THAT CURRENTLY PROVIDED FOR DOMESTIC CUSTOMERS). IF SO PLEASE PROVIDE A CLEAR RATIONALE AS TO WHY.**

SSE Airtricity agrees that there should be a formal requirement in licences that disallows rollover contract with lock in clauses similar to that currently

provided to domestic customers. We believe that if rollover contracts with lock in periods and associated termination fees were introduced in the Northern Ireland market that it would lead to a negative customer experience and would reduce a customer's ability to switch and potentially avail of a better offer from another supplier. As stated in other responses, we believe that customers should be communicated to before the end of their fixed term contract and offered a contract renewal rate or be advised of the non-contract standard rate. This will allow customers to decide if they are happy to rollover or not.

**Q11. DO RESPONDENTS THINK THAT EXIT FEES ARE JUSTIFIABLE WHERE A CUSTOMER HAS ENTERED INTO A CONTRACT WITH A SUPPLIER?**

It is SSE Airtricity's position that exit fees are justifiable where a customer has entered a contract with a supplier. This is because there is a risk to a suppliers hedging position if that customer withdraws before the end of the contract. There are also costs associated with initial sign-up of customers and on-going costs to serve and these costs are considered when setting tariffs. When a contract is entered into both the customer and the supplier have obligations in relation to that contract and those obligations should be honoured by both parties. Exit fees can apply to some domestic contracts and therefore we do not see why they should not also apply to business contracts.

**Q12. DO RESPONDENTS THINK THAT UR SHOULD INTRODUCE A MEASURE WHICH MAKES IT MANDATORY THAT THE LEVEL OF EXIT FEES IS REASONABLE AND THAT THE LEVEL OF EXIT FEES (OR THE DERIVATION OF THE LEVEL) IS APPROVED BY THE UR?**

The Marketing Code of Practice for Business Customers contains the Energy Sales Checklist that suppliers must provide to potential customers before signing them up for an account. The checklist contains the following two requirements that relate specifically to exit fees:

"Did the agent:

- i) Explain any penalties that apply if you do not meet the terms of the contract?
- m) Confirm that you understand that you are switching to a specified product with a specified payment method and explain any fixed term conditions you are agreeing to as part of the contract. This should include duration and any applicable exit fees and any other specific conditions of the fixed term.”

The agent must confirm that the customer has read and understood the checklist. Information on exit fees should also be included in the product terms and conditions. Therefore, all customers will be aware at sign up of any exit fees that may apply. We believe that a business customer can determine themselves if the exit fees are reasonable or not. If the customer does not believe that the exit fee is reasonable then they can decide not to sign up with that particular supplier and go elsewhere. We do not agree that the level of exit fees should be approved by the UR.

**Q13. DO RESPONDENTS THINK THAT THE INTRODUCTION OF PREPAYMENT METER SOLUTION WOULD ENHANCE THE OPERATION OF THE SMALL BUSINESS ENERGY MARKET? CAN YOU PROVIDE A CLEAR RATIONALE AS TO WHY?**

SSE Airtricity would support the introduction of a prepayment meter solution as these meters can be a useful tool for customers to manage their energy usage as well as being an alternative debt recovery solution for both the customer and the supplier. We would support their introduction provided there is sufficient demand by the sector for the solution. In recent years SSE Airtricity piloted a PPM meter for small business customers in the Republic of Ireland and found that there no demand for the meter. While we support the potential introduction of a PPM solution to the small business sector we would have concerns that the existing domestic prepayment meter may not be suitable for business customers as there are limited tariff options with the current domestic PPM meter. We would also have concerns relating to tampering, as unrecorded consumption could be significantly higher for business customers who would also be more mobile compared to domestic customer with regards to moving premises in order to avoid repaying debt.

We propose that a cost benefit analysis be undertaken to gauge likely demand for a PPM solution for the small business energy market.

**Q14. DO RESPONDENTS THINK THAT THERE SHOULD BE A COOLING OFF PERIOD FOR SMALL BUSINESS CUSTOMERS ONCE THEY ENTER INTO A CONTRACT. IF SO PLEASE PROVIDE A RATIONALE AS TO WHY AND HOW IT COULD WORK IN PRACTICAL TERMS. IF NOT PROVIDE A RATIONALE AS TO WHY.**

SSE Airtricity does not think that there should be a cooling off period for small business customers once they enter into a contract. Legal obligations in relation to a cooling off period only apply to domestic customers and do not extend to business customers. Once a business customer contracts with a supplier for energy that supplier will then procure energy on the assumption that the customer will remain with the supplier for the specified length of the contract. If business customers were afforded the right to withdraw from contracts all customers would end up covering the cost of this provision.

Additionally, introducing a cooling off period for small business customers would require costly changes to market processes and systems which we believe are unjustifiable without further evidence that the lack of a cooling off period is an issue for small business customers.

**Q15. DO RESPONDENTS AGREE THAT SMALL BUSINESS CUSTOMERS SHOULD BE GIVEN 21 DAYS NOTICE IF THERE IS A CHANGE TO THEIR T&C'S OR PRICE AND NOTIFIED OF A FIXED TERM CONTRACT ENDING? IF NOT PLEASE PROVIDE A CLEAR RATIONALE.**

SSE Airtricity agrees that if there is a *significant* change to a customer's T&Cs that will impact on the customer, such as a change to processes, then the customer should be given notice.

SSE Airtricity already notifies business customers in advance of their fixed term contract ending. This notification includes the proposed contract



renewal rate along with the non-contract rate. As discussed above, we believe that this assists customers when assessing offers from other suppliers and would support its introduction as a licence requirement. As stated above we believe by placing this requirement on all suppliers that it may address the transparency concerns raised by small business representatives. Therefore, we support the proposal to notify customers coming to the end of their fixed term contract and we suggest 4-10 weeks' notice should be provided.

SSE Airtricity notifies non-contract small business customers of a price change on the customer's bill. Customers have not express any negative views to us with regards to this approach. Notifying non-contract small business customers in advance of a price change would involve additional costs which would ultimately be borne by the customer.

**Q16. DO RESPONDENTS AGREE THAT A MANDATORY STATEMENT SHOULD BE INCLUDED IN SMALL BUSINESS BILLS WHICH INDICATES THAT OTHER TARIFFS MAY BE AVAILABLE TO THEM? IF NOT PLEASE PROVIDE A CLEAR RATIONALE WHY.**

Businesses, large and small, understand that they should shop around for a better deal. Energy is only one cost that businesses must consider. In order to set up and remain in business, owners must shop around for the best telephone, internet/ broadband, insurance, furniture and fittings, delivery deals etc. Businesses themselves do not have similar requirements to advise their own customers that other businesses may have similar products elsewhere or online. Therefore, we do not agree that a mandatory statement should be included on small business bills indicating that other tariffs may be available to them.

Another reason why we do not support this proposal is that the statement would not apply to customers who are in a contract; any enhancements that are introduced must not encourage customers to break energy contracts. Indeed, in this scenario such a statement could create a lot of frustration for customers in fixed term contracts as they could result in exit fees being applied should the customer decide to act on the statement.

**Q17. ARE THERE ANY OTHER MEASURES TO ENHANCE THE OPERATION OF THE SMALL BUSINESS ENERGY MARKET**

WHICH RESPONDENTS THINK SHOULD BE CONSIDERED AS PART OF THIS CONSULTATION PROCESS? IF SO, PLEASE PROVIDE A CLEAR RATIONALE.

The stakeholder sessions discussed the issue of the lack of engagement by small business customers in the market. Suppliers undertake a number of activities in order to try to encourage customers to engage with the market and ultimately switch supplier. In order to assist suppliers in this regard it would be beneficial if NIE Networks publish site information for non-domestic customers. This would allow suppliers to market to specific areas as the market size is too small for generic marketing campaigns. By having access to this information a supplier would be able to reduce the cost to acquire which would ultimately benefit customers. The site information we suggest be made available is MPRN, Meter Address, Use of System code, and Estimated Annual Consumption.

SSE Airtricity will be responding separately to the UR's Information Paper and Call for Evidence in relation to Third Party Intermediaries in the Non-Domestic Retail Energy Market.



## CONCLUSION

SSE Airtricity supports several of the proposals contained in the consultation such as transparency on deposit setting criteria, introduction of PPM solution (contingent on a CBA being undertaken), restricting roll-over contracts, and notification to customer when coming to the end of a fixed term contract. However, some of the proposals around exit fees, advance price change notification, cooling off periods etc., if progressed, could significantly impact on suppliers hedging costs and on-going costs to serve which would ultimately impact all customers of that supplier. Indeed, many of the proposals could be seen as barriers to entry for any new supplier considering entering either the gas and or electricity markets in Northern Ireland.

SSE Airtricity agrees that more must be done to encourage small business customers to engage in the energy market and we believe that this could be achieved by provided suppliers with site specific information that would allow suppliers direct market campaigns at specific areas as we believe the Northern Ireland market is too small for generic marketing campaigns.

## Annex IV

### Electric Ireland



**Electric Ireland Response:**  
**Measures to Enhance the Operation of the**  
**Small Business Energy Market**  
**Consultation paper**

**5<sup>th</sup> December 2018**

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| Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier? .....   | 8 |
| Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR? .....  | 8 |
| Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why? .....   | 8 |
| Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why. ....  | 9 |

|   |    |
|---|----|
| Q15. Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale. .... | 9  |
| Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why. ....                  | 9  |
| Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale. .... | 10 |

### Respondent's Details

| Name      | E-mail Address   | Telephone Number                           |
|-----------|--|--|
| Jim Wynne | <a href="mailto:Jim.wynne@electricireland.ie">Jim.wynne@electricireland.ie</a> | + 44 (0) 2890 257299<br>+ 353 (01) 8934460 |

## General Comments

Electric Ireland are supportive of the Utility Regulator (UR) in their role in protecting consumers and ensuring consumers are adequately protected in markets and welcomes the opportunity to respond to this consultation paper - Measures to Enhance the Operation of the Small Business Energy Market. Electric Ireland believe the regulator has advanced some interesting and challenging ideas in relation to supporting small businesses operating in the energy market and we have hopefully reflected this in our responses below.

There is a need to strike a balance between options to ensure the UR achieve consumer protection and recognising that in most markets there is a difference between the protection afforded to domestic and business consumers and it is reasonable to expect a business customer to manage risks themselves and seek to recoup potential losses as any normal creditor would, in a way that is not so reasonable to expect of domestic customers. To quote OFGEM: *"This approach is in line with general consumer law. In consumer law, anyone operating a business is deemed to have the ability to make themselves aware of what they are signing up to and to be aware of all relevant consumer laws and apply them in running their business"*.

Consistent with all of our responses, Electric Ireland views these questions from the perspective of a standalone supplier and as a representative of the customer.

**Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?**

Yes

**Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.**

No

**Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?**

Agree

**Q4. Do respondents agree with the issues highlighted in Section 4 –if not please provide explanation/rationale as to why?**

Yes, but not necessarily that all are deserving of equal consideration and we would like to see further research/evidence in support of any decision to take further steps in any particular area.

**Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?**

No



**Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.**

In principle we agree that suppliers should provide transparent price information on their website. Whether it should take a similar format to that required in GB should be the subject of consideration and we agree with the approach in GB where the licensee has flexibility when ensuring that the Tariff Information Label is displayed. It would be useful to have some additional clarity from UR on the proposed content and format of such a label.

**Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why**

Electric Ireland would support providing information on websites in relation to our policy for determining deposits for our customers. Deposits for customers relate to expected consumption and consequently customer bills. As expected consumption will vary widely dependent on business type, so we do not agree that calculations should be provided for individual customers where discretionary factors will apply.

For businesses it needs to be borne in mind that it is necessary to carry out relevant credit checks in advance of quoting any security requirements. This check could for example validate the following information,

1. Valid company name
2. Company registration number & record same on system
3. Credit score to determine whether business is a low/medium or high risk company (see Table A below)

The deposit amount required is generally based on the approximate electricity consumption and will generally equate to the value of two bills.

In the event of a recently established Company where no accounts have been returned or no Credit Score is available, Electric Ireland needs to be in a position to make a decision on what terms to do business with a business customer.

Where it is appropriate to accept direct debit only as security, we reserve the right to apply a deposit or issue the account for disconnection if the customer defaults on direct debit payments. There are other cases where it is necessary to have discretion e.g. Liquidations or Receivership.

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

Security deposits should reflect the risk and exposure with the deposit amount required being based on the approximate electricity consumption and should generally equate to the forecasted value of two bills.

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

Yes, but subject to credit status of the customer and their payment record, security deposits will be automatically credited to the account following the 14-month anniversary of all payments being made in line with agreed credit terms. This period would also need to cover situations where demand is growing altering the associated risk calculation.

**Q10. Do respondents think that there should be a formal requirement on licencees which disallows the rollover of a contract (similar to that currently provided for domestic customers). If so please provide a clear rationale as to why.**

We do not agree as customers could be left without energy supply where they have not responded to reminders from their energy supplier. This has to be balanced with a responsibility on business owners to ensure that their energy supply is secured where their supplier has provided advance notice that the contract is due to expire.

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

Yes, there are forecasting implications and hedging/risk exposure. It is important not just to look at individual customers but where groups or large numbers of customers have sizable aggregated demand creating the risk. The removal of exit fees would provide customers with the opportunity to leave contracts without regard to the consequential costs their early departure impose on suppliers and could result in the addition of risk premiums penalising all customers even those who don't choose to switch in advance of contract expiry.

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR?**

The level of exit fees are set by suppliers to manage their costs associated with administration, hedging, risk and loss of profit arising from early departure of customers within the terms of a contract. These level of these fees are inherently regulated by the business requirement to be competitive in the market and should not need to be mandated.

**Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?**

Startup small businesses might particularly benefit from the introduction of prepayment meter solution. However, the challenge to date has been the availability of meters for three-phase operation

**Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.**

No

**Q15. Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.**

In principle yes if there is a material change to their Ts&Cs possibly e.g. Price or critical service considerations

**Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why.**

No – we would expect that business customers whether small or large will review available options in the market. This approach would be a departure from norms across all business sectors.

**Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.**

Electric Ireland believe the regulator has advanced some interesting and challenging ideas in relation to supporting small businesses operating in the energy market and we have hopefully reflected this in our responses above. At this point we have no additional measures to propose

## Annex V

### Energia



## **Response by Energia to Utility Regulator Consultation**

### ***Measures to Enhance the Operation of the Small Business Energy Market***

**5<sup>th</sup> December 2017**

## **1. Introduction**

Energia welcomes the opportunity to respond to this Utility Regulator (UR) Consultation on Measures to Enhance the Operation of the Small Business Energy Market. Energia has extensive experience in the commercial sector in Northern Ireland and as such is well placed to respond to this consultation. Energia are supportive of measures that are necessary to enhance the effectiveness of competition in Northern Ireland and believe that an informed customer is a more engaged customer. However, an appropriate balance needs to be struck between the duties and obligations imposed on suppliers and, ensuring that customers have appropriate agency and engage with the market. There is a risk when regulatory measures seek to standardise suppliers' approaches that competition ultimately suffers; in a competitive market, regulatory measures to enhance competition should be a last resort. This response outlines our general points before addressing the consultation questions and finally concluding.

## **2. General Comments**

Energia welcomes this review and is supportive of a number of the initiatives contained within the paper. However, the UR seems to have taken the view that suppliers are predominantly responsible for customers not engaging in the market. Whilst suppliers always seek to improve their commercial offerings, there is also a responsibility on customers to be informed and consider the product most suitable to them and their business, and in this vein there may be more that the UR can do. A standardisation or simplification across the small I&C may result in a market that does not deliver appropriate products, is less competitive and has increased costs. As such a balance should be struck between focusing on the supplier and encouraging small I&C customers to engage more with the market.

The application of the measures in the paper will apply a different set of rules and practices in a subset of the commercial sector. This will create complexities for suppliers and customers alike, particularly customers at the consumption band thresholds. While the proposed consumption thresholds are clear, their application to specific customers is unlikely to be. It is also unclear as to how suppliers would monitor the consumption thresholds and apply the proposed measures appropriately. Customers may move up and down consumption bands depending on a given year's consumption and as such would be very difficult to capture. This becomes particularly cumbersome for many of the proposed measures that are to afford additional protections to a nebulous category of customers.

One of the main drivers behind these suggested changes are the CMA finding on small I&C. As suppliers have repeatedly pointed out the GB and NI markets differ greatly and there is not necessarily a read across between the two. Apart from stakeholder engagement little evidence has been provided in relation to the need for these changes, some of which will come at a significant cost and may hamper competition in the small I&C.

The paper seeks to be prescriptive in terms of a supplier's commercial interaction with the customer and runs the risk with many of the proposals surrounding deposits, of exposing suppliers to increased debt. Suppliers have to be able to manage their risk or they will face an increased debt burden brought about by regulatory



measures. The cumulative effect of these measures may result in increased prices for small I&C as the increased debt burden, less aggregation and cost of implementing the proposed measures increases supplier's costs.

### 3. Consultation Questions

***Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?***

No Comment.

***Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.***

No Comment.

***Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?***

Energia agrees with setting the threshold at 50MWh for small I&C electricity and 0-73.2MWh for small I&C gas customers. However, as highlighted herein, it is unclear how this would be monitored or indeed implemented by suppliers. Sufficient consideration does not appear to have been given to the difficulty of implementing these measures for a dynamic subset of commercial customers.

***Q4. Do respondents agree with the issues highlighted in Section 4 –if not please provide explanation/rationale as to why?***

Energia recognises the topics discussed in Section 4 of the paper, although we do not necessarily agree that these are issues requiring regulatory intervention in this context and/or that justify the proposals outlined later in the paper. For example, at a high level the approach by the UR in the paper and in some of the suggested measures, does not necessarily find a balance between encouraging engagement in the market by making the market work for small I&C customers and encouraging this cohort of customers to engage more with suppliers and the market. Businesses also have a responsibility to seek out the best value deals and products that are suitable to them. Much like in other sectors this will always require some time and energy on the behalf of the customer to seek out a suitable deal. This is a fundamental principle of a competitive market where suppliers differentiate themselves from competitors by offering a range of products, differentiated by price and quality of service.

***Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?***

No comment.

***Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.***

Commercial customers receive bespoke offers that are applicable at that point in time. Offers vary according to the customer's consumption, contract length and hedging. In addition the prices are changed every week. Publishing prices based on the above would represent a significant administrative burden on suppliers and would arguably be of questionable benefit to the customer. Furthermore, if the assertion in the paper that customers don't have time to compare prices is correct then presenting this information may be of limited value to the customer.

***Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why***

Suppliers should be free to calculate a deposit based on the commercial risk that a customer represents. As suppliers deal directly with a large cross section of customers they are best placed to understand the risk that a specific customer may represent. In addition suppliers are directly exposed to the implications of any credit issue. Energia is open to providing a high level overview of our deposit requirements, however, this should be limited to an overview of the requirement as the details of specific deposits should be appropriately calculated on case-by-case basis.

***Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.***

Similar to the above point (Q7), as suppliers deal with the customer directly and are the ones exposed to the risk, they are best placed to assess the risk associated with specific customers and set an appropriate level for any deposit. Energia are supportive of a general deposit threshold of 3 months but suppliers must be able to assess their exposure to risk and apply greater deposits in certain circumstances.

***Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.***

Suppliers apply deposits based on their assessment of the risk that the customer represents. Whilst regular payment will indicate that some customer's present a reduced financial risk this is not true for all customers. Applying a 12-month threshold may leave suppliers exposed to greater risk. As a matter of course, Energia reviews a customer's credit risk regularly and will refund the deposit where the customer no longer presents that level of risk. Energia also reviews customers' individual accounts, upon request, to assess whether the customers situation has materially improved, thus necessitating a revision to the level of deposit held and/or the duration of any such deposit.

***Q10. Do respondents think that there should be a formal requirement on licencees which disallows the rollover of a contract (similar to that currently***

***provided for domestic customers). If so please provide a clear rationale as to why.***

Energia are supportive of this proposal to disallow the rollover of a contract for 12-months.

***Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?***

Exit fees are appropriate in the context of a contract and suppliers should be able to apply them. Customers may be aggregated and hedged based on a specific price that is contingent on certain volumes. As such a customer breaking their contract can result in a loss for suppliers. Exit fees are also considered to be justifiable in the context of limited rollover contracts (e.g. 3-months). There is also an administrative cost associated with acquiring a new customer that is reflected in the exit fees,

***Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR?***

Similar to the previous comments, suppliers set exit fees at an appropriate level to the contract being offered. Energia include in the T&Cs the exit fees that apply to each customer segment so customers are informed of the exit fee upon entering a contract. Furthermore, early exit fees may play a part in competition with customers reluctant to engage with suppliers who apply unreasonable exit fees.

***Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?***

Energia has no objection to the introduction of PAYG meters assuming that it is technically feasible and suitable to this cohort of customers.

***Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract? If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.***

Similar to the point on exit fees, customers are hedged and an early exit can result in a cost to the supplier. As small I&C are aggregated and hedged to offer the best price, introducing a cooling off period would limit a supplier's ability to hedge and offer the most competitive rates. Also, in a market where rates change weekly, the implementation of a cooling off period could be problematic for customers and suppliers.

***Q15. Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.***

The need for such a measure as the 21 days' notice for fixed term contract is questionable, especially in the context of the UR proposal to include a message on bills that refers to other tariffs being available. There is likely to be a significant system cost associated with automating a 21 day notice for the end of a fixed term contract. This is further complicated by the customer threshold to which this applies.

The difficulty in automating the above notices combined with the issues in consistently capturing customers below the 50MWh threshold means that the implementation of this proposed requirement would be costly with a significant lead in time.

***Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicate that other tariffs may be available to them? If not please provide a clear rationale why.***

Including a message on all bills that other tariffs may be available could lead to confusion amongst customers who are within contract. It will likely lead to increased calls from customers in contract which results in additional costs for suppliers. If such a measure was to be implemented it should only be after the customer's contract has ended.

***Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.***

As referenced in this paper there is a call for evidence on Third Party Intermediaries (TPIs) open. The growth of this unregulated component of the energy market is of concern. It is critical that the UR ensure that customers are adequately protected from rogue TPIs by regulating this segment of the market. Failing to do so will mean that customers will not be afforded the same protections as they are when they engage with suppliers directly and will not receive the best price available. Regulating the TPI sector would likely deliver more in terms of reduced prices for customers than the measures contained within this paper.

## **4. Conclusions**

Energia is supportive of some of the measures contained within this proposal and welcomes efforts to encourage customer engagement in the market. However, the level of detail and prescription in some of the proposals is of concern. There is a combined issue of the cost of implementation and the unintended consequence of such prescriptive measures. Whilst a lot of the assertions here are based on small I&C having similar consumption to domestic they are still two fundamentally different customer segments, with the latter having a duty of responsibility to engage with the market to find a suitable and competitive product.

Regulatory intervention should be evidence based and measured in its approach. It is not clear that a significant issue has been identified here with the main driver behind the paper being the CMA findings in GB. Yet based on this a raft of very prescriptive measures has been proposed.

Further consideration needs to be given to the cost, unintended consequences and indeed the need for some of the proposed measures.

## Annex VI

### Firmus Energy Supply

Nicola Sweeney  
Utility Regulator  
Queen Street  
Belfast  
BT1 6ED

Firmus energy  
A4/A5 Fergusons Way  
Kilbegg Road  
Antrim  
BT41 4LZ

5 December 2017

Dear Nicola,

**RE: Utility Regulator Consultation – Measures to Enhance the Operation of the Small Business Energy Market**

Firmus energy (Supply) Ltd. welcomes the opportunity to respond to the Utility Regulator's consultation regarding measures to enhance the operation of the small business energy market in Northern Ireland.

**Background and Scope**

We note the proposals within this consultation relate to small business customers using less than 2,500 therms (73,200 kWh) per annum. As the current natural gas supply price control (SPC17) is in place until 31 December 2019 and its scope includes all customers using less than 2,500 therms (73,200 kWh) per annum, natural gas customers within the scope of this consultation are protected by a price control regime.

**Measure 1 - Tariff Transparency**

As noted above, the current natural gas supply price control regime provides protection for small business customers. SPC17 states *"Industrial and commercial customers using less than 73,200 kWh (2,500 therms) per annum are charged a tariff with the same structure as the domestic credit tariff."*<sup>1</sup>

SPC17 introduced licence modifications which set out how the incumbent supplier will calculate the maximum average price for its regulated tariff. It also outlines the biannual regulated tariff review process which includes engagement between the Utility Regulator, gas suppliers, CCNI and the Department for the Economy. The Utility Regulator states that this can "help guard against tariff volatility for consumers."<sup>2</sup>

Firmus energy agrees that as far as possible suppliers should provide transparent price information on their website. Firmus energy notes that the presence of the regulated tariff encourages other suppliers to publish their tariff information, and where this is the case the same level of transparency is provided to consumers as that required under the GB Energy Market Investigation (Microbusinesses) Order

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<sup>1</sup> SPC17 Final Determination, Page 15, paragraph 5.27

<sup>2</sup> SPC17 Final Determination, Page 14, paragraph 5.16

2016 Article 3 “Obligation to disclose Required Price Information to Relevant Micro Business Customers”.

#### Measure 2 – Deposit calculation

The SPC17 Final Determination notes *“firmus currently operate with a bad debt level within the existing control at 0.2% of credit revenue. This is a comparatively low rate when compared with other supply companies both in Northern Ireland and GB...firmus have consistently managed credit debt at a low level due to having proper procedures in place for preventing debt.”*<sup>3</sup>

One element of the firmus energy debt prevention procedure is the firmus energy Credit Management Policy which stipulates that all I&C customers will be subject to a credit check prior to sign-up.

Any deposit levied upon customers is resultant from that credit check process and the customer’s forecast annual consumption. Whilst information regarding the requirement for a credit check can be published, publication of indicative deposit estimates would not be appropriate.

#### Measure 3 – Deposit level

Firmus energy notes the proposal that deposits should be capped at the equivalent of 3 months consumption and should be returned after a 12 month period of timely bill payment. This is in line with Domestic Customer deposit Licence requirements.

Firmus energy agrees that this proposal is reasonable, however, firmus energy note that the rate of debt is higher within the customer group that have had their deposit returned than the group of customers whose deposit continues to be held by firmus energy. This would invariably negatively impact upon the low firmus energy’s levels of bad debt.

#### Measure 4 – Rollover of Contracts

Firmus energy would welcome the extension of Licence Condition 2.18 to also cover small business customers. This would prevent suppliers from rolling over contracts without notifying the customer of their right to terminate.

#### Measure 5 – Exit Fees

Firmus energy agrees that reasonable exit fees are justifiable where a customer has entered into a contract with a supplier. This provides the supplier with protection from liabilities associated with gas purchasing on behalf of the customer.

Firmus energy note that exit fees already form part of some supplier’s terms and conditions and would welcome further detail regarding the Utility Regulator’s proposal that it take part in the approval of exit fees.

#### Measure 6 - Prepayment Meters

On 1 September 2017 firmus energy provided the Utility Regulator detail regarding the factors that would prevent the introduction of prepayment meters for small business customers. That response is appended to this letter.

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<sup>3</sup> SPC17 Final Determination, Page 49, paragraph 7.4.23

The reasons outlined include important practical considerations:

- prepayment meters are not manufactured in sizes greater than U6. However, approximately half of small business customers use meters larger than U6
- incomplete switching can occur with the use of prepayment meters. This creates a larger debt risk to suppliers given the higher consumptions associated with business users
- it would be difficult for suppliers to calculate and apply the relevant tax rate and the climate change levy
- prepayment top-ups are limited to £49 per single transaction which is not suitable for business customers with higher consumption

It is also important to note that the introduction of prepayment meters for small business customers would be a barrier to competition in the gas supply market and could limit customer choice. This is because those suppliers that do not have a domestic offering would have to invest in disproportionately costly systems development in order to facilitate a prepayment option for small business customers.

Firmus energy does not believe a significant demand for prepayment meters exists within the small business market as our anecdotal evidence indicates we have received no more than one or two enquiries per year relating to prepayment meters for business customers.

Given the lack of demand and the difficulties outlined above regarding implementation, firmus energy does not believe prepayment meters would enhance the operation of the small business market.

#### Measure 7(a) - Cooling Off Period

Firmus energy agrees that consideration should be given to granting a cooling-off period for customers but recognise that where a customer has entered into a contract with a supplier the supplier may have liabilities associated with gas purchasing on behalf of the customer.

Firmus energy would welcome the further clarification that may arise from responses to this consultation regarding how a cooling-off period for small business customers could be implemented whilst recognising suppliers' liabilities.

#### Measure 7(b) - Transparency of Ts&Cs

As a responsible supplier firmus energy welcomes the proposal to introduce an obligation to inform customers of a change in their terms and conditions, a 21 day notification period for price changes and notification regarding the end of a fixed term contract. This will help ensure all suppliers follow good practice as they undertake customer interactions.

#### Measure 7(c) – Mandatory Statement on Bills

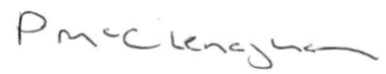
Firmus energy is supportive of the narrative's intentions to inform customers. However, a mandatory requirement for this statement is not necessary. Within the domestic sector, such a statement may assist vulnerable customers or those unaware of competition where it exists. The level of switching activity within the business customer market indicates that customers are aware of the range of suppliers and tariff options available to them.

\* \* \*



We look forward to further engagement with the UR and other stakeholders as part of this consultation process.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'P. McClenaghan', with a stylized, flowing script.

Peter McClenaghan  
**Regulatory Affairs Manager**

## Appendix 1: first submitted to Utility Regulator on 1 September 2017

### firmus energy

#### Prepayment Meter Offering For Small Business Customers

At the Gas Market Opening Group (GMOG) meeting held on 14<sup>th</sup> June 2017, all Distribution Network Operators (DNOs) were asked to provide comments regarding the viability of offering prepayment meters to small business customers within the Northern Ireland natural gas industry.

Firmus energy is supportive of the work that the Utility Regulator (UR) is undertaking to enhance the operation of the small business energy market, through industry meetings and the consultation due later this year. We note the importance of ensuring that changes made to natural gas industry procedures and practices are in response to established market requirements, specific to Northern Ireland. Any alterations to current processes should be proportionate to the benefits and result in minimal costs to the natural gas industry and ultimately, the consumer.

The below response outlines the potential issues with a prepayment meter offering for small business customers, in relation to DNOs, Gas Suppliers and consumers.

#### Little Demand for Prepayment in Business Sector

Firmus energy do not offer prepayment meters to business consumers. In our ten years of operation this has never prevented a connection to the network from proceeding. Resultantly we do not believe a significant demand for prepayment meters exists within the small business market. Additionally, historical evidence indicates we have received no more than one or two enquiries per year relating to prepayment meters for business customers.

#### Barrier to Competition

At present, there are six Gas Suppliers in the Ten Towns Network, all of which are active in the industrial & commercial (I&C) market. Only two of these Suppliers are currently certified to supply customers in the domestic market. Those Suppliers that do not have a domestic offering would have to invest in systems development in order to facilitate a prepayment option for small business customers. This would include the arrangement of agreements with prepayment facilitators (e.g. PayPoint / Siemens). Such agreements may be disproportionately costly for suppliers to implement with only a small number of customers to service.

As a result, the implementation of prepayment meters in the I&C market would advantage those suppliers already active in the domestic market, i.e. those with existing relationships with PayPoint or Siemens, and lead to a negative impact on competition.

#### U6 Meters Only

Prepayment meters are only manufactured to a maximum U6 meter size; a large proportion of the small businesses in the firmus energy network require meters larger than U6. Therefore,

a DNO would not be in a position to offer a prepayment solution to all business customers in this consumption based category.

Of the 1,250 commercial SMPs in the Ten Towns EUC1 category, over 45% are currently fitted with a meter larger than a U6. The meter size is determined by the hourly flow of natural gas through the meter and this will vary greatly depending on individual customer requirements – there is no guaranteed correlation between annual consumption and meter size.

### Switching

In order to switch between Suppliers on a prepayment meter, the customer must change the Supplier values on the meter within a certain time window. This is done by receiving a message at a designated PayPoint location while adding credit to their account after an agreed registration date. The process often results in incomplete switches as the customer does not transfer the message correctly to the meter. This results in one supplier paying for the natural gas and another receiving the payment. This would be a greater problem for I&C suppliers, given the higher consumption rates in the I&C markets. However this risk to suppliers is not present when customers use credit meters.

### Top-up Limitations

Prepayment meters can help a customer to manage their energy usage. However, given the higher average consumption of a business customer, they may be inconvenienced by frequently running out of credit. This may also lead to an increase in maintenance call-outs for DNOs and have resultant cost implications.

Prepayment meters are facilitated by PayPoint platforms, which currently have a top-up limit of £49 per single transaction. This amount has been set by PayPoint, taking average domestic consumer usage into account and is applied across the natural gas industry. A £49 top-up limit is unlikely to be practicable for a business customer with a higher consumption and could result in multiple top-ups in a short amount of time and/or customers frequently running out of natural gas. Increasing the top-up limit would require system development by PayPoint.

### VAT & CCL

The prepayment meters that are installed across Northern Ireland are created to accept tariffs charged at a pence per kWh rate and these tariffs include a uniformly applied domestic VAT rate of 5%. Currently, the amount of VAT that is charged to I&C customers is determined at the end of the billing period, by using the average daily consumption, applying the de Minimis rule. Where the average consumption over the billing period is under 145kWh per day, the lower VAT rate of 5% is applied, rather than 20% for I&C businesses. This is calculated by Gas Suppliers at the end of each billing period and can vary depending on customer patterns throughout the year. The use of prepayment meters

for I&C customers would require a uniform VAT rate of 20% to be included in the pence per kWh tariff for I&C PAYG customers.

Any I&C customer with a VAT exemption (e.g. falls below the de Minimis limit or has charity status), would then need to proactively apply to their Gas Supplier for a VAT rebate. This process would result in additional administrative burdens for Gas Suppliers to monitor and verify consumption at each meter point.

Similarly, the Climate Change Levy uses a de Minimis rule to gauge average consumption in order to avail of a reduced CCL rate. As this is also calculated using average consumption during a billing period, it would also add an additional level of complexity for customers using prepayment meters.

\* \* \*

Firmus energy look forward to discussing this matter further with the Utility Regulator and other industry stakeholders.

## Annex VII

### Federation of Small Business

## **Federation of Small Business**

In response to the UREGNI consideration of the small business energy market, we would like to offer the following observations:

The SME sector has called for greater transparency of tariffs for small businesses. FSB commissioned a major piece of research from the Ulster University Business School, who extensively surveyed small business owners across Northern Ireland, resulting in The Contribution of Small Businesses to Northern Ireland report.

The research showed that the cost of energy ranks high in the list of FSB members' concerns over barriers to growth, with 35% of respondents citing energy costs as an obstacle to doing business. FSB members also called for "a reduction in energy and fuel prices" as one of the top actions suggested by members for the Assembly to take.

Our research, at that time, found that Northern Ireland had the **sixth highest electricity prices in Europe** for 'very small' business customers – our typical businesses. Most business consumers in this category in Northern Ireland were found to be paying **around 10% more for electricity** than their peers in other parts of Europe and the UK. For these users, energy is the second largest cost, so the need to have easy access to transparent prices and tariff structures is essential to assist the most vulnerable firms to reduce this aspect of their overheads.

FSB NI's recommendations in relation to transparency of tariffs, as set out in our 2016 Assembly Election Manifesto, include:

- ***Empower small businesses to compare different electricity contracts and tariffs by compelling the suppliers to publish easily understood and compared information***

Having easily understood and comparable information from the competing energy suppliers would enable small businesses to work out the their best energy deal. Crucially, it would also serve to provide benchmarks against which offers and renewals options could be easily assessed.

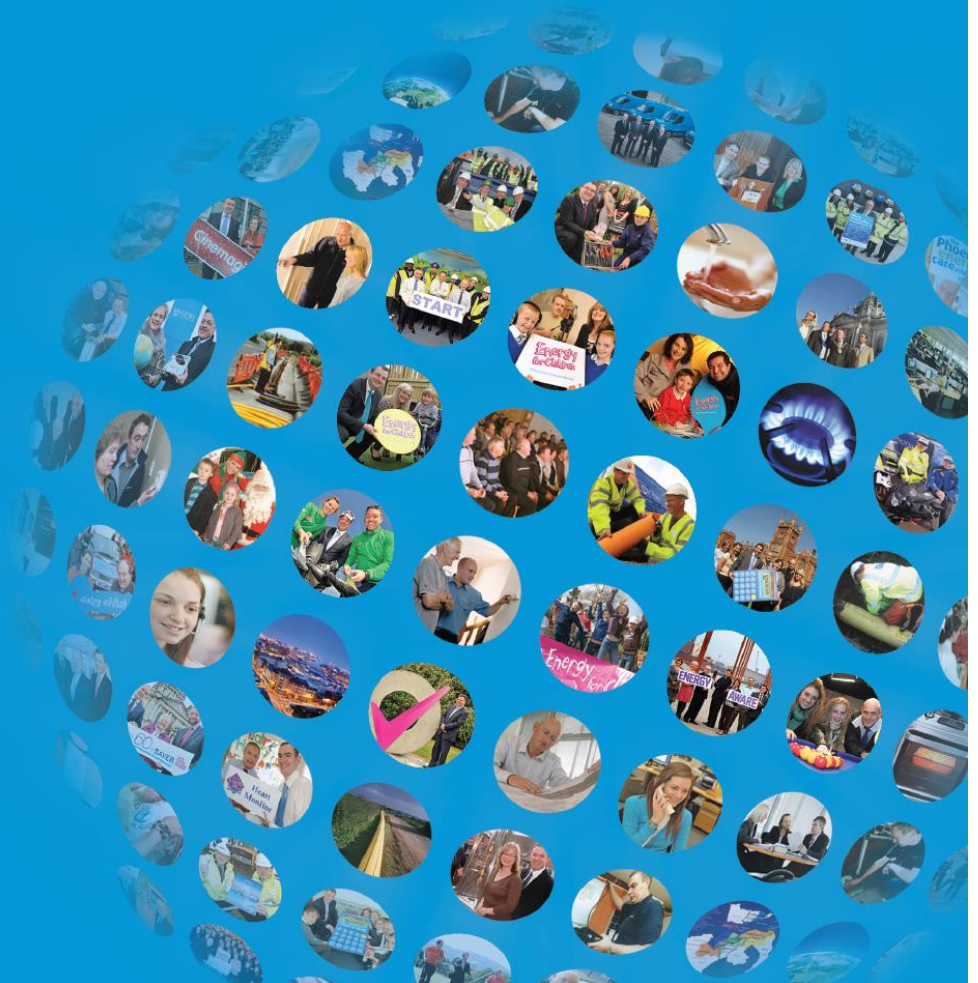
## Annex VIII

PNGL



# Measures to Enhance the Operation of the Small Business Energy Market

October 2017





Phoenix Natural Gas Limited (“**PNGL**”) welcomes the opportunity to respond to the Utility Regulator’s (“**UR**”) consultation on measures to enhance the operation of the small business energy market.

PNGL has concluded that the majority of measures proposed for the small business natural gas sector can only be delivered by gas suppliers. The only potential measure that may impact on PNGL is the use of a prepayment solution and, as requested by UR in advance of this formal consultation, PNGL provided UR with its views on the viability of this meter type for small business natural gas customers on 1<sup>st</sup> September 2017 (Appendix A). We do not therefore repeat these here.

UR’s October 2017 consultation suggests that stakeholders indicated their support for prepayment metering for small businesses as it:

- could help address concerns in relation to the level of deposits required for some businesses by energy suppliers; and
- may help small businesses budget their energy costs more appropriately.

In response, PNGL believe the issue of deposits is best addressed by suppliers and notes the various considerations brought forward for consultation.

We note that the measures being considered by UR are in line with the CMA findings and package of remedies for the GB market; however it does not appear that the use of prepayment meters in this small business sector was proposed as a potential remedy to the issues identified in GB.

UR’s decision should balance the operational viability issues with any perceived consumer benefit.



## APPENDIX A

# Review of the Viability of Prepayment Meters for Small Business Gas Customers



Phoenix Natural Gas Limited (“**PNGL**”) welcomes the opportunity to provide its view on the viability of prepayment meters for small business gas customers.

There are two types of prepayment meters used in PNGL’s Licensed Area with different functionality; the Pay As You Go (“**PAYG**”) meter (Libra 100 series) is facilitated through Paypoint and the Quantum meter (Libra 200 series) is facilitated through Siemens. The Quantum meter is also used as a debt recovery meter in PNGL’s Licensed Area.

Gas Suppliers will be best placed to address many of the viability issues however PNGL would make the following high level observations:

### 1. Tariffing Considerations

Gas Suppliers are best placed to address any tariffing issues however PNGL has identified two key considerations, VAT and the Climate Change Levy (“**CCL**”). We understand:

- Gas Suppliers provide their tariffs to PayPoint inclusive of VAT. Domestic customers pay VAT at 5% and I&C customers pay VAT at 20%. Furthermore some I&C customers pay VAT at the reduced rate, 5%, e.g. some charities or small businesses using small volumes of gas, if they meet the appropriate HMRC guidelines. If small business users were to avail of prepayment metering, Gas Suppliers would need to provide each different tariff to PayPoint to ensure that the correct VAT rate was being applied to the end consumer. As PNGL does not have a relationship with PayPoint, we have not explored whether current natural gas prepayment metering technologies allow for the provision, and indeed application, of multiple tariffs by each Gas Supplier. However, PNGL would point out that processes developed to allow customers using prepayment meters to switch Gas Supplier requires the Gas Supplier to issue individual market messages to Paypoint to facilitate the request and this type of approach may need to be utilised for application of correct VAT rates. The switching process has had to consider separate Gas Supplier processes to address the issue whereby customers fail to pick up these messages via Paypoint, i.e. they fail to top-up within a given period, and switches are therefore incomplete. In this instance failure to pick up messages may also result in the incorrect application of VAT rates which presents issues for Gas Suppliers and customers if and when the error is identified.
- CCL is an environmental tax on businesses. Similar to VAT, there are different rates depending on a business’s consumption or the type of business itself. Again Gas Suppliers would need to consider the CCL requirements and account for each scenario within the range of tariffs it would need to provide to Paypoint for the small business sector. We understand that it may not be possible to manage CCL using a prepayment meter and that the Gas Supplier may need to consider different ways to collect this CCL from small businesses.

Gas Suppliers will be in a position to advise if the same processes apply for Siemens. More detailed analysis by Gas Suppliers will be required to understand if prepayment metering for small businesses

is a viable option given the current functionality of natural gas prepayment meters in Northern Ireland.

## 2. Operational Considerations

- Prepayment meters are received by PNGL pre-programmed with the commissioning Gas Supplier's assigned code<sup>1</sup>, i.e. SSE Airtricity's ID, and therefore any request for a prepayment meter by an I&C consumer at the point of connection can only be facilitated by the extension of the commissioning supplier process currently applicable in the domestic market to the I&C sector. Currently all I&C customers can choose their gas supplier at the point of connection and therefore reintroducing restrictions on gas supplier choice may be considered a backward step for the development of supply competition by current market participants. The use of prepayment meters for new connections is also restricted by the VAT issue detailed in section one. If different VAT rates could apply for individual meters, it could only be facilitated post connection with the Gas Supplier issuing the appropriate market message to the prepayment meter service provider.

*PNGL could not support the introduction of different I&C connection processes depending on meter type.*

- PNGL has developed its Distribution Network Code, market procedures and supporting systems e.g. SMP Confirmation system, to allow Gas Suppliers to choose the market in which they operate **based on tenure**. To date the majority of Gas Suppliers have chosen to operate in the I&C sector only. If prepayment metering were to be extended to the I&C sector and Gas Suppliers were allowed to offer (i) credit meters only; or (ii) credit and prepayment metering, PNGL would have to revise many of its market procedures including its market entry process, I&C sales and new connection procedures as well as undertake system development to facilitate each Gas Supplier's participation in the market. Given the size of any potential prepayment market, PNGL would not support this further I&C market sector dissection and the costs associated with process and system amendments would outweigh any benefits to consumers.

*These changes were not foreseen by the Utility Regulator ("UR") when making its GD17 Final Determination and would require time and resource to develop.*

- One of Gas Suppliers' primary reasons for choosing to operate in the I&C sector only is the level of additional processes they would have to have to facilitate domestic market participation and, in particular, they often reference the complexities of operating in the prepayment market e.g. costs associated with putting in place and maintaining contracts with Paypoint and Siemens as well as the additional processes associated with switching prepayment customers set out in their Licence and SMP Agreement. PNGL therefore has

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<sup>1</sup> Please note that PNGL has discussed the cost effectiveness of this process during the new connection process with both UR and gas industry participants.

concerns that the obligation to facilitate prepayment metering in the I&C sector could see Gas Suppliers exiting the market, thereby damaging the ongoing development of supply competition in Northern Ireland.

- Prepayment meters are more expensive than credit meters. UR's GD17 Final Determination provides an allowance for the installation of a credit meter in small business premises. If prepayment meters were made available to the small business sector, a small business seeking a new connection to the Network would be required to pay the difference in cost. If an existing small business gas user wished to switch to a prepayment meter, they would be required to pay for the meter exchange, currently £72 plus VAT. These increased charges may outweigh any perceived benefits of prepayment metering from the outset.
- Prepayment meters are a convenient budgeting tool. This may lead to a decrease in the number of isolations for debt where prepayment meters are installed from the outset. However at the end of 2016 there were already c.8,400 small businesses connected to the PNGL Network. With only c.350 additional connections assumed each year in GD17 the budgeting benefits of prepayment metering in the small business sector may never be fully realised.
- 'Topping-up' will be a new operational consideration for the small business. Gas Suppliers will be able to provide more detailed comments however we understand that:
  - only two cards can be held by the consumer at one time with the maximum vend £49;
  - the technology available for topping-up are not as advanced for natural gas as they are for electricity e.g. you cannot top-up 24/7 online;

The small business will therefore have to manage its operations to ensure that it has sufficient credit on its meter to run its business. If the meter runs out of credit, particularly when prepayment outlets are closed, the business may find itself unable to operate.

- If prepayment meters were viable for the small business sector, PNGL would expect an increased number of calls given that the functionality of the prepayment meter is more complex than the credit meter. This also means that there are more things to go wrong e.g. card faults that would require a visit by an Engineer. UR's GD17 Final Determination does not allow for a step increase in the number of calls received by PNGL or indeed increased callouts which may result. In addition UR will need to consider the Individual Guaranteed Standards of Service for natural gas to ensure that, if deemed appropriate, the service levels applicable to domestic consumers reporting problems with prepayment meters are also applicable to small business users. These increased calls and callouts should also be factored into any cost benefit analysis and may outweigh any perceived benefits of prepayment metering from the outset.

## Annex IX

### Firmus (Network)

## firmus energy

### Prepayment Meter Offering For Small Business Customers

At the Gas Market Opening Group (GMOG) meeting held on 14<sup>th</sup> June 2017, all Distribution Network Operators (DNOs) were asked to provide comments regarding the viability of offering prepayment meters to small business customers within the Northern Ireland natural gas industry.

Firmus energy is supportive of the work that the Utility Regulator (UR) is undertaking to enhance the operation of the small business energy market, through industry meetings and the consultation due later this year. We note the importance of ensuring that changes made to natural gas industry procedures and practices are in response to established market requirements, specific to Northern Ireland. Any alterations to current processes should be proportionate to the benefits and result in minimal costs to the natural gas industry and ultimately, the consumer.

The below response outlines the potential issues with a prepayment meter offering for small business customers, in relation to DNOs, Gas Suppliers and consumers.

#### Little Demand for Prepayment in Business Sector

Firmus energy do not offer prepayment meters to business consumers. In our ten years of operation this has never prevented a connection to the network from proceeding. Resultantly we do not believe a significant demand for prepayment meters exists within the small business market. Additionally, historical evidence indicates we have received no more than one or two enquiries per year relating to prepayment meters for business customers.

#### Barrier to Competition

At present, there are six Gas Suppliers in the Ten Towns Network, all of which are active in the industrial & commercial (I&C) market. Only two of these Suppliers are currently certified to supply customers in the domestic market. Those Suppliers that do not have a domestic offering would have to invest in systems development in order to facilitate a prepayment option for small business customers. This would include the arrangement of agreements with prepayment facilitators (e.g. PayPoint / Siemens). Such agreements may be disproportionately costly for suppliers to implement with only a small number of customers to service.

As a result, the implementation of prepayment meters in the I&C market would advantage those suppliers already active in the domestic market, i.e. those with existing relationships with PayPoint or Siemens, and lead to a negative impact on competition.

#### U6 Meters Only

Prepayment meters are only manufactured to a maximum U6 meter size; a large proportion of the small businesses in the firmus energy network require meters larger than U6. Therefore,



a DNO would not be in a position to offer a prepayment solution to all business customers in this consumption based category.

Of the 1,250 commercial SMPs in the Ten Towns EUC1 category, over 45% are currently fitted with a meter larger than a U6. The meter size is determined by the hourly flow of natural gas through the meter and this will vary greatly depending on individual customer requirements – there is no guaranteed correlation between annual consumption and meter size.

### Switching

In order to switch between Suppliers on a prepayment meter, the customer must change the Supplier values on the meter within a certain time window. This is done by receiving a message at a designated PayPoint location while adding credit to their account after an agreed registration date. The process often results in incomplete switches as the customer does not transfer the message correctly to the meter. This results in one supplier paying for the natural gas and another receiving the payment. This would be a greater problem for I&C suppliers, given the higher consumption rates in the I&C markets. However this risk to suppliers is not present when customers use credit meters.

### Top-up Limitations

Prepayment meters can help a customer to manage their energy usage. However, given the higher average consumption of a business customer, they may be inconvenienced by frequently running out of credit. This may also lead to an increase in maintenance call-outs for DNOs and have resultant cost implications.

Prepayment meters are facilitated by PayPoint platforms, which currently have a top-up limit of £49 per single transaction. This amount has been set by PayPoint, taking average domestic consumer usage into account and is applied across the natural gas industry. A £49 top-up limit is unlikely to be practicable for a business customer with a higher consumption and could result in multiple top-ups in a short amount of time and/or customers frequently running out of natural gas. Increasing the top-up limit would require system development by PayPoint.

### VAT & CCL

The prepayment meters that are installed across Northern Ireland are created to accept tariffs charged at a pence per kWh rate and these tariffs include a uniformly applied domestic VAT rate of 5%. Currently, the amount of VAT that is charged to I&C customers is determined at the end of the billing period, by using the average daily consumption, applying the de Minimis rule. Where the average consumption over the billing period is under 145kWh per day, the lower VAT rate of 5% is applied, rather than 20% for I&C businesses. This is calculated by Gas Suppliers at the end of each billing period and can vary depending on customer patterns throughout the year. The use of prepayment meters for I&C customers would require a uniform VAT rate of 20% to be included in the pence per kWh tariff for I&C PAYG customers.



Any I&C customer with a VAT exemption (e.g. falls below the de Minimis limit or has charity status), would then need to proactively apply to their Gas Supplier for a VAT rebate. This process would result in additional administrative burdens for Gas Suppliers to monitor and verify consumption at each meter point.

Similarly, the Climate Change Levy uses a de Minimis rule to gauge average consumption in order to avail of a reduced CCL rate. As this is also calculated using average consumption during a billing period, it would also add an additional level of complexity for customers using prepayment meters.

\* \* \*

Firmus energy look forward to discussing this matter further with the Utility Regulator and other industry stakeholders.

Annex X

SGN

SGN Natural Gas,  
3rd Floor,  
83-85 Great Victoria Street,  
Belfast,  
BT2 7AF

Nicola Sweeney,  
Utility Regulator,  
Queens House,  
14 Queen Street,  
Belfast,  
BT1 6ED.

31 August 2017

Dear Nicola,

### **Measures to Enhance the Operation of the Small Business Energy Market**

Further to your email on 3 August 2017 and the Information Paper published in May 2017, SGN Natural Gas welcome the opportunity to comment on the proposals to enhance the operation of the Small Business Energy Market.

SGN Natural Gas recognise there would be several benefits in facilitating the installation of prepayment meters for small IC gas connections in addressing the concerns from this sector in terms of deposits required and the duration of which the deposit is held by a gas supplier.

There are however a few operational challenges which would need to be addressed before such a scheme could be successfully implemented. The following list includes some of these, but is not intended to be exhaustive:

- Supplier certification process – any supplier wishing to offer a gas prepayment meter to IC customers would need to have completed the market certification process for this type of meter and have suitable systems and processes in place to facilitate
- The treatment of commercial VAT on a prepayment meter would need to be considered
- The requirement for new IC prepay tariff(s)
- The inability to top up gas prepayment meters online (this is only possible with prepayment electricity meters)
- Determining who should be entitled to a U6 prepayment meter. Would this be based solely on the maximum hourly throughput?
- Impact on the new connection process. The IC connection would be subject to the domestic connection process or a least a variation of the domestic connection process.
- Potential for issues where a 'high risk debt' customer exceeds the flow limit requirements on a prepayment U6 meter and then requires a meter upsize which may not have the prepayment facility, therefore the requirement for a supplier deposit would return.

- Increasing the number of prepayment meters installed may have a knock-on effect on the number of 'no-gas' call outs which are required. This is a situation where an emergency site visit is required for health and safety, however the 'no gas' is a result of zero credit on the prepayment meter.
- Impact on maintenance cost for meters. Some work should be carried out to determine the effect on maintenance costs when increasing the prepayment meter numbers.

I trust you find this information helpful.

Yours sincerely

  
Chris Shine

Head of Finance and Regulation  
SGN Natural Gas

## Annex XI

### NIE Networks

# Prepayment Meters for Small I&C Customers

Feasibility Response

McHale Gemma  
01/09/2017

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## 1. INTRODUCTION

NIE Networks have been asked by the UR to assess the requirements for the introduction of prepayment meters for small I&C customers within the retail electricity market. This paper provides a high level assessment of areas for consideration during this consultation.

The paper will consider:

- Feasibility of the solution
- Meter Solution/ Costs
- IT System requirements

## 2. FEASIBILITY

There are c. 350,000 prepayment meters installed in domestic customer premises. Currently, there is no suitable meter solution or tariff available for the small I&C market. Whilst the concept has been tabled in the past, no Suppliers have raised a design request within the CDA forum to consider this concept further. The barriers which would prevent this in the past are still considered viable today.

### 2.1 Tariff Development

Currently, there is no specific prepayment tariff available for small I&C customers. This would need to be developed and approved by UR before it could be implemented. A lead time would be required to develop the tariff and would only become effective from 01 October of the relevant year.

### 2.2 Suitability of I&C customers

There are a wide range of business types within the small I&C industry. Consideration must be given to the suitability of each business and the feasibility of a prepayment installation. There are c 47,000 customers within the small I&C market. Approximately 4,000 of these sites will be council sites, NI Water sites phone masts, ATM machines and therefore it would not be feasible to install a prepayment meter in these instances. Further consideration must be given to the remaining sites, for example:

- Premises requiring continuous supply for security alarms, IT equipment, fridges etc
- Premises with a domestic residence on the first floor
- Premises with Lift access

This is not an exhaustive list and there will be a number of varying scenarios which must be considered before the proposed installation of a prepayment meter. A rigid set of criteria would have to be established and utilised by Suppliers prior to the selection of a prepayment tariff.

### 2.3 Health & Safety Issues

As above, certain commercial premises will not be suitable for a prepayment meter due to Health and safety reasons. Each request would need to be considered on an individual case basis.



Health and Safety concerns include

- Layout of premises – residential property located above
- Supply of stairway lighting
- Lift, disabled access

Again, this is not an exhaustive list and would be assessed under the same criteria as per the de-energisation process currently carried out by NIE Networks.

## 2.4 Other Considerations

A customer who avails of this prepayment meter should check if there are any implications on public liability insurance, or business insurance they may have in place. Consideration should be given as to any business insurance implications for a customer who would like to install a prepayment meter.

NIE Networks will have to consider resource implications for a number of retail market business processes, for example, Change of Legal Entity. Commercial premises can change ownership quite regularly and would involve a change of business type. If a commercial prepayment meter has already been installed at the premise but the change in ownership did not require a prepayment meter or alternatively did not meet the criteria for a prepayment meter, there would be a significant increase in the number of fieldwork visits and meter changes.

## 3. METER SOLUTION/COSTS

Currently, there is no prepayment meter available that would meet all the requirements of a commercial tariff. NIE Networks have been advised that it would be possible, however at this stage, it is difficult to quantify the full cost of this development. Secure meters have indicated that some assurance of volumes would be required before full development could proceed. This may have an impact on the overall cost of the meter.

It will be necessary to determine full requirements such as:

- Will friendly credit be applied to commercial premises? (as in the same manner as domestic meters)
- Should a commercial customer be allowed to self disconnect in all situations
- VAT registered businesses and ability of Keypad meter system to utilise potential different VAT rates

### 3.1 Forced Keypad Process

Within the domestic market, the forced keypad process is utilised by Suppliers for debt management. Within the commercial market, a de-energisation code of practice is in operation. This code of practice must stay in place. The forced keypad process should not be applied in this instance.

## 4. IT SYSTEM REQUIREMENTS

In addition to the meter solution, a number of changes will be required for both the Secure Meter PRI system and NIE Networks back end systems to facilitate the new tariff. Retail market Suppliers will also be required to make changes to their billing systems.

## 4.1 NIE Networks

At a high level the changes would include:

- Validation changes required for at least 4 different market messages
- New keypad tariff – changes to TCC codes
- Changes to fieldwork systems to accommodate meter change scenario
- In addition, a schema change is required to update the DUoS group for the new tariff, therefore, an implementation would be aligned with a co-ordinated schema release.

Further detail would be required on the solution prior to any system development.

## 4.2 Secure Meters – PRI System

At a high level, the changes would include

- New configuration for commercial prepayment meter
- New Tariff codes to be devised
- Vat Registration complexities resolved

## 4.3 Retail Market Suppliers

At a high level, the changes would include

- New Tariff development for different commercial types, applicable discounts
- Capability to select commercial credit meter changes to keypad

It is not possible for NIE networks to state the exact nature of system changes required for Suppliers. It is assumed that the above points will be a minimum requirement. The level of complexity of the system change for Suppliers will be dependent on the current level of automation with their systems.

## 5. CONCLUSION

Based on the high level points outlined, it is important to consider the costs of implementing such a solution against the benefits achieved in terms of feasibility and suitability of an adequate number of customers to make this solution viable. Engagement on the detailed design and development of processes would be required by all relevant participants to ensure that the solution meets all requirements including health and safety concerns.

NIE Networks consider that there are a number of complexities in relation to the concept of commercial prepayments meters which would reduce the viability of the solution.