

Consultation on the Implementation of the EU Third Internal Energy Package

This response details the comments of Phoenix Supply Ltd to the Utility Regulator's (UR) revised consultation on the Implementation of the EU Third Internal Energy Package and focuses on the draft licence modifications proposed by UR to give effect to the retail and consumer provisions of the Directive.

Phoenix Supply's comments on each of the draft licence conditions proposed are detailed below.

Generally throughout the consultation paper it is still evident that UR has sought to "gold plate" the requirements of the Directive. We maintain that this is not necessary and will increase the regulatory burden on suppliers and increase costs which are ultimately borne by consumers.

[New to Substitute] Condition 2.1: Deemed Contracts

The requirement of paragraph 4 (a) is too broad and requires clarification as to the meaning of "significantly exceeds". An over-recovery on our tariff as a result of a fall in wholesale gas costs would result in Phoenix Supply revenue significantly exceeding costs which could lead to a technical breach of this condition. UR should consider this issue and amend this condition accordingly.

[New to Substitute] Condition 2.6: Facilitating Supplier Transfers

Phoenix Supply notes that it will be required to ensure that its practices, procedures and systems facilitate supplier transfers within 15 working days and will inform UR should it become apparent that the numbers of notifications received are jeopardising its ability to comply with this timeframe. We would again point out that the driver of customer switching activity is currently the marketing activities of alternative suppliers and therefore are not known to Phoenix Supply. Therefore, it is unreasonable to expect Phoenix Supply to flag up if the 15 business days is likely to be breached in time for staff to be recruited and trained. Therefore, Phoenix Supply must be adequately resourced under the supply price control to deal with these eventualities.

[New to Substitute] Condition 2.8: Code of Practice on Complaints Handling Procedure

Phoenix Supply notes that it will be required to formalise a complaints handling procedure for all consumers which requires that “the period shall not be longer than three months, within which it is intended that complaints will be processed and resolved”.

Suppliers should be required to use all reasonable endeavours to process and resolve complaints within three months, however it should be acknowledged that there can be elements outside the control of the Supplier which prevent complaint resolution within three months. Phoenix Supply acknowledges UR clarification that this is concern is covered by the wording “within which it is intended that complaints will be processed and resolved”.

[Amended] Condition 2.10: Code of Practice on the efficient use of gas

Phoenix Supply does not agree that suppliers should provide a dedicated telephone information service for the provision of energy efficiency information. This is unnecessary bureaucracy and will increase costs to consumers. Phoenix Supply has a code of practice for the provision of information, publishes energy efficiency tips on its website and refers consumers to its website. The contact number for the Energy Saving Trust Advice Centre is included on the back of bills. Phoenix Supply believes that this best meets the demands of its customers as the Energy Saving Trust will be able to provide its customers with energy efficiency advice on all aspects of energy usage and not just the efficient use of gas.

[Amended] Condition 2.11: Code of Practice on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick

Phoenix Supply notes the proposal to extend the October to March gas supply cut off to households containing such vulnerable consumers whether or not they are the customer. Phoenix Supply only disconnects customers as a last resort. However, some recognition must be given to the rights of gas suppliers to recover debt. It is not always possible for a supplier to know, or to be able to confirm, the occupancy of a household and must base this on the information imparted to him by the consumer. Phoenix Supply maintains therefore that the paragraph 4(d) (ii) is too subjective and should be removed.

[New to Substitute] Condition 2.12: Code of Practice on payment of bills

Phoenix Supply notes that the proposed requirement to ensure that the recovery of debt is no more than 40% from each transaction, unless the consumer has requested a higher repayment percentage rate in writing. Phoenix Supply’s current procedures facilitate the customisation of the debt recovery for each customer and is in line with the recovery rate applied in Great Britain. This allows specific weekly amounts to be collected based on an individual’s ability to pay and size of the outstanding debt hence ensures that adequate safeguards are in place. Determining a specific percentage will be paramount to a one-size-fits-all debt collection process and would in fact leave customers in debt in a more vulnerable position. Furthermore Phoenix Supply believes that it is more transparent for

customers if they know the specific weekly maximum amount that will be collected for debt e.g. £10. As it stands Phoenix Supply's debt procedures take into account the individual needs of its customers and determine an appropriate debt recovery level based on their individual circumstances. No further licence amendments are required and Phoenix Supply maintains that the requirement to have a maximum recovery rate of 40% should be removed. This condition is not a requirement of the EU Directive and is unacceptable to Phoenix Supply.

[Amended] Condition 2.18: Terms and Conditions of Gas Supply Contracts

Phoenix Supply notes the proposed requirement to explain to and draw domestic consumers' attention to the principal terms of their contract before entering a contract for the supply of gas. Gas supply licences already secure transparency by virtue of the requirement on suppliers to provide customers with a written copy of their full terms and conditions before entering a contract. In fact, as a matter of good practice, Phoenix Supply provides each of its new consumers with a copy of their contract on commencement of supply and addresses any individual queries arising therefrom. It is important that customers read the full terms and conditions of every contract they enter into and it would be inappropriate for suppliers to draw customers' attention to only a few specific terms when arguably each of the terms therein are of equal importance.

Secondly Phoenix Supply sees no reference to either termination fees for domestic customers or a requirement to have these approved in advance by UR within the Directive. Paragraph 5(d) should therefore be removed.

Phoenix Supply strongly maintains that the detail of relevant tariffs should not be included within the body of the terms and conditions. The terms and conditions should advise customers where information on tariffs can be accessed. Tariff structures and prices have in the past changed on three occasions within a 12 month period and we are not aware of any supplier operating in Great Britain or Ireland who includes their tariff structure and unit prices within the detail of their general terms and conditions. This is not regarded as best practice.

Phoenix Supply considers that a supplier's general terms and conditions should require them to:

- Provide advance notice to customers of either a change in tariff structure or unit rates;
- Provide the actual tariff details to customers in advance of the change occurring;
- Subsequently provide tariff details (i.e. structure, unit price, and any other pricing information) to customers on request; and
- Make tariff details freely available on their website.

UR needs to consider the cost-efficiency of reproducing terms and conditions and circulating these to customers each time a tariff announcement is made where the only change is to the unit rate. Indeed Phoenix Supply received confirmation at the consultation meeting held in January 2012 that it we are already compliant with the requirement of the EU Directive by the virtue that we write to all of our customers every time our tariff changes to advise of the new tariff. This requirement goes beyond the requirements of the EU Directive, is not cost effective and should be removed.

[Amended] Condition 2.19: Provision of Information to Customers

Phoenix Supply agrees with UR decision that the Energy Consumer Checklist is not required to be provided to all customers annually. Phoenix Supply acknowledges that UR has published the Energy Consumer Checklist on their website, however remain of the view that UR should publish the checklist in alternative formats it believes appropriate.

Phoenix Supply maintains that it is questionable what benefits may be derived by Pay As You Go consumers receiving a bill at least once a year. Pay As You Go consumers can readily access more up-to-date information about their gas consumption via their meter which allows them to regulate and be informed of their consumption. Indeed by the time the annual statement would reach a Pay As You Go consumer, the information would already be out-of-date as their meter would provide more accurate information.

Phoenix Supply still remains concerned with regard to the practical application of the licence modifications proposed. Suppliers will hold consumption information relating to the period between meter reads, not a 12 month period. Indeed the Electricity and Gas (Billing) Regulations (Northern Ireland) 2010 require suppliers to provide consumers with information about their gas consumption in the corresponding period in the previous year. Phoenix Supply believes that to ensure transparency and accuracy of information, consumption should be based on the metering data held by the supplier and that the provisions within the Electricity and Gas (Billing) Regulations (Northern Ireland) 2010 already meet the requirements of the Directive. Providing data for the 12 month period to the date of the request will be subjective and in Phoenix Supply's opinion, goes beyond the requirements of the Directive.

Phoenix Supply viewpoint remains that it is entirely inappropriate for suppliers to provide customers with details about switching on each bill. Customers already believe they receive too much information on their bill and this adds further complexity. This has already been recognised in Great Britain where the move is towards simpler billing information. This information can be captured within the Energy Consumer Checklist.

Similarly the proposed requirement for Phoenix Supply to send an updated bill to a customer within 14 days of the customer registering a self-read is not a requirement of the Directive and should be removed. Frequently when customers provide a meter reading (e.g. at the date of a tariff change) they specifically request not to receive a bill as this generates a bill

and crystallises a debt which must be paid. Instead the meter reading is held on the account and forms part of the subsequent scheduled bill/statement. UR's proposal is actually to the detriment of consumers and it amazes us that the UR is making this proposal.

Phoenix Supply notes that it will now be required to keep its customers informed of the rights to initiate its complaints handling procedure and that complaints can be referred to UR. However Phoenix Supply does not agree that the Directive requires the contact address and telephone number of its complaints handling department and the Consumer Council to be included in all of its promotional material and therefore this requirement should be removed.

[New to Substitute] Condition 2.22: Security Deposits

This is a new condition in gas supply licenses. Phoenix Supply advises that the period stipulated under paragraph 2 (b) that the security deposit "does not exceed the charges for the supply of gas likely to be applicable for an average of three month period of supply is too low. In the winter quarter consumption is significantly in excess of the "average" and the exposure for suppliers is more than one quarter consumption. There will have been gas supplied but not yet billed in the second quarter to which suppliers are exposed. The UR proposal will therefore push customers towards much faster disconnection.

Phoenix Supply welcomes the fact that the proposal to pay interest on security deposits has been removed.

[New] Condition 2.22A: Customer Protection: Modification of Conditions

Any licence modifications must be made following consultation with and consent of the relevant licence holder. Phoenix Supply does not accept the inclusion of this open-ended licence condition which goes beyond the remit of the Directive and should be removed.

[New to Substitute] Condition 2.23: Report on Performance

This is a new condition in gas supply licences. Phoenix Supply notes the requirement to maintain quarterly statistics in relation to domestic customers by payment method, domestic disconnections as a result of debt, complaints received, and number of customers on the Phoenix Energy Care Scheme etc. However, it will not be possible for Phoenix Supply to record the different types of service offered to domestic customers on the Phoenix Energy Care Scheme. The service is completely voluntary and entirely confidential and the leaflet and application form clearly set out the range of services which are available to anyone qualifying for the scheme. Arguably the number of the different type of services offered by Phoenix Supply therefore equals the number of domestic customers on the register.

With regard to the recording of complaints, Phoenix Supply acknowledge that UR have amended the wording from “to the satisfaction of the complainant” to “resolved by the licensee” in paragraph 2e.

[New] Condition 2.27: Wholesale Contracts and Electricity Derivatives

Phoenix Supply notes that it will be required to provide UR with information under this condition. Should UR decide to make available to market participants elements of this information, Phoenix Supply requests that UR enters into discussions with suppliers to determine what information they deem commercially sensitive and cannot be published.

[New] Condition 2.28 Provision of Information to Gas Suppliers

Phoenix Supply notes that it will be required to give any registered supplier access to a customer’s metering data where they have consent of the customer. Phoenix Supply believes that to ensure transparency and accuracy of information, the condition should be amended and refer to the provision of metering data held by the supplier, not consumption data. Phoenix Supply has some concerns over the practical application of the licence modifications proposed. Take for example a domestic consumer. Suppliers will hold consumption information relating to the period between meter reads. If the “Customer Information Request” specifies a different period, gas consumption will have to be estimated. While this may not be as subjective for electricity, gas consumption, particularly for domestic consumers, varies significantly throughout the year and is weather dependant. It is therefore more appropriate for suppliers to provide metering data as provided for in the Directive.

[New] Condition 2.29: Business Separation

Phoenix Supply maintains the viewpoint that it is wrong to place a licence obligation on Phoenix Supply to act in a manner which is consistent with an arrangement to which it is not party. This condition is superfluous to requirements and unworkable in practice and should be removed.