

To: Gas Suppliers
Electricity Suppliers
I & C Consumer Groups
Energywatch

Your Ref:
Our Ref: SUPPLY/OBJ/01
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21 December 2001

Dear Sir/Madam,

Objections in the I & C energy supply markets

On 30 October 2001 we wrote to energy supply licensees, consumer groups and energywatch to request views on the possible implementation of MRA Change Proposal 87 (MCP 87). MCP 87 sought to introduce provisions to the MRA that would allow electricity suppliers the right to object to the transfer of an Industrial & Commercial (I & C) customer where a contract has not been validly terminated. The non-confidential responses to this letter are now published on the Ofgem website and they can be found by either selecting Electricity Infrastructure from the drop down window or by using the following link.

http://www.ofgem.gov.uk/responses2001/responses_ict_oct2001.htm

Having considered all of the responses, Ofgem believes that to give consent to the implementation of MCP87 would be inconsistent with the Authority's principle objective. We also do not consider that the proposed change would satisfy the requirements of the MRA as defined in the standard distribution licence condition 37, in particular 37.5 (f). The Authority has therefore decided not to give that consent. This letter will give a brief summary of the responses, the reasoning behind the decision and our proposed way forward.

Supplier Responses

To date we have received 15 responses to our letter of 30 October 2001 from suppliers of which one is confidential. The vast majority of supplier respondents supported MCP87 and gave the following as reasons for its implementation.

- Harmonisation of the rules for objection in electricity and gas supply to I & C sites would remove a source of confusion to some customers.

- Enhancement of a supplier's ability to predict purchasing requirements and thereby better manage their energy balancing risk. This would allow suppliers to offer better contract terms to their I & C customers.
- Enhancement of a supplier's ability to prevent erroneous transfers, particularly in effecting supply on large multi-site contracts. This will remove a major source of customer complaints and administration costs to both customers and suppliers.

Electricity Direct expanded on these three points, proposing that MCP87 should be implemented but should not apply where the incumbent is a larger supplier and where the customer has not already switched supplier.

London Electricity however opposed the implementation of MCP87 on the grounds that it was inconsistent with the wider objective of removing regulatory restrictions in the competitive market, and they suggest that I & C objections should only be permitted in order to rectify or prevent registration mistakes.

Consumer Responses

We received 16 responses from consumers or consumer groups including energywatch of which one is confidential. The majority of the non-confidential responses opposed implementation of MCP87 and the following emerged as general grounds for concern.

- Harmonisation of objection rules is desirable but gas should be aligned to electricity rather than the reverse. Misuse of the objections facility has caused problems in the I & C gas supply market and will only to serve to exacerbate current registration problems in electricity supply.
- Mismanagement of multi-site contracts is an administration issue for customer organisations and their incumbent supplier, although some respondents considered that more should be done to prevent erroneous or vexatious customer transfers.
- Suppliers should pursue breaches of contract via legal proceedings, as with the supply of any other commodity.

Ofgem Views

It is of concern to Ofgem that the views of customers and suppliers should be so polarised on this issue. We understand the views expressed by the supplier community but nonetheless can not use them as a basis for change given the clear position held by consumers. The following are Ofgem's views on the issues raised by the supplier community.

- Protecting the customer by preventing erroneous transfer: Ofgem is aware of the administration problems that are often associated with large multi site contracts and any measure that will help to reduce these problems must be given due consideration. However, the MRA already attempts to make provision for such eventualities with co-operative objections process where a registration is made in error (clause 16.1.3) and related MPANs objections (16.1.4). If the processes that support the current erroneous transfer objection provisions are not fit for purpose then these processes should be the focus of supplier

attention rather than attempting to introduce objection rights whose vires extend substantially beyond the prevention of erroneous transfer. Note that in gas, the registrations systems provide for a supplier to withdraw a planned registration rather than having to rely on the co-operation of the incumbent supplier.

- Enhancement of ability to manage purchasing and balancing risk: There are potential costs to suppliers of a customer breaching the terms of their contract by transferring to another supplier before that contract has run its full term. However, it is inappropriate that the regulatory framework should protect suppliers from such risks when suppliers have the opportunity to include necessary protective measures within the terms of their contract. If a supplier has cost reflective termination provisions within its contract, and the customer is aware of such provisions within its contract, the supplier is not exposed to unnecessary risk and the customer is unlikely to attempt to knowingly place himself in breach of that contract.
- Harmonisation of objection rules in gas and electricity: We view the harmonisation of rules for objection between electricity and supply as desirable but the evidence collected over the last few weeks, points to a change in the standard gas supply licence to align with the Master Registration Agreement as being the way forward.

The Way Forward

Clearly there is difference of views between suppliers and their customers. Many suppliers referred to the opportunity to reduce multi site contract administration costs while certain customers oppose it on the grounds that it will have the opposite effect. Suppliers refer to the opportunity for cost benefits resulting from reduced purchasing risk and yet no consumer appears to have been made aware of the opportunity to make any such savings. We therefore encourage suppliers to contact their I & C customers and discuss these issues with them in order that a more complete understanding can be established. Such initiatives can only lead to a more cohesive approach of effective market solutions.

Secondly, rather than introduce new grounds for objection, Ofgem would prefer to see MRA parties attempt to develop a process to make effective use of co-operative objections to prevent erroneous transfer. The views of consumers received during this consultation would suggest that their involvement would be invaluable in the development of such a process.

If you wish to comment on the points raised in this letter then please contact Catherine Monaghan (Catherine.Monaghan@ofgem.gov.uk) in the first instance.

Yours sincerely

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Head of Market Infrastructure