

18 November 2016

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By email only

Dear David,

**Re: EMI Consultation: The Energy Market Investigation (Gas Settlement) Order 2016**

Thank you for the draft of The Energy Market Investigation (Gas Settlements) Order 2016 (the Order) and draft Supply Licence Conditions (SLCs). This letter forms Utilita Energy Ltd's (Utilita) response.

As we have previously identified in CMA submissions, the issue of customer consent to smart data collection acts as a barrier to more frequent settlement and reduction of profiling. The CMA has identified that mandatory half hourly electricity data settlement is expected to provide benefits to consumers. In the final decision document, the CMA made a clear recommendation for DECC to consider removing potential barriers to data of greater granularity than daily for these purposes. CMA therefore recognised that such a barrier exists.

We believe and have previously proposed that the supply licences should be amended to remove the requirement for customer consent, where the purpose of data collection is for industry settlement processes. In our view this is different to using data for supplier gain/marketing and should not be an issue.

We are therefore extremely disappointed that instead of addressing the underlying problem in a cost effective way, which would have provided a permanent solution, the CMA has proposed an option which, as set out in the explanatory note, imposes additional cost on suppliers. The drafting is unclear but indicates that the CMA expects all suppliers to write to all gas customers with smart meters, outside their normal cycle of correspondence and annual activities. This therefore imposes additional costs suppliers would not otherwise face.

We believe that the CMA should update their approach in the Order, and instead of imposing supplier cost, provide an exception in the licence to confirm that 41(5) does not apply to data collected solely

for the purpose of complying with the CMA Order. This would provide a temporary solution while BEIS takes forward the wider recommendation to address barrier removal identified above.

We have reviewed that changes made since the initial draft and acknowledge that the work has resulted in a number of improvements, including addressing the No WAN scenario we previously identified.

We also welcome the change that delays implementation of the read submission until six months after Nexus implementation. We appreciate the intention behind this approach but we remain extremely concerned on whether Nexus and the xoserve systems will be able to manage this data.

We believe that the Nexus systems should have been designed and tested to support such submissions as part of the initial implementation, but we do not believe this has been confirmed by xoserve or sufficient bulk testing performed to give confidence. If additional activity is required to render the xoserve systems 'ready' to receive such data, this must be defined to be part of the original specification and the costs of additional development and testing attributed as such. If xoserve has not met the foreseeable requirements in this case, it must support any necessary additional development and testing needed: shippers should not be expected to bear additional costs.

It is also important to recognise that if the systems cannot support this Order, implementation must be deferred given the risk to shipper systems and customer switching on Nexus failure.

We are also aware that concerns have been raised that this proposal goes beyond the original CMA remedy identified. We agree that this is a matter for concern. CMA has clearly identified that to move to mandatory half hourly settlement in electricity, Ofgem must conduct a full cost benefit analysis.

The proposed order would have the effect of requiring suppliers to place such customers in category 3 with attendant additional costs due to processing and administration.

The CMA has also identified that the current arrangements for gas settlement result in an inefficient allocation of costs to suppliers. While the submission of meter readings used to allocate volume to suppliers will ensure a correct allocation of gas volume, the proposed cash out arrangements mean the AEC of inefficient allocation of costs will not be addressed in full.

The current proposal for classes 3 and 4 is that volume will initially be allocated using a profile and AQ, and subsequently reconciled to volume from actual readings. Any imbalance on initial allocation, however, will be charged at the system buy or system sell price (depending on whether the supplier is short or long), whereas reconciled volume will be charged at system average price. As system buy price is greater than system average price, which is greater than system sell price, suppliers are financially incentivized to buy volume initially allocated, rather than the volume used by customers.

For a supplier whose portfolio is atypical, and therefore will experience large reconciliation volumes, its ability to hedge wholesale price risk is impaired (as reconciled volume will be incurred at system average price, which will be different to the weighted average cost of a supplier's forward contracts). This will result in greater variability of returns and therefore increases the cost of capital of associated with customer groups exhibiting atypical consumption (prepayment customers, for example), and discourages suppliers from competing to attract such customer groups. Furthermore, the cash out arrangements encourage the system as a whole to require balancing by the system operator, as suppliers are not incentivized to contract volumes used by their customers.

The CMA proposes to implement an Order which changes the basis of profiling and settlement in gas without a consultation on the nature of the proposals, addressing important issues such as those identified above, or a cost benefit analysis. We are concerned by this approach, we believe that the CMA should postpone implementation of this Order pending a cost benefit of the analysis of the change, and identifying solutions to address the related issues.

We hope that these points have been useful. If you would like to discuss any points in more detail, we would be happy to help.

Kind regards,

Yours sincerely,

*By email*

Alison Russell  
Head of Regulatory Affairs