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Consultation on the Implementation of the EU Third Internal Energy Package

Thank you for the opportunity to respond to this second consultation on implementation of the legislation. Please note: this response is not confidential and may be placed on your website.

The following comments are offered on behalf of Shell Energy Europe Ltd. Headquartered in London, Shell Energy Europe Limited coordinates Shell's European gas, power and CO₂ marketing and trading business across 14 offices around Europe.

Shell Gas Direct (SGD) Ltd, the holder of GB supplier (non-domestic) and shipper licences, is part of Shell Energy Europe Ltd, and supplies gas to Industrial and Commercial customers. SGD is currently No. 1 for Customer Service in Datamonitor's most recent survey of Industrial & Commercial gas customers – this is the fourth consecutive time we have achieved this position, a record that no other UK gas supplier has achieved.

Shell welcomes the opportunity to comment on the proposed way forward in relation to implementation of EU legislation. We support the intent of the 3rd Package to help create a level playing field in relation to an internal energy market. EU-wide implementation of the 2nd Package was patchy, so it is important that the same does not happen with this latest set of legislation.

Notwithstanding the above, we agree that GB is already broadly compliant, although some changes are required. In that context, we would draw DECC's attention to the following comments in relation to Customer Protection and Gas Infrastructure.

Customer Protection

Q: Consultees are invited to comment on Government proposals to implement the consumer protection measures of the Third Package.

There are two aspects of the proposals that we consider do not adequately differentiate between the structure and needs of the domestic and business customer supply markets. Left unchecked, the proposals could have a significant impact on both prices for customers and the level of competition amongst suppliers.

The first issue relates to the proposal for a switching period of 14 days. We would be grateful for clarity on how such a proposal would interact with, for example, the limitations of current industry timescales or the impact of bank holidays?

The second issue is the proposal for a 14 calendar day 'cooling-off' period during which the contract can be cancelled by the customer. We have received mixed messages from DECC and the regulator regarding the proposed applicability of this new requirement, in particular whether it is proposed to extend it to the Industrial and Commercial (I&C) sector?

Such a proposal would have significant implications for this sector. The GB I&C gas market is the most competitive in Europe, characterized by high switching rates and low supplier margins. GB business customers have benefitted from this high level of competition and have the ability to enter into contractual arrangements that, in broad terms, allow them to link their requirements to wholesale prices, either by tracking prices on a daily basis or opting for a fixed-price contract - it is important to note that market related contract pricing of this type is very different to the use of tariff-pricing in the domestic sector.

In the case of a fixed-price contract, the price is offered at the time a contract is negotiated and derived from the wholesale gas price at that time. If the consumer agrees to the contract, then the supplier will be able to lock in that price for the duration of the contract immediately by procuring the gas required. However, any cooling off period will create a high degree of uncertainty. The price of gas can move significantly in 14 days. Moreover, this period of time may also encourage poaching by other suppliers and energy brokers.

A supplier will therefore need to 'build-in' the costs of this uncertainty with respect both to wholesale price changes and the potential of losing a customer at the last minute. This will be achieved either through building additional margin into the original price or hedging the quoted price. In both cases this adds cost and moves quoted prices away from wholesale prices; at a time when government and regulator are concerned at the lack of a clear linkage between wholesale and domestic end user prices, it is not clear what benefit will be derived from potentially introducing the same concerns into the business sector?

Moreover, we understand that DECC has been informed that the costs of this uncertainty will add around 2p/th to current prices. This is a significant price increase and we wonder whether this will benefit business customers? The potential impact on smaller suppliers and new entrants should not be forgotten. The proposals, left unchecked, would impact on cash-flow and credit requirements in a way that could reduce competition.

Other concerns that may not be immediately apparent also include the potential lack of flexibility for customers on 'deemed contracts' who wish to sign-up to lower contract rates as soon as possible or the date of sending out renewal terms.

We find it difficult to believe that in framing this part of the 3rd Package, the intention was to consider that the needs of a business customer were indistinguishable from those of one in the domestic market. A potentially one-size-fits-all approach would be deeply damaging in many respects, both to I&C suppliers and, more importantly, to business customers themselves.

For these reasons, we would suggest that the definition of a customer for the purposes of these proposals should refer to the domestic market alone. Such an approach would not be unusual and has already been legitimized by the GB licensing regime that differentiates between domestic and I&C suppliers. Moreover, implementation in this manner would provide ample demonstration that it reflects the needs, success and maturity of the GB business supply market.

Gas Infrastructure

Q: Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible.

It is not immediately clear that the creation of a new licence regime would, in terms of costs and regulatory certainty, be preferable to amending existing legislation. To a degree, the additional compliance costs associated with a new licence regime would exist with a legislative route, although it may be argued that the day-to-day costs of the former are greater.

In terms of regulatory certainty, a concern may be that a licence regime is more prone to change than a legislative one. This consideration may be a factor behind the comment in para 3.4(ii):

'by creating a new, but light touch, licence regime for gas storage and LNG operators limited to the requirements of the Third Package and any subsequent binding decisions at European level.'

This statement is welcome. Nevertheless, we wonder whether DECC could offer clarity in relation to what exactly is meant by 'European level', eg. Does this refer to EU legislation alone; and will the proposed changes to the current collective licence modification process apply to this new licence regime?

Another area where we would seek clarity is in relation to paragraph 3.21. This paragraph states that for the purposes of Article 33 and TPA to ancillary services, the Government will look at which services could be caught under this definition, in particular


'...whether any other activities should be covered by the definition of gas processing facility in section 12 of the Gas Act 1995'.

DECC will be aware that some upstream infrastructure includes such facilities, which are covered by existing legislation and a voluntary code of practice. Additional clarity would be beneficial regarding any interaction between this existing framework and the proposals in the consultation document.

Similarly, in relation to the Gas Importation and Storage Zone, the document proposes the extension of the rules that apply to land-based facilities. What is not quite clear is whether this aim includes the TPA Exemption rules that also apply to such facilities? It would be helpful if this point could be addressed.

Finally, the consultation document refers to an issue previously raised by Shell, namely that of the commercial uncertainties caused by the requirement to hold an open season ahead of making an application for a third party access exemption under Article 36 (see para 3.30). It is not immediately obvious that this point has been addressed and we wonder whether it would be possible to do so?

Yours sincerely

 Shell Energy Europe Ltd

