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By email to: gcreview@ofcom.org.uk

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Dear Selene

Review of the General Conditions of Entitlement: Part 2

SSE is a large company with its primary focus in UK and Irish energy markets. It is active in the communications markets, offering fixed line telephony and broadband products to residential customers in Great Britain as part of its wider retail business; and also has an operator business providing capacity and bandwidth services, using its own commercial communications network, to other communications providers (CPs) and to business customers.

This part of the review of the General Conditions (GCs) focuses on consumer-related conditions and is therefore clearly relevant to SSE's retail communications business. However, in reviewing the proposed text from the viewpoint of our operator business, we have concerns that some of the definitions of 'Regulated Provider' in the new format for the GCs has been set more widely than necessary. Our operator business may serve a few 'small' business customers but, in only providing connectivity based services, is not providing 'mass market' services of telephony or the newly defined 'publicly available internet access services'. We would therefore like to ensure that our operator business, in common with many other business to business CPs, is not caught by Ofcom's intention to extend some types of regulation from telephony to broadband services, for example. We believe it should be possible to avoid unwarranted extension of the scope of regulation with careful specification of the scope of each GC and that Ofcom would wish to do this in order to meet its 'objectively justifiable' and 'proportionate' legal tests.

I have attached SSE's response to the consultation questions as an appendix to this letter.

Yours sincerely

Aileen Boyd
Regulation Manager

Response to consultation questions

Question 1: Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.

We support Ofcom's intention to clarify the General Conditions (GCs) and to remove redundant requirements or those which add unnecessary burdens or duplication of requirements imposed by other forms of generally applicable legislation. We also support the rearrangements of the consumer protection requirements into the seven headings proposed, which provides a more logical grouping of the requirements.

We are also generally content with the proposed new style of the GCs, with definitions in a separate annex, short recitals at the start of the conditions and the scope of each condition set out at the start by means of defining the term 'Regulated Provider' in the scope of each condition. However, we have some concerns that Regulated Provider is defined more widely than necessary in some conditions and comment on this point, as relevant, in our responses below.

Question 2: Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.

In this second stage of consultation on the revised form of the GCs, Ofcom is also consulting on some significant changes in obligations such that it is proposed that the substance as well as the form of some GCs will change. Following the current consultation, it is possible that Ofcom will amend its proposals in some respects and, in order to ensure that this major change in the form of the GCs has been properly scrutinised, we suggest that a further final consultation on the exact proposed wording of the complete set of GCs is carried out. At that stage, there should no longer be any policy points subject to consultation and it would give stakeholders the chance to review the near final and complete wording of this significantly changed presentation of the GC requirements. We support an implementation period of at least 6 months due to the changes in requirements that are proposed.

Question 3: Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.

Question 4: Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?

We do not object to the withdrawal of Ofcom's guidance on price rises and material detriment with the accompanying clarification on the main element of this being added to the GC itself. However, in doing this, the scope of application of the existing guidance (which applied to Consumers and Small Businesses) has been extended to the scope of existing GC9.6, i.e. to all 'Subscribers' as noted in paragraph 4.19 of the consultation. We do not think Ofcom has made the case for this expansion in scope and consider that new GC 1.7 should be restricted to those contractual price changes affecting Consumers and Small Businesses.

Question 5: Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?

Question 6: Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?

Question 7: Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?

We support Ofcom's proposal to draw together and simplify the various current requirements in the GCs to make information available and transparent to customers. We have some comments on detailed aspects on the proposed GC wording as set out below.

- a) This is one of the amended conditions where the scope of communications providers (CPs) covered by 'Regulated Provider' has been set too widely, in our view. The bulk of the GC deals with providing information about telephony related matters while there are many CPs who provide, for example, only connectivity products to business customers, some of whom may be 'small' but who do not provide services to consumers. The definition of Regulated Provider includes providers of all Public Electronic Communications Services (PECS) while the parts of the GC from GC10.4 to GC10.10 and GC10.12-13 onwards are only relevant for CPs providing telephony services. We would therefore suggest that GC10.11 on method of publication requirements is moved to the 'General information publication requirements' at the start and that it be made clear in the Scope section of the GC that only CPs providing telephony services are subject to the final part of the GC starting at GC10.4.
- b) The wording of GC10.2(f) does not read easily with 'termination of the contract' added in: should there be an 'on' after 'including' to signal the start of a list of items within part (f) that fall under the over-arching 'shall include' at the start of GC10.2? Alternatively, the added items could be given their own sub-paragraphs to aid clarity on what the published information should include.
- c) We suggest that the requirement set out at GC10.5(b), namely about publishing maximum charges applying to Personal Numbers, is not referring to the best place for this level of detailed information to be provided, particularly where, for instance on comparison sites, space for advertising of packages is limited. If there is really a need to continue any form of regulatory requirement on providing maximum prices, we suggest that the requirement should refer to providing this information in the published price lists, which are already required to be readily accessible and have 'up-front' information on Personal Numbers by virtue of the other requirements in GC10.5.
- d) In preserving within GC10.13 much of the wording from the similar paragraph in the annexes to GC14, we believe that Ofcom has inadvertently made this requirement much more burdensome and unwieldy. In its current form in annexes 1 and 2 of GC14, the paragraph includes the phrase 'referring to the Code in sales and marketing literature' whereas this now reads 'referring to the requirements [of this Condition] in sales and marketing literature'. This has substituted a requirement to make reference to a document with one that potentially requires significant explanation and we do not believe that information about 'information publication and transparency requirements' is particularly helpful to customers in sales and marketing literature. In our view, this paragraph is redundant as the proposed new form of the GC is all about making different types of information available and once they have been made available, they are there for customers and any other interested party to read on websites or in another form as directed by Ofcom.

Question 8: Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections

for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?

Question 9: Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?

Question 10: Are there any other modifications to the billing conditions that you consider would be appropriate?

We have no comments on the proposals for new GC C4, which combines existing conditions GC11, 12 and 13.

Question 11: Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.

Question 12: Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?

In general, SSE supports the streamlined layout of obligations related to complaint handling within a single, separate GC and considers that its own processes already conform, to a great extent, with Ofcom's expectations in this area. We comment further on some points of detail below but consider first a concern over the scope of the proposed obligations.

The revised condition now contains significant obligations on record-keeping. While this may be reasonable for CPs serving consumers (and perhaps small business customers in addition) and thus having bulk complaint volumes to track, we consider that this particular addition to the GC requirements is overly burdensome for CPs who do not provide mass market retail products such as phone and broadband etc but still potentially have 'small business' customers when providing other products such as connectivity. They will have relatively few complaints and the record-keeping obligations seem onerous in that context. Ofcom's justification for its development of obligations in this area is founded on its experience of enforcement on complaint-handling requirements to date, which has focussed on the major CPs providing the mass market products mentioned above. We propose that, to be more proportionate, the scope of CPs to whom the record keeping obligations apply is limited to those serving Consumers or alternatively, those providing Publicly Available Telephone Services (PATS) or Publicly Available Internet Access Services, as defined for the scope of some other GCs.

Other comments on points of detail in the proposed GC:

- a) In aggregate, Ofcom's wording for the proposed new complaints handling GC C5 contains a range of process changes, changes to information requirements for customers and changes to information on bills. Ofcom is minded to give a 6 month implementation period and SSE agrees that this time would be needed to consider, test and implement the updated messaging in bills and other documents, as we would have to carefully consider potential amendments to customer bills and statements to ensure clear and consistent messages are provided.
- b) Notwithstanding our concern on the scope of application of the proposed record keeping requirements in the new GC, our retail telecoms business already has a fairly

comprehensive record keeping arrangements divided between customer account notes that are selected and used as part of our complaint handling process and a central complaints database which itself collates some of the high level information from these notes. These are readily accessible in terms of being viewed but could take greater time to gather if they were eventually to be requested in a prescribed format for compliance monitoring purposes. Inevitably, some tweaks may be needed to match exactly the finalised Ofcom requirements and, as above, the proposed implementation period would be fully needed to specify and test any amendments needed to reporting requirements.

- c) SSE's approach to retail telecoms complaints is embedded in its wider customer service culture developed, in large part, from its base industry of energy supply. Every complaint would be considered until a resolution was found or until our complaint handling efforts were exhausted to the point of Deadlock being reached. We have therefore not needed to use the existing exemptions for complaints that might be considered 'frivolous or vexatious' and do not expect to need to embed this reason into our processes for closing complaints as set out in paragraph 14. c. of the proposed code, although we have no objection to this reason for complaint closure forming part of the code.

Question 13: Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?

We support the removal of the codes of practice from GC14 and the associated replacement of these, only if it is necessary, with direct obligations in other parts of the GCs.

Question 14: Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?

Question 15: Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?

Question 16: Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?

While we have no objection to the extension of the condition to include vulnerable consumers or those who are taking broadband or any other service generally available to consumers, we believe that the scope of the condition has been set wider than necessary to achieve this. Where the current condition applies to providers of PATS, it is proposed that GC C6 will apply to all providers of PECS. This wider definition will capture CPs who provide only connectivity services to a business market. As Ofcom's concern in considering the extension in scope at paragraph 9.22 of the document is to "ensure that these important protections for consumers apply consistently across the sector", we propose that this can be accomplished by specifying in the Scope of the condition that it applies to "all providers of Public Electronic Communications Services to Consumers".

In relation to the obligation on mobile SMS access, we suggest that the proposed clarifications extend to confirming the scope of this requirement as applying only to those CPs who are providing PATS on a mobile basis.

Question 17: Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.

Question 18: Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.

We have no objection to the intention of the proposed amendments to this GC but would note that, for a retail-only CP, the technical parts of the proposed GC – for example, preventing calls with invalid or non-diallable CLI Data from being connected to the called party – can only be carried out by its wholesale providers. Given the range of different CP roles in the supply chain between originated and terminated calls, it may be appropriate for Ofcom to specify more clearly which CP party is responsible for which part of the technical detail underpinning the overall intent of the GC.

Question 19: Do you have any comments on our proposals in relation to the proposed revised general condition on switching?

Question 20: Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?

GC22 on Service Migrations and Home-Moves or fixed-line 'switching' is a complex condition. SSE is not in favour of Ofcom making material amendments or reflecting policy changes in the GC before these have been consulted upon and considered as part of the related work on switching that is still underway. Ofcom refers to this related work in paragraphs 11.22-24 and we agree with the comment that Ofcom considers it preferable "to align an assessment of any significant policy changes to the Openreach/KCOM reforms with our ongoing assessment" of the other switching projects. Thus, while we agree with the removal of redundant text, the consequential amendments proposed as a result of reframing the GC in the new style common to all the GCs and clarifications of wording such as those proposed to GC22.4(c)(ii), we do not agree with making other substantive changes to the GC. In that context, we consider that the reactive save prohibition should remain in place and changes to significant definitions such as 'Transfer Order' and 'Customer' avoided in case there are unforeseen consequences in the operation of the GC and its interaction with actual switching processes.

Question 21: Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.

We do not agree with the new text inserted into GC22.3 on the topic of obligations to prevent mis-selling. We have no objections to the general principle that marketing material used should be accurate and not misleading – and note that this is the main amendment that Ofcom proposes to require in the mobile sales and marketing GC. However, the remaining requirements are overly prescriptive, difficult to apply or applied to the wrong type of CP, as discussed further below.

- The new requirement at the equivalent of GC22.3(b) is spurious as it requires a Gaining Provider (GP) to use Cancel Other in particular ways – but Cancel Other is a facility that is used by a Losing Provider (LP) to prevent a transfer and is adequately described already in Annex 1 of GC22.

- The proposed requirements in the sub-paragraphs of GC22.3(c) are unnecessary or difficult to comply with: we suggest that marketing information will naturally include information about the services being offered such that sub-paragraph (i) is unnecessary; and it is not feasible for a GP to be aware of all the impacts that his own services might have on a customer's existing services, as set out in sub-paragraph (ii). Similarly, it is also completely infeasible for a GP to be aware of a prospective customer's existing contractual obligations, as proposed in sub-paragraph (iii). These are areas where the LP is currently best placed to provide information and is required to do so in the Losing Notification of Transfer (NoT) letter specified in GC22.10 & 11 (new numbering). As part of the switching reforms coming into effect in September 2014 and June 2015, the previous more general NoT requirements were specifically amended to require the LP to provide information on the relevant communications services that the LP reasonably believes will be both affected and unaffected by the proposed transfer to another supplier. It was recognised at that time that it was inappropriate for the GP to be required to give a view on this topic.

If Ofcom's intention with this additional wording is that where the GP chooses to provide information about the impact of its proposed services on a customer's current services and contractual obligations, it does so accurately, then we suggest that the wording is made clearer – for example, by using wording such as “Where the Regulated Provider that is the Gaining Provider provides marketing information to Switching Customers on the following topics [...], it shall ensure that the information provided is accurate, not misleading and provided in a Durable Medium on request.” This approach would avoid giving the impression that the type of information listed must be provided by the GP.

- Paragraph GC22.3(d) appears to support the proposed text in GC22.3(c) rather than being a separate requirement on the GP. We suggest that the obligation is incorporated in revised wording about topics that a GP may choose to provide to customers in marketing material, as discussed above.

Question 22: Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction?

Question 23: Do you have any comments on our equality impact assessment?

No comments on any of these matters.

Question 24: Do you have any other comments on the matters raised by this consultation?

We note that GC18 on Number Portability has been moved to proposed GC B3 and is largely unchanged. However, we would take the opportunity to comment that, in common with some of the other conditions in section B dealt with in the first consultation on the review of the GCs, the scope of the GC is set wider than necessary by applying it to any person who provides an Electronic Communications Network. There are CPs who provide such networks but have no involvement in numbering – providing only connectivity services, for example. For GC18, as well as the others moved to section B in the new framework, therefore, we suggest that a narrower set of CPs is brought within the scope of the GCs by reference to their involvement in Numbering activities.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Review of the General Conditions of Entitlement – Part 2

To (Ofcom contact): Selene Rosso

Name of respondent: Aileen Boyd

Representing (self or organisation/s): SSE plc

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

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Name Aileen Boyd

Signed (if hard copy)