

10th July 2009

Stuart Coleman
The Commission for Energy Regulation
The Exchange
Belgard Square North
Tallaght
Dublin 22

Dear Stuart

RE: Fuel Variation Tariff Draft Decision Paper

Bord Gáis Energy (BG Energy) welcomes the Commission for Energy Regulation's (CER) latest draft decision, which seeks to afford a level of flexibility to customers. BG Energy would like to make the following comments with respect to the draft decision and requests that the CER take these comments into consideration before finalising their review of the Fuel Variation Tariff (FVT) Regime.

This response focuses on four key aspects of the FVT regime and its structure. Our key concern with the current FVT regime is that it is viewed as a method of constraining the incumbent's ability to compete in the market segment. This concern was validated in the responses submitted by other suppliers to the CER's initial consultation.

Constraining competition and competitive rivalry, in BG Energy's view, is not the role of regulation in the sector. Professor Stephen Littlechild confirms this view, describing regulation as "a means of preventing the worst excesses of monopoly". He further suggests that the focus of regulation should be on "securing the most promising conditions for competition to emerge, and protecting competition from abuse"¹. Accordingly, regulatory practices should not attempt to constrain competitive rivalry, but should aim to foster *an environment where innovation and choice* emerge.

¹ Littlechild, Stephen (1983), 'The Regulation of British Telecommunications' Profitability" Department of Industry, London.

The remainder of this response refers specifically to the structure of the FVT regime and the draft decision paper issued by the CER.

1. Capacity Discount

BG Energy does not agree with certain suggestions that the capacity discount provision confers a competitive advantage to the incumbent relative to other competitors in the market. The CER approves a set of regulatory prices which essentially dictate the discounts offered to FVT customers. This system was designed to accurately reflect the actual costs of supplying FVT customers and was not approved by the CER to provide a competitive advantage to the incumbent.

With regards to the level of discount offered, the CER had previously agreed a methodology for the calculation of the discount. At the time of approving the methodology, it was recognised by both BG Energy and the CER that the methodology was most likely an understatement of the actual discounts generated by the sector. However, without more accurate information relating to the profiles of FVT customers it was agreed to allow a 10% discount to be applied.

In light of more accurate and FVT specific data, BG Energy has recently discussed the recalculation of this discount with the CER and submitted its analysis for review. It was BG Energy's understanding that the CER was analysing this data as well as other profile data from Bord Gáis Networks and would revert to BG Energy with specific numbers and for further discussion before a decision would be made. This was not referred to in the CER's draft decision paper and BG Energy was disappointed that the CER effectively made a decision without giving proper consideration to the available data and analysis.

BG Energy still contends that the discount of 10% over-charges BG Energy's customers and that it is unreasonable to think that other suppliers in the market cannot attain similar discounts given their [increasing] customer bases'. [Failure to recognise this asserts higher margins for suppliers at the expense of customers]

2. Booking Window

BG Energy appreciates the CER's recognition of a customer's value for flexibility in its draft decision, by extending the booking window from two to five days. BG Energy has attempted to improve the flexibility of its service provisions to customers through a web service. This is a 24-hour service which allows customers to view, review and lock-in gas contracts at any time during the booking window. This was designed to take account of the working environment of our FVT customers, for whom gas trading is not their primary or daily focus. With this service, customers can review and agree their gas contracts outside of the normal working day.

The CER's decision to close the booking window at 5pm on each day of the booking window effectively revokes this service. BG Energy therefore asks the CER to extend the closing time of the booking window until 9am of the following morning. This ensures that the gas price is open for less than one twenty-four period (9.45 a.m. on day D until 9.00 a.m. on day D+1), minimising the risk to suppliers but again enhancing the flexibility offered to customers.

3. CHP Opt-Out

BG Energy does not agree with the assertion that allowing a CHP opt-out for FVT customers would fragment the sector. The CHP opt-out provisions were firstly introduced by the CER in the bulk and then RTF sectors for wider policy purposes to promote the installation and use of CHP units. At the time, the aim of the initiative was to reduce demand on the system and promote more efficient types of generation (which was in keeping with the obligations placed on member states under Directive 2001/77/EC). The CER also recognised at the time that CHP operators were competing with electricity generators and prices, unlike other gas users in its customer segment.

Given this initial impetus, it is therefore difficult to understand, why the CER now proposes that there is "no real justification" for the distinction of CHP customers in the FVT sector. It is BG Energy's [concerted] view that it is unfair and unjustified to now discriminate between different sizes of CHP generators,

which given new technology have become more efficient since the initial opt-out was introduced. BG Energy believes that the CER should recognise, firstly the expense of installing CHP units and also their contribution to the stability of the electricity system and treat them accordingly.

A number of BG Energy's FVT customers with CHP units also operate CHP units in the RTF sector and have difficulty in understanding why the regulatory approach to the two sectors is dissimilar.

It was suggested by one respondent to the CER's initial consultation that the provision of an opt-out for FVT customers would: *"increase the cost to serve and reduce opportunities for independent suppliers to develop and deliver deals that are attractive to a range of differing customer types, including CHP"*. BG Energy would like to highlight that the other suppliers operating in the FVT sector also supply customers in other sectors of the gas market, and some even in the electricity market. It therefore seems disingenuous for it to be proposed that they would have difficulty in offering a range of products to a range of customer types.

4. Contracts

BG Energy is currently receiving representations from customers seeking budgetary certainty in the current volatile market by concluding and settling their gas contracts 6, 12 and even 18 months ahead. The current regime does not permit BG Energy to lock-in contract prices with customers until two months prior to the termination of their existing contracts. This essentially precludes BG Energy from competing in the market with other suppliers and reduces the choices offered to customers.

In recognition of the changing market requirements, BG Energy therefore requests a further amendment to the regime which will allow BG Energy to enter into separate contracts with customers during a prevailing contractual period. For the avoidance of doubt and acknowledging the rationale for the initial provision, BG Energy will at no stage enter into a contract for a period greater than 12 months. This proposal simply provides that BG Energy will be permitted to settle contracts prior to the current 2 month moratorium.

This amendment will not impact negatively on the competitive market environment, however a failure to make this modification will impact negatively on the incumbent's ability to compete and the level of choice offered to the market.

I would welcome an opportunity to discuss the content of this submission with the CER prior to a decision with respect to the current review being finalised.

Yours sincerely,

John Cussen
Manager Commercial Regulation
Bord Gáis Energy

c.c. John Melvin, CER

{by e-mail}