From: FPRA [mailto:Bob@fpra.org.uk]
Sent: 01 February 2011 08:45
To: Off-Grid Energy; Min Lim
Subject: Off-grid Energy Market Study

Off grid energy study and the impact on long-leaseholders.

Thank you for the opportunity to respond to the Off-grid Energy Market Study. The Federation of Private Residents Associations Ltd are members of the End Fuel Poverty Coalition and fully support a review into the energy market in respect of apartment blocks and leasehold flats as we are an independent national body that represents the interests of long leaseholders in England and Wales which we do via their Resident Associations, Resident Management Companies, Right to Manage Companies and similar groups and have done so since 1971 and have long campaigned for better competition in the energy market for our sector.
The OFT needs to consider a much wider range of issues if it is to assist the government to meet its objectives with energy efficiency and climate change.
The FPRA's response below firstly sets out the wider issues which we feel the Government has to address and then makes more detailed comments on general issues affecting those of us living in long-leasehold properties with communal arrangements for energy very often with no gas supply at all.

The Wider Issues

1. The Green Deal
The Green Deal is intended to assist residential properties to improve their energy efficiency. For blocks of flats it will require a communal approach to be taken which will involve the lessees (tenants), the landlord and the managing agent. Many lessees cannot implement cavity or loft insulation in a block of flats themselves (due to restrictions in the lease)
If the energy supply of the landlord is classed as a commercial supply then it will frustrate the application of the Green Deal to residential blocks of flats. Why?
Taking the scenario in your letter of the resident management company (our members, many of which are run by volunteer Directors) which supplies gas from one communal supply for a communal heating and hot water system how would this work? If the licence conditions are altered to class this supply as residential then the Green Deal could work and the communal supply point meter have a Green Deal charge be put on it. But what if that communal gas supply was in the name of a landlord that was not a resident management company, which applies in many blocks? Then that would be classed as a commercial supply which would not be helpful in applying the Green Deal.
The importance of clarifying that landlords' supplies to any premises which are adjunct to residential flats should be residential becomes more important when considering flats where there is not a communal heating and hot water supply; that is the great majority of our membership and the sector as a whole.

How will the Green Deal work for these blocks? In your current proposals that supply could still be classed as commercial and so current Green Deal proposals would mean that to implement energy efficiency measures in a block of flats would require every lessee in the block to agree to a Green Deal charge being put on their meters; something that will very rarely happen in practice. Even if all lessees agree the administration of the charges will become very complex for the suppliers rather than dealing with one landlord's supply. It will assist the application of Green Deal to residential flats to clarify licence conditions such that any supply by a landlord to flats as an adjunct to the residential flats is a residential supply.

2. The Contradiction between Licensing Conditions and VAT Regulations

The VAT regulations concerning the supply of gas and electricity to common supplies to blocks of flats by landlords have been clear for many years. But they conflict with licensing conditions and managing agents, resident management companies and other landlords have constant battles with utility companies who incorrectly class the supplies as commercial for VAT purposes. Here are the key extracts from the VAT regulations available from HMRC.
The VAT Act 1994, Schedule 4, Paragraph 3 defines any supply of heat, power, refrigeration or ventilation as a supply of goods.
Supplies of fuel and power are subject to the standard rate of VAT unless there is a provision for a reduced rate for a qualifying use.
Qualifying use means:
"domestic use"; or
"charity non-business use".
The legal provisions for the reduced rate are in the VAT Act 1994, Section 29A.
The following supplies are charged at the reduced rate:

- *fuel and power for domestic use*

The following are treated as domestic use if they are part of the same residential unit:

- ***subsidiary buildings situated a short distance away, such as a garage in a block located away from a house; and corridors, lifts, hallways and stairways in a residential unit.***

Item 3.2 of Fuel and power leaflet produced by HMRC, which defines what is Domestic use.

"3.2.2 Other supplies that are for domestic use

Supplies of fuel and power that exceed the de minimis limits are for domestic use only if they are for use in a dwelling or certain types of residential accommodation (excluding hospitals, prisons or similar institutions, hotels or inns or similar establishments). Examples are:

• armed forces residential accommodation;
• caravans;
• children's homes;
• homes providing care for-

(a) the elderly or disabled;
(b) people with a past or present dependence on alcohol or drugs;
(c) people with a past or present mental disorder;

• houseboats;
• houses, flats or other dwellings;
• hospices;
• institutions that are the sole or main residence of at least 90% of their residents;
• monasteries, nunneries and similar religious communities;
• school and university residential accommodation for students or pupils; and
• self catering holiday accommodation.

The following are treated as part of the same residential unit:

• buildings such as garages used with houses;
• subsidiary buildings situated a short distance away, such as a garage in a block located away from a house; and
• corridors, lifts, hallways and stairways in a residential unit. "

Item 5 of the same VAT Publication states

5. Electricity

5.1 What supplies are taxed at the reduced rate?

Electricity supplied for a qualifying use (see Section 3) is subject to the reduced rate. (as explained above)

5.2 Supplies of small - de minimis - quantities

Supplies of not more than an average rate of 33 kilowatt hours per day - 1,000 kilowatt hours per month - of electricity to one customer at any one of the customer's premises are subject to VAT at the reduced rate. This applies whether the bill is based on a meter reading - by either you or your customer - or on an estimate.

Item 2.2 of the Reliefs and special treatments for taxable supplies.pdf specifically relates to Carbon Change Levy but defers to the VAT guidance as a parent document.

There is a clear contradiction in the approach to common supplies to blocks of flats between VAT rules and the current interpretation of licence conditions of some, not all, utility companies. It would make sense to clarify the licence conditions such they are in accord with VAT rules. To do this the current proposal in your letter does not go far enough to provide the same competition for energy suppliers to long-leaseholders as it does for those living in a freehold premises which put simply means leaseholders are much more likely to pay more for energy supplies than those living in other tenure properties?

3. The Lack of a Disconnection Protocol for Blocks of Flats

The current confusion about supplies to common parts of flats means that protocols adopted to protect domestic customers from disconnection do not apply to blocks of flats. So because the landlord's supply may be treated as a commercial supply it is possible for utility companies to disconnect supply to common parts or to communal heating systems without regard to protecting vulnerable customers. Even if the landlord's supply is limited to light and power in communal areas there can be grave consequences of disconnection.
Disconnection can lead to no fire alarm and emergency lighting, no lifts, no pumped water and sewerage in tower blocks.
To ensure that utility companies adopt sensible measures before disconnection to common parts of supplies of blocks of flats the licence conditions should be quite clear that all such supplies should be classed as residential. We are currently waiting for a response from The Department of Energy and Climate Change on this point.

4. The Attitude of Utility Companies to Resident Management Companies

The FPRA estimate that for about 60% of blocks of flats in England and Wales the effective landlord for supplies to common parts is a resident management company of which the vast majority are run by volunteer Directors often with little support from an experienced property manager advising them. Utility companies have taken in recent years a tougher and tougher stance with these companies. Under Landlord and tenant law landlords including resident management companies have to collect and spend service charges as trustees (S42 of 1987 L&T Act). The company acts a trustee but the service charge monies do not belong to the company. This means that these companies generally have no assets and many file as dormant at Companies House.
In recent years utility companies have run credit checks on resident management companies and some have refused to supply all together again effectively stifling competition and any search for best value for long-leaseholders.
Others will only supply if large deposits are made; this is not practical for most of these companies as they do not hold any reserves (or the lease may not allow it). Others demand direct debit payments; a trustee or its managing agent cannot do this (again excluding leaseholders from many discount schemes available to other tenures). For example it is against RICS code of practice to set up a direct debit on a client or trust account.

In the interest of providing effective competition for resident management companies all supplies of gas and electricity to common parts of blocks of flats should be made as residential supplies and not commercial as at present.

5. Other Forms of Tenure
The OFGEM consultation dated December 14th only refers to flats and is missing other forms of tenure that also have communal supplies. There are many developments of freehold houses either solely of houses or mixed with flats on the same development. It is entirely possible, and with the current move to more shared equity and mixed development arrangements that those properties will pay an amenity charge for gas and electricity to some form of specialist company or landlord. OFGEM and the OFT needs to consider how freehold houses which are part of communal supplies can also be brought within any change to the current energy market.

The Current Proposal to Alter Licence Conditions

1. It is not clear whether OFGEM are considering supplies of gas and electricity or just gas in their consultation. OFGEM only talks about gas supply. Surely it is intended that any changes should apply to electricity supplies as well. To not do so would seem strange and not be even handed to consumers with electricity only supplies like many leasehold flats as well as utilities themselves.

2. OFGEM state that there must be a 'legal entity acting on behalf of individual residents'. This seems to imply that the change would only apply to resident management companies. But some resident management companies do not have all residents as members of that company. Would these qualify?
Then what about the other blocks of flats which do not have a resident management company as the landlord. There may be an individual or a company that provides services. Does that landlord act on behalf of individual residents?
OFGEM seem to imply there is a difference here which will produce different results in supply in adjacent blocks dependent on the history of those blocks.
These will produce even more confusion. In addition there are the general issues listed above to consider.
What if the resident management company delegates its functions to another legal entity (very common for most volunteer Directors to appoint a managing agent?
Would that qualify)?

3. OFGEM state that as a condition 'the legal entity does not provide commercial services to such residents such that is does not charge residents for the supply of gas'.
What does this mean?
Is a resident management company that is registered at Companies House supplying commercial services? Usually not as the lease will often be very specific about the remit.
What if the resident management company appoints a managing agent who calculates and charges for the supply of gas and charges an administration fee to the company for doing so? (Very common indeed and what would be a reasonable fee to charge?).
What about newer developments that use combined heat and power plants. Many of these schemes typically outsource the supply of light and power to others and there are also specialist companies that handle the complex billing processes involved. The current proposal from OFGEM would appear to discriminate against the use of CHP and other new ways to promote energy efficiency (surely this is in conflict with current Government policy?)

4. Would a local authority or housing association landlord meet the same requirements? They do not 'act on behalf of individual residents' but they are major landlords of blocks of flats.

I trust you will be taking in to account the views of Department of Communities and Local Government (Leasehold branch), Leasehold Advisory Service as well Department for Energy & Climate Change when preparing a final response.

Yours truly,

Bob Smytherman (Chairman)
For FPRA Ltd