**Does the microgrid need to be adoptable and can PEC/ESCO charge a 'comfort charge'?**

**What are the consumer rights regarding choosing energy suppliers?**

As you are aware consumers have the right to switch and choose their electricity and gas supplier. The obligation to facilitate this right applies to all suppliers of energy and does not exclude electricity microgrids.

We have assumed for the purposes of this note that PEC and/or the ESCO (as applicable) qualify for distribution and supply class exemptions in respect of the microgrid.

**How will this impact a microgrid?**

The right to switch is unlikely to be exercised by a consumer where the rate of electricity sales in the microgrid are priced below market rates. However, this issue may arise if a customer is dissatisfied with the service (for example if there are problems with or interruptions to the energy supply).

Under the Electricity and Gas (Internal Markets) Regulations 2011 a customer who owns or occupies a property which is connected to and taking a supply from an exempt distribution system may request to switch their supply to a third-party supplier. If such notice is received then the microgrid will need to take steps to give the new supplier access to the distribution system or, where applicable, notify the customer that:

1. It would need to increase the capacity of its distribution system in order to give a third-party supplier access to that distribution system; and
2. It is not technically feasible to provide the increase in capacity in question; or
3. Providing the increase would have a significant and adverse economic impact on the distribution exemption holder or any other person.

In providing third party supplier access, the microgrid distributor can levy **charges for ‘Use of System’** on suppliers much the same as a normal licenced Distribution Network Operator (DNO). The charging practice must be transparent and non-discriminatory and approval of a **charging statement** by Ofgem is required.

In addition paragraph 8(1) of Schedule 2ZA provides that where an exempt distribution holder has to make a connection to allow a third party supplier access, "any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder requires, be met by the person requiring the connection'. This implies that if a customer asked to switch PEC could recover some of its costs in connecting the microgrid to the national grid from the relevant third-party supplier.

**Should PEC design the microgrid so that it is adoptable?**

In short, the answer to this question is yes. Unless PEC is satisfied that it would be able to demonstrate that any switch to a third party supplier would require it to increase the capacity of its system and that this is either technically not possible or would have an adverse economic impact on the party holding the distribution exemption for the microgrid (PEC/ESCO as applicable) or others the microgrid should be designed so that it can be adopted if a customer asks to switch their electricity supply to a third party supplier. It may be possible to argue that if the microgrid was designed so it was not adoptable it would therefore be technically not possible or have an adverse economic impact on PEC/ESCO but there is a risk OFGEM would simply push back on the basis of consumer law. In addition, it certainly wouldn’t comply with the spirit of the law to rely on such an argument.

To date, microgrids have been used largely where there is no option to connect to the National Grid, and so the freedom to switch is less of an issue. There are therefore some regulatory aspects in relation to the operation of microgrids that are still yet to be fully understood.

Where households are connected to an off-grid microgrid, and are not connected to the National Grid by any other means, it is much more difficult to switch supplier if they are dissatisfied. Where this is an informed choice by the consumer, this may be acceptable. However, subsequent occupiers of the same property may wish to opt for a different supplier, which could present issues. This is still very much a grey area and is one which is being explored in Ofgem's Insights for Future Regulation[[1]](#footnote-1).

Ultimately, where it is possible for a consumer to connect to the National Grid and source energy from a licensed DNO (whether that be via the microgrid or via a separate connection to the National Grid), it should be free to do so.

**Comfort charges**

You explained to us that you would like occupiers to pay what you refer to as a 'comfort charge', either as part of the service charge or an additional charge on their gas or electricity bill. The houses which will form part of PEC's development will be built to a very high standard of energy efficiency and the comfort charge is intended to reflect some of the savings occupiers will make as a result of such energy efficiency measures.

The general approach is that those who benefit from energy saving solutions should pay for it[[2]](#footnote-2), but there are limited examples where developers of an energy efficient property have also developed the means of energy supply and have charged the consumer for both. A 'comfort charge' seems to be a fairly novel concept but it does not appear that it would breach any service charge regulations on affordable housing or breach any energy supplier obligations, as long as the charge is both transparent and reasonable.

However, to avoid any dispute should the consumer decide to switch energy supplier, it may be simpler to not include this charge as part of the energy bill so that the switching process is easier and also the comparison process more straightforward (in that Customer's comparison options will look less favourable against a tariff that includes a comfort charge element).

The heat/electricity supply agreement (as applicable) could provide that if the occupier switches supplier that the comfort charge will still be payable and set out how the payment would be collected, whether as part of a service charge or otherwise. This type of requirement in an energy supply agreement is, as far as we aware, untested but a comfort charge is likely to be more workable if it is not included in the energy bill and the value of the efficiency benefits are clearly presented.

1. <https://www.ofgem.gov.uk/system/files/docs/2017/01/ofgem_future_insights_series_3_local_energy_final_300117.pdf> [↑](#footnote-ref-1)
2. <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1730/1730.pdf> [↑](#footnote-ref-2)