



Retail Financial Resilience

Ofgem

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Emailed to: retailfinancialresilience@ofgem.gov.uk

14th January 2022

Dear Retail Financial Resilience Team,

Statutory Consultation on strengthening milestone assessments and additional reporting requirements

Drax Group plc (Drax) owns two non-domestic retail businesses, Drax Energy Solutions (formerly trading as Haven Power) and Opus Energy, which together supply electricity and gas to over 300,000 business premises. This is a joint response on behalf of Drax Energy Solutions and Opus Energy.

While we understand and share the desire for greater financial resilience across the sector, we unreservedly disagree with Ofgem's proposed changes to supply licence condition 19AA. Whilst it's right that the regulatory framework mitigates the risk of supplier failure and potential consumer harm, we've seen no evidence to suggest the proposals will achieve this more effectively than the existing licence requirements. More fundamentally, it's not Ofgem's role to control the commercial decisions of Supply licensees or the personnel changes they may make. Indeed, these proposals go against Ofgem's long-stated view that it shouldn't dictate how suppliers operate their businesses.

Moreover, the suggested 30 – 60 day timeframe for Ofgem to conduct its SLC19AA Assessment is wholly inappropriate for such time-critical processes and decisions.

Finally, we're extremely concerned that Ofgem has proposed significant new policy interventions without following due process and has instead immediately gone to the Statutory Consultation stage. Significant interventions, such as these proposals, should only be progressed following proper scrutiny, industry engagement and coordinated development. To do otherwise goes against any concept of best regulatory practice and risks unintended consequences, ineffectual outcomes and undue cost burdens.

We've provided additional views in the appendix. If you would like to discuss any aspect of our response, please do not hesitate to contact us.

Yours faithfully,

Matt Young

Group Head of Regulation

Drax Group plc



Appendix

Question 1: *Milestone assessments* - What do you believe to be the optimum timeframe for information to be provided and assessed and for any necessary actions identified by an assessment to be taken?

No comment as this applies to domestic suppliers only.

Question 2: *Significant commercial developments and personnel changes* - What do you believe to be the optimum timeframe for information concerning a significant commercial development/personnel change to be provided and assessed and any necessary action identified by the assessment to be taken?

We fundamentally disagree with the need for any assessment. Nevertheless, if Ofgem proceed with its intended proposals, we believe the maximum timeframe for Ofgem to complete and provide findings of any SLC19AA Assessment should be 30 calendar days, with an objective of completing it well within that limit.

The commercial processes, decisions and personnel changes in scope of the proposed assessment are typically time critical and can be market sensitive for publicly listed entities. Any assessment timeframe longer than 30 days will unduly delay business critical outcomes that could negatively impact both suppliers and consumers. For example, a struggling supplier who has found one or more potential 'lifelines' in the form of a trade sale or Relevant Merger may be forced into administration if it is subject to a prolonged Ofgem approval process. Similarly, introducing a prolonged delay into the recruitment/appointment process for a role of significant responsibility and/or influence, will mean that role is fulfilled in the meantime by someone less able/willing to do the role (i.e. the incumbent who is leaving either voluntarily or involuntarily) or the critical role is left unfilled (as by definition someone can't do it on an interim basis without having first been assessed by Ofgem).

Question 3: Do you have any other comments on our proposals?

We fundamentally disagree with Ofgem's proposed changes to SLC 19AA. However, if Ofgem believes it needs these powers to fulfil its statutory duties and protect consumers, then we believe the following changes need to be reflected, in addition to limiting the maximum assessment timeframe to 30 calendar days, as discussed above.

Excluding persons with *Significant Managerial Responsibility or Influence* from SLC19AA assessment

Changes to persons with *Significant Managerial Responsibility or Influence* need to be exempt from the SLC 19AA Assessment as it would be impractical and improper to do otherwise.

Ofgem has not yet provided any clarity around what Suppliers will need to provide for Ofgem to conduct its assessment. Although it is reasonable to assume personal details, a curriculum vitae and results of background checks, will be required as a minimum. The provision of that information is



governed by strict data protection and privacy rules, and to get the necessary governance in place and approvals from individual applicants will frustrate and elongate the recruitment process.

Moreover, it will be impractical for Ofgem to review every associated change in role, particularly in the timescales proposed. For instance, it is not implausible that Suppliers will submit multiple applicants for roles (classed as *Significant Managerial Responsibility or Influence*) to Ofgem for Assessment part-way through the application process so that Suppliers know which applicants they can eventually offer the role to.

Without excluding this proposed requirement, Ofgem will cause undue delay to the recruitment process for critical roles, will frustrate senior personnel moving around the sector, and may also disincentivise new talent from joining the sector.

Re-defining persons with *Significant Managerial Responsibility or Influence*

Irrespective of how Ofgem deem it appropriate to proceed, but particularly if the proposals continue unchanged, the term '*Significant Managerial Responsibility or Influence*' needs to be more tightly defined. To date, Ofgem has not strictly defined the term, meaning some suppliers will have taken a low-risk approach to the existing obligations and thus captured a higher number of roles within the definition (), while others will have taken a higher risk approach and captured fewer roles. This perversely means risk averse suppliers are being disproportionately burdened by a regulation that is purposely intended to moderate the behaviour of those suppliers with an unduly high-risk appetite.

To address this, we urge Ofgem to revise the current licence definition of '*Significant Managerial Responsibility or Influence*' so that suppliers take the same approach to compliance, both with SLC 4C (*Ongoing fit and proper requirement*) and SLC19AA should it get introduced. We believe the following definition more closely aligns with Ofgem's objective, to explicitly capture those senior employees with significant decision-making accountability.

"Significant Managerial Responsibility or Influence means –

- (a) Board Directors and Members***
- (b) Company Directors***
- (c) Any person holding equivalent power to Board Directors, Board Members or Company Directors."***