



Rebecca Barnett
Deputy Director – Financial Resilience and Controls
Ofgem
10 South Colonnade
London
E14 4PU

Emailed to RetailFinancialResilience@Ofgem.gov.uk

25th February 2022

Dear Rebecca,

Consultation on changes to Ofgem’s guidance on applying for a gas or electricity licence

Drax Group plc (Drax) owns two retail businesses, Drax Energy Solutions (formerly trading as Haven Power) and Opus Energy, which together supply renewable electricity and gas to over 300,000 business premises. Drax also owns and operates a portfolio of flexible, low carbon and renewable electricity generation assets – providing enough power for the equivalent of more than 8 million homes across the UK. This response is on behalf of the whole Drax Group and is non-confidential.

Our main point of feedback and request for clarification relates to Chapter 3, paragraph 3.23, and Chapter 4, paragraph 4.84, of the guidance, which set out Ofgem’s expectations as to what it considers to be a person with ‘*Significant Managerial Responsibility or Influence*’ in relation to new licence applications. It is unclear whether Ofgem intends this new definition of ‘*Significant Managerial Responsibility or Influence*’ to be applied more widely than solely for licence applications. Specifically, whether Suppliers are expected to have regard to it when assessing individuals in relation to the *Ongoing fit and proper requirement (SLC 4C)* and new SLC 19AA obligations.

If it is Ofgem’s intention for this new definition to apply equally across SLC 4C and SLC 19AA, then it should be appropriately consulted upon first, and then formally communicated to existing supply licensees, who may not have reviewed the new licence application guidance document, given it is aimed at new entrants.

Until now Ofgem has provided little guidance to existing licensees as to how to interpret the term ‘*Significant Managerial Responsibility or Influence*’. The definition set out in the Supply licence is vague, meaning Suppliers have interpreted it in varying ways. This means risk averse Suppliers have captured a greater number of roles within the definition and are therefore being disproportionately burdened by a regulation that is purposely intended to moderate the behaviour of Suppliers with a higher risk appetite. If the definition provided in the licence application guidance is to apply equally to existing licensees, then Ofgem need to clearly and definitively communicate this.

Notwithstanding the need for clear communication to ensure consistent application, we do not believe the proposed definition is proportionate or appropriate. Moreover, it is wholly inconsistent with Ofgem’s decision and policy intent when introducing SLC 4C, which stated in paragraph 1.52, “*we would expect that*



for the majority of cases, the new requirement would apply to company directors. In a minority of cases, it may also extend to other senior managers at the top of the organisation”¹.

Applying the very broad definition proposed in the guidance, could unfairly ‘blacklist’ significant numbers of people who previously worked for any of the c.30 suppliers who have exited the market in the last 18 months. Additionally, applying the broad definition will create a huge administrative burden for both suppliers and Ofgem in reviewing prospective applicants and conducting assessments, without any defined benefit. Instead of the broad definition, we believe the following definition should be adopted as it would more appropriately capture those employees with significant decision-making responsibility and ultimate accountability for a supplier’s financial resilience:

“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”

If you would like to discuss the points above, please do not hesitate to contact us.

Yours sincerely,

Matt Young

Group Head of Regulation
Drax Group PLC

¹ <https://www.ofgem.gov.uk/publications/decision-supplier-licensing-review-ongoing-requirements-and-exit-arrangements>