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18 February 2022

Update to action plan on retail financial resilience: supplier control over material assets

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewable generation, including onshore, offshore wind and solar generation, and energy storage. We have around six million electricity and gas customer accounts, including residential and business users. EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to provide comments on Ofgem's update to its action plan on retail financial resilience and its proposals to amend the guidance in relation to the Financial Responsibility Principle and Operational Capability Principle obligations set out within supplier licences. It is right that lessons are learned from Ofgem's ongoing monitoring work and experience with supplier failures and that appropriate and proportionate measures are developed, in consultation with industry, that further improves financial resilience in the market and minimises the risk of consumers bearing substantial mutualised costs.

'Control of Assets' Guidance

EDF continues to be supportive of Ofgem's work in this area. Considering and developing additional effective and proportionate regulatory measures that will benefit consumers by supporting effective competition between financially responsible suppliers, improving standards across the industry and helping to reduce the risk of cost mutualisation, is the right approach. However, unless there are good reasons with known risks that may crystallise in a short time frame, it is important that change is not unnecessarily rushed and that Ofgem fully considers the potential for unintended consequences and the risk of imposing additional costs on suppliers before any decision to implement change is made.

The manner in which supply businesses are organised and deliver their key business activities will differ between market participants as suppliers look to innovate and deliver the level of service expected by their customers in an effective and economical manner. It would therefore be inappropriate for regulations to prescribe in any way a one size fits all approach as to how suppliers should be structured.

It is perfectly normal for a supplier not to deliver or source all key services in house and this is the business model approach adopted by EDF where some key services are delivered through third parties under enforceable contractual arrangements. For instance, EDF Trading (a fully separate legal entity from EDF) provides market access services to execute most of the trades performed across the EDF Group on wholesale commodity markets. In this context, EDF Trading effectively acts as a broker to EDF (and other Group entities) and receives a commercial arms length transaction fee for providing this service.

In addition, some of our customer service operations have been outsourced to third parties, including overseas operations, and we have recently contracted to build on our industry-leading customer service by licensing the cutting-edge Kraken energy technology platform. This is in customers' interest as a means of improving the efficiency of our customer service operations and providing a platform to innovate and adapt to future energy requirements.

We strongly believe we have adopted an efficient and resilient approach to delivering our customers' needs and meeting our regulatory obligations, whilst maintaining appropriate control over the operations needed to run our business. Any significant changes to our business model driven by regulatory changes around asset control requirements is likely to have material cost implications. We would therefore welcome further engagement with Ofgem on this matter prior to any changes proceeding in this area.

Insolvency

While in principle the objectives behind these proposals are supported, we have doubts on the extent to which the changes to the guidance will have the desired outcome in terms of minimising mutualised costs and addressing some of the issues identified through past supplier failures. Our experience in previous SoLRs has identified that an appointed SoLR can be exposed to the actions of the appointed administrator and supply chain of the failed supplier that can lead to additional costs being incurred, which ultimately end up mutualised. In the event of supplier insolvency, the power of the Administrator (and supply chain) will not be altered by proposed licence and guidance changes, as any contractual rights are likely to have fallen away.

Therefore, requiring suppliers to have greater 'control' over their material assets in principle sounds sensible, we are concerned these current proposals will not in themselves necessarily lead to reducing the burden of mutualised costs on consumers. However, it would be good to understand if Ofgem sees broader benefits of these proposals, including with their interactions with Administrators of failed suppliers and recovery of costs, which they could share with us.

Use of Guidance

We acknowledge that one of the benefits of the Ofgem move to more principles based regulation (with accompanying guidance) was to allow for regulations to more agile and be updated in a timely manner to reflect the energy market at any particular point in time. However, in adopting such an approach Ofgem needs to be clear on its expectations and the benefits and outcomes it is expecting to achieve through such principle guidance. To do otherwise puts at risk the

achievement of the desired outcome and/or places additional regulatory risk on suppliers where clarity is only obtained, for instance, through any compliance investigation. In order to ensure that the policy intent is achieved, Ofgem will need to keep under review the degree to which the guidance is proving an effective route for driving the behaviours and actions expected.

Credit Balances

We remain supportive of additional measures around use of credit balances and therefore welcome the introduction of additional guidance relating to the Financial Responsibility Principle. However, we are disappointed that more specific regulations around credit balances previously consulted upon have yet to be decided upon and would urge Ofgem to make timely progress on these policy proposals.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Steven Eyre or myself. I can confirm that this letter may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink that reads 'R. Beresford'.

Rebecca Beresford
Head of Customers Policy and Regulation