

Ofgem  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

Email: RetailFinancialResilience@ofgem.gov.uk

19 July 2022

### **Statutory consultation: 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 statutory consultation on supplier control over material assets. 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 improve financial resilience in the market and minimise the risk of consumers bearing substantial mutualised costs.

### **Effectiveness of the Proposal**

EDF does NOT support the proposed changes since they would not deliver any clear customer benefit or ensure that suppliers maintain control over their material assets in the event of insolvency. EDF has two principle reasons for taking this view:

1. Where a supplier does not hold its material assets directly, then irrespective of the financial strength or otherwise of a supplier, the changes proposed by Ofgem would not prevent a supplier who wished to do so from divesting or ceasing to have formal legal control of its material assets by terminating such arrangements at any time prior to insolvency.
2. For large suppliers such as EDF with extensive corporate structures within a larger parent company, not all material assets will be directly held by the specific supplier licensed entity. This is characteristic of how the corporate structures of large established businesses operate in a range of regulated industries. The proposed changes would require such large suppliers to enter into a range of solely intra-group contracts and arrangements in respect of various material assets. In addition to being a time-consuming exercise at a time when the energy supplier sector is facing many more pressing challenges, this would have no practical value for the reasons given above in paragraph 1 - namely that such arrangements could be terminated at any time prior to insolvency by the respective parties thus providing no consumer protection at all.

Ofgem's Operational Capability Principle and Financial Responsibility Principle have been within the licence since January 2021 but Ofgem has not yet demonstrated that these have been effective. Where Ofgem has specific concerns about the business structure of a supplier it should first look to use its existing powers to address the risk and open investigations with that specific supplier, taking targeted and specific action. It is our firm view that the proposed broader changes will only create increased administrative work for suppliers who responsibly manage their business, creating increased costs for consumers, whilst providing no protection against the irresponsible supplier activity that Ofgem wishes to prevent.

### **Consultation Process**

We are disappointed that Ofgem has chosen to publish a statutory consultation on this topic so soon after it updated its guidance and without further engagement with suppliers. Supplier responses to Ofgem's earlier consultation consistently encouraged Ofgem to further consult and engage with suppliers so that effective changes could be designed, and an appropriate Impact Assessment could be performed. Ofgem updated its guidance despite this feedback and is pursuing the licence changes with little further engagement with suppliers and without conducting any Impact Assessment, concluding that one was not needed since the guidance had been updated (which equally took place without an Impact Assessment) and an unspecified number of suppliers had not indicated a significant impact for their business. We consider that this is a very poor example of regulatory development and, furthermore, as detailed above, will not deliver the benefit that Ofgem has set out to achieve.

### **Next Steps**

We urge Ofgem to decide against implementing its proposed licence changes and instead collaborate more effectively with suppliers to develop licence changes that will actually be effective in ensuring assets of an insolvent supplier can still be used by the SoLR, minimising the detriment and costs for consumers.

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 'Jon Cole'.

Jon Cole  
**Senior Manager, Customers Policy and Regulation**