

Ofgem
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Dear CSS Team,

We are writing in response to Ofgem's Initial proposals on Reviewing the Consolidated Segmental Statement (CSS).

We welcome that Ofgem have clearly responded to Energy UK and energy supplier concerns about the unnecessary and problematic data collection and sharing considered in previous consultations. However, we remain unconvinced that there is a sufficient case for the CSS to continue at all and ask that Ofgem makes a full impact assessment in the forthcoming statutory consultation.

The objective appears to be to require energy suppliers to publish financial performance, underpinned by a consistent and robust process. Energy UK members support the case for providing additional transparency for consumers and stakeholders, provided that the benefits are proportionate to the costs.

We are concerned that the proposal goes beyond that required to meet the outlined objective, creating additional avoidable costs and duplication. As Ofgem itself notes, the market has changed a lot since the CSS were created, including the enhanced supplier reporting requirements and the CMA dispelling any concerns on the impact of vertical integration in the market. The CSS may no longer be justified given the narrow focus and the costs involved in their production, particularly for newly obligated suppliers who will have to develop new processes from scratch.

Energy UK agrees that the current regime, where only a small subset of suppliers is obliged to report, is untenable and unfair, and we fully support the aim of harmonising any obligation across all suppliers above a certain threshold size. Yet, for the same reasons as Ofgem gives for this change, continuing obligations on a subset of generators and those businesses with 'other' activities is also not fair.

We encourage Ofgem to conduct an updated impact assessment for its preferred position and alternative options (against a counter-factual of terminating the CSS obligation). This is necessary to help develop an efficient and proportionate approach which is in consumer's interests. More broadly we would always expect Ofgem to conduct impact assessments which would seek to ascertain the relevant benefits and proportionality of means to secure the stated objectives, where significant additional efforts and costs are involved.

Simplification

If Ofgem chooses to retain the CSS obligation, we think there is scope to simplify the proposals further to be consistent with the aim of reporting supplier financial performance.

Of the data Ofgem is proposing to require suppliers to publish, we are confident that this will not add to Ofgem's understanding of supplier's financial performance, as the regulator already has access to more granular information through regular and ad hoc RFIs.

Generation reporting

Energy UK objects to the proposed retention of the obligation to report on generation segment. Ofgem justifies retention because *'providing a split of profits between generation and supply allows companies to be transparent about the allocation of costs between the two activities; Government, consumer bodies and Ofgem expect this information to understand whether cost allocation is fair.'*

However, the only area of cost allocation that has ever raised any significant concern is transfer pricing of wholesale electricity, and we do not believe that requiring publication of generation data will materially assist with transparency for the following reasons:

- a) We are not aware of any recent concerns over transfer pricing within Vertically Integrated (VI) companies, and the trend towards Joint Venture structures for large generation projects further reduces transfer pricing risks.
- b) The only check of transfer pricing that can realistically be carried out from the CSS is to compare the average price (£/MWh) achieved by generation and the average cost (£/MWh) incurred by supply. However, there are many reasons why these numbers may be different, such as different mixes of peak and baseload or different average prices captured by renewable and thermal generation. This means that requiring VI companies to publish a generation statement does not actually assist in checking whether cost allocation and transfer pricing are fair.
- c) VI suppliers can still be required to disclose full details of transfer pricing policies (as they already do in the notes to their CSS) without the need for them to report on their generation segment.

Placing this additional obligation on VI generators places them at a competitive disadvantage relative to non-VI generators (cost of preparation, increased disclosure) and is discriminatory in the absence of objective justification. If Ofgem still has concerns, there are more proportionate ways of addressing its concerns, for example by introducing targeted information requests.

Obligation to report 'other' revenue

We note that Ofgem is now proposing to require suppliers to report on aggregate 'other' activities (which we understand to mean unlicensed activities of the supply licensee) rather than provide a granular breakdown of other activities as was proposed in 2020. However, the document is vague and does not allow for sufficient scrutiny as to what information Ofgem is intending to gather. We disagree with any obligation to report on 'other' activities. In particular:

- If Ofgem's primary purpose in requesting this information is to obtain early visibility of risky unlicensed activities which could precipitate or exacerbate Supplier of Last Resort (SoLR) events, there are other more proportionate ways of achieving this, such as direct information requests to suppliers, which are already being routinely gathered.
- We see no need for third party stakeholders to have visibility of this information, and requiring suppliers to publish it is therefore disproportionate, given the potential competitive disadvantage that suppliers may suffer from disclosing this information to their unlicensed competitors.

- Given the proposed obligation to reconcile the published data back to statutory audited accounts, there is no obvious need for Ofgem to request additional information on unlicensed business activities.

Where there are questions over the nature of supplier data or the veracity of supplier claims, Ofgem retains the right to request an audit meaning Ofgem can take prompt action to interrogate compliance, while also utilising existing financial reporting.

We would also request that Ofgem clarifies the legal powers under which it proposes to require publication of this information. Ofgem states that it will use powers under s47(1)(b) of the Electricity Act to request this information. But s47(1)(b) merely places a *duty* on Ofgem, and the associated information gathering *powers* are in s47A(1). However, the s47A(1) powers are limited to licensed activities falling within s47(1C), and the s47(1C) activities do not include 'other' non-licensed activities.

Timescales

The timescales for implementation appear rushed. In the case of newly obligated suppliers, they will place significant burdens on already stretched finance teams. Much of the data being asked for is already easily available as Ofgem is in receipt of a large volume of suppliers' financial data, which allows it to monitor competition and supplier financial health. Further, the requirement to expedite audit timelines at short notice will be undeliverable for 2024 as they will have already been planned. Ofgem should deprioritise the existing obligations for current obligated parties until any revisions are introduced and ensure that existing obligated parties would not unfairly be required to report under the existing outdated obligation.

While on an enduring basis, the 4 months for the development of a CSS will not enable suppliers to provide actual data required due to not having a complete view of energy supply operation returns. Suppliers' statutory accounts are typically published and audited around 9 months after the end of the financial year. We would urge Ofgem to complete an impact assessment to fully ascertain the costs of this proposal.

Please do get in touch if you would like to discuss this response in further detail.

Kind regards

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