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Dear David,

Guidance on Supply Licensee Governance Arrangements

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 renewables, including onshore and offshore wind and solar generation, as well as energy storage. With over five and a half 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.

EDF welcomes the opportunity to provide comments on Ofgem's proposals to introduce new guidance on the governance arrangements of supply licensees through expanding the guidance under Standard Licence Condition (SLC) 4A.

It is important that the regulatory framework facilitates an effective and thriving competitive market that facilitates innovation, investment and enables efficient and responsible market participants to be sustainable in the long term. It is, however, important that Ofgem adopts a sensible balance between minimising additional costs on consumers and financially responsible suppliers and ensuring Ofgem has the powers it needs to act where it has concerns around individual suppliers' activities. A well-functioning competitive market, with minimal distortions, will ultimately deliver the best outcomes for customers, including fair prices.

Executive Summary

In line with the Government's focus on promoting economic growth, regulation must focus on those areas where it is needed and will provide consumer benefit, ensuring there is also sufficient commercial space for companies to invest and grow. This ambition was clearly highlighted in HMT's March policy paper¹ setting out Government's approach to ensuring

¹ HMT Policy Paper - New approach to ensure regulators and regulation support growth – March 2025

regulators and regulation support growth. Specifically, it highlighted Government's desire to overhaul the regulatory system such that it not only protects consumers and supports competition, but also encourages new investment, innovation, and growth. Furthermore, the paper was clear that regulators should regulate only where necessary to allow space for discretion and good behaviour, as it argues that in most cases, businesses operate in a responsible and sensible manner.

With this in mind, having reviewed the scope and prescriptive nature of Ofgem's proposals to amend the Guidance on Supply Licensee Governance Arrangements it is clear that this approach would be inconsistent with the Government's vision for regulation and the need to promote economic growth. The amended Guidance appears to be attempting to unnecessarily align existing financially resilient and operationally capable companies' internal governance to meet a generic and subjective expectation of 'good' from Ofgem which does not align with each company's individual financial, operational and commercial imperatives. The proposed amendments contradict Ofgem's own set policy of *'being proportionate, allowing licensees the flexibility to have the arrangements that work best for the size, corporate structure and specific risks they face'* as described in Section 4 of the consultation document.

Ofgem should avoid opening up new areas of regulation or extending existing requirements where there is no demonstrable customer harm, and where there is a risk of a significant net increase in regulatory burden for otherwise resilient companies. This is a clear example that fully fails that test and as such we do not support Ofgem's proposals to amend the existing guidance on the governance arrangements of supply licensees through expanding the current Guidance under Standard Licence Condition (SLC) 4A and 4B.

In proposing these changes Ofgem has failed to set out the definable customer harm that these additional rules would remove or reduce. There is no evidence provided where the issues around governance since the implementation of Ofgem's wider package of financial Resilience and Control measures have led to customer harm. There is also no consideration given of the burden on business for applying these rules, set against any perceived benefit. Ofgem should clarify their policy intent and the outcomes they are trying to support, including identifying ongoing risks that it considers exist in today's market as opposed to historical concerns and previous supplier practices that have either exited the market or existed prior to the introduction of the SCL4A and 4B principles.

Ofgem must also remain mindful in attempting to manage any perceived risks that the energy retail market now predominantly consists of robust established suppliers who weathered the energy crisis period. In addition, Ofgem has also already introduced multiple measures to improve the financial resilience of the sector of both new entrants – where historic governance issues have previously presented themselves – and established players, which were supported by EDF, including stronger scrutiny on new licence applications, greater capital adequacy requirements, ringfencing of Renewables Obligation funding and a fit and proper person tests for Directors. Any new controls are likely to be duplicative, add cost with no demonstrable consumer benefit.

For example, the proposed requirement to undertake **‘a formal review (completed every other year) of the effectiveness of its board of directors with documented evidence of how it has sought to address any findings’** would be counterproductive if followed as a prescriptive requirement. It should be a matter for each company to consider how best to monitor the effectiveness of their governance arrangements, including as to when and by whom such reviews are performed. Overly prescriptive requirements in terms of timing and review bodies would not necessarily result in positive outcomes. While companies may consider conducting a review every two years, it may actually be more prudent for companies to review at a time when significant Board changes or commercial strategies are under consideration.

Instead of seeking to unnecessarily amend existing guidance, Ofgem should, therefore, instead be focused on robustly enforcing existing measures to mitigate any risks associated with poor governance, rather than introducing additional measures on all suppliers. Ofgem should also be looking to ensure that it has sufficient levels of knowledge and understanding of each individual licensee’s governance arrangements through its monitoring and FRC supervisory activities, so that it can address any specific concerns with compliance with SLC 4A and 4B through a risk-based, supplier-specific approach, making additional Guidance unnecessary.

We remain concerned at the lack of transparency in how some of the existing measures, such as the rules on Capital Adequacy, are being enforced by Ofgem which is giving the impression, perhaps incorrectly, that certain suppliers have been allowed to avoid putting in place appropriate protections for consumers quickly enough and at the correct level. We would urge Ofgem to take a robust position on this key control and ensure far greater transparency in how this has been implemented by all suppliers.

Obviously, if there is evidence that some specific suppliers (such as new entrants) would benefit from examples of what ‘good governance’ can look like, these do not need to be provided in regulatory guidance for all suppliers. Ofgem guidance has a long history of morphing into firm prescriptive expectations of suppliers for those monitoring licensees’ compliance with the SLC requirements. We also note significant information and advice of ‘good governance is already available from Organisations like the Financial Reporting Council etc.

To be clear, as currently drafted the proposed amends to the Guidance on Supply Licensee Governance Arrangements are not in keeping with the broader Government policy agenda and could have a negative impact on governance in the energy retail sector. Ofgem’s proposed approach does not recognise the differing business models and governance arrangements that exist in the market, and which deliver real benefits to consumers as opposed to any quantifiable risk. Ofgem must, therefore, urgently reconsider their approach and move away from increasing regulatory requirements for all suppliers, including those with a long track-record of excellent governance arrangements.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Steven Eyre, or myself.

I confirm that this letter may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Mason", enclosed within a thin black rectangular border.

John Mason
Senior Manager - Senior Manager (Price Regulation and Market Dynamics)

Attachment

Guidance on Supply Licensee Governance Arrangements

EDF's response to your questions

1. Do you agree that Ofgem should introduce guidance under SLC 4A setting out its expectations for governance arrangements?

No, not in the manner that Ofgem is proposing. Ofgem should clarify their policy intent and the outcomes they are trying to support, including identifying ongoing risks that it considers exist in today's market as opposed to historical concerns and previous supplier practices that have either exited the market or existed prior to the introduction of the SCL4A and 4B principles. It should avoid unnecessarily increasing the regulatory burden on suppliers through setting out specific prescriptive approaches to compliance with principle-based licence conditions through Guidance. We would note that such a level of prescription is also counter to Ofgem's set policy of *'being proportionate, allowing licensees the flexibility to have the arrangements that work best for the size, corporate structure and specific risks they face'* as described in Section 4 of the consultation document.

We agree that Ofgem should have a level of knowledge and understanding of each individual licensee's governance arrangements through its monitoring activities that allows it to address any specific concerns with compliance with SLC 4A and 4B through a risk-based approach. This would be far more effective than implementing a broad-brush approach to guidance that applies to all licensees, and which does not recognise the differing business models and governance arrangements that exist in the market, and which deliver real benefits to consumers as opposed to any quantifiable risk.

2. Do you agree that the guidance under SLCA 4A should cover the effectiveness of the board, transparency of governance arrangements, and example scenarios?

EDF as an energy supplier within a large vertically integrated multi-national company takes internal governance incredibly serious and already has extremely robust processes and procedures in place, in line with a wide range of existing requirements. However, even for a company with very resilient governance arrangements such as ourselves these are not a natural fit with the narrow prescriptive 'examples' provided within the updated Guidance by Ofgem. Such 'examples' may be a useful starting point for new entrant and/or smaller, stand-alone independent supplier but is not in any way appropriate for a large multi-national company such as EDF.

Ofgem should not include extraneous governance examples as proposed or make clear that licensees can/may have alternative but equally robust governance arrangements in place. This is essential as it is our experience that over time, examples provided in regulatory guidance can in effect morph into firm expectations for those monitoring licensees compliance with the SLC requirements. It is essential that the Guidance document does not risk setting artificial

parameters over licensees' freedom to develop and practise robust governance arrangements that suit their own operational and commercial models and to meet their own customers' needs. As set out in our cover letter, it is clear that this approach is inconsistent with the Government's vision for regulation and the need to promote economic growth.

As a matter of principle Ofgem must avoid unnecessarily increasing the regulatory burden on suppliers through setting out specific prescriptive approaches to compliance with principle-based licence conditions through Guidance.

In terms of the example scenarios, we not only oppose the prescriptive nature of the scenarios but also consider them to be misplaced and improper in number of areas. For instance:

- **'the majority of the board of directors are non-executive directors (including an appropriate number of independent non-executive directors)'** – We do not see any need to require this for EDF Customers Ltd (our licensed retail energy business in the UK). This scenario does not appropriately reflect multi-national vertically integrated organisations such as EDF which has a broad and extensive organisation structure that sits about the UK licensed retail entity, including Boards of Directors that contain Non-Executive Directors that have appropriate oversight of licensed entities. We are confident that our current approach is expedient and proper. We do not consider Ofgem has evidenced why such a requirement is proportionate or would lead to better customer outcomes. On the contrary, we consider it is only likely to introduce additional cost and complexity.
- **'published policy on diversity and inclusion, which is used to support appointments and succession planning'** – EDF fully acknowledges the importance of this topic and in line with Good Practice we have in place a Vision, Agreed Procedures and Practices around Equity, Diversity and Inclusion, including on Inclusive Recruitment. However, we see no reason why this is a matter for an economic regulator such as Ofgem. Any amendments to the Guidance in this area is arguably extending beyond the scope of Ofgem's statutory remit and the policy intent of the SLC 4A Principle, especially given no quantifiable benefit to competition or energy consumers has been identified.
- **'a formal review (completed every other year) of the effectiveness of its board of directors with documented evidence of how it has sought to address any findings'** – This should be a matter for each company to consider how best to monitor the effectiveness of their governance arrangements, including as to when and by whom such reviews are performed. Overly prescriptive requirements in terms of timing and review bodies would not necessarily result in positive outcomes. For instance, while companies may consider conducting a review every two years, it may actually be more prudent

for companies to review at a time when significant Board changes or commercial strategies are under consideration.

- **‘publishing clearly on its website information relating to the corporate ownership of the licensee, the board composition and committee structures and the matters reserved for its board or parent company’** – Again, there is no clear reasoning why this is required or how this will benefit customers. Large multi-national organizations like EDF can have quite complex and broad corporate ownership structures, roles and responsibilities. Therefore, not only could this prove to be an onerous task to complete and keep updated for such a licensee, but the complexity of the information is also likely to involve little if any consumer interest or benefit over the current transparent approach a company such as EDF takes in providing relevant information to our customers and stakeholders.

3. Do you have any comments on the guidance drafting itself?

Please refer to our cover letter and answer to Question 2 above regarding the prescriptive nature of the guidance and concerns with some of the scenarios.

We are extremely concerned that the proposed amendments to the wording of the existing the Guidance are unnecessary and potentially could actually be counter-productive to Ofgem’s goal of improving suppliers’ governance arrangements. This is due to the overly detailed approach proposed, including detailed examples, which appears to be increasing the level of regulatory burden faced by suppliers by attempting to align existing financially resilient and operationally capable companies’ internal governance to meet a generic expectation of ‘good’ from Ofgem. Ofgem’s expectations are misplaced and improper in a number of areas and are not suited to all company’s individual financial, operational and commercial imperatives. This includes a company such as EDF which has very strong GB and international governance arrangements.

As a minimum, Ofgem should not include extraneous governance examples as proposed or make clear that licensees can/may have alternative but equally robust governance arrangements in place. This is essential as it is our experience that over time, examples provided in regulatory guidance can in effect morph into firm expectations for those monitoring licensees compliance with the SLC requirements. It is essential that the Guidance document does not risk setting artificial parameters over licensees’ freedom to develop and practise robust governance arrangements that suit their own operational and commercial models and to meet their own customers’ needs.

4. Do you agree we should amend the guidance for milestone assessments to include governance arrangements?

We agree that Ofgem should have a level of knowledge and understanding of each individual licensee's governance arrangements through its monitoring activities that allows it to address any specific concerns with compliance with SLC 4A and 4B through a risk-based approach. For new entrants and small suppliers who are growing their business it appears prudent for Ofgem to amend the milestone assessments to include governance arrangements in order to facilitate its monitoring activities.

5. Do you have any comments on the proposed drafting?

We have no further comments in this area.

6. Have we identified the key impacts, risks and benefits of the proposals, and are there any impacts we should give further consideration to?

We would question the extent to which Ofgem is in effect allowing flexibility in the application of the guidance when it is including prescriptive scenarios and expectations. As a minimum, Ofgem must not include extraneous governance examples as proposed or make clear that licensees can/may have alternative but equally robust governance arrangements in place. This is essential as it is our experience that over time, examples provided in regulatory guidance can in effect morph into firm expectations for those monitoring licensees compliance with the SLC requirements. It is essential that the Guidance document does not risk setting artificial parameters over licensees' freedom to develop and practise robust governance arrangements that suit their own operational and commercial needs and to meet their own customers' needs.

7. Do you agree that overall these proposals would be benefit consumers?

No. For the reasons stated throughout this response, we fail to see any quantifiable benefit to consumers through the introduction of increased regulatory requirements on robust financially responsible suppliers.

EDF
April 2025