

To: retailfinancialresilience@ofgem.gov.uk

24th April 2025

Dear Sirs

Thank you for your email dated 7 February 2025 highlighting the opportunity to comment on the proposed changes to the guidance on SLC 4A published on 30 January 2025.

This response does not have to be treated as sensitive.

To place our response in context, we wish to note first that Ecotricity Limited celebrated the thirtieth anniversary of its foundation this month. The company was incorporated on 7 April 1995, and has grown through multiple industry cycles, including the most recent and challenging, the wholesale energy price spikes following the covid pandemic and the invasion of Ukraine.

Ecotricity Limited was established with a mission: to end the use of fossil fuels. We have always been clear with our customers about our mission and strategy, to turn “bills into mills”. The regulated supply business is at the core of the Ecotricity group of renewable energy companies, with revenues from the supply business having been invested in the construction of 3 sun parks and 22 wind parks with a combined peak capacity of over 100MW. Our Heckington Fen solar project will have peak capacity of 500 MW and we are also investing in battery storage systems, collocated with our generation assets. Unusually in the UK energy supply sector, Ecotricity and the Green Britain Group remains founder-owned.

Ofgem’s stated role is to “*work to protect energy consumers, especially vulnerable people, by ensuring they are treated fairly and benefit from a cleaner, greener environment.*” Its responsibilities are stated as: *working with government, industry and consumer groups to deliver a net-zero economy, at the lowest cost to consumers; stamping out sharp and bad practice, ensuring fair treatment for all consumers, especially the vulnerable; [and] enabling competition and innovation, which drives down prices and results in new products and services for consumers.*”¹

We understand that the intention of the proposed governance guidance changes is to support Ofgem’s focus on the first two points, but progress in those areas should not come at the expense of stifling competition and innovation, particularly at a time when the UK’s energy infrastructure is in the midst of a fundamental shift from consumption of fossil fuels to renewable energy sources, and the retail markets have a vital role to play in managing changing demand patterns to deliver net zero.

In our view, the effect of the proposed changes will be to create barriers to market entry, increase market concentration, and stifle innovation. Consequently, we oppose their implementation. If however, Ofgem decides to implement the proposed changes, they should be amended to acknowledge that Ofgem must assess suppliers’ approach to corporate governance and compliance with SLC 4A and the guidelines in a way which is sensitive to the characteristics of different degrees of business maturity, with varying financial and business

¹ [Our role and responsibilities | Ofgem](#)

models. This is essential to minimise the potentially anti-competitive and anti-innovation effects of the changes.

UPDATED GUIDANCE UNDER SLC 4A

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

We do not agree that Ofgem should introduce guidance around SLC4A regarding governance arrangements.

While most of the suggested additional paragraphs are unobjectionable in themselves, we do not support these proposed changes to the existing guidelines.

Our concern is that, even if the guidelines set out a reasonable range of options for licensed suppliers' governance arrangements, these could quickly morph into essentially mandatory requirements, so that any supplier which does not meet all of the "suggested" criteria or "example" structures could be subjected to intrusive investigations into its corporate governance and related operations. Larger suppliers will usually already apply all of the suggested arrangements, either as a result of being exchange-traded entities themselves or by being controlled by even larger exchange traded entities. The additional regulatory burden will therefore disproportionately affect start-ups, smaller suppliers, and privately held companies, which already face compliance costs which are higher, on a per customer basis, than their larger competitors.

If Ofgem decides to proceed with these changes, it is essential that they are and remain guidelines which are interpreted appropriately in the context of energy suppliers' different business models and corporate structures. Consequently, the proposed wordings should be revised to include an explicit statement that Ofgem will be obliged to assess compliance with the guidelines in a way which is sensitive to the characteristics of different businesses, with varying financial and business models. If this is not done, the proposed changes will tend to drive out competition and innovation from the licensed supply sector and have the effect of concentrating the industry into a small number of very large entities.

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

We do not believe these insertions are necessary, nor that they would be beneficial.

If they are adopted, they should be balanced by specific obligations on Ofgem as described above.

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

As noted above, if Ofgem decides to proceed with these changes, it is essential that these remain guidelines which are interpreted appropriately in the context of energy suppliers' different business models and corporate structures. Consequently, the proposed wordings should be revised to include an explicit statement that Ofgem will be obliged to assess

compliance with the guidelines in a way which is sensitive to the characteristics of different businesses, with varying financial and business models.

ENHANCED DATA GATHERING

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

We do not agree that Ofgem should amend the guidance for milestone assessments to include governance arrangements.

The assertion in paragraph 3.3 of the consultation that *“it is important to increase the data we collect in relation to a supply licensee’s governance arrangements to provide us with greater assurances”* seems to us to point directly to the undesirable and counterproductive outcome which we discussed under Question 1. Wherever a supplier says “we have not implemented all of the guidelines to the letter”, the logical response will be for Ofgem to probe further. We see a genuine risk that this would lead to Ofgem putting its own assessment of the “right” governance structure for a supplier ahead of the considered judgement of the directors themselves and order that supplier to amend its governance structure.

We are concerned that Ofgem’s judgement will necessarily be informed more by a risk-averse mindset centred on its view of *“ensuring fair treatment for all consumers”* than one which recognises the importance of delivering *“a net-zero economy, at the lowest cost to consumers”* and *“enabling competition and innovation”*.

Section 172 of the Companies Act 2006 obliges a company’s statutory directors to: *“have regard (amongst other matters) to*

(a) the likely consequences of any decision in the long term,

(b) the interests of the company’s employees,

(c) the need to foster the company’s business relationships with suppliers, customers and others,

(d) the impact of the company’s operations on the community and the environment, [and]

(e) the desirability of the company maintaining a reputation for high standards of business conduct”.

Where the company in question is a regulated entity such as a licensed energy supplier, sub-sections 172(a), (c) and (e) necessarily require that the interests of customers and the expectations of the regulator are considered in every material decision made by the board and individual directors.

Where “moral hazard” risks have been addressed by the strengthening of the financial responsibility principle and associated reporting, and since all the statutory directors of a licensed supplier will necessarily have been assessed as “fit and proper persons”, we do not see any justification for Ofgem to be able to impose its view of the “right” governance structure on a company, against the advice of its professional directors. We take the holistic view of all the potentially competing duties and obligations incumbent upon Statutory Directors

For the reasons set out above, we do not support the insertion of new paragraphs 3.1.4, 3.5.3, or 3.17.

If Ofgem nonetheless decides to proceed with these changes, the proposed wordings should be revised to include an explicit statement that Ofgem will be obliged to assess the information received and individual suppliers' compliance with the guidelines in a way which is sensitive to the characteristics of different businesses, with varying financial and business models.

IMPACT ASSESSMENT

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

In our view, the impact assessment does not establish a robust need case justifying the proposed changes to SLC4A guidance.

You have stated that *"We saw instances in failed supply licensees where weaknesses in their governance arrangements might have contributed to their failure"* (Consultation paragraph 4.3). It is notable that you used the words "might have", not "clearly" or even "are likely to have".

The fact is that the wave of supplier failures which commenced in Q3 2021 were the result of inadequate financial reserves and/or trading and hedging strategies which were not fit for purpose in those (admittedly extraordinary) market conditions. Paragraph 4.3 suggests to us that there is no evidence that changing the corporate governance arrangements of failed suppliers would have had any effect on their financial structure or their wholesale trading and hedging strategies prior to Q3 2021.

You have quoted the £2.3bn cost of SOLR processes arising from the energy price crisis (Consultation paragraph 4.2), but have not included an assessment of whether the expected level of supplier failures and associated SOLR costs would have been substantially reduced if suppliers had been subject to the more demanding financial responsibility measures already implemented. Our view is that the financial responsibility measures would have significantly reduced the number of supplier failures and associated costs. The absence of that counterfactual assessment means that the impact assessment does not in fact assess the likely value of the proposed changes to suppliers' governance arrangements in preventing supplier failures and consequent socialisation of SOLR costs.

The fundamental reason for the market turmoil and supplier failures since 2021 was extreme wholesale price volatility caused by the UK's dependence on gas as its primary fuel for energy generation and much of its heating load. This is explicitly recognised in the consultation paper, which notes that *"The energy crisis of winter 2021 and the supply licensee failures that followed exposed significant weaknesses in the financial resilience of the retail energy market."* (Consultation foreword). We support Ofgem's recent moves to ensure high levels of financial resilience across the supplier sector, such as the enhanced financial responsibility principle set out in SLC 4B and the Annual Adequacy Self-Assessment, but do not believe that, if the proposed changes to the guidance around governance arrangements had been in effect before the 2021-2022 crisis, they would have had a material impact on the level of supplier failures.

In our view, Ofgem would most effectively deliver on its responsibility “*to deliver a net-zero economy, at the lowest cost to consumers*” by working to change the way the wholesale energy market works, to prevent gas price spikes driving the market clearing price and accelerating the transition away from gas entirely. Alongside changes to the pay-as-bid basis of the wholesale market, there is a huge need to encourage and accelerate the move towards a net zero electricity system and decarbonising domestic and other heating.

Facilitating the development of low-carbon/no-carbon domestic gas production through anaerobic digestion, accelerated introduction of technologies such as heat pumps and district heating will all minimise the UK’s exposure to international energy markets. These changes would very significantly reduce the systemic market risk to energy suppliers, making the catastrophic and undoubtedly expensive circumstances of 2021-2022 much less likely to recur.

6. Do you agree that overall, these proposals would be benefiting consumers?

We do not agree that these proposals would benefit consumers.

For the reasons set out in our responses to Questions 1, 4, and 6, we believe the likely effect of the proposals will be to create barriers to market entry, increase market concentration, and stifle innovation. For these reasons, we believe they will be detrimental to consumers.

If they are to be implemented, we believe they must be balanced by clear obligations on Ofgem to take a measured and holistic approach to the assessment of individual companies’ response to these changes.

Yours faithfully,

Signed

A handwritten signature in black ink, appearing to read 'Asif Rehmanwala', with a stylized, flowing script.

Asif Rehmanwala

Director, Ecotricity Limited