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17 February 2014

**Ofgem Forward Work Programme 2014-15 – Draft for consultation**

Dear Mr Atkins,

I am pleased to attach Energy UK's response to Ofgem's consultation on its Forward Work Programme 2014-15. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2963 or [daisy.cross@energy-uk.org.uk](mailto:daisy.cross@energy-uk.org.uk)

Yours sincerely

Daisy Cross  
Policy and External Relations Executive

# Ofgem Forward Work Programme 2014-15 – Draft for consultation

## Energy UK response

17 February 2014

### 1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and supplies and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.
- 1.2. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers, and promotes a stable and independent regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy. We are committed to support Ofgem in its leading role in evaluating competition in the market, and promoting consumer trust and engagement.
- 1.3. These high-level principles underpin Energy UK's response to Ofgem's Forward Work Programme. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.
- 1.4. Energy UK's comments on Ofgem's Forward Work Programme are made by exception. To keep our response as concise and useful as possible, we see no need to comment where we support Ofgem's plans.

### 2. Executive Summary

- 2.1. Energy UK welcomes Ofgem's Forward Work Programme, and will continue to support Ofgem in its objective to promote a competitive energy market that produces good outcomes for domestic and business consumers, and which enables energy customers to trust and engage with energy suppliers.

- 2.2. Energy UK calls for Ofgem to create a compliance function that sits between licence condition and enforcement. This would enable speedier intervention when problems arise and facilitate dialogue between regulator and the regulated, assisting all parties in delivering Ofgem's desired outcomes. Energy UK urges Ofgem to undertake a compliance review in the coming year.
- 2.3. We are supportive of Ofgem's work seeking to deliver a faster, more reliable change of supplier process, and look forward to continued engagement with Ofgem and other parties to improve the switching process for customers.
- 2.4. Energy UK encourages Ofgem to engage with the Smart Meter Central Delivery Body (SMCDB) and DECC as the smart metering rollout programme moves forward in order to avoid duplication of effort on consumer engagement planning.
- 2.5. Energy UK would like to see more detail on contributory factors Ofgem considers when deriving its budget, and more detail on its areas of spend.
- 2.6. We are keen to understand Ofgem's perspective on the possible implications of further devolution occurring, and call for Ofgem to share its views on this issue.

### **3. Promoting Value for Money**

- 3.1. Ofgem states that it will "show trends in the costs that suppliers face and the prices they charge to their customers". Energy UK would ask for clarification as to whether this is referring to the Supply Market Indicators (SMI), or something else. With respect to the SMI, Energy UK believes that it could be portrayed more accurately. For instance, Ofgem should be precise with its terminology around profits and margins (EBIT is not profit) and should ensure that readers of the SMI are clear that it is a prediction that might not reflect actual costs.
- 3.2. Energy UK welcomes Ofgem's work to deliver a faster, more reliable change of supplier process. Energy UK has responded positively to the Secretary of State's calls to speed up switching, and looks forward to continuing to work with Ofgem and other third parties to ensure that the necessary changes can be delivered.
- 3.3. Ofgem has stated that possible outcomes of the first annual competition assessment include taking no further action, identifying further issues on which to focus assessments in future years, proposing specific reforms or proposing a market investigation reference. These different outcomes would presumably have quite different impacts on Ofgem and regulated companies' activities and resources available for other projects outlined in the Forward Work Programme. We would like to see Ofgem acknowledge these uncertainties and dependencies in its Forward Work Programme, along with reassurance that there are plans to deal with different scenarios.
- 3.4. To acknowledge Ofgem's shift toward principles-based regulation Energy UK encourages Ofgem to consider a review of existing licence conditions, with a view to removing any prescriptive conditions that are no longer necessary.
- 3.5. Energy UK fully supports Ofgem's ongoing review of regulation of Third Party Intermediaries (TPIs) in the domestic and non-domestic markets. Addressing issues in this market is key to improving consumer trust in the energy industry, for instance by ensuring transparency in the commissions taken by brokers. Energy UK welcomes the announcement of Ofgem gaining powers to regulate TPIs directly through the Business Protection from Misleading Marketing Regulations (BPMMRs).
- 3.6. Care must be taken to ensure Ofgem's domestic regulatory agenda is fully aligned with EU developments, and initiatives which could cut across areas of future EU work should be avoided. Included in this - whilst mindful of the increased convergence of energy and financial regulation - Energy UK urges Ofgem to work closely with the Financial Conduct Authority and ACER in a transparent manner when approaching the implementation of the EU regulation on wholesale

energy market integrity (REMIT) to police the market effectively, and to avoid duplication of regulation, information requests and consultations.

- 3.7. Energy UK expects that, through the Future Trading Arrangements (FTA) Forum and other fora, Ofgem will ensure consistency between its work programme and that of ACER and the European Commission. Ofgem should not, in our view, be bringing forward proposals in areas where the EU Target Model is being developed through the Network Codes or other EU measures.
- 3.8. ACER is receiving significant amounts of data under REMIT requirements. Energy UK requests that Ofgem explores whether REMIT data can be repurposed for increasing transparency of wholesale electricity market activity, particularly trading. Energy UK is undertaking work on wholesale market transparency and would welcome the opportunity to work with Ofgem on ways to make non-confidential data more accessible.
- 3.9. Energy UK welcomes Ofgem's action on electricity theft, the costs of which are ultimately borne by customers. Theft poses serious health and safety risks for those who commit the crime and any others in close proximity. Furthermore, where electricity is stolen, it is often used inefficiently, thus negatively impacting on the wider aim of reducing carbon emissions. Energy UK members look forward to working with Ofgem as plans are developed. However, as part of any review suppliers must ultimately have the ability to disconnect where there is a threat to safety, repeat offending, or where a customer is not prepared to pay for their energy despite being able to do so. As regards safety, Ofgem's view of the relevant electricity legislation appears to restrict disconnection on these grounds to be a power solely dischargeable by distribution companies. We are aware that the industry and individual members have raised this interpretation with government. We hope that Ofgem remains cognisant of this as it develops its policies on energy theft.
- 3.10. Energy UK calls for Ofgem to review the governance structure of the Smart Grid Forum with the aim of improving its transparency and inclusiveness, to ensure that all relevant stakeholders are represented.
- 3.11. Energy UK requests that Ofgem issues an information request to Transmission Network Operators, Distribution Network Operators (DNO) and Elexon in order to understand the level of credit lodged, what the credit is intended to cover and which banks are providing the cover. There is a concern that this could be from within a limited number of banks given the choice limitations around 'A' rated London-based banks
- 3.12. Energy UK urges Ofgem to commit DNOs to improving standardisation with respect to Credit provisions and produce a 'Dummies' Guide' to credit. Current provisions are difficult to interpret, making comparison impossible between providers.

#### **4. Promoting security of supply**

- 4.1. Energy UK supports Ofgem's continued engagement with stakeholders on the introduction of the European Union's Third Energy Package. Implementation of the Third Package, including the removal of retail price regulation in those Member States where it still exists, is a retail market priority. New policy measures at European level should be considered secondary to this.
- 4.2. Energy companies understand that the European Network Codes will have substantial commercial ramifications, but believe that ultimately European market liberalisation should benefit the GB energy market, provided that implementation is designed to complement the functioning of the GB energy market at a reasonable cost. Energy markets are evolving rapidly, given in particular the development of renewable generation, and it is important that the EU Target Model is adapted where necessary to take account of these broader developments. The evolution of the Target Models should be considered in the light of experience so far.
- 4.3. Several gas codes are being reviewed as part of the Significant Code Review, but are not referenced in Ofgem's work programme. The proposed review of centrally contracted demand

side response has also been omitted. If Ofgem decides to go ahead with this review, Energy UK would require more detail around the programme.

- 4.4. Energy UK calls for an Ofgem-led review of the change management process currently utilised for the Grid Code and Distribution Code. We request that industry adopt the governance arrangements used in other GB codes, such as the Connection and Use of System Code or the Balancing and Settlement Code.
- 4.5. As Government develops its Capacity Market proposals in 2014, it is important that Ofgem continues to take part in the debate on generation adequacy throughout the process.
- 4.6. Market integration of renewable generation continues to be an important issue affecting many stakeholders, and Ofgem should continue to play an active role in related UK and EU fora. In doing so it must consider the wider energy policy context.
- 4.7. Energy UK is concerned that the Government's Strategy and Policy Statement, designed to help ensure that Government policy and Ofgem regulation are joined up, has been overlooked in the Forward Work Programme.

## **5. Promoting Sustainability**

- 5.1. Energy UK is supportive of the five key themes proposed by Ofgem as part of its Consumer Vulnerability Strategy. In our response to Ofgem's consultation in 2012 we suggested an additional sixth theme for the Strategy - Ofgem should consider how it could better leverage its position as an independent voice with consumers and third parties to help rebuild trust in the industry and raise awareness of the support already on offer. We also note Ofgem's intentions to review the Priority Services Register and further explore how vulnerability is identified and would encourage Ofgem to work with suppliers to build upon existing best practice.
- 5.2. In our response to Ofgem's Simplification Plan consultation<sup>1</sup>, we urged Ofgem to make clear its objectives around data requests, explaining why it is investigating a particular issue and communicating outcomes and conclusions to suppliers and stakeholders following its data requests. Our members also urge Ofgem to rationalise its information request process to avoid duplication across multiple requests, and to consider its requests against the full backdrop of reporting requirements, liaising with Ofgem directorates and referring to its Memoranda of Understanding with other parties before requesting information.
- 5.3. As the smart meter rollout progresses, Ofgem should ensure it works closely with the Smart Meter Central Delivery Body (SMCDB) to prevent duplication of effort on consumer engagement planning which would result in extra costs - ultimately paid for by the consumer.
- 5.4. Energy UK calls for stronger partnering between Ofgem and DECC in support of the smart metering rollout programme, as further engagement appears to be necessary between the two organisations.
- 5.5. Under "key projects" within the Sustainability section, Ofgem states that it will "continue our programme of work focused on microbusinesses". Energy UK would welcome further detail regarding the scope of this work programme.

## **6. Ensuring Efficient Delivery of Government Consumer and Environmental Programmes**

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<sup>1</sup> <http://www.energy-uk.org.uk/component/jdownloads/finish/155/938.html>

- 6.1. Moving from the Carbon Emission Reduction Target and the Carbon Emission Saving Programme to the Energy Company Obligation has presented some challenges as we move towards delivery of a significantly different energy efficiency programme. Energy UK will continue to work with Ofgem E-serve to ensure efficient and cost effective delivery of obligations placed on suppliers.
- 6.2. The consultation notes that Ofgem is working on closure of CERT and CESP and publication of compliance report for phase 1 and 2 of ECO. Further detail on the timescales under which Ofgem intends to complete these projects would be helpful.
- 6.3. Recently proposed changes to ECO will result in additional guidance. It will be important to build upon past experiences and ensure provision of scheme guidance and compliance requirements are made as soon as practically possible to avoid a hiatus in delivery as the supply chain waits for clarity on reporting and documentation is needed. We would strongly urge Ofgem E-serve to replicate the helpful workshops that were delivered when the first set of ECO guidance was developed.
- 6.4. Energy UK has had increased engagement with the Ofgem Fraud Prevention, Audit and Governance team, particularly through the newly formed ECO Industry Fraud Prevention Committee, of which Ofgem and ECO obligated parties are members, and also through continued engagement on ECO Technical Monitoring. This increased engagement has been appreciated by members and we would welcome this level of engagement to continue in the future.
- 6.5. Guidance should be developed to support cost effective compliant and customer-friendly delivery. We will continue to work with Ofgem E-serve to identify opportunities to simplify reporting requirements that will deliver efficiencies to environmental programme.
- 6.6. We note that key performance indicators (KPI) are provided for other environmental programmes in Annex 2. Energy UK is surprised that there are no KPIs for ECO.

## **7. Budgets and Spend**

- 7.1. Energy UK notes that Ofgem budget forecasts show an increase in projected gross spending of around £10m over the next five years, compared with last year's work programme.
- 7.2. Due to the Large Combustion Plant Directive, significant volumes of megawatts are being removed from the GB generation capacity, affecting the income and, therefore, budgets of generators. At the same time, GB gas plant is not operating at full capacity due to the high price of gas, with significant projects being mothballed. Overall, generators and suppliers are seeking to reduce their costs to remain competitive.
- 7.3. Energy UK seeks a commitment from Ofgem – an organisation which indirectly contributes to industry cost - to reduce its budget and ensure that only increases that are absolutely necessary be imposed.
- 7.4. In our response to Ofgem's 2013-14 Work Programme<sup>2</sup>, Energy UK called for Ofgem to provide more detail around how it intends to deploy resources, and on the projects themselves. Ofgem should lead by example and be as transparent as it wants the market it regulates to be. Energy UK re-states its request for Ofgem to provide a per-programme breakdown of costs, including its spend on permanent staff and consultants.

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<sup>2</sup> <http://www.energy-uk.org.uk/component/jdownloads/finish/147/834.html>

## 8. Additional Points

- 8.1. Ofgem has set a wide-ranging and ambitious programme for the year ahead which responds to its duty to protect the interests of gas and electricity consumers. Energy UK notes, however, that little detail on performance indicators is included in the publication. Ofgem must communicate more relevant information on how it will measure performance against its objectives.
- 8.2. Ofgem has a responsibility to ensure that entry into the energy market for new companies is not overly burdensome, but must also ensure new entrants have access to relevant support and information. We would welcome further engagement and advice from Ofgem when market players are considering new products and services to ensure they meet Ofgem's interpretation of the licence conditions.
- 8.3. Energy UK is supportive of Ofgem's mission to 'regulate only where necessary to protect consumers' interests' and to 'carefully consider whether any regulatory requirement we are proposing to introduce is proportionate and necessary to protect consumers'<sup>3</sup> and encourages Ofgem to apply these principles to all of its regulation. Through its Better Regulation Unit, Government has adopted a policy of "one in, two out"<sup>4</sup> for business regulation. We would encourage Ofgem to consider a similar principle.
- 8.4. Energy UK notes that Ofgem's enforcement review is featured in the Forward Work Programme. At Ofgem's Enforcement Conference held in autumn 2013, Ofgem stated that it was reviewing the role of compliance as a separate piece of work. Energy UK believes that Ofgem should create a compliance function that sits between licence condition and enforcement, to allow sensible change to take place without always having to go back through a long, slow process. We would also want to emphasise the need for speedy intervention when problems arise and a good dialogue between regulator and the regulated, for the purposes of being able to better effect the outcomes that Ofgem seeks such as, for example, their Standards of Conduct. For these reasons we were very disappointed not to find a mention of the compliance review in the Forward Work Programme and would strongly encourage Ofgem to make this a priority for the following year.
- 8.5. Not all elements of projects listed in the work programme are listed as deliverables in Appendix Two; for example Ofgem's planned progress regarding the Gas Transmission Charging Unit. Energy UK would like to see this section expanded in future work programmes.
- 8.6. Energy UK welcomes Ofgem's suggestion of using return of capital as a measure of profitability in the generation sector, which companies will report in their Consolidated Segmental Statement (CSS).
- 8.7. In Appendix 2, Ofgem states that it will publish a revised statement on penalties. Energy UK would like clarity as to whether this will include a consultation and statement on how it will deploy its new consumer redress powers under the Energy Act.
- 8.8. Although assessment is against the current baseline, some of Ofgem's decisions may not be implemented until after the Scottish referendum. It will be important for Ofgem to consider potential impacts of a split occurring, and Energy UK would like to see this analysis mentioned in Ofgem's work programme.

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<sup>3</sup> <https://www.ofgem.gov.uk/about-us/how-we-work/our-approach-regulation>

<sup>4</sup> <https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business>