



By email only

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Our contact

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Dear Louise,

REMIT Procedural Guidelines and Penalties Statement Consultation

Npower welcomes the opportunity to respond to the Ofgem consultation on the REMIT Procedural Guidelines and Penalties Statement Consultation. We are generally supportive of the approach that Ofgem are looking to adopt to monitor, investigate and enforce the requirements under REMIT. Please see below our response to your consultation questions.

Question 1: Do you agree with the proposed Vision and Strategic Objectives for REMIT?

Yes, we support Ofgem's proposed Vision and Strategic Objectives for REMIT and the aim to achieving a culture where wholesale energy markets place customers first and act in line with their obligations both generally and under REMIT.

Question 2: Do you have any comments on the proposed changes to the settlement processes?

We agree with Ofgem's proposed changes to the settlement processes, particularly the introduction of the Enforcement Decision Panel (EDP) undertaking important decisions in contested REMIT cases and the composition of Settlement Committee. We welcome the opportunity to settle cases within a set timescale where discounts are provided for cases settled at the earliest opportunity. We elaborate on this below (see answer to Question 10). As we are supportive of the introduction of these proposition, npower have no further comments.

Question 3: Do you have any comments on Ofgem's proposals for oral representations?

We are supportive of the proposed opportunity for the subject of an investigation to make a request for an oral representation and to be heard by the decision-makers of their case. Therefore, npower has no further comments.

Question 4: Do you have any other comments on the proposed REMIT Procedural Guidelines?

As a market participant we are supportive of the proposed REMIT Procedural Guidelines. Ofgem have expressed that they will be updating the Guidelines to reflect an expected development of the enforcement regime to include breaches under Article 8 (transactions and fundamental data reporting) and 9 (market participant registration). As market participants who are impacted by the Regulation(s) are expected to register from 1st December 2014, can Ofgem provide the timescales in which the updated guidelines are likely to be published. npower will be registering as a market participant in due course and would like to review the updated documents to review the impacts of non-compliance under Article 8 and 9 for information purposes.

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Question 5: Do you agree with the proposed factors that affect the decision to impose a financial penalty and/or make a restitution or issue a statement of non-compliance?

Yes, we agree with the proposed factors that affect Ofgem's decision to impose a financial penalty and/or make a restitution or issue a statement of non-compliance.

Question 6: Is the proposed process for determining the amount of penalties and/or restitution appropriate?

We agree with Ofgem's position in keeping with the general enforcement policy and process for determining the amount of penalties/restitution appropriate. Npower agrees with Ofgem's ability to take enforcement action for non-compliance by market participants/individuals and assessing gains from such misdemeanours. However, Ofgem needs to be clear about how it will determine what an appropriate financial penalty is and when it should be applied. Existing case law and precedents set by previous regulatory investigations need to be taken into account in setting penalties, in line with the principles of natural justice.

Question 7: Do you agree with the proposed approach to assessing the seriousness of a breach and calculating the starting point for a financial penalty?

Yes, we agree with Ofgem's proposed approach in assessing the seriousness of a breach impacting the size of the financial penalty.

Question 8: Do you agree with Ofgem's proposed approach in relation to representations that a person believed that the behaviour was not a breach or that a person had taken all reasonable precautions and exercised due diligence to avoid the breach?

Yes, we consider Ofgem's approach in such circumstances as fair and reasonable.

Question 9: Do you agree with the factors that may aggravate or mitigate the level of the penal element?

Yes, we consider Ofgem's approach in assessing factors that may aggravate or mitigate the level of penalty to be fair and reasonable. Npower welcomes the opportunity for market participants to have the ability to go 'above and beyond' of what would be expected of persons facing enforcement action. Nevertheless, despite being new ground, npower will ensure full compliance with the Regulations and have the necessary procedures and processes in place to support this.

Question 10: Do you agree with the proposed settlement percentage discounts in REMIT cases?

Yes, we agree with the proposed settlement percentage discounts that may apply to cases under REMIT, as this is consistent with the approach adopted in cases settled under the Gas or Electricity Act. However, the early settlement timescales are extremely challenging and would be very difficult to meet.

Question 11: Do you agree with Ofgem's proposed approach to restitution under REMIT?

Yes, we agree that market participants in breach of their obligations under REMIT should identify, contact and compensate those who have been negatively impacted by such non-compliance. Therefore, npower support the Authority's ability to make (or apply) for an order for the non-complying party to make restitution payments.

Question 12: Do you agree with Ofgem's proposals in respect of serious financial hardship?

Yes, as a market participant we consider Ofgem's approach to serious financial hardship as fair and reasonable.

Question 13: Do you have any other comments on the proposed REMIT Penalties Statement?

We have no further comment to Ofgem's proposed REMIT Penalties Statement.

If you would like to discuss our response, please contact the following individual:

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Harris', written in a cursive style.

Chris Harris
Regulation Director
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