Lisa Charlesworth & Jeremy Adams-Strump,
Industry Codes & Licensing team,
Ofgem,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU

17th January 2019

Dear Lisa & Jeremy,

Supplier Licensing Review

Thank you for the invitation to respond to the above consultation. Bristol Energy is an independent supplier of electricity and gas with a business model that has a regional focus on the South West of England, although we supply customers across Great Britain. We have a mission to fight fuel poverty and be a force for social good.

Executive Summary

Bristol Energy welcomes Ofgem's proposals to improve both the requirements for market entry and ongoing monitoring and look forward to their quick implementation once Ofgem has considered the feedback from this consultation. We consider that the failure of suppliers is detrimental to the market and to consumer confidence and hence it is appropriate that Ofgem does all it can to ensure that market entrants are robust and have a sustainable business model.

Our main concern is the proposal to limit the evidence for market entry to the first year of operation. We do not believe that a single year is sufficient and Ofgem should require a three-year business plan from applicants. We agree with Ofgem that plans may change over time, but by providing a three-year plan the applicant will have to demonstrate to a higher degree how they will manage growth both financially and operationally and what prudent provisions they would make if actual growth was greater or lower than forecasted.

We also call on Ofgem to consider further the fact that if an existing supplier wishes to buy a struggling supplier it is in that supplier's interest to allow that supplier to fail and pitch a competitive SoLR bid rather than pursue a trade sale, thus passing on the debts of the failed supplier onto the rest of the market whilst gaining the customers. We believe this happens to the detriment of both consumers and competition. We recognise that certain elements of insolvency law are outside Ofgem's ability to change, but some aspects of the debt owed to industry mechanisms are within its remit.

Finally, whilst we support Ofgem's plan to improve ongoing monitoring in principle, as a matter of urgency, we believe they must address the magnitude of debt a failed supplier can passes on to its competitors, and thus to their customers. It cannot be right for example, that cash rich customers who are lured to a cheap supplier with promises of high interest on credit balances being compensated by financially constrained customers of financially prudent suppliers. This is a social abomination that Ofgem should not be tolerating.

We have answered your specific questions below, expanding our response as necessary.

Q1. Do you agree with the principles we have set out to guide our reforms?

We are supportive of the principles that Ofgem is using to guide its reform. However, we believe Ofgem should,

as a matter of urgency, whilst protecting customers whose supplier has failed, also consider the impact on all customers whose suppliers must act to protect the integrity of the market through mutualisation and support for the Supplier of Last Resort (SoLR) process.

Ofgem should consider the principle of protecting the integrity of the market. One of the issues with the current SoLR process is that it is often in the ultimate SoLR supplier's interest to allow the struggling supplier to fail and put in a competitive SoLR bid, rather than pursue a trade sale which would require them to pick up the defaulting supplier's debt. By going for SoLR, they can avoid the costs of unpaid RO, FIT and other obligations and payments owed to the industry which all suppliers must then make good. This was clearly evident in the takeover of Spark Energy by OVO Energy in November. As Ofgem rightly identifies, this ultimately leads to poor outcomes for all consumers, potentially increases the pressure on all suppliers and hence risk of further failures, as well as distorting in the market.

We recognise that Ofgem cannot influence insolvency laws directly, but it can look at ways to minimise how much debt a failing supplier can accumulate in certain areas, by for example more frequent RO payments, and clamping down on incentives or practices that lead to excessive customer credits.

Q2. Do you agree with our proposal to introduce new tougher entry requirements and increase scrutiny of supply licence applicants? Do you agree this can be achieved with increased information requirements and qualitative assessment criteria?

Bristol Energy supports Ofgem's proposal to introduce tougher market entry requirements to ensure suppliers have realistic ability to operate in the market. However, we believe a variant of option 3 would be a better solution, principally because history shows that very few, if any, suppliers fail in their first year, and many do not "go-live" in their first year, thus option 2 is unlikely reduce the risk of supplier failure.

We believe there should be a requirement on applicants to provide a 3-year business plan and evidence of their ability to fund it, including the wherewithal to manage key risks such as a '1 in 10 Winter'. This should include how they will manage collateral requirements and trading risks. We do not believe it is appropriate to have a minimum capital requirement, just that applicants can reasonably fund their 3-year plan.

We accept the view that business plans can change, but the importance of the test is to demonstrate to Ofgem that the applicant has a good understanding of what funding is required for their proposed business plan and what provisions need to be made to support growth. It is also an opportunity for Ofgem to draw to their attention any deficiencies for them to consider. For example, an applicant may present a plan that shows they can fund adequate resources for trading and customer delivery but underestimated the collateral requirements, which Ofgem can bring to their attention and ask them to address before being granted a licence.

Q3. Do you agree that our proposed assessment criteria for supply licences applications are appropriate?

In our view the three criteria outlined are appropriate at a high level although we have comments below on the evidencing of them. We would also welcome more information on how, having been presented with evidence, Ofgem will test it in detail. For example, what do Ofgem believe is an appropriate call centre staff to customer ratio? Or what is the minimum funding they believe a supplier needs to get to market in a financially robust state?

Q4. Do you agree that the applicants should provide evidence of their ability to fund their activities for the first 12 months, and provide a declaration of adequacy?

As stated above we believe requiring evidence of the first 12 months of activity is insufficient. Assuming the evidence is required after an applicant has passed BSC & MRA entry tests, then the party will still need to undergo controlled market entry (CME) which will be soft pedal for the first three to six months, and then measured growth for the rest of the first year. As far as we can recollect, no supplier has failed in their first year of operation, although some have never made it to market. If the evidence is required at the beginning of the process, then many suppliers do not enter the market within the first year after a licence is granted so the first-year business plan would be academic. We propose Ofgem look at the evidence of lag between licence being awarded and a supplier exiting CME, to help inform its view on this.

It is our view that applicants should present a three-year business plan and evidence of funding to meet this plan. Whilst we fully accept that plans can change, having a three-year plan would give Ofgem a better idea of the applicants' understanding of the impact of growth, and their overall access to funds ongoing, not just seeding money. Of course, Ofgem will need to be mindful that innovative approaches may mean traditional funding models will be a poor test, but it is up to the applicant to explain this and Ofgem needs to be willing to be open-minded on these issues.

In our mind a declaration of adequacy serves little purpose as nearly all parties would be able to sign in good faith. Ofgem would only be able to take action if they had reason to believe that any applicant signed knowing it not to be true or, in other words, that they provided false information to Ofgem. Should this be the case, action could be taken for fraud, whether a declaration was signed or not.

Q5. Do you agree with the specific information we should generally expect applicants to provide (in Appendix 1)? If not, why/what would you change?

As stated above, we believe the one-year time frame is too short and things like the expected rate of growth and projected volumes of energy to be supplied and purchased can be tested against their funding over 3 years. Plans may change, but it would demonstrate how well an applicant understands the connections between growth, trading and funding.

As stated above, we do not believe a statement of adequacy serves much purpose as it would only be useful if Ofgem can evidence that the statement was not signed in good faith based on the Directors' view at the time of signature.

We would divide the corporate structure into two. One would be a diagram showing ownership, including ultimate controlling parties. The other would be an organogram showing how the applicant will be set up and the roles created, with named individuals if appointed. The business functions will be part of this, but any resourcing will need to be a forecast linked to growth, as at the time of application the party will have no customers to serve.

We would also suggest that Ofgem provide a bit more clarity and reassurance around how they would assess the evidence provided by the applicants, particularly that set out under Criteria 1. Current proposals seem to suggest that Ofgem would not carry out any significant analysis of the plans submitted, instead stating an expectation that the supplier would have already analysed, or stress tested, their own plans. Whilst we understand that there needs to be a balance in the amount of analysis that the regulator undertakes, some reassurance that a minimum level of scrutiny will be observed is necessary in order to give the new process any significant credibility. Otherwise, combined with a declaration of adequacy, these plans could end up amounting to nothing more than additional paperwork and a box ticking exercise.

We would propose that Ofgem give serious consideration to appointing an accountancy firm to analyse business plans of new entrants.

Q6. Do you agree that applicants should provide a narrative in respect of their key customer-related obligations under the licence?

We agree that applicants should provide a narrative of their key customer-related obligations under licence. We also believe that they should cover other licence obligations where they have the ability to disrupt the market through non-compliance, unless these are specifically tested at a code level.

The narrative should also include how they plan to cope with market volatility, and for peaks in cash flow requirements such as paying the RO buy out and funding the WHD – if crossing the threshold is within their three-year plan.

Ofgem should also test this narrative with the applicant as it would be all too easy for industry consultants to provide a "template style" narrative for completion which may not present a true picture. This would ensure that the focus is on embedding that narrative into the business for the long term, rather than simply ticking the box to get the licence.

Q7. Do you agree with the areas we would generally expect applicants to cover (in Appendix 1)? If not, why/what would you add?

We would add Customer communications as a separate area but accept the areas Ofgem has proposed in Appendix 1 are correct. We also support the view that they should be provided in the form of a statement of intent and that Ofgem should not penalise an applicant if their approach is more flexible whilst it has small customer numbers. For example, if an applicant does not plan to offer PPM until it reaches the payment methods threshold, then it should not be required to provide a fully worked up narrative other than to acknowledge this will need to be developed before the threshold is passed.

Although not covered by licence, we believe Ofgem should consider requesting a statement of intent around data protection and data security, particularly in the context of smart metering, which will significantly increase the amount of data a supplier holds about a customer.

Q8. Do you agree that we should ask additional 'fit and proper' questions as part of the application process (as set out in Appendix 1)?

We support Ofgem adding robustness to the "fit and proper' person assessment. We believe it should cover anyone who would have significant or ultimate control, whether it is a corporate body or a person. It should also include anyone with significant management responsibility. This should be down to any appointed Head of Function and Ofgem should require each person's employment history to demonstrate the requisite experience for the role. Ofgem should also ensure that as a corporate body they can demonstrate a minimum level of industry knowledge within the senior team, or evidence of mitigation for the lack of such knowledge.

Q9. Do you agree that Ofgem's licencing process should be undertaken closer to proposed market entry? Do you identify any barriers to this approach or any adverse impacts of this change?

We support this approach although believe Ofgem should consider whether it should split the process into granting a provisional licence, based on some of the proposed information checks, but requiring the rest of the proposed evidence before granting a full licence to allow CME to commence. This will have two benefits; firstly,

it will help meet the requirement for a party to be a licensee before acceding to a code; secondly, it will allow the applicant to begin a dialogue with Ofgem as it moves forward.

One of the most important aspects of this is that Ofgem should not be linear in their assessment. Specifically, the process should not imply that the only two possible outcomes of an application are the granting or refusal of a licence. Ofgem should act as a critical friend to applicants and, before refusing an application, allow applicants to receive feedback, seek to improve any deficiencies, and prepare for resubmission. This approach would fit with Ofgem's duty to promote competition and could be based on its present approach to advice via its regulatory sandbox.

Q10. Do you consider that suppliers should report on their financial and operational resilience on an ongoing basis? If so, do you have any initial views on the content of these reports/statements?

Given that most supplier failures occur after their first year of operation and recent failures have included participants with history of several years in the market, we support the view that Ofgem needs to monitor market participants on an ongoing basis. Ofgem already collects data on supplier performance and also has access to data available in the public domain. These should be sufficient to give Ofgem early warning of issues and create an opportunity to engage in dialogue and targeted information requests.

In terms of financial data, Ofgem will have access to company's accounts as they are published, but we recognise that in the energy market a party's financial position can deteriorate quite rapidly in times of market stress. We would therefore support parties providing Ofgem, perhaps on a quarterly basis, a basic financial statement of sufficient detail to allow Ofgem to identify where more targeted financial information is required. However, we believe this should be fact and evidence based, rather than in the form of another declaration, as some of the proposals suggest. Suppliers may be reluctant to declare there is 'doubt over their resources', particularly as the consequences of such statements are unclear both in terms of Ofgem's reaction, financial supporters and indeed Directors own responsibilities to ensure the business is viable. As we explain below. Instead, providing a basic but factual financial statement would be a more transparent and objective means of assessing suppliers' ongoing financial adequacy.

One thing Ofgem does not state is what actions it would consider taking having identified that a party is struggling operationally or financially. Clearly, a financial penalty would have the potential to make matters worse and could be counter-productive. Previous experience tells us that Ofgem is also reluctant to revoke a company's licence to operate as this will, in all probability, trigger a supplier failure to the detriment of consumers.

We believe Ofgem should make more use of provisional orders or voluntary agreements banning a party from recruiting new customers or require the party to seek expert external help to develop and implement an improvement or recovery plan. Whatever Ofgem decides, it is important that parties understand there will be consequences to being on Ofgem's "supplier at risk" list.

Additionally, whilst respecting data provided in commercial confidence Ofgem should consider if there are any ways in which it can assure other market participants that they are aware of certain suppliers' problems and are both monitoring and working with them to either resolve or minimise the consequential impact on other suppliers should they fail.

Q11. Do you have any initial views on the potential introduction of targeted or strategic monitoring requirements on active suppliers?

We support Ofgem having powers to make targeted or strategic monitoring of active suppliers but believe these should be as a result of concerns that come to light in routine monitoring, or other market intelligence. We do not believe Ofgem should set static milestones or triggers which cause parties to be subjected to targeted information requests when in fact there is nothing to be concerned about. Indeed, it should be seen as a benefit of good performance or financial health, that regulatory reporting is reduced.

Whilst we appreciate Ofgem's primary concern is the customers of a failing supplier, it also has a duty of care to all customers to minimise the impact of failure via mutualisation calls, and the protection of credit balances. With hindsight, allowing Economy Energy to continue to trade after it failed to pay its RO invoices, has resulted in another 3 months of RO liabilities which other suppliers and their customers will have to fund.

Q12. Do you have any initial views on the potential introduction of prudential/financial requirements on active suppliers?

As stated above we would support a high level of quarterly financial reporting to the degree that it would allow Ofgem to identify potential risks and seek more targeted information. We also believe there should be an obligation to report to Ofgem any significant financial event based on similar rules that apply for public limited companies needing to make a market announcement.

Because of the diversity in the market and differing business models, we do not support a capital adequacy requirement as this may inhibit innovation. Nevertheless, Ofgem should remind suppliers that any offer of interest on credit balances may require them to become FCA regulated, and compliance with FCA rules. Ofgem should also consider opening a dialogue with the FCA as some suppliers are becoming de-facto savings banks without the protections, that banks and building societies offer.

Q13. Do you consider that Ofgem should introduce an ongoing requirement on suppliers to be 'fit and proper' to hold a licence?

We agree that Ofgem should require suppliers on an ongoing basis to be 'fit and proper' to hold a licence. However, it raises the questions as to what actions Ofgem would take if it decided that a new corporate owner, person of influence or head of function was not 'fit and proper'. If the person concerned is a Director of the company, then Ofgem could use its powers to disqualify them, although we believe that, in order to avoid litigation or appeal the level of unsuitability would have to be very significant and unambiguous.

In order to enforce the 'fit and proper' requirement Ofgem must have access to powers to enforce it and be prepared to act below the level of revoking the licence which may cause customer and market detriment if used. To this end, the ideal solution would be for Ofgem to have powers to veto the purchase of or appointment to persons, corporate or person it deems unfit. Without this Ofgem's only recourse would be licence revocation.

I hope you find this response useful. If you have any queries, please do not hesitate to contact me.

Kind regards,

Chris Welby

Chris Welby
Head of Regulation