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Dear Lisa,

Supplier Licensing Review

I am writing on behalf of ESP Utilities Group (“ESPUG”) (comprising the licensed companies ES Pipelines Ltd, ESP Connections Ltd, ESP Networks Ltd, ESP Pipelines Ltd and ESP Electricity Ltd). We welcome the opportunity to respond to Ofgem’s “Supplier Licensing Review” consultation paper (the ‘Consultation Paper’), dated 21st November 2018.

In summary, ESPUG supports Ofgem’s objectives of raising standards of financial resilience and customer service of suppliers by increasing scrutiny and oversight of suppliers. We believe that the existing regulatory regime has scope for improvement as we need a regime that is adequately equipped to deal with the dynamics of the energy market.

Conditions for entering the market

We agree that conditions for suppliers entering the market could be improved and welcome the proposed new supply license application requirements. The theme of financial resilience is one that we feel necessary for new suppliers to grasp as they should be able to demonstrate adequate operational and financial resources for operating and competing in the energy market. Additionally, we believe Ofgem could make proactive use of information obtained through entry criteria (such as those outlined in appendix 1 of the consultation paper) in assessing entry criteria as well as aiding with ongoing monitoring and engagement.

Ongoing requirements, monitoring and engagement

We support Ofgem’s intent to increase requirements and monitoring. All too often, suppliers can fall off radar even with displaying moderate to poor performance. Increased monitoring and engagement with suppliers post licensing will also serve to heighten supplier compliance and ensure the impacts of negative events for suppliers or decreasing standards of performance are mitigated in a timely and effective manner. We harbor a favourable view of the potential introduction of targeted monitoring/requirements on active and future suppliers and will elaborate more on this in the appendix accompanying this letter.

Arrangements for managing supplier failure and market exit

We understand that market exit is a feature of competitive markets but the reputational risk that stems from supplier failure is highly detrimental for the market as well as Ofgem. However, it must be noted that the energy market is unique in that a SOLR process exists to protect customers and therefore, traditional exit concepts may not apply directly. Our initial view on protecting customer credit balances is that a balance must be struck between letting suppliers utilize these funds and timely refunding of these balances to customers. With regard to the types of options Ofgem may consider to limit the risk exposure of credit balances, maximum amount limits and maximum duration seem particularly attractive. While we understand that a supplier’s utilization of these credit balances

would generally serve as a minor source of working capital, we would encourage options that do not particularly promote viewing credit balances as short term sources of funds for suppliers.

Our detailed comments are set out in the appendix to this letter. If you wish to discuss any of the issues raised in our response or have any queries, please feel free to contact me on 01372 587500.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Seb Eyre', with a large, stylized 'S' at the beginning.

Sebastian Eyre
ESP Utilities Group

Appendix: Answers to Ofgem's consultation questions

Question 2: Do you agree with the principles we have set out to guide our reforms?

Yes, we agree with the principles set out in the consultation, as we support a regime that reflects supply dynamics and we think the existing regime is too permissive.

Additionally, we think risk management is important in context of wholesale energy markets with the most important aspect being priority of risk.

Question 4: Do you agree with our proposal to introduce new tougher entry requirements and increase scrutiny of supply license applicants? Do you agree this can be achieved with increased information requirements and qualitative assessment criteria?

Yes, we agree and argue that recent supplier failures have shown inadequate regulation in this area, either by way of a permissive entry regime or by lack of oversight at later stages of a company's life. A brief view of the suppliers that failed in 2018 would indicate that the majority of them failed between five and seven years after incorporation. This would imply that ongoing oversight just as important as entry criteria. In particular, small suppliers could have less resilience to later stage factors such as wholesale price fluctuation than larger suppliers.

For the purpose of assessing the broad policy options proposed by Ofgem, we fully support option 2. We think Ofgem should delay entry if they feel new suppliers do not have adequate strategies for dealing with retail markets. However, we recognize that this would be part of a subjective assessment and that due care must be taken. Additionally, Ofgem need to set a boundary where they can refuse or prevent granting licenses based on estimations of failure or non-failure of supplier. We accept that this won't be easy.

We support option 3 but note this might create a barrier for new entrants. We would like to point that there exist similar capital requirements in existing regulatory regimes such as the BSC. In addition to increased information requirements and qualitative assessment criteria, we would also prefer utilization and oversight of non-intrusive quantitative data.

Question 5.4: Do you agree with the areas we would generally expect applicants to cover (in Appendix 1)? If not, why/what would you add?

Yes. Additionally, we would like suppliers to understand their regulatory obligations to networks which do not appear to be mentioned in consultation documentation.

With respect to Criteria 1, we would like to point out that previous suppliers' failures have not necessarily been helped by having a large parent company so the ability to assess suppliers' proof of funds/ability to raise capital through external providers of credit will be crucial. This regards the financial health of the supplier and does not take into account other factors such as competitive advantages gained from having a parent company.

Question 6: Do you agree that Ofgem's licensing process should be undertaken closer to proposed market entry? Do you identify any barriers to this approach or any adverse impacts of this change?

In the current climate, we would regard it being justified to spend extra time to complete checks and get a more accurate assessment than it would be to allow a narrow timeframe for suppliers entering the market.

Question 7.18: Do you have any initial views on the potential introduction of targeted or strategic monitoring/requirements on active suppliers?

We believe that the introduction of targeted monitoring requirements on active suppliers would add a layer of protection not currently available in the market. A targeted risk based approach for regulatory reporting would make a substantial difference as suppliers would have to, for example, reconcile expectations and outcomes and prove the viability and ability to achieve future performance that they outline. This adds a layer a safety and stability, especially when supplier expectations and outcomes are misaligned.

It must also be noted that the potential introduction of the proposed system would have far reaching implications for the wider energy market. The proposed system would be fairly costly for both Ofgem and market participants and too stringent monitoring may have an effect of stifling innovation of market participants.

Question 7.31: Do you consider that Ofgem should introduce an ongoing requirement on suppliers to be 'fit and proper' to hold a licence?

Yes. Doing so would enable Ofgem to better monitor and act on suppliers that do not or cannot conform to their obligations.

In principle, the addition of a clause allowing Ofgem to revoke the license post-granting would be an extremely useful tool to encourage suppliers to maintain a standard of service that Ofgem considers to be satisfactory, provided the formal route for the process is followed and due care is taken that the company truly is incapable of providing the service expected of them.