



Lesley Nugent,
Deputy Director, Licensing Frameworks,
Ofgem,
10 South Colonnade,
London,
E14 4PU

13th May 2019

Dear Lesley,

Consultation on new applications regulations and applicable guidance document

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 build a sustainable energy system that addresses fuel poverty in the Bristol area and beyond.

Executive Summary

Bristol Energy is supportive of the proposals for greater due diligence of licence applications and welcome Ofgem's proposals.

In terms of the requirements we are concerned that Ofgem is relying to much on statements of intent from applicants. We accept that this is a reflection of the fact that an applicant will not be fully up and running and able to demonstrate fitness, but it does create a risk that any statement of intent, even if honestly intended at the time, will not be followed through. To mitigate this Ofgem should, wherever possible seek evidence to back up any quantifiable part of a statement of intent. For example, an applicant's employee growth plan is matched with an accommodation strategy.

We also believe that Ofgem needs to be clearer about who is a relevant person in terms of being a "fit and Proper" person. As currently drafted, Non-Executive Directors are placed under a higher degree of scrutiny than a Head of Finance or Head of Regulation who arguably are more influential in terms of the applicant being able and capable of operating in the market to the expected standards.

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

Q1. Do you agree we should extend our enhanced 'fit & proper' assessment questions to all licence application types, not just supply licence applications?

We support this move. All market participants rely on the integrity of other parties to act in compliance with their licences and as such it is important that all parties carrying out a licence function should be subject to same degree of scrutiny. It would also send the wrong message if a person excluded from having a supply licence was able to gain a different licence because no fit and proper test existed.

Q2. Do you agree that the proposed questions in section 12 will enable the applicants for a gas or electricity licence to demonstrate that they meet the new supply licence application criteria?

Whilst we appreciate the need to be flexible in allowing applicants to submit their evidence in their own format, we are concerned that the questions allow too much latitude for a positive gloss to be put onto the response i.e.



Highlighting the positive and playing down the risks. If the answers are properly scrutinised and tested with requests for evidence by Ofgem then they could be sufficient. However, if Ofgem accepts submissions at face value then this creates a risk that the applicant's submission is less robust than it appears.

In our view, Ofgem should, when reviewing responses, question any statement that is not backed up with quantifiable evidence. In particular, that the applicant's statement of intent on customer service obligations is evidence by credible resource planning, including training and robust systems and processes, or at least evidence recognising what robust systems and processes are required.

Q3. Do you have any comments on the proposed new regulations/application forms, including the updated tiered process or fees? Or is there anything we have not included that you believe should be?

We note that in a number of the required statements the applicant needs to state various things about both named applicants and persons it considers having significant management responsibility. However, nowhere does it ask the applicant to name those persons who have significant management responsibility. We believe this will prevent Ofgem from carry out the checks it states it will carry out on those persons. This means Ofgem will carry out checks on Non-Executive Directors, who may have limited influence in the day to day operation of the business, but not check the operational management, such as a Head of Finance.

We believe Ofgem should, as part of the application ask for details of all persons with significant management control and be clear in its guidance what this definition entails.

We also note that not all ultimate parents will be UK companies. Bristol Energy itself is owned by a Local Authority, and even EDF Energy's ultimate parent is the French Government, and some may be foreign corporate structures where transparency is not of the same standards of the UK. The application form should refer to ultimate holding entity rather than company.

Q4. Do you have any comments or would you suggest any changes on 'suitability to hold a licence' (Chapter 3 of the draft guidance)?

We believe that there needs to be greater clarity on what "significant managerial responsibility" means. In our view it would be beneficial if an applicant was to provide Ofgem an organisational chart, and Ofgem highlights to the applicant which roles it believes are roles of "significant managerial responsibility".

In terms of relevant persons who was connected to a supply company that triggered a Supplier of Last Resort process, we believe Ofgem should not limit this to 12 months. Relevant persons should declare all incidents they have been connected with and Ofgem should give it due weighting based on the length of time since the event and the role the person had within the failed organisation. We also note that here have been occasions where a failing supplier has sold its portfolio to another supplier and then entered administration leaving debts to industry. However, because of the sale no SoLR process was triggered. We believe Ofgem should consider this further.

Q5. Do you have any comments, or would you make any changes to Chapter 4 of the draft licence application guidance, relating to the new criteria and process for supply licence application?

We feel that 4.8 should be starker and make clear that it is up to the applicant to demonstrate their fitness to hold a licence, not for Ofgem to prove they are not fit to do so. This is important because if Ofgem's decision not to grant a licence is challenged, then it is up to the applicant to demonstrate that they had proved to Ofgem



they had provided sufficient information to allow Ofgem to make a positive risk-based assessment on the criteria mentioned, not for Ofgem to justify why they refused a licence application.

Under criteria 2, we believe the guidance should include that the applicant should have knowledge and consideration of any significant regulatory change that will impact them within 24 months. For example, at present, as well as entering the market an applicant should be aware of the implications of the faster switching programme, market wide Half-Hourly settlement SCR, Midata and looking forward further Ofgem & the Government's review of the retail energy market.

Q6. Do you have any other comments, or would you suggest any other changes to any part of the draft guidance?

In section 3.36 we disagree that an applicant will have appointed a solicitor. Applicants may not as they have their own In-House legal support or be using the legal team of a parent company. We are also unsure why Ofgem needs any of the information mentioned in 3.36 as we do not see what bearing it has on assessing an applicant's suitability to hold a licence.

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

Kind regards,

A handwritten signature in black ink that reads "Chris Welby".

Chris Welby
Head of Regulation