

Supplier Licensing Review: Entry Requirements

13 May 2019

Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry response to Ofgem's statutory consultation on new application regulations, application forms and guidance document as a result of its ongoing Supplier Licensing Review. 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.

Executive Summary

Minimising the detriment to customers must be the central aim of these reforms. Energy UK's views in this response are focussed on action to best protect customers from the costs of mutualisation as a result of failed suppliers. The need for action to be taken is pressing in light of the unprecedented number of failed suppliers in the previous 18 months, and the costs faced by all customers as a result of those failings. A more robust market entry assessment forms part of these protections, and we look forward to engaging positively with Ofgem as it continues its work on ongoing requirements and the review of market exit arrangements.

Energy UK remains supportive of Ofgem's Supplier Licensing Review and welcome it as an imperative first step in creating a better functioning market. We are concerned, however, that a number of the finalised proposals in this consultation do not represent the most robust or effective option and would recommend Ofgem reconsider. Most prominently, the requirement for an application to provide evidence of their ability to finance their activities should be extended to at least 24 months, rather than the current 12 months being proposed by Ofgem.

We are also concerned that there is a lack of information within the guidance on how Ofgem will be assessing narrative-based answers. This limits the scrutiny that we are able to provide of the final proposals. In particular, Energy UK would like to understand how Ofgem will ensure it learns from the real-life experience of supplier failures and how these lessons will be applied to its assessment regime going forward to better prevent avoidable customer detriment.

Finally, Energy UK believes that Ofgem should monitor whether the new regime is delivering value on an ongoing basis, and actively rectifying regulatory requirements where necessary in a timely manner.

Applications Regulations

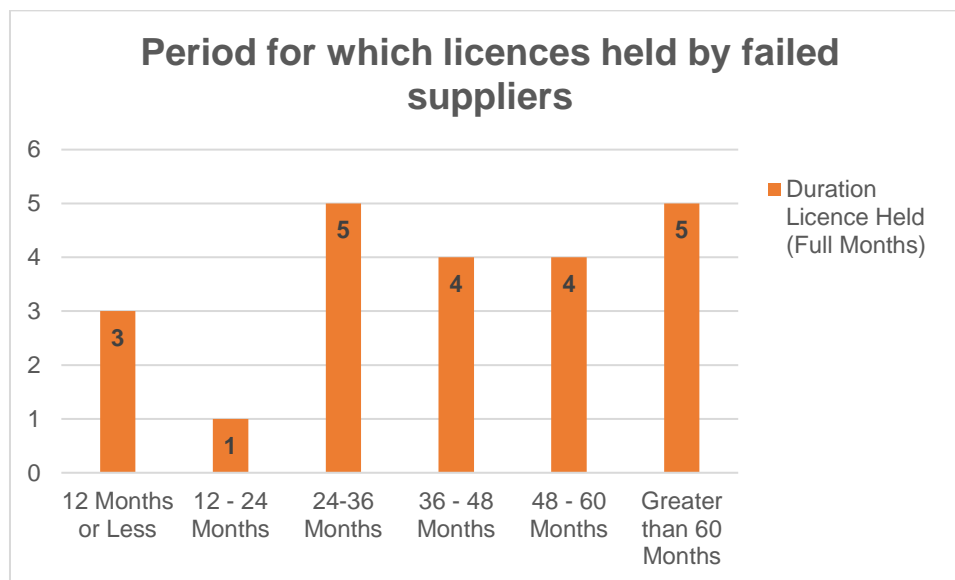
1: Do you agree we should extend our enhanced 'fit and proper' assessment questions to all licence application types, not just supply licence applications?

Energy UK is supportive of Ofgem's enhanced 'fit and proper' assessment, as well as its proposal to extend the assessment to all licence application types.

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

Energy UK believes that Ofgem's decision to limit the requirement for applicants to provide evidence of their ability to fund their activities to only the first 12 months undermines the effectiveness of the strengthened market entry requirements. Ofgem has not sufficiently made the case against requiring such information for a longer time period. In line with our response to the initial proposals, Energy UK would recommend extending the application requirement to cover the first 24 months, with a further requirement for applicants to outline their financial projections, risk management strategies and funding arrangements to cover the first three years of operation. A robust entry assessment will better protect all customers against shouldering the costs of mutualisation as a result of ill-prepared or financially unsustainable suppliers failing.

In implementing these reforms to the supplier licensing regime, Ofgem must ensure that lessons are learned and incorporated from the recent and unprecedented number of suppliers exiting the market, with many triggering the Supplier of Last Resort (SoLR) process. In particular, as illustrated in the chart below, supplier failure has rarely occurred within the first 12 months of a supplier holding a licence. This is why Energy UK believes that a longer financial timeline than the proposed 12 months should be set as part of applications, to better protect all customers and market participants.



While Energy UK does agree that post 12-month funding plans are more speculative in nature, the information received is no less important for assessing an applicant's preparedness for market entry and participation. This is particularly pertinent as the reason for these stronger entry requirements is to protect all customers against having to shoulder costs of supplier failure which we saw rise massively in 2018. As noted in our response to the previous consultation, Energy UK believes that such longer-term information could additionally be used by Ofgem as part of any new ongoing market monitoring

¹ See Annex 1 for data.

and reporting requirements to aid in early detection of problems, for example as a result of companies experiencing rapid, unplanned growth.

3: Do you have any other 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?

Energy UK welcomes the proposal to consolidate the tiered process by disposing of the tier 3 review. However, we believe that there is merit in bringing the Tier 1 and Tier 2 processes further together to improve the effectiveness of application assessments and gathering the best information. In particular, Energy UK believes that there would be a benefit in Ofgem having the ability to require an interview of any applicant, without the need to escalate the application to Tier 2. This may be useful given the narrative-based application and qualitative assessment of an applicant's understanding of their customer service obligations, and would also help Ofgem meet its aim of more engagement with suppliers.

We note that the main aims of the Supplier Licensing Review are focussed around financial resiliency and customer service, which has guided the proposed new entry requirements and applications. However, Energy UK believes that, in addition to the requirements on applicants to detail how they will meet their customer service obligations, applicants should be required to detail how they expect to meet their smart meter rollout obligations. The importance of a successful rollout for customers, industry and the wider energy system cannot be understated. There is also a distinct customer service aspect to the smart meter rollout that should not be overlooked by the application requirements, covering areas such as marketing, complaints and treatment of customers in vulnerable circumstances, whilst also underpinning wider energy market developments such as consumer engagement with their energy use.

Energy UK welcomes Ofgem's commitment to keep the new requirements and guidance under review. However, we would welcome greater specificity with regards to the timing or trigger for such as review, its impacts and consultation on potential improvements. Ofgem should commit itself to such a review after a specified time period, such as 12 months, or when a certain number of applications have been completed, depending on which is triggered first. This should, of course, not hinder Ofgem in taking corrective action if failings in the new regime become apparent before one of these triggers are reached. It will be important for Ofgem to react and learn from its experience of the new entry requirements to ensure that they remain as robust as originally intended.

Application Guidance

4: Do you have any comments or would you suggest any changes to the section on 'Suitability to hold a licence' (Chapter 3 of the draft guidance)?

Energy UK welcomes the inclusion of the requirement for applicants to be aware of industry code requirements. We believe that there could also be merit in Ofgem additionally considering an applicant's awareness of voluntary codes or initiatives that provide good customer service, in order to promote better outcomes for customers.

5: Do you have any comments or would you suggest any changes to Chapter 4 of the draft licence application guidance, relating to the new criteria and process for supply licence applications?

We note that only three of the four finalised overarching principles to guide Ofgem's Supplier Licensing Review reforms are listed within this Chapter (page 24). Energy UK would contend that the currently omitted principle is relevant for Ofgem's consideration of new market entry requirements. In particular, Energy UK believes that its stated aim of improving visibility of market risks could be better achieved with a more robust financial reporting requirement. As noted in our response to Question 2 above, this would allow Ofgem to better detect problems that risk consumer harm from the costs of a failed supplier and take appropriate pre-emptive action. We would, therefore, urge Ofgem to ensure that the proposed new entry requirements meet all of the overarching principles for reform and that they are all appropriately considered when finalising policy decisions.

Alongside financial sustainability, it is important that applicants understand their customer service requirements, and we welcome this additional focus in the new requirements. Ofgem should ensure that it uses its experience and real examples of where things have gone wrong for customers of other

suppliers, and apply these learnings to its qualitative assessment of new applications. In particular, applicants should be required to explain how they will specifically serve customers in vulnerable circumstances, since such customers will likely need enhanced customer service provisions.

6: Do you have any other comments or would you suggest any other changes to any part of the draft guidance?

Energy UK has no other comments or suggestions relating to the draft guidance. However, we would emphasise that the success of the new entry requirements in protecting customers from the costs of financially unsustainable businesses will also depend upon enhancements to ongoing monitoring requirements.

Supplier Licensing Review: Next Steps

Energy UK welcomes Ofgem's plan to publish an update on the way forward for the next stage of its Supplier Licensing Review shortly, and we remain keen to engage cooperatively throughout the process. Market exits in themselves are to be expected as a feature of any competitive market. At the heart of this work should be the ambition to avoid the burden of costs resulting from a failed supplier being borne unfairly by customers as a whole.

In its upcoming paper updating stakeholders on the ongoing and exit workstreams of its review, we would encourage Ofgem to consider a number of options to mitigate the risks that customers face from supplier failures. In our previous response, we highlighted a potential licence condition to avoid mutualisation of debts, and we are aware that an insurance-based model has been proposed by Laura Sandys and the Energy Systems Catapult previously.² Prior to deciding or finalising any policy proposals, we would urge Ofgem to have a full and detailed exploration of potential solutions with industry and other stakeholders.

As a matter of priority, Ofgem should review existing dormant licence holders and seek revocation of such licences where these have not been used for over 12 months. Energy UK believes that it is important that these are assessed in order to address the risk of parties being able to circumvent the new entry requirements by picking up an existing dormant licence.

In addition, and in relation to all workstreams, any new requirements and protections will only be as robust as the staffing resources in place will allow. We note that Ofgem has given itself only 10 extra days for licence applications despite the more detailed and qualitative requirements in place for applications. We would welcome clarity from Ofgem in how it will ensure that it has the appropriate staffing resources and expertise in place to ensure the success of these new requirements. .

If you would like to discuss the above or any other related matters, please contact me directly on 020 7747 2931 or at steve.kirkwood@energy-uk.org.uk.

² <https://www.imperial.ac.uk/grantham/publications/redesigning-regulation-powering-from-the-future.php>

ANNEX 1**Data on Recent Supplier Exits**

Supplier	Date Licence Issued	Date Licence Revoked	Duration Licence Held (Full Months)	
GB Energy Supply Limited	29 October 2015	26 November 2016	12	
Boltland Energy Limited (formerly Utility Point UK Limited)	14 July 2017	12 January 2018	5	
Future Energy Utilities (Traded as Sirocco Energy Supply Limited)	07 August 2013	30 January 2018	53	
Future Energy (Supply) Ltd	03 July 2015	20 January 2018	30	
Flow Energy	08 April 2011	10 April 2018	84	
Greengen Direct Limited	10 September 2014	12 April 2018	43	
ENSCO Energy Services Company (UK) Ltd	21 January 2016	06 June 2018	28	
National Gas and Power Limited	28 June 2017	25 July 2018	12	
Iresa	01 July 2014	31 July 2018	48	
GEN4U	04 February 2016	13 September 2018	31	
Golding Energy Limited (Traded as USIO Energy Supply Limited)	12 August 2016	15 October 2018	26	
Snowdrop Energy Supply Limited	16 December 2016	02 November 2018	22	
Callisto Energy Supply Limited (Traded as Extra Energy Supply Limited)	E	22 August 2012	21 November 2018	74
	G	12 July 2013	21 November 2018	64
Spark Energy	E	16 July 2007	23 November 2018	136
	G	18 October 2006	23 November 2018	145
Cornflower Energy Supply Limited (Traded as Oneselect Limited)	E	27 October 2015	10 December 2018	37
	G	19 November 2015	10 December 2018	36
Economy Energy	16 October 2013	08 January 2018	50	
Our Power Energy Supply Limited	E	24 October 2014	31 January 2019	51
	G	23 October 2015	31 January 2019	39
Brilliant Energy Supply Limited	02 February 2015	15 March 2019	49	