



By Email Only

Lesley Nugent
Deputy Director - Licensing Frameworks
Ofgem
10 South Colonnade, Canary Wharf, London,
E14 4PU
licensing@ofgem.gov.uk

Name Richard Vernon
Phone 07825608088
E-Mail richard.vernon@npower.com

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Dear Lesley,

Consultation on new applications regulations and application guidance document

We are supportive that Ofgem make changes to the supplier market entry process, with a view to reducing service issues for customers and cost uncertainty for existing supplier organisations, without creating undue market access barriers. Indeed, we are equally supportive of the wider Ofgem programme that aims to address risk associated to (1) ongoing supplier activities and (2) market exit procedures.

The significant and preventable issue that Ofgem must address within the next stage of its programme are mutualised market costs linked to energy supplier failure. Mutualisation of costs, particularly to the levels seen recently, has been unfairly allocated to competitor suppliers and by default the customers they supply. This impact is seen by suppliers of all size and market experience with the allocation of this additional cost to customers being complex. Ofgem has yet to provide for these additional costs within the price caps.

We acknowledge and support that Ofgem has amended the first overarching principle of this programme to include that energy suppliers 'bear an appropriate share of their risk'. We are concerned that this wording is not strong enough as there is no recognition of proportionality, but look forward to further engagement later this year to understand proposed market mechanics. At this stage we would suggest that all forms of mutualised cost are included within the review and Ofgem do not discount any options before industry consultation has commenced. The solution must balance scenarios where supplier growth is linked to unsustainably low tariffs (without adequate financing) against placing onerous regulatory reporting burdens on the wider market.

Independent of the proposals Ofgem could do more now to reduce risk to the industry, specifically using its powers of referral to other regulators or enforcement bodies where a market exit may warrant additional scrutiny, for example a breach of the companies act or suspected fraud.

We would be supportive of Ofgem conducting a review of its proposals, perhaps after a year of operation, to determine overall effectiveness. Our responses to the specific questions you pose in the consultation are set out within Appendix 1. If you require any clarification on any of the points we have made please do not hesitate to contact me.

This response is not confidential.

Yours sincerely,

Richard Vernon / Regulation

npower

Npower Group limited
Trigonos
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

T +44(0)1793/87 77 77
F +44(0)1793/89 25 25
I www.npower.com

Registered office:
Npower Group limited
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

Registered in England
and Wales no. 8241182

Appendix 1: Response to Consultation Questions

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

We remain supportive of Ofgem asking these additional questions relating to energy supplier market entry. There is no argument that we can see for not applying this criteria to other licence types given it makes sense to do so at the start of the licencing process. Other licence types have a similar opportunity to create undue costs and risk for the market or impact customer experience, in addition to energy supply licence holders.

We have some specific comments on the proposed questions:

- Question 10.3 should be expanded to include employment by / whether an individual has had investment within the last 5 years with a company that became insolvent.
- Question 10.4 should cover a longer period, perhaps 5 years. 12 months is not a long enough period and Ofgem can simply discount any irrelevant information.

Consultation question 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?*

We are broadly supportive of the proposals, however we have some specific suggestions that Ofgem should consider:

- Ofgem could more proactively probe the commercial expertise of key individuals e.g. qualifications / experience to decrease the likelihood of financial issues (fit and proper individual and corporate test).
- Proof of funding should be for a greater period than 1 year, perhaps up to 5 years and could be incorporated into the ongoing supplier requirements tests. Recognising that projecting costs for more than 1 year is challenging this could be a rolling 1 year period for both financial projection and proof of funding, perhaps up to a period of 5 years or when Ofgem are satisfied that risk to the wider market is acceptable. This would be particularly relevant for newer suppliers with long running loss making tariffs. This could be tied to a requirement for independent financial audit to ensure information provided is accurate.
- Ofgem could also require that applicants are required to have undertaken a 3rd party independent audit to validate the information provided to Ofgem.
- Application focus could be increased for particular areas that bear market level risk such as trading collateral approach and credit cover processes.
- We are supportive of Ofgem asking how customer service obligations will be met, however there is a risk that the Ofgem licence guides may simply be regurgitated without a clear understanding of the associated obligations. The strength of the qualitative assessment could address this risk.
- Ofgem may also wish to capture any outsourced activities such as BSC agent contracts and any external compliance support. Ofgem should take into account the experience and capability of individuals / organisation who are responsible for meeting these requirements.
- We are support that the licensing process comes after the code accession processes to support the principle that the company using the licence will be the company undergoing scrutiny by the regulator.

Consultation question 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?*

We support the revised legal text as it stands but it would need to change should Ofgem decide to address the points raised in our response to question 2. The proposal to remove the 3rd tier is sensible and not required under the revised process.

The increase in licence fees is significant, however we don't disagree with this increase if it resolves the issues highlighted. It's better to get the process right, providing it is cost reflective of the additional actions Ofgem are taking. We would suggest these costs are regularly reviewed.

Consultation question 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)?*

Ofgem may wish to consider making 'Evidence of contact with industry code bodies' a tier 1 activity as it should be relatively low cost and fits in with the revised licencing timeline.

Consultation question 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?*

No comment.

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

Given the "qualitative" assessment approach, value will be from the rigour of the Ofgem individuals involved, therefore we would ask what changes or upskilling Ofgem will carry out to try and meet the increased qualitative assessment burdens (or whether it feels it already has the requisite expertise). Without that consistent and detailed assessment the revised application process is unlikely to achieve the desired outcome.

Section 9 – Licence Transfers. We would suggest that intra group-licence transfers should not be required to undergo the same scrutiny as a new company entering the market, this should be a quicker process to avoid impacting innovation and creating unnecessary costs to both Ofgem and the market participant. A suggested criteria could be that if there is no change to an overall parent company, a lighter process can be utilised.