



Ofgem  
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29 November 2019

**Ofgem ref: Supplier Licensing Review: Ongoing requirements and exit arrangements, E Ref: Reg. 055**

For the attention of Vlada Petuchaite, James Proudfoot

Dear Vlada, (Or James)

E (Gas and Electricity) Ltd welcome the opportunity to respond to the above referenced consultation with regards to the licence reform proposals outlined in the Ofgem consultation dated 22 October 2019. We have participated in the Energy UK response, but in addition to their submission please find our response below.

**Overarching question:**

**1. Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail? Are there other actions you consider we should take to help achieve these aims?**

E supports the need to protect consumers impacted through a potential disorderly market exit and we support some of the proposals within the consultation, but we are concerned a number of the proposals will not achieve their objective or increase Ofgem's regulatory powers above those that already exist within the licence / legislation. In addition, we are concerned that a number of the proposals will unnecessarily increase the size of the current licence with little impact with regards to the intended consequences.

**Promoting better risk management:**

**5. Do you agree with our proposed option to cost mutualisation protections? Are there other methods of implementing this proposed option? Please provide an explanation and, if possible any evidence, to support your position.**

It's unclear from the proposal what assessment has been completed of the proposed cost implications of the protection of credit balances and scheme costs across different suppliers of all sizes. As the proposal is not clear on the final credit balance and scheme cost values to be protected, we would recommend that a further assessment of the financial implications on suppliers is completed prior to implementing licence changes. This should include a review of the price cap to allow (where applicable) any additional costs on suppliers to be taken into account.

E would like to seek further clarity from Ofgem with regards to the scheme cost percentage protection expected to be covered as there is insufficient information available to assess the impact. As the final scheme costs protection values are yet to be determined, it is also not possible to confirm if the 3-6 month timeframe window is suitable. E is concerned at Ofgem's impact assessment where only a single bank was approached to assess if suitable insurance products would be available in the market.

The proposal to require suppliers to cover scheme costs in order to protect consumers appears to be a backwards step with regards to the administration and financial burden this would impose on compliant suppliers. It's clear that a consequence of the RO policy requiring an annual RO payment by suppliers has

impacted the retail market and consequently some supplier's cash flow resulting in an increase in suppliers going into administration. Taking into account that any policy change is a BEIS requirement, there needs to be greater collaboration between both BEIS and Ofgem to commit to push through applicable changes to policy to increase the frequency of scheme payments to mitigate the risk on compliant suppliers and ultimately the end consumer from picking up mutualisation costs. This would then reduce the requirement of suppliers having to protect any scheme costs.

Whilst the proposal to protect credit balances doesn't explicitly state that traditional prepayment customers are excluded, we have assumed this would be the case as any credit would be secured on the consumers meter should their supplier go into administration. E would like clarification from Ofgem that our assumptions are correct and that the proposal does not extend to traditional prepayment customers.

In addition to above, the proposal does not go far enough to detail how suppliers will be required to assess any credit balance including, seasonality effects throughout the year, any estimated reads used to calculate consumption and credit balances on smart meters operating in prepayment mode. In order to make an assessment of the proposal impacts, E would like further clarity regarding these aspects and if possible for Ofgem to provide the calculation that should be used by suppliers to assess customers credit balances.

E would like to see further options developed for potential different implementation timeframes for protection of credit balances and scheme costs, and the protection of credit balances above a set value. This would need to be defined on an individual supplier basis, depending on its financial position, number of customers and aggregated value of credit balances, but could reduce the financial impact of implementation.

The proposal was unclear what would be the consequence if suppliers cannot get sufficient cover i.e. if sufficient insurance cover was either not available or not commercially viable. E would like to see clarity from Ofgem on what the options available to suppliers would be.

## **Milestones**

**6. Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers' may be in financial difficulty?**

It's unclear why the milestone checks are being proposed as Ofgem already has powers to assess a supplier's compliance with current licence obligations, which include and are not limited to triggers at proposed thresholds. Suppliers already submit regular customer number data to Ofgem, Ofgem simply need to issue a Request For Information at certain trigger points to assess a suppliers ability to comply with current obligations. I.e. offering ppm, delivering on ECO / WHD. Adding this requirement into licence will only increase the size of the licence but will not be adding any additional value.

It's unclear from the proposal thresholds why Ofgem would not impose any licence checks on suppliers above the 400-800k threshold. The current Citizens Advice supplier league (April – June 2019) shows that there are a number of suppliers above this threshold that are in the bottom half of the table, and likewise a review of Ofgem's ECO delivery data as at 1 November 2019 indicates that there are a number of suppliers above the same threshold that have to date, not delivered any of their obligation. E believes that Ofgem already has sufficient data from suppliers or industry to identify trends associated with suppliers entering potential financial distress, and the relevant powers to restrict growth and protect consumers.

It was proposed by Ofgem at the Supplier Licencing reform workshop (26 November 2019) that Ofgem are proposing exempting suppliers from any threshold checks if they acquire as a means of a Supplier of Last Resort (SOLR) process. E would like to raise our concerns at this approach, and would like to highlight the recent Toto acquisition of Solarplicity through the SOLR process only to then subsequently enter the SOLR process themselves. E would like to suggest that suppliers acquiring customers through the SOLR process should be held to more stringent validation checks and not less.

E would like to see some clarity from Ofgem regarding Ofgem's KPI's regarding timescales and processes for assessing supplier's information to ensure no un-due restrictions are imposed on suppliers for prolonged periods.

**More responsible governance and increased accountability:**

**7. Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, that you believe suppliers should assess in conducting checks?**

E agrees in principle with the inclusion of a fit and proper requirement, however, the licence draft doesn't reflect the proposal and goes too far with the inclusion of 'Significant Managerial responsibility or Influence'. In a small to medium sized supplier structure this could include lower level management. E believes the proposals intentions is for this to refer to supplier ownership, Managing Director or CEO's, if our assumptions are correct then we support the proposal in principle but would request the licence drafting reflects this, or mirrors that of the HMRC Fit and Proper person test.

E seeks clarity from Ofgem on what considerations there have been recognising that there could be some awkward conversations between Regulation Managers and Senior Management within licenced suppliers. E also seeks further clarity from Ofgem on what considerations there have been regarding this proposal potentially conflicting with employment law legislation, and where there is a conflict, the actions a supplier would need to take to comply with the new proposals.

**Increased market oversight:**

**8. Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?**

E does not agree with the proposal to introduce a Living will as we do not consider the additional administration and financial burden of producing and maintaining a Living Will will achieve the proposals intention of reducing costs and the impact of a potential supplier exit. This is further supported by the lack of detail within Ofgem's proposal and Impact Assessment on the content to be included and the financial benefit assessment completed.

To date, Ofgem has managed a significant number SOLR processes, and should be able to provide a detailed requirement of the data / company information an incoming supplier & administrator will require to minimise the impact of a SOLR event. Historically a SOLR event has occurred as a result of poor data management / systems and a supplier's inability to bill. All of which a Living Will would not resolve.

It was suggested at the recent Supplier Licencing reform workshop (26 November 2019) that Ofgem needed to be clearer in providing what these requirements are and should be liaising with third party data owners i.e. Exelon / Electralink to streamline their processes for data sharing where a SOLR event occurs.

Until the final content is confirmed by Ofgem it is not possible to determine if the proposed timeframe would be sufficient to implement. E would also ask Ofgem to consider other commitments (Consultation and RFI's) that may also conflict with any timeframe to implement should this proposal be taken forward.

The proposal was also unclear what Ofgem has done to assess any legal requirements within insolvency law with regards to attempted to restrict what administrators can and cannot do as part of a SOLR event. This would also be applicable to the proposal to include within suppliers customer contracts the requirement "that activities relating to debt recovery will be executed as outlined in the relevant licence conditions".

**9. Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.**

**Additional audit actions**

E's view on this proposal, is that it looks to be adding unnecessary volume to the supplier licence as unclear what additional powers this provides Ofgem above those they already have. With the introduction of Ofgem's new Financial Stability Team, they now have a new team able to focus on supplier data obtained either through regular reporting or RFI's, this should provide sufficient means to identify key risks or trends at a supplier level. Where suppliers do not provide the relevant data requirements, Ofgem already has the power to require additional controls, governance or apply restrictions.

The proposal and proposed licence wording do not mirror each other, i.e. the licence drafting does not reflect the purpose of the audit. E suggests that there needs to be clearer defined terms within the licence draft wording as to when Ofgem can use this new power.

**Exit arrangements:**

**10. Do you agree with the near terms steps we propose to take to improve consumers' experience of supplier failures? Are there other steps you think we should be taking?**

As mentioned above, Ofgem has managed a significant number SOLR processes to date, and should be able to provide a detailed requirement of the data / company information an incoming supplier & administrator will require to minimise the impact of a SOLR event. It was suggested at the recent Supplier Licencing reform workshop (26 November 2019) that Ofgem needed to be clearer in providing what these requirements are and should be liaising with third party data owners i.e. Elexon / Electralink to streamline their processes for data sharing where a SOLR event occurs.

**11. Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these steps? Are there any potential difficulties you can foresee?**

In order to respond to this question an assessment of historical SOLR events needs to be conducted by Ofgem to understand the commercial arrangements agreed as part of those SOLR's to establish if in hindsight a proposed portfolio split or trade agreement would have been an improved option on the consumer / industry as a whole based on the overall cost of mutualisation.

**Appendix 1**

**12. Do you think our draft supply licence conditions reflect policy intent?**

As identified above E has recommended that the draft licence wording needs to reflect the policy intentions and needs to be amended in certain areas.

Please contact me in the first instance should you require any further information.

Yours sincerely

Richard Masterson  
**Regulation & Compliance Manager**



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