

Response by email only:

licensing@ofgem.gov.uk

Vlada Petuchaite & James Proudfoot,
Ofgem -Industry Codes and Licensing,
10 South Colonnade, Canary Wharf,
London, E14 4PU.

27th November 2019

Dear Vlada and James,

Supplier Licensing Review: Ongoing requirements and exit arrangements

We welcome the opportunity to respond to the above consultation. We are an independent energy supplier with a customer base of approximately 3,500. In addition to traditional supply activities, we store and trade our customers renewable energy. We use artificial intelligence to maximise savings and pass these back to our customers.

We started supplying our first customers in February this year, and as a new entrant we find the contents of the consultation particularly pertinent to our business.

We are supportive of the introduction of measures to improve risk management within the industry, especially those introduced following evidence-based assessment of the issues we face. We look forward to continued dialogue with you on this subject.

We do feel there are two critical themes which are not being considered within the scope of this consultation;

1. There has been some high-level discussion with regards to how suppliers pass through the anticipated cost of these requirements to end customers. The current consultation suggests significant fixed costs, which would have a larger impact on smaller suppliers who don't have the economies of scale. This means that adding a cost to the standing charge or unit rate calculations of the price cap element won't work. We strongly feel onerous administrative requirements should be heavily minimised for smaller suppliers until they reach a size threshold whereby a lot of these costs can be better absorbed.
2. The way the industry operates is extremely segmented. Suppliers have large numbers of credit requirements, and obligations to separate companies for a variety of costs; National Grid, Elexon, EMR, Ofgem, XOServe, DNOs to name a few. A more holistic, and better way of approaching the issue of company performance would be two-fold;
 - a. Ofgem to use existing credit measures across the industry to analyse independently supplier's payment and credit performance.

- b. Over a longer timeframe, Ofgem to look to consolidate all of the credit and payment requirements suppliers have, so this can be centrally managed.

Please find our responses to your individual questions below. Should you have any additional queries, please do not hesitate to contact me by return.

Yours Sincerely



Helen Crump

Regulation and Compliance

Social Energy Supply Ltd

Social Energy Consultation Response

Supplier Licencing Review – Ongoing requirements and exit arrangements.

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?

Whilst we believe that a number of the reforms will encourage responsible risk management, we do not believe all of the measures suggested within the consultation will help to achieve the aims outlined, to minimise disruption for consumers and other market participants in the event of supplier failure. As outlined in our responses below, we are supportive of activities which will bring about real improvements when suppliers exit the market.

Question 2: Do you agree with the outputs of our impact assessment?

Cost mutualisation protections

Based on the data within the impact assessment, it has not been possible to fully analyse the options to protect anything other than credit balances. We would be interested to see more detailed data on the cost per customer of each element of the SoLR costs (FIT, RO and SoLR costs) before we could determine our position on this.

Milestone Assessments: Factors for Assessment and trigger points

The evidence within the Impact Assessment supports the rationale for using customer numbers as a milestone rather than deviation from business plan and demonstrates that an opportunity for intervention would have been identified in several cases since July 2016.

We would welcome a supportive "critical friend" approach to assessment. No supplier sets out in business to fail and as a new supplier ourselves, we feel the milestone assessments would provide an opportunity to learn from the mistakes of others to the benefit of both the customer and the business.

Ongoing Fit and Proper Requirements

We support Option 1 in this instance as we do not feel it is appropriate for Ofgem to determine this. A blanket approach would not allow for individual circumstances to be considered in line with supplier's own risk management strategies.

Living Wills

We do not agree with benefits attributed to living wills within the impact assessment document. We have provided more detail within our response to question 4 of this consultation.

Independent Audits

We do not agree that this will add any further deterrent to the current investigative and enforcement powers afforded to Ofgem as regulator.

We have commented on Independent Audits in our response to question 9 of this consultation.

Customer Interactions with Administrators

We agree with the output suggested in the Impact Assessment to incorporate certain licence conditions into customer terms and conditions.

Question 4: Do you agree with the assumptions used to calculate the costs and benefits in our impact assessment? Please provide evidence to support further refinement.

Milestone assessments:

Assumption: 3.11 – *indicative fee rate of 0.5% of the protected amount per annum*

We do not agree that small suppliers would be able to access third party guarantees at a cost of 0.5% per annum and that the actual cost would be significantly higher.

Small suppliers are less likely to be able to benefit from the deep pockets of a parent company and as such would be the ones seeking the third-party guarantees at a less attractive rate. Whilst we do not rely on holding high amounts of customer credit, this could prove disastrous to other suppliers with different business models.

If Ofgem can obtain the credit for a cost of 0.5% per annum, then perhaps this could be offered as a service to suppliers?

Benefits: 3.32 – *Better data in the event of failure* / 3.44 – *The cost of becoming a SolR could be reduced if data quality and operational standards were better* / 3.51 – *Wider market efficiencies of suppliers with fit-for-purpose operations*

Based on the proportion of market entrants that use “of the shelf” systems upon entry to the market, we would like to see Ofgem take the opportunity to work with billing system providers to increase rigour and data governance as well as standardising data output. We agree that improved data would result in a host of benefits for consumers and the market, not least in a market exit scenario.

We have concerns over the efficiency of putting this requirement onto suppliers, when nearly all suppliers in the market all use a small selection of billing engines.

Costs: 3.43 – *Administrative costs for suppliers for preparing for milestone/trigger point assessments*

To minimise the cost impact of milestone assessments that suppliers would incur, we would encourage Ofgem to clearly define the measures required to pass each milestone upfront, to allow suppliers to build their plans and processes around this. If Ofgem’s expectations are clear upfront it will allow suppliers to build this into their processes and operational goals at an early stage, preventing further additional work when preparing for assessment.

We would urge against the use of mandatory, time consuming and costly external audits to achieve the assessment of milestones. Instead, we would like to see the use of evidence from other industry sources count towards this assessment. For example, using the results the MRA and CIO audits which we are already required to undertake.

Ofgem should look to link some requirements into existing things we already do; i.e. evidence of MRA, and DCC audit counts as ‘points’ towards assessment.

We would suggest that these and any other costs which would be incurred by suppliers as part of the Supplier Licencing Review are factored into the price cap to give transparency to consumers over the cost of legislation.

Living Wills:

Benefits: *5.6- Consumers will have an improved experience when going through the SoLR Process*

The assumption made within the consultation is that the living will provides a mechanism for the regulator and any Supplier of Last Resort to readily attain information, however contains no provision for the standardisation of key data items requires in the SoLR Process.

5.7 - Consumers could benefit from increased competition in the market that we expect to arise as a result of improved market confidence / 5.8 & 5.9 - Suppliers obligations to maintain a living will could result in increased investment

We do not agree with the benefits attributed to living wills within the impact assessment. No company values themselves or seeks investment based on their potential future failure. Whilst investors may place value on good governance and systems, we do not see an evidential link to the living will proposals in the consultation.

Given that we are a rapidly growing company that continues to seek additional investment we are a working case study on this matter and can unequivocally state that the living will would have no bearing on the confidence of our investors.

Question 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.

As outlined in our response above, we have significant concerns over the cost of the mutualisation protections to small suppliers, however we have no objection to the principle.

It seems that a significant number of supplier failures coincide with the annual RO payment deadline. It seems a highly risky strategy from a collections perspective to allow this debt to accrue to the scale it does before it becomes "overdue".

Ultimately the mutualisation of costs affects us all, as customers and suppliers. We would urge Ofgem to look at the other costs that are mutualised when a supplier fails, such as RO, where the opportunity exists to increase the payment frequency to prevent debt build up.

Question 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?

We are supportive of the additional scrutiny when companies are growing at pace and failing to meet their customer's needs. Poor customer experiences are something we have seen time and time again as suppliers rapidly grow and the negative publicity around this does nothing to encourage consumer engagement with the market, particularly with small suppliers. We welcome measures to strengthen supplier's performance in this area.

We would encourage Ofgem to leverage existing information sources, data and relationships to monitor this, rather than relying on the introduction of new reporting or audit mechanisms. All

suppliers are already subject to significant monitoring, reporting and audit requirements which must be met by the limited resource available in a small business like ours.

The proposal does not provide a mechanism for assessing those suppliers who have exceeded the 500,000 – 800,000 milestone yet continue to aggressively target customers with loss leading tariffs and publish financial results which are tens of millions negative each year. In addition, there are larger energy companies that are publicly stating they make not make a profit for at least five years. Whilst we acknowledge that to date there have been no failures by suppliers of this size, the impact felt by the rest of the industry would be significantly greater than the failure of a sub 50,000 customer supplier and would urge Ofgem not to absolve these suppliers from assessment as they grow.

If Ofgem is going to target their concern based upon materiality of the issue, then it's imperative Ofgem focuses on loss leading large supplier. As an example, the portfolio sizes of two of these larger, non "big six" suppliers are approximately the same size as the entire portfolio of other small suppliers added together, between them they reported approximately £30m losses in the financial year 2017/2018.

Levying a charge for this activity would impose costs on small suppliers which would not be incurred by those over the customer numbers suggested. Depending on the level of cost this could stifle small supplier growth and unfairly favour larger suppliers.

More responsible governance and increased accountability:

Question 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, you believe suppliers should assess in conducting checks?

Fit and Proper Persons

We are supportive of the proposal to introduce an ongoing fit and proper requirement and believe that suppliers should be allowed to determine how they seek to achieve this based on their own business circumstances.

We welcome any steps to build confidence and transparency within the industry, however it is currently unclear from the proposals how Ofgem would act in this situation based on current powers. We believe it would be necessary to allow suppliers to take a risk-based approach to managing the fit and proper process persons process or seek additional powers.

Social Energy would always seek to assess appointments on a case by case basis, although there are circumstances listed within the consultation document which we would consider to be preclusive to employment in a senior position.

We do not believe that this would be burdensome to implement or evidence.

Increased market oversight:

Question 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?

We agree that the effects on customers and the market should be minimised in the event of supplier failure, however, we do not believe that the proposal of a "living will" achieves this.

Our concern is that although suppliers may create a document that plans for engagement or handover, this may not be implemented in the event of supplier failure. Where administrators are appointed and individuals' livelihoods are in jeopardy, it is difficult to envisage what incentive they would have for the delivery of the plans within the living will.

We regretfully believe that this has the potential to become a "set and forget" box ticking exercise undertaken by suppliers.

Data Issues

You have correctly highlighted within the consultation the issues with data, processes and systems in failed suppliers along with the importance of data quality across the industry, however this is not reflected in the proposal.

Accurate, quality data is a fundamental requirement of our industry and our operational businesses, not just in the event of difficulty or supplier failure. There is an opportunity for Ofgem to focus efforts on the billing engines used by suppliers with a view to standardising the output of these. We believe that this would bring greater benefits at a lower cost to consumers.

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

We recognise audits as a valuable tool to provide independent assurance, root cause analysis and to raise the potential for improvement. We would encourage Ofgem to allow greater flexibility in the first instance for the supplier to use their own Internal Audit function to provide this assurance. We are mindful that this would not work in all circumstances.

Where external audits are required, there must be clear definition and agreement on the scope of the work prior to commencement. We believe that this should be collaboratively achieved between the supplier and Ofgem. We would ask that these be based on strict criteria, given the costs of such activity both in time and money.

Where the rationale for an external audit is to seek expertise, it should not be assumed that this is best sourced from an external audit provider.

We have not seen any evidence to suggest that the costs of independent audits would vary extensively based on the size of a supplier and as such it appears that smaller suppliers would be disproportionately affected. We would encourage Ofgem to incorporate these costs into the Price Cap to provide transparency to customers over the cost of regulation.

Exit arrangements:

Question 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 options? Are there any potential difficulties you can foresee?

As a small supplier we would encourage the introduction of portfolio splitting during the SoLR process as we feel this would present more of an opportunity for us to participate in the process. We see benefits for customers also, that they could be more accurately matched to a supplier and proposition which meets their needs.