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Dear Licensing Frameworks Team,

### **Supplier Licensing Review: Ongoing requirements and exit arrangements**

Overall, we are pleased with the direction that Ofgem is taking to improve customer protection by ensuring suppliers have the adequate governance controls and protection of customer credit balances and social and environmental scheme costs. This will help ensure a stable and level competitive playing field while assuring customers that they can have confidence in the supplier they choose to buy from.

SSE Energy Services believes strongly that Ofgem's previous review of market entry requirements should also inform ongoing monitoring, and that Ofgem should develop an efficient approach based primarily on existing market monitoring, supplemented by additional reporting requirements where necessary, to improve the overall monitoring regime.

Responses to individual consultation questions are provided in Annex 1. Key remaining points at this stage include:

- We welcome the 50% coverage of credit balance and scheme costs to minimise the mutualisation impact when a supplier fails, but Ofgem should undertake an assessment of a 100% coverage model as well. We believe there is a strong case for 100% coverage for scheme costs at least, since suppliers should be able to meet the legal obligation of the costs of industry schemes.
- We do not support the living will proposal as it does not improve the Supplier of Last Resort (SoLR) process.
- The introduction of milestone assessments should be supported with a risk-based approach towards additional tests and periodic financial checks that are consistent with market entry requirements.
- Fit and Proper requirements should also consider having independence between certain roles.
- Ofgem should work with the Insolvency Service to encourage the right sort of behaviour by insolvency practitioners.
- Ofgem should look at portfolio splitting between domestic and non-domestic but anything more than this will risk damaging the customer experience and the safeguards the SoLR process provides.

We would be happy to discuss this issue in more detail.



Yours sincerely

Josh Henderson  
**Policy and Regulation**

## **Annex 1 - Supplier Licensing 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?**

Yes, these proposals are a step in the right direction but there are elements that could be strengthened beyond the preferred options that Ofgem outlines. While we support the proposal for cover to be set at 50%, Ofgem should consider, subject to an appropriately informed impact assessment, fully protecting consumers from the cost of supplier failure by having the credit cover for scheme costs and credit balances set at 100%. This should particularly be the case for scheme costs as full coverage arrangements already exist for other industry arrangements such as the gas Uniform Network Code and electricity Distribution Connection and Use of System Agreement and so this gives some reason to extend the same approach to social and environmental schemes.

We note that even if the proposed reforms were in place this year, over £45m would still be subject to mutualisation due to Suppliers failing to meet their Renewables Obligation scheme liabilities.

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

While we think that Ofgem have correctly identified events that can result in supplier failure, as above, Ofgem should consider the 'maximum' intervention options for the protection of scheme costs and credit balances subject to these being fully and rigorously impact assessed.

Ofgem should also consider how any costs associated with these proposals could be recovered under the default tariff cap. Equally, Ofgem should continue to review and assess whether the level of the default tariff cap is sufficient to recover the costs being incurred by suppliers as a result of mutualisation, with adjustments made where necessary.

**Question 3: What further quantitative data can industry provide to inform the costs and benefits of the impact assessment, particularly for cost mutualisation protections?**

And

**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.**

SSE Energy Services is satisfied that the impact assessment has attempted to consider the details of previous supplier failures and that this is a worthwhile approach to establish the costs of any disruption in the future. However, the decision on the cost of coverage for credit balances and schemes must be credible and informed by a realistic view of the different credit facilities that suppliers will have available. Ofgem does not appear to achieve the right expectation of what will be available with the reference to 0.5% available from a 'high street bank'. Ofgem should also consider that getting this wrong could result in multiple failures and disruption that are exactly what these plans are trying to avoid.

To try and accommodate different suppliers and funding options, suppliers should have the possibility of avoiding excess financing costs by making more regular Renewables Obligation payments. This

would also help having to lodge such substantial credit cover while also ensuring that all suppliers are meeting the same commitments irrespective of their size and funding options.

**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.**

SSE Energy Services believes that suppliers should have adequate cover to discharge the cost of social and environmental schemes and credit balances and that they should be able to choose how this is achieved.

**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?**

SSE Energy Services welcomes the approach of setting customer thresholds based on the data Ofgem has gathered from previous supplier failures. Additionally, we think that Ofgem monitoring should also look for a sudden decline or halt in growth as an early indicator of possible supplier distress.

We believe Ofgem should take a risk-based approach to determining whether additional assessments are required. For example, as well as assessments triggered by passing customer milestones, Ofgem should also view late payment of scheme liabilities as a possible trigger for further assessment. Additional early indicators could also include credit default under the Balancing and Settlement Code.

Ofgem should also consider maintaining a view on Supplier financial health through periodic reporting of indicators, such as financial projections and funding arrangements. This should be required at least annually and the timing of this should also ensure it gives a true reflection of financial position. These requests would also align with the requirements introduced to the licence application process. We expect that periodic reporting could be covered by current powers held by Ofgem and so there should be no need for additional licence requirements.

**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?**

Yes. An additional factor in this assessment should also be to ensure there is appropriate independence between certain jobs, such as those providing assurance on compliant operations, and that no personnel are subject to conflicting interests that would compromise the credibility of a well-run supplier. While it could be that the number of staff in smaller organisations may not lend itself to as large a number of positions as would be possible in a bigger organisation, the requirement for named officers in key functions should apply equally across all suppliers as part of ensuring a robust approach to governance and the same consistent standards across the industry. Ultimately, having the requirements applied equally is also a measure that should be taken to also ensure that all customers are subject to the same protections.

**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?**

SSE Energy Services does not agree with the living will proposals and does not believe these would help a supplier exit the market in an orderly manner. It is unclear how such a statement would be of any use and whether it would realistically be up-to-date at the time of a supplier failure. If a supplier is in distress and on the brink of failure, it is unlikely to have the time or motivation to ensure its living will is in order.

It would also be possible for a supplier to make a statement about being able to manage an orderly market exit without this necessarily occurring in practice. The living will proposal also fails to consider that after any market exit, the relationship with the appointed Supplier of Last Resort (SoLR) will be with the appointed administrator and not directly with the failed supplier.

Instead, Ofgem should focus on ensuring that the data held by suppliers is of adequate quality and kept up-to-date. This would be of more material benefit in the event of supplier failure since it would simplify data and customer transfer activities.

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

We agree there should be an appropriate level of concern before suppliers are required to make these arrangements, but it is unclear how these proposals differ from the powers that Ofgem currently have to instruct suppliers to conduct audits. Ofgem's intentions to ensure the use of this requirement is well targeted and proportionate should also be represented in the licence condition.

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

As referenced above, Ofgem should look again at how improving the quality of supplier data would enhance the transfer of customers and their experience during the SoLR process. This should be considered as it could provide a material benefit to any required data transfer.

We have reviewed the proposal for suppliers to update their terms and conditions and it is unclear how this would help inform any third-party debt collection. These terms apply to the relationship between the supplier and the customer; a relationship that would no longer exist if the supplier was to exit the market. At the relevant point, the customer would then be expected to deal with any appointed administrator and/or debt recovery agent.

Nevertheless, Ofgem could do more on this question and build on their recent open letter to insolvency practitioners encouraging them to apply expected conduct standards. Ofgem should attempt to formalise this expectation by working more closely with the Insolvency Service to gain their joint support for these standards as well as ensuring that any appointed administrator is also subject to the appropriate oversight in their own sector.

**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?**

SSE Energy Services believes that the SoLR process should allow splitting of domestic and non-domestic customers since they are different markets. Further splitting of these groups could potentially detract from the core function of the SoLR process, i.e. providing necessary backstop protections for customers, in favour of creating a complex competitive bidding process.

Ofgem should be cautious about seeking to add more complexity to the SoLR process where it could dilute the customer protection element. There is also a risk that this would create winners and losers as prospective suppliers cherry-pick more attractive customers.

Customer experience could also deteriorate if they are allocated to different suppliers for electricity and gas. Partnership/multisite customers would also have a fractured experience if allocated to different suppliers. Instead, the focus should remain on informing customers they retain the option of choosing a supplier once moved through the SoLR process.

Ofgem also requires suppliers to make quick decisions based on limited information. Suppliers may be less able to provide quick and meaningful responses, where there is an increased likelihood that they will be granted only a fraction of the base being analysed.

Since Ofgem have previously noted that trade sales have resulted in poor customer outcomes, it follows that they should seek some intervention in being able to approve commercial transactions. This could be addressed in a similar way in which suppliers will inform Ofgem about change of controls. As much as this should consider the customers being transacted, it should also be mindful of any remaining groups that may not make up part of the sale itself and could be subject to the seller failing at a later time and having to be transferred through the SoLR process, as was recently the case for Solarplicity customers.

#### **Question 12: Do you think our draft supply licence conditions reflect policy intent?**

The current drafting of the supply licence conditions is mostly clear in reflecting policy intent. However, there are elements which could be updated to avoid duplicating requirements and to appropriately establish how Ofgem can invoke certain powers as well:

- The intended drafting of the 'Operational capability' condition overlaps with existing conditions which already include requirements to comply with. Ofgem should avoid duplicating existing requirements.
- The 'fit and proper' requirements should include Ofgem acknowledging that it is up to individual suppliers to determine how they can reasonably determine how those with Significant Managerial Responsibility or Influence are appropriate for the role. If this is not captured in the condition, then it would be up to Ofgem to provide more detail on what such an assessment should consider.
- As referenced above, the condition on 'Independent audits' should include that the option becomes available to Ofgem where they have a good case and demonstrable reason to believe such an undertaking is worthwhile.
- The intended 'Other improvements to exit arrangements' should also note that suppliers make commitments based on potentially limited information that is available during the selection process.