



Licensing Frameworks Team
Ofgem
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Emailed to: licensing@ofgem.gov.uk

18th August 2020

Dear Licensing Frameworks Team,

Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements

Drax Group plc (Drax) owns two retail businesses, Haven Power and Opus Energy, which together supply renewable electricity and gas to over 350,000 business premises. Drax also owns and operates a portfolio of flexible, low carbon and renewable electricity generation assets – providing enough power for the equivalent of more than 8.3 million homes across the UK. This is a joint response on behalf of Haven Power and Opus Energy and is non-confidential.

As mentioned in our response to Ofgem’s policy consultation in 2019, we are fully supportive of action to raise standards around supplier’s financial resilience and customer service. To achieve that objective, it is important that any measures introduced are targeted, proportionate and have precise licence drafting to ensure all suppliers meet the same high standards. We are concerned that some of the proposed licence drafting does not meet that necessary high bar as it lacks the clarity and precision necessary for suppliers to interpret appropriately and consistently. Additionally, further guidance will be required to sit alongside the licence drafting, particularly around the scope and content of Customer Supply Continuity Plans.

Our views and concerns are explained in further detail in the attached Appendix. If you would like to discuss any aspect of our response, please do not hesitate to contact us.

Yours faithfully

Matt Young
Group Head of Regulation
Drax Group plc



Appendix

Cost mutualisation protections and Financial Responsibility Principle

We agree with Ofgem's decision to further investigate and consult on prescriptive protections of costs that could be mutualised in the event of supplier failure. Although we do not believe these prescriptive measures are necessary in the non-domestic sector as non-domestic customers do not typically accrue credit balances and so suppliers do not rely on them for working capital.

As part of this future assessment we urge Ofgem to consider the frequency with which governmental scheme costs are paid. We believe that suppliers should be required to pay their Renewables Obligation liabilities more frequently so the amounts owed cannot accrue over significant periods of time as has occurred historically.

The proposed Financial Responsibility Principle may influence better practices by suppliers and thus go some way to mitigating the risk of mutualisation, but we do not believe it will be sufficient on its own, nor does it present an enduring solution. In the meantime, we do agree with Ofgem's decision to take a risk-based approach to monitoring compliance with this principle.

Ofgem should consider how to monitor and measure the success of this principle, as this will form the baseline comparison for any cost benefit analysis when considering prescriptive protections.

Ongoing fit and proper requirement

While we support the intent of this requirement, the proposed licence drafting lacks the precision needed for all suppliers to take a consistent approach to compliance. The definition of *Significant Managerial Responsibility or Influence* is vague, and whilst we acknowledge Ofgem's argument that this is to account for different business models and sizes, the definition still lacks the clarity required for consistent application once those differences have been accounted for. Without added clarity, suppliers will take very different approaches to compliance which may undermine the effectiveness of this new requirement.

Additionally, we do not believe the statutory implementation timeframe of 56 days is sufficient to establish the necessary policies, processes and system changes required, particularly with the amount of concurrent regulatory change that is being implemented in the next 12 months. We propose that Ofgem allow an additional six calendar months from the statutory implementation date to afford suppliers sufficient time to meet this requirement.

Principle to be open and cooperative with the Regulator

As currently drafted, the term '*cooperative*' is vague and could be interpreted in different ways, and further guidance on the application of this principle is important so that all suppliers are clear what type and materiality of matter Ofgem would reasonably expect to be notified of.

There are also some practical considerations that Ofgem need to provide information on, such as who within Ofgem do suppliers inform and how.



Customer Supply Continuity Plans

We understand the value of useful and accurate data, particularly in the event of supplier failure and reliance on the Supplier of Last Resort (SoLR) process, and we acknowledge that the proposed requirement to maintain Customer Supply Continuity Plans has the potential to improve such data. However, we are concerned that without formalised guidance as to what needs to be included within the Customer Supply Continuity Plan, its principle aim of achieving quality industry data that is relevant for the SoLR process will not be met equally across all suppliers, and particularly not by those suppliers most likely to fail. This guidance must come in a suitable and consistent format so that it is easy to locate and use by those parties wishing to take on a portfolio through the SoLR process.

We would also like to understand how frequently Ofgem expect suppliers to update these Plans, as this could affect how they are established and implemented. For example, if Ofgem expect the Plan to be updated monthly, suppliers may choose to invest time and resource in automating some aspects. Additionally, we would like to understand Ofgem's expectations regarding provision of the Plan; for instance, whether Ofgem will allow suppliers time to update the Plan, or penalise suppliers if the Plan is not available immediately.

Additionally, the statutory implementation time of 56 days is not sufficient to devise a Plan of this scale and to the standard we believe Ofgem expect. We recommend Ofgem allows an additional six calendar months from the statutory implementation date to afford suppliers sufficient time to meet this requirement.

Monitoring and reporting requirements

We are concerned with one particular aspect of the proposed licence drafting: Suppliers must notify Ofgem promptly and within a reasonable timescale of changes to *'any person with Significant Managerial Responsibility or Influence in respect of the licensee'* (SLC 19AA.2(g)). As mentioned above pursuant to the Ongoing Fit and Proper Requirement, the term *Significant Managerial Responsibility or Influence* is not clearly defined, and the number of people included within the scope of this requirement could be considerable, particularly for larger suppliers. It is simply not practical for suppliers to be continually updating Ofgem on recruitment and role changes.

There are also some practical considerations that Ofgem need to provide information on, such as who within Ofgem do suppliers inform and how, and what do Ofgem intend to do with this information, particularly as it will contain personal employee information.