



Licensing Frameworks Team
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**Ofgem ref: Supplier Licensing Review: Ongoing requirements and exit arrangements;
E Ref: Reg: 172**

Submitted via email

For the attention of the Licencing Frameworks Team,

E (Gas and Electricity) Ltd is a medium sized challenger UK energy retailer focussing on serving prepayment customers through our UK base call centre. We are also an active member of Energy UK and have participated and fully support their submission paper for this consultation.

We welcome the opportunity to respond to this consultation and in addition to the Energy UK submission we would like to provide our recommendations regarding both the consultation proposals and how Ofgem and BEIS can assist the retail market by improving current policy frameworks where current policy has the potential to increase the risk of consumer detriment through increased mutualisation costs.

It's apparent that a large contributing factor to increased mutualisation costs has been the annual RO payment. We would like to raise our concern that the proposals put forward in this consultation do not address the root cause of the issue of addressing ineffective government policy and the promotion of better financial risk management. Evidence suggests that suppliers do use the funds collected for RO costs throughout the year as cash flow and on multiple occasions suppliers have not had sufficient cash flow to pay the RO annual payment resulting in SOLR events and large mutualisation of costs across the industry. It is our view that this consultation does not go far enough to mitigate the financial risk on the end consumer and would suggest that further pressure needs to be applied on BEIS to recognise they have a responsibility to adjust the annual payment requirement to promote financial management amongst suppliers through better policy design.

Promoting better risk management

- **Financial Responsibility Principle**

As a supplier who predominantly supplier's prepayment customers our energy supply products are capped by the price cap framework, any additional costs on industry as a result of both policy design and mutualised costs need to be cost reflected in future price cap allowances. We would urge Ofgem to ensure that they take into account the different business models within the industry and guarantee that there is a level playing field amongst all suppliers, as currently the cross subsidy that exists within the price cap methodology adversely impacts those suppliers with large prepayment portfolios.

We would also encourage Ofgem to review the bad debt risks within energy retail as suppliers are the conduit between industry parties and consumers for the collection of industry costs, and therefore any default payments by the consumer results in energy retailers carrying all the bad debt risk associated with industry costs.

We welcome Ofgem's stance where suppliers who take up network deferral schemes would be of focus of interest for review and that the Financial Responsibility Principle applies to both domestic and non-domestic suppliers. Since the introduction of the network deferral scheme there have been calls by retailers for greater transparency with regards to the aggregated deferral value to understand potential risk of mutualised costs, we would support greater transparency around the aggregated costs as a means to mitigate financial risk.

We welcome Ofgem's approach to supplier's sustainable pricing approaches that allows them to recover their costs over time and that any pricing below cost risk should sit with investors and not consumers. We would like to highlight that when assessing suppliers with below cost risks that there needs to be consideration of where a suppliers scheme delivery is to date. I.e. a suppliers overall ECO delivery obligation needs to be assessed when reviewing a supplier's financial position. For example, where large financial losses are reported due to loss leading products, clarity should be sort that the supplier has sufficiently accrued for scheme delivery to date and that the supplier has suitable financial means to cover the aggregated costs of loss leading products, scheme delivery and other obligated costs, I.e. credit balances.

- **Operational Capacity Principle**

We do not support the proposal for the introduction of the Operational Capacity Principle on the basis that we do not believe that the principle itself will fulfil the intention or introduce any more consumer protection over the existing supplier licencing arrangement. Suppliers are currently required to provide key indicator data to both Ofgem and Citizen's Advice on a regular basis, this information should be sufficient to enable Ofgem to establish any trends of consumer detriment and where applicable, gaps in operational capacity. We would suggest that Ofgem provides further detail of how they intend for this principle to be measured and further clarity on how current legislation does not already provide for suppliers to ensure they are able to comply with their licence obligations.

- **Milestone Assessments**

We support the need for a lower level milestone threshold (50,000) as these suppliers would be reasonably new to the market and supplier performance data may not exist. However, we do not support the need for the higher level threshold (200,000) as the requirement for suppliers operating below the proposed 200,000 threshold level does not take into account the timeframe the supplier has been in operation or that they may already have stable customer service functionality and business plans in place that should already be being assessed by Ofgem though the key performance data provided to regulators, i.e. Social Obligation Reporting submission, Citizen's Advice Supplier Rating¹, supplier customer complaint data and Energy Company Obligation² / FiT / Warm Home

¹ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/supplier-performance/energy-supplier-performance/compare-domestic-energy-suppliers-customer-service/>

² <https://www.ofgem.gov.uk/environmental-programmes/eco/contacts-guidance-and-resources/eco-public-reports-and-data/scheme>

Discount reporting by Ofgem on supplier performance. From a financial perspective, suppliers are already required to submit the new monthly financial RFI in addition to any annual financial account submissions to Companies House.

Regular progress meetings with Ofgem, BEIS, Citizen's Advice, Ombudsman and Ofgem E-Serve are already in place to discuss the key indicator data referred to above which should provide Ofgem with ample opportunity to discuss concerns and raise requests for additional clarity without the need for increased milestones and administration costs enforced on suppliers.

We therefore suggest a different approach is considered and the focus of any assessment should be where a supplier has substantial growth in a short period of time and / or where the key indicator data already collated identifies any concerning trends for further analysis. This approach would not require any additional licence changes or additional Ofgem powers.

It is also unclear why the supplier needs to notify Ofgem to trigger an assessment when they approach the proposed milestones. The requirement to notify Ofgem appears to be another unnecessary process that the supplier needs to be aware of and action and suggests that Ofgem is not utilising the data available to assess a supplier's situation within the marketplace. It's our recommendation that Ofgem should be able to use the existing data as a trigger for assessment as suppliers regularly provide customer volume data to Ofgem as part of the following reporting requirements: -

- Social Obligation reporting
- Citizen's Advice Supplier performance rating
- SMICOP – Annual declaration
- Quarterly Complaints data
- Annual ECO / WHD & FiT submission of customer numbers and electricity / gas volume supplied.

If Ofgem decide to progress with the proposal, then we would request further clarity from Ofgem regarding what is the exact trigger point a supplier should notify they are approaching the threshold level. We would also seek clarity on the scenario whereby a supplier regularly moves above and below the threshold level and the impact of this on the Milestone Assessment RFI requirements on an enduring basis.

- **Dynamic Assessments**

Whilst we support the need for assessments of supplier stability, it's not clear what this additional requirement will add to the regulators powers of assessment. It's our understanding that that the current regulatory framework arrangements already provide Ofgem with the ability to request clarity on a suppliers financial stability (as demonstrated in the new monthly financial RFI) and act accordingly based on the information received, such as restricting a suppliers ability to take on new customers until compliance issues are rectified. Therefore we do not support the addition of the Dynamic Assessment on the basis that it will duplicate existing powers and increase the size of the supplier licence arrangement.

More responsible governance and increased accountability

- **Ongoing fit and proper requirements**

Since this proposal was first presented at an Ofgem workshop, it's been unclear how Ofgem expect a supplier to implement retrospectively and how this could be applied within a licenced supplier organisation if such an assessment is carried out and it's deemed that an individual within a controlling position within the business is not suitable. It's also unclear on Ofgem's expectations with this proposal of how far within an organisation the assessment is expected to reach. We request that further clarity is provided regarding these points.

- **Principle to be open and cooperative with the regulator**

We feel that this principle is not required based on the current regulatory framework and reporting requirements that already provide sufficient opportunities for Ofgem to gather supplier information. The very nature of this proposal suggests that Ofgem deems that suppliers are purposely non-cooperative and refrain from being open with the regulators. We would therefore ask Ofgem to clarify how the introduction of this principle could have resulted in historical cases of supplier of last resort processes been mitigated?

As a medium sized supplier, we have benefited from two way communication with Ofgem established through developing a working relationship via our regular account manager meetings. We believe that if Ofgem want to improve supplier openness then the most effective way would be to improve communication channels and relationships with suppliers and our experience has highlighted that the account manager relationship is key to improving those channels. Historically trying to get an organigram of the departments within Ofgem, or a named contact within Ofgem with an accompanying telephone number has been very difficult. We would therefore suggest that Ofgem needs to improve its communication channels with suppliers to enable open dialog.

Increased market oversight

- **Customer Supply Continuity Plan (CSCP) (Formerly living will)**

We welcome Ofgem's decision not to enforce suppliers to publish content from the CSCP, as we deem this to be inappropriate for suppliers to publish commercially sensitive data. We would also like to repeat previous concerns within industry that the requirement for all suppliers to produce a CSCP is unlikely to mitigate the risk in the event of a SOLR as it's unlikely a supplier going through this process will be actively updating the content. We would like to propose that any requirement to produce a CSCP should be based on a risk approach established through the key indicator data already provided by suppliers through current reporting and RFI submissions. Where concerns are raised as part of this assessment we suggest that the information required should be requested as part of an individual Request for Information to the supplier in question.

- **Independent audits**

Whilst we can appreciate the need for a financial / customer service assessment, it's unclear from the proposal of the benefits of introducing this requirement for suppliers who are subject to a milestone

assessment, as there is already key assessment data available to Ofgem to determine if a supplier is able to meet its customer service obligations or is in financial difficulty, such as: -

1. Companies house audit requirements;
2. Ofgem monthly financial RFI;
3. Other RFI / Reporting requests;
4. Complaint data;
5. Citizen's Advice Supplier rating tool;
6. ECO / WHD delivery progress reports issued by Ofgem;
7. Guaranteed Standard performance reporting; and
8. Regular monthly contract managers meetings with Ofgem and Ofgem E-Serve managers

It's unclear how effective an independent audit will be for a distressed organisation, due to the speed in which a business can enter the administration process and make Ofgem aware of the proceedings, the time required to contract an independent auditor and for said auditor to carry out an assessment prior to the SOLR event progressing passed the point where the assessment would be useful to Ofgem. It's also highly unlikely that any business in distress is likely to incur further substantial costs in compliance with this requirement.

- **Additional reporting requirements**

It's unclear how this proposal is any different to the 'Open and Cooperative' principle being proposed as part of this consultation paper. It is also unclear how this principle will add any increased regulatory governance above that that already exists within the current licence framework agreement. We would like to highlight again our response above for the Open and Cooperative with the Regulator Principle in conjunction to the proposal of this principle.

Exit arrangements

- **Interactions with administrators**

As mentioned above we are an active member of Energy UK and support their submission for this consultation. We would like to highlight their response for this question, specifically their concerns raised with the current drafting of SLC 27.8A which states: -

(ii) charges may not be demanded or recovered unless and until it can be established that such steps to ascertain a domestic customers ability to pay have been taken and instalment set accordingly.

As we are predominately a prepayment supplier, we would like to raise our concerns with the proposed licence draft as it is unclear from the content of the drafting how this would apply to prepayment customer charges as by the very nature of the meter functionality the consumer would need to pay in advance of consumption. We would also like to raise how a supplier is supposed to make this assessment where a deemed contract is in place and charges are accrued by the consumer who does not make contact with us to advise that they are the new occupant. (For avoidance of doubt, this is after we have attempted to make contact with the occupier).

In addition, it's not clear how the above aligns with the Utilities Act 2000, specifically *Non-payment of suppliers' charges* which details suppliers rights where non-payment of charges against the terms

outlined in the suppliers agreement with the consumer have not been adhered to by the consumer. The proposed licence drafting is an additional requirement above that that is specified within the Act.

- **Customers book sales**

We support the need for Ofgem to be informed of any customer book sale prior to any sale being made. However, we would like to raise concerns with the proposal in that any restriction by Ofgem of a customer book sale could be the mechanism that leads to a supplier going into administration, resulting in increased costs on the industry and ultimately the consumer. Therefore we would recommend further consideration on the proposed wording to ensure the above scenario is minimised and the permission of consumer book sales are processed within Ofgem within a timely manner where commercially viable.

- **SOLR commitments**

We support the need for Ofgem to ensure that any supplier who has been awarded a consumer book sale as part of a successful SOLR bid should be required to honour their original bid proposal. We would also like to seek transparency from Ofgem on historical SOLR events where the original bids agreed by Ofgem have not been adhered to.

With regards to the proposed terms and condition change requiring all suppliers to honour credit balances where that contract arises from a SOLR process. We do not believe that these additional terms and conditions changes are required. Firstly, because the requirement to enforce suppliers to honour their SOLR bid should be sufficient, and secondly because not all retail suppliers are mandated under the SOLR process, therefore any requirement for all suppliers to make changes to terms and conditions would lead to increased costs on smaller and medium suppliers who do not participate within the SOLR process.

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

Yours sincerely

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