

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

In June 2018, Ofgem announced their intention to review energy supplier licensing arrangements to ensure appropriate protections are in place against financial instability and poor customer service. The review covers conditions for entering the market, ongoing requirements and exit arrangements. Ofgem consulted on changes to the new entry requirements in the initial phase of the review. These new requirements came into effect in July 2019.

Ofgem are now focusing on ongoing requirements for active suppliers, and exit arrangements. In October 2019, Ofgem proposed remedies to improve supplier standards of financial resilience and customer service. Ofgem requested feedback from stakeholders on the package of proposals set out in the policy consultation. After considering stakeholder feedback, Ofgem are now setting out our final policy proposals. This is a consultation on the licence modifications to implement them. The majority of the reforms remain unchanged, however Ofgem are planning to consult separately on whether potential additional requirements are appropriate to further strengthen requirements relating to cost mutualisation. Ofgem set out the final proposals for this package of reforms in this consultation.

The People's Energy Response

The People's Energy (Supply) Company, hereafter referenced as People's Energy, are moving from being a Start Up to a medium supplier. As a Community Interest Company (CIC), People's Energy are an 'asset locked' entity created with the aim of ensuring that the organisation is, at all times, managed for the benefit of the wider community, focusing specifically on People's Energy members and others in the UK in fuel poverty.

Our reason for being and our strategy are different to all other energy companies and is fuelled by our desire for growth to:

- *make good on the profits back promise in the form of a member rebate as soon as possible*
- *deliver on our social responsibility objectives, i.e. end fuel poverty while respecting people and the planet, over and above our Industry Obligations*

We have ambitious growth plans over the next 5 months to the year end. Our current focus is on the significant acquisition of pre-payment meter Members. People's Energy are strategically delivering a deliberately low margin, as we aim to provide one of the cheapest PPM tariffs in the UK market. This will fulfil our aim of ending the traditional exploitation of PPM customers through highly priced tariffs.

Our response is based on both adhering to our Industry obligations and delivering on our strategic goals.

Most of the proposed measures are sensible and we would support. People's Energy would like to highlight that some of the measures will prove dissuasive to new market entrants and may therefore limit the competitiveness of the market.

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Promoting Better Risk Management

Cost mutualisation – Financial Obligation Principle

Ofgem intend to introduce a new principles-based requirement for all suppliers in the domestic and non-domestic sectors to take actions that minimise the likelihood and extent of costs to be mutualised in the event of their failure.

As a minimum, to comply with the Financial Responsibility principle, Ofgem would expect suppliers, where appropriate, to have:

- plans in place to meet their financial obligations under government schemes or other mechanisms by the respective deadlines,
- effective processes for setting direct debit levels, and proactively returning credit balances in a timely manner,
- sustainable pricing approaches that allow them to cover their costs over time or evidence the business plan is financially responsible,
- robust financial governance and decision-making frameworks in place, and
- arrangements in place or are taking steps that would reduce the need for costs to be mutualised in the event of their failure.

- ⚡ *People's Energy would embrace an overarching Principle designed to drive all suppliers towards responsible behaviours as long as this remains separate from the cost mutualisation protections and that the industry is further consulted with regard to these protections. Changes to the structure or the timing of the Renewable Obligation payments would result in significant impacts to People's Energy financial security.*
- ⚡ *Any such Principle must permit flexibility of approach. This should be measured by the effect on the end consumer and continue to run energy companies to different models. Any prescriptive model should not affect our ability to make decisions on our own future. For the avoidance of doubt this is not to the detriment of the consumer in any way.*
- ⚡ *People's Energy would recommend that the ability to manage obligations annually is maintained. This encourages a flexible approach to the management of these, and other, obligations, and can be managed by Suppliers through planning and financial governance rather than inflexible monthly or quarterly deadlines.*
- ⚡ *As the largest Community Interest Energy Company, People's Energy recognise the importance of having the financial systems and milestones in place to support the Principle. In our aim to be fully transparent, robust plans to demonstrate this capability can be made available to the Regulator.*
- ⚡ *People's Energy have effective processes in place both for setting direct debit levels, and proactively returning credit balances in a timely manner.*
- ⚡ *Our sustainable pricing approach enables us to evidence that our business plan is financially responsible, ensuring tariffs are never below cost because of growth. This protects the integrity of the organisation.*
- ⚡ *People's Energy have robust financial governance and decision-making frameworks in place and would expect this to be the same for all other suppliers.*
- ⚡ *People's Energy would recommend that financial warning signs would be flagged through the year end audit, which could be scrutinised by Ofgem. Additional Quality Systems should also feed into this including, but not limited to, ISO90001 audit, Investors in People audit. Where there is an infrastructure already in practice, this should be used to illustrate adherence to the Supply License Conditions.*

- ⚡ *Any overarching Principle should not prohibit, or be seen to prohibit, new entrants to the market.*
- ⚡ *The aim to reduce carbon footprint by 30% would offset the Renewables obligation through the Green Homes Grant scheme green scheme, so we would propose a more joined up approach with carbon net zero.*

Operational capacity and capability

A new principles-based requirement for suppliers to have sufficient operational capability to effectively serve their customers and adopt appropriate risk management practices.

Expectations of suppliers

Ofgem expect suppliers to have internal systems processes and governance in place to serve all their customers efficiently and effectively and meet their regulatory obligations. Suppliers should be proactive in identifying and mitigating risks of consumer harm, in doing so pre-empting and preventing it from arising, and acting quickly to put things right when it does.

- ⚡ *As a Community Interest Company, People's Energy routinely look to put our Members first, and do not have the added complication of managing investor expectations when making decisions to ultimately deliver for our Members.*
- ⚡ *People's Energy actively identify ways to support Members whilst meeting our regulatory obligations.*
- ⚡ *People's Energy support both the wording and ethics behind this proposed Principle.*

Milestone assessments

Ofgem propose to introduce milestone assessments at 50,000 and 200,000 domestic customers, for each individual fuel. These thresholds apply in terms of the number of unique customer accounts, rather than meter points. Process Suppliers would be required to notify Ofgem when they approach, and when they reach, these thresholds for each fuel, but Ofgem may only conduct one assessment at each threshold if both fuels pass the same threshold within a short space of time. Ofgem would then issue a milestone assessment Request for Information (RFI) requesting that the supplier return the information within a reasonable period of time.

Ofgem would have the flexibility to decide whether it is appropriate to conduct a milestone assessment, or amend the milestone assessment, based on the information Ofgem already have on the supplier.

Assessment criteria

A typical milestone assessment would look at:

- Operational performance with regards to customer service, billing, switching, debt management practices and vulnerability.
- Scaling of customer service function against projected growth and how suppliers assure themselves that IT systems, billing systems and Customer Relationship Management (CRM) is fit for purpose and integrated into growth strategy.
- Oversight and controls over outsourced functions.
- Growth plans in relation to pricing strategy, tariffs and products, projected volume of energy and purchasing strategy.
- How the supplier budgets for energy-specific charges and collateral requirements.
- How the supplier budgets for costs resulting from obligations under the government's renewable energy, energy efficiency and social schemes and plans for changing costs associated with business scaling.
- How the supplier is meeting (or is planning to meet) regulatory obligations that begin at certain thresholds.

Actions Ofgem could take following a milestone assessment

Ofgem could look to take enforcement action which may include imposing requirements upon the supplier for the purpose of securing compliance with other regulatory obligations. Consequences may include, but not be limited to, not allowing the supplier to acquire any new Domestic Customers, or add any Domestic Customer accounts by upgrading such accounts to dual fuel accounts, or not allowing the supplier to alter its existing payment collection patterns to collect advance payments from customers.

- ⚡ *People's Energy would propose that Milestone Assessments are not just focussed on meeting obligations, but wider preparedness for growth. This would include a clear link to the Operational Capacity and Capability principle.*
- ⚡ *People's Energy would expect this to be the same for all other Suppliers.*
- ⚡ *It would be expected that these assessments are not too onerous and take into account the size of the organisation at the relevant time, the resources available to manage the assessment and any existing reporting submissions.*
- ⚡ *People's Energy would expect that any growth plan would encompass all areas of the organisation.*
- ⚡ *People's Energy would recommend that the ability for suppliers to be flexible in their approach to managing the costs resulting from obligations is maintained ie. the ability to manage these on an annual, rather than monthly or quarterly basis. This encourages a flexible approach to the management of these, and other, obligations, and can be managed by Suppliers through planning and financial governance rather than inflexible monthly or quarterly deadlines.*

Dynamic assessments

Ofgem propose to undertake dynamic assessments in response to specific concerns about a supplier's financial sustainability or ability to serve their customers.

When Ofgem may conduct a dynamic assessment

Ofgem will look at a range of criteria when determining whether to conduct a dynamic assessment, including financial warning signs, customer service indicators and pricing practices.

Financial warning signs will include indicators such as missed industry or regulatory payments, credit default and statutory demands, winding up petitions or other debt enforcement action being taken against the company. Ofgem would also take into account customer service indicators, such as customer service failings and spikes in complaints, as well as pricing practices such as sharp increases in direct debits or consistently pricing at the bottom of the market.

Each of these indicators alone may not trigger a dynamic assessment – Ofgem would take into account the indicators collectively before deciding whether further scrutiny is warranted. As with any regulatory tool, Ofgem would use it proportionately where it is needed in order, to best protect consumers.

Assessment criteria

Assessments would be similar to milestone assessments to ensure that a supplier is adequately prepared and resourced for growth and to meet its obligations but may be more tailored based on the cause of our concern. This may begin with an informal contact with the supplier to understand the situation and may lead to issuing a formal information request, if further detailed information is required. Ofgem could then request that the supplier completes an independent audit if Ofgem deem this necessary.

Actions Ofgem would take

Ofgem could look to take enforcement action which may include imposing requirements upon the supplier for the purpose of securing compliance. Consequences may include, but not be limited to, limiting a supplier's ability to acquire any new customers or preventing a supplier from altering its existing customer payment collection patterns.

- ⚡ *Linked to the responses above, People's Energy would expect any Supplier to be monitoring these metrics and flag any issues to Ofgem in advance of any potential requirement for a dynamic assessment.*
- ⚡ *People's Energy would recommend that Ofgem initially use data and information already used within a Supplier's internal governance arrangements. Small and Medium Suppliers do not have an endless resource to manage reporting requests on an ad hoc basis. That does not mean that the information is not already available.*
- ⚡ *People's Energy would recommend that quarterly reporting obligations be enhanced to cover areas of concern not already detailed in the Social Obligations, Complaints or Guaranteed Standards reporting, with sufficient advanced notice of any such reporting being requested or enhanced.*
- ⚡ *People's Energy would expect that Ofgem would have regular interaction with Suppliers where any potential issues can be raised in advance of any formal action.*
- ⚡ *People's Energy would further request that there is a more joined up approach across the organisation for Requests for Information (RFIs), that consideration is given to metrics already reported and that information may already be available from suppliers in differing formats. People's Energy would welcome the introduction of a timetable to control the various requests and the impacts on Suppliers internal resources be taken into consideration in the timing of RFIs.*

Governance and controls

Fit & Proper Persons

Ofgem propose to introduce an ongoing fit and proper licence requirement. Suppliers would be required to have robust systems, processes and governance in place to ensure relevant individuals are fit and proper.

Ofgem propose that where suppliers have determined relevant individuals do not meet this criteria, they must not appoint them to senior positions without appropriate mitigations in place.

Scope of requirement

Suppliers would be responsible for determining which individuals fall within the scope of the licence condition. This would include, but not necessarily be limited to, individuals who:

- influence or make decisions in relation to a supplier's finances, eg finance reallocation, plans to make industry or regulatory payments, or
- influence or make key decisions on how the company operates.

Who carries out the checks

It would be the supplier's responsibility to undertake these assessments on an ongoing basis to ensure that relevant individuals continue to be fit and proper to occupy that role. Ofgem would assess the systems, processes and governance a supplier has in place.

Assessment criteria

In assessing compliance with the requirement Ofgem may look at supplier recruitment, performance and disciplinary processes, governance arrangements and frameworks a supplier has in place to mitigate any risks of poor behaviour by an individual.

- ⚡ *People's Energy would recommend that Ofgem provide a minimum requirement for this rather than leave to the discretion of Suppliers.*
- ⚡ *People's Energy would also extend this to include the Board and/or Senior Leadership team and/or equivalent at any Supplier.*
- ⚡ *People's Energy would recommend that this Principle applies from the date of introduction as there is no need to delay implementation.*
- ⚡ *Any holding within a supplier should prevent an individual holding any position within a competitor supplier. Any senior individual involved with a supplier failure should be subject to scrutiny before being able to join a different Supplier.*
- ⚡ *People's Energy firmly support the Principle that, If you have previously been involved with the set up or senior Director level management of a bankrupt energy company, then an individual cannot be involved with the set up of another energy company.*

Principle to be Open and Transparent with the Regulator

Having considered the views expressed by stakeholders, Ofgem continue to consider that there are benefits to introducing a new principle-based requirement for suppliers to be open and cooperative with them.

While the scope of the principle remains broad, suppliers should ensure that they exercise sound judgement in determining the developments or changes about which Ofgem might expect to be informed.

Ofgem expect suppliers to come to us early in cases where there is the potential for negative impacts on consumers. Ofgem also expect suppliers to work with us to reduce the potential for consumer detriment, and resolve issues when incidents occur that threaten such harm.

- ⚡ *People's Energy would expect any Supplier to engage with Ofgem on any issue which had significant customer impact.*
- ⚡ *People's Energy Values fully support this Principle:*
 - **NAKED**
We have nothing to hide and happily let anyone see each and every decision we make.

Increased Market Oversight

Ofgem propose to introduce a requirement for suppliers to have and maintain a Customer Supply Continuity Plan. Ofgem expect the content of this plan to include, but not be limited to, the information and plans set out below. Ofgem expect each supplier's plan to be proportionate to its scale. The plan should reflect the size and complexity of the supplier's business with appropriate governance and oversight from its senior management. Ofgem propose to give suppliers one additional calendar month from the statutory implementation date to meet this new requirement.

Contents

- **Supplier information:** Details of arrangements with third-party service providers to ensure continuity of services, billing system information, Priority Services Register customer list, customer numbers, and customer payment method information. This could potentially reduce disruption to customers during the onboarding process in the event of a SoLR process.
- **Key contacts:** Details of key staff: Directors, Heads of Teams, Senior Officers. Details of key contacts at service providers. This information would ensure individuals are aware of their responsibilities even in the event of supplier failure.
- **Customer account information:** Details of the processes that would be followed to prepare a summary of customer debt information and customer account balances. In the event of a SoLR process, it is crucial a potential SoLR is aware of critical customer account information.
- **Data:** Details of how to access data sets, and where data sets are held. Details of how the supplier proposes to keep its data sets up to date.

Details of methodologies for handing over information and customer data.

This is fundamental information for a potential SoLR and would allow for a smoother transition for customers.

SoLR-related: Plans for engaging with Ofgem, and central industry bodies. Customer communications plans. Assessment of any other barriers to an orderly exit. This interacts with our open and cooperative principle as we expect suppliers to have a strong and transparent relationship with us. Reporting requirements We have considered whether or not a supplier should be required to publicly disclose some or all of its Customer Supply Continuity Plan, but do not propose to include this requirement as part of the new licence condition. Instead, a supplier will be required to submit its Customer Supply Continuity Plan when requested by Ofgem, including as part of the new Milestone Assessments and Dynamic Assessments.

- ⚡ *People's Energy would expect all suppliers to be required to produce and maintain a plan that is proportionate to the scale of its business but not required to publicly disclose the content of its plan as part of the new licence condition.*
- ⚡ *The plan requirements should be tailored to the size and maturity of the organisation.*
- ⚡ *People's Energy would recommend that Ofgem agree a primary, strategic level of ownership for the Plan.*

Independent audits

Ofgem propose to introduce a new requirement to enable us to compel suppliers to undertake an independent audit of their financial status and/or customer service systems and processes. This should be conducted by an external party, with the appropriate skills, knowledge and expertise, and where appropriate, meet the required industry standards.

Ofgem have reflected in the licence drafting that we may request an independent audit in circumstances where a supplier:

- has not sufficiently demonstrated its financial status and we identify a risk of consumer harm,
- has not been able to or has not been constructively engaged in identifying root causes of systemic or prolonged customer service failings, associated with systems and/or processes, and
- if a supplier is subject to a milestone assessment or dynamic assessments and cannot provide Ofgem adequate information. In determining when to seek an independent audit we will evaluate each situation on its merit.

Ofgem expect independent audit outcomes to provide suppliers an opportunity to improve their processes, procedures, systems and controls they have in place, or in the case of financial insolvency, to help establish necessary information needed to facilitate an orderly market exit, where necessary.

- ⚡ *People's Energy would recommend that financial warning signs would be flagged through the year end audit, which could be scrutinised by Ofgem.*
- ⚡ *Additional Quality Systems should also feed into this including but not limited to, ISO90001 audit, Investors in People audit, Training and Competency schemes. Where there is an infrastructure already in practice, this should be used to illustrate adherence to the Supply License Conditions.*

Monitoring and reporting requirements

Ofgem intend to introduce a new requirement for suppliers to notify us in the event of some specific changes that may arise in the course of running its business, called the 'Additional reporting requirement'. This will ensure that Ofgem is informed promptly of issues which may have the ability to impact on a supplier's financial stability.

- ⚡ *People's Energy have no issue with providing visibility of performance through enhanced reporting as long as this is appropriate and balanced with appropriate timeframes applied.*

Exit Arrangements

Debt Recovery

We intend to introduce a requirement for suppliers to include references in their contract terms and conditions that activities relating to debt recovery will be executed as outlined in relevant licence conditions.

Ofgem will also continue to engage with the relevant regulatory bodies for insolvency practitioners, and where possible consider whether there are opportunities to work together to ensure energy customers are treated in a fair and reasonable way.

- ⚡ *People's Energy again agree with this requirement subject to the relevant and appropriate timescales for implementation.*

Customer book sales

Ofgem propose to introduce a new requirement for suppliers to notify Ofgem when they are planning to undertake a commercial transaction which would result in the transfer of customers.

Ofgem also propose to introduce a licence condition that prevents licensees from engaging in commercial transactions that subvert or distort, or are likely to subvert or distort, the Supplier of Last Resort process; and / or make it more likely, in the Authority's opinion, that costs will be mutualised.

- ⚡ *People's Energy strongly believe that Suppliers should not be using Trade Sales to avoid an insolvency situation that could then threaten the full business.*
- ⚡ *Such actions should be monitored.*
- ⚡ *People's Energy recognise that this action is designed to mitigate the risk exposed by previous transactions in the market.*

Other improvements to exit arrangements

SoLR commitments

Ofgem propose to introduce a new requirement for suppliers to take all reasonable steps to honour the terms of the bid they provide as part of the SoLR selection process. We also propose to introduce a requirement for suppliers to include a clause in deemed contracts committing them to honouring customer credit balances where that contract arises from a SoLR process and the supplier has committed to honouring credit balances.

- ⚡ *People's Energy would expect that any commitment to any terms in a SoLR bid would be honoured.*
- ⚡ *People's Energy agree with this Principle.*

Update on portfolio splitting

- ⚡ *People's Energy have previously advised that the SoLR process could be split but that 'cherry picking' should not be allowed and should be actively prevented.*