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BY EMAIL ONLY to: Licensing Frameworks team, Ofgem

## **Supplier Licensing Review: Ongoing requirements and exit arrangements - Pure Planet's response to Statutory Consultation**

As a growing digital, renewable energy supplier committed to supplying our Members with affordable, zero carbon energy, Pure Planet welcomes Ofgem's aim within this Statutory Consultation to facilitate a more responsible and sustainable energy retail market.

We agree that reducing the risk of supplier failure and mitigating the subsequent financial burden on the market is an important and timely aim. However, Ofgem should also consider issues beyond the Supply Licence that place undue financial pressure on suppliers, increasing the risk of failure. This includes the rising cost demands from DCC with the Smart rollout, additional costs from programmes such as Faster Switching and the collection of Renewable Obligation payments on an annual basis. We'd recommend Ofgem conduct a full cost analysis of the impact of supplier failure against the benefits of enhanced competition, and whether the industry cost of supplier failure outweighs the growing non-commodity and policy costs borne by suppliers.

There are a number of valuable measures that we agree will allow Ofgem to achieve its stated aims and encourage a more sustainable retail market. In our response below, we've noted some areas for practical consideration when developing the supplier Milestone Assessment. However, we don't believe that all the measures under consultation will adequately address Ofgem's objectives. This is particularly true for the proposals on Supply Continuity Plans, contract term changes to regulate administrators, and prescriptive Fit and Proper requirements.

We're concerned that the regulator's keenness to implement changes in the next six months will add an unnecessary burden to suppliers. The industry is already working hard to innovate and improve processes to better support their customers in response to Covid-19, as well as respond to a full regulatory programme. In the longer term, there's a risk that this will mean suppliers have less time and fewer resources to invest in meaningful business changes that will support the Green Recovery and improve consumer outcomes. We'd urge Ofgem to revisit this package of measures, and develop more proportionate and pragmatic solutions to meet its policy ultimate aims which better reflect the actual or potential costs of supplier failure.



Moreover, as part of the Review we'd encourage Ofgem to harmonise, as far as possible, the Supply Licence, avoiding unnecessary and overly long additional clauses, including the proposed additional conditions outlined in this consultation. This would ensure the Review uses the momentum of moving towards principles-based regulation, established in Ofgem's Future Retail Market work in 2016.

Please find our response to the Statutory Consultation in full below. If you have any questions, please do not hesitate to get in touch.

Best wishes,

Katie Davies  
**Regulatory Lead**

## **Response to Questions**

### **1. Better risk management**

#### **Financial Responsibility Principle**

We welcome Ofgem's principal aim to reduce the financial burden of cost mutualisation following supplier failure on the rest of the market, and encourage more financially responsible supplier operations.

However, we're concerned that the wording in draft Licence Condition 4B.3 that suppliers will be obligated to comply with guidance around financial responsibility which Ofgem 'may issue and may from time to time revise'. We feel this is too vague and raises concerns that this may allow Ofgem the power to change its approach to enforcing compliance in this area without due process and thorough consultation with industry.

We also note that the measures outlined in this consultation are significantly different from those outlined in 2019's policy consultation, particularly around protecting credit balances and environmental and social obligation payments. Ofgem should provide far greater detail about how it intends to enforce this requirement proportionately and consistently across the market. Ofgem should also provide evidence to demonstrate the effectiveness of these measures to meet the aim of reducing the financial burden of supplier failure on industry.

#### **Operational Capability Principle**

We do not believe that this Principle is a substantive addition to the supply licence, and Ofgem has not outlined the value of its inclusion to avoid supplier failure. We note that just before it failed in 2019, Breeze Energy was top of the Citizens Advice's customer service ratings, suggesting that requiring suppliers to 'effectively serve' their customers is not an effective deterrent to supplier failure (draft SLC 4A.1). As above, we'd urge Ofgem to consider harmonising and streamlining the existing Supply Licence.

#### **Milestone Assessments**

We support the introduction of Milestone Assessments to assess the readiness of suppliers at 50,000 and 200,000 customers to ensure sustainable growth whilst maintaining a good level of service for customers.

As a growing supplier likely to be required to undertake this assessment soon after Go Live, we'd like to offer the following views about practical implementation.

#### **Defining thresholds**

As a growing supplier there are a number of new regulatory requirements we're preparing to meet. However, as the table below shows, the customer thresholds that new suppliers work towards are defined differently in almost every instance. The customer threshold proposed for this requirement is different again: customer numbers per fuel. We feel that this will lead to an unnecessarily confusing and inconsistent landscape for suppliers to navigate and we'd recommend that Ofgem takes serious steps to simplify the thresholds at which suppliers are obligated across the board.

Reg Obligation	Threshold	Definition	Fuel type	Date to be achieved
Warm Home Discount	150,000	Customer accounts per fuel	Electricity and gas	31 December
Energy Company Obligation	150,000	Customer accounts per fuel	Electricity and gas	31 December
Smart Export Guarantee	150,000	Customer accounts	Electricity	31 December
Feed in Tariff	250,000	Customer accounts	Electricity	31 December
Green Deal	250,000	Customer accounts	Electricity	31 December
Smart rollout	250,000	Domestic premises	Electricity and gas	When reached
Smart annual rollout and monitoring report	250,000	Customer accounts	Electricity	31 December
Smart annual milestone report	250,000	Customer accounts	Electricity	31 December
SEGB definition of small supplier	250,000	Customer accounts	Electricity	When reached
CSS reporting (proposed)	50,000 or 150,000 or 250,000	Absolute customer accounts	Electricity and gas	TBC

Ofgem should define the customer threshold for this Milestone Assessment as the number of absolute customer accounts with dual fuel accounting for one customer account (or number of domestic premises supplied). This is consistent with how suppliers track and forecast their customer numbers internally, allowing growing suppliers to better prepare for this Assessment and likely response timeframe.

### Response timeframe

We note from the consultation Annex that Ofgem proposes a 15 Working day response timeframe for this assessment. We do not believe this will allow sufficient time for suppliers to prepare the report as proposed, not least because of the likely need to obtain data from third party service providers. We'd recommend at least a 4 week response timeframe, reflecting Ofgem's typical approach to other RFIs, with scope for flexibility for example if a supplier meets their threshold over Christmas or Easter bank holidays.

### Assessment criteria

As Ofgem develops its proposals, we'd encourage the regulator to engage with suppliers nearing the 50,000 and 200,000 customer thresholds, and provide a draft reporting template for feedback. As noted above, it would be valuable for suppliers to understand reporting requirements well in advance to facilitate a timely and successful submission.

We'd urge Ofgem to make best use of the reporting data it already collects from suppliers: complaints, Social Obligation reporting and switch performance under the Guaranteed Standards as well as performance outside Ofgem's remit including the Energy Switch Guarantee and Citizens Advice Supplier Star Rating. We believe these facilitate a better view of suppliers' approach to sustainable growth by charting performance over time. Beyond this, our response to the proposed reporting criteria are as follows:

- **Operational performance** - as above, we believe that these indicators are already reflected in existing regulatory reports.
- **IT systems and third party providers** - we'd expect that a qualitative understanding of suppliers' operational model be understood via the account manager relationship. Ofgem should clarify how it will appraise the sustainability of suppliers' chosen systems. We recommend that to avoid picking winners, Ofgem should take a risk-based approach based on industry acceptance of common systems and third party providers.
- **Growth plans** - we ask that Ofgem refines this criteria and limits any requests to information that would contribute to a risk-based assessment of suppliers' growth plans. We do not think it is necessary for suppliers to disclose details about future products, tariffs and pricing for this reason. These are influenced by external factors, will be subject to change and commercially sensitive in nature.
- **Finance** - Ofgem should clarify the data requirements for this area, and we'd recommend that they align with financial data suppliers already collect and report on. We note the current Covid-19 monitoring RFI requests similar information about suppliers' financial position. This proposal should also align with the approach and rationale for the revised Consolidated Segmental Statements report which is currently under consideration.

Ofgem should also clarify its intention to ask suppliers to provide evidence of measures proposed elsewhere in this consultation, namely Fit and Proper recruitment processes and Supply Continuity Plans, as implied in the proposals, and provide appropriate guidance.

### **Dynamic Assessments**

We welcome Ofgem's intention to establish as robust assessment criteria on suppliers across the market as it intends for new and growing players. However, we're concerned that Ofgem has not provided sufficient clarity about when it would issue a supplier with an assessment of this kind. We'd recommend that Ofgem aligns these proposed new powers with the existing framework for managing compliance cases, and that this is coordinated via supplier account managers. This will, we hope, ensure the process is fair, transparent and proportionate.

## **2. More responsible governance and increased accountability**

### **Ongoing fit and proper requirement**

We agree that senior leaders in domestic energy supply companies should be necessarily able to fulfil their role, and have a strong appreciation of responsible business practices and customer protection. Suppliers should be encouraged to ensure those in positions of responsibility and influence are adequately vetted. Indeed, we understand that recruitment screening services already offer products that would fulfil this requirement, as the criteria aligns with that already in place for FCA regulated companies. However, it should be noted that this does not come without additional cost to suppliers; we don't feel this has been adequately reflected in the Impact Assessment.

Furthermore, we're very concerned about the prescriptive nature of the SLC drafting for this requirement. We don't believe the criteria that suppliers 'must have regard to' in the drafting of SLC 4C.3 are proportionate to the role or relevant to the responsibilities of working in the energy sector. For instance, the consideration of individuals who have 'unspent criminal convictions' (4C.3 (c )) or 'insolvency history, including undischarged bankruptcy, debt judgements and County Court judgements' (4C.3 (d)) that may not be relevant to their current professional capabilities.

We believe that the specific provisions against employing individuals who have previously worked for a supplier which has been issued a Last Resort Supply Direction (4C.3 (e)) or other enforcement action with a regulator (4C.3 (f)) will unfairly exclude talented and experienced individuals from the market. This could lead to unintended consequences of discouraging suppliers from retaining experienced individuals as the Supplier of Last Resort, meaning operational expertise and the opportunity for learning from failure is lost. It could also lead to a situation where fewer individuals will be prepared to take senior roles at smaller suppliers for fear that if the supplier were to fail, it could result in a premature end to that individual's career in the energy industry.

We'd recommend that Ofgem redraft SLC 4C.3 to reflect a more principles based approach.

### **Open and Cooperative Principle**

We accept this as an additional supply licence condition. However, we'd like to note that the essence of the Open and Cooperative Principle is already enshrined in the Standards of Conduct. In terms of implementation, we'd encourage Ofgem to reinforce its support of the account management relationship as the most effective channel for suppliers to constructively engage on compliance issues.

## **3. Increased market oversight**

### **Customer Supply Continuity Plans**

Ofgem should think again about the value of Supply Continuity Plans to meet the stated aim of ensuring an 'orderly exit from the market in the event of [supplier] failure' (p.49).

Under the current proposals, Ofgem has offered insufficient guidance about what form the Plan would take, and what information should be included. We appreciate that suppliers are all uniquely structured, but we don't see the value in suppliers producing Plans that do not fit a standardised format. Given the policy intent of the Plan is to allow acquiring suppliers a useful tool to quickly understand the failed suppliers' organisational structure, key contacts and datasets, the Plans should surely be in a format that everyone is familiar with, and crucially, can trust.

We'd recommend Ofgem revisit this proposal and ensure the practical requirement is more in line with overall aim of the policy.

### **Independent Audit Requirement**

We're very concerned about the vagueness of draft SLC 5B.1, and the provision it makes for Ofgem to ask suppliers to undertake an independent audit of their assessment reporting or where Ofgem has other 'concerns' about suppliers' operational or financial performance.

Ofgem's current proposals unfairly place the cost burden of independent audits on suppliers, who are likely to be either growing or already struggling financially in this context. The audit process should be used as a last resort if Ofgem has been unable to agree with the relevant supplier an appropriate means to resolve their questions or concerns. Ofgem should develop a formal framework for escalating such concerns, as is proportionate with its approach to enforcement action for non-compliance, and the cost burden should sit with the regulator.

## **4. Exit Arrangements**

### **Customer interactions with administrators**

We don't feel it is appropriate that suppliers should be obligated to adopt measures for the sole purpose of allowing Ofgem to regulate the activities of administrators in the event of supplier failure. We think a more effective alternative would be for Ofgem to establish a panel of registered administrators who can be appointed by the courts to failed licenced energy suppliers that adhere to an appropriate Code of Conduct.

We note that the proposed additions to all customer supply contracts is no small feat for all suppliers to fulfil, as this is a careful, resource-intensive process. Ofgem should also acknowledge that the timing of these contract changes will be paramount, to avoid unnecessary concerns from customers that a supplier is on the verge of failing, particularly given the current uncertainties resulting from Covid-19.

SUBMISSION ENDS.