

Supplier Licensing Review: Ongoing Requirements and Exit Arrangements - Decision

Appendix 3: Financial Responsibility Principle Draft Guidance Document

22nd January 2021

Introduction

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering almost all (90%) of both the UK's power generation and energy supply for over 27 million UK homes as well as businesses. The energy industry invests over £13.1bn annually, delivers around £85.6bn in economic activity through its supply chain and interaction with other sectors, and supports over 764,000 jobs in every corner of the country.

This is a high-level response to the draft guidance of the Financial Responsibility Principle in Appendix 3 of Ofgem's Supplier Licensing Review: Ongoing Requirements and Exit Arrangements – Decision. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK welcomes action from Ofgem to minimise the extent of cost mutualisation in the event of supplier failure, by ensuring costs are managed more responsibly during the time when suppliers are still trading.

However, we are concerned that the principle will be lacking in effectiveness if Ofgem does not enforce against it in a robust and proportionate manner. We believe that Ofgem need to provide assurances that it remains committed and prepared to act on non-compliance it identifies as and when they arise, whilst being accepting of suppliers' differing interpretations of the guidance. Enforcement of the new principle will need to be viewed by suppliers as being a credible threat with Ofgem publicly stating that it is ready to take swift and robust enforcement action where appropriate. To address this, we suggest that Ofgem could, alongside the guidance, provide a broad range of worked example scenarios of non-compliance to help provide greater context of the tools and actions available to it that it will be prepared to use and take to ensure the effectiveness of the principle in minimising the cost of mutualisation.

We are also concerned that, in the absence of a robust timeline, Ofgem's plan to consult on cost mutualisation in early 2021 may be delayed. We, therefore, request assurance from Ofgem that it plans to consult on cost mutualisation by the end of February 2021.

Principle Implementation

Energy UK agrees that, wherever possible, Ofgem sets out to use the data it already gathers from existing monitoring processes, rather than undertaking unnecessary and burdensome collections of

information that it already holds elsewhere. Reporting can be burdensome for suppliers; especially as various reporting obligations already exist. Therefore, we believe that it is important for Ofgem to not duplicate any information requests to monitor compliance with the principle and ensures that it targets suppliers behaving in a financially irresponsible manner.

In addition, we would also welcome greater clarification on the guidance proposals, such as what may trigger an ad hoc information request and the timescales involved. To that end, we ask Ofgem to uphold the 6 weeks that suppliers should currently receive to respond, as well as consulting on a draft of the RFI with industry beforehand, unless it has sufficiently robust justification to request the information on an urgent basis. To minimise unnecessary burdens on suppliers already compliant with the principle, we also suggest that any additional information requests related to the principle should be targeted in response to specific concerns Ofgem has identified.

Expectation of Suppliers

Energy UK agrees with the expectations set out in the guidance. Whilst we appreciate the flexibility this presents to suppliers; we request assurance from Ofgem that it will be accepting of different supplier approaches to attain Ofgem's principle-based goals.

Whilst we note that Ofgem will look to use its power to intervene to protect consumers and reduce potential cost mutualisation in the event of supplier failure, we are keen for Ofgem to set out clearly the actions and tools it has available, and is prepared to use, to minimise the cost of mutualisation in a case of non-compliance. Ofgem could provide worked example scenarios to clarify what actions it would look to take and at what stages, how it will evaluate whether to take such actions, and at what points information would be made public. This can include its more informal compliance activities such as raising the issue with a supplier before it reaches definitive enforcement activities. We have an overall concern that the principle will lack in effectiveness if not enforced upon appropriately, and believe Ofgem needs to provide industry reassurance that it is committed and prepared to act robustly and proportionally on problems as and when they arise and are identified.

Whilst we appreciate that much of Ofgem's monitoring and compliance work would naturally take place behind closed doors, highlighting that Ofgem has worked through examples would provide assurances that the principle would be an effective means of minimising the costs of mutualisation in the event of supplier failure, that Ofgem is committed to robustly enforcing the principle and, indeed, does take sufficient action in response to failure risks.

Cost Mutualisation Phase Two

To enable suppliers to best manage resources over the coming months, we are keen for Ofgem to provide greater detail on its plans for forthcoming consultations, including a clear timeline for future consultations and proposed implementation, as well as whether these will be in the form of policy or statutory consultations. Whilst we acknowledge that Ofgem intends to consult on cost mutualisation in early 2021, we are concerned this may be delayed in the absence of a robust timeline, and, therefore, we request assurance that this is still Ofgem's intention.

When Ofgem consults on more prescriptive rules, we believe that it should be clear on what additionality prescription delivers above and beyond the principle. In addition, it will be important for Ofgem to set out how it envisages the proposed prescriptive cost mutualisation protections to work in line with the principle, and how they would work together to achieve Ofgem's aim.

I trust Ofgem will find these comments useful, but if you would like to discuss the above or any other related matters, please contact me directly at Paige.Truelove@energy-uk.org.uk.