

Energy UK's Response to Ofgem's Simplification Plan 2016-17

11 February 2016

1. Introduction

1. 1. Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.
1. 2. We strongly believe in the value of a competitive energy market underpinned by a stable and independent regulatory regime. Together these can foster innovation, support market development, bring benefits to consumers and help provide the certainty that is needed to encourage investment and enhance the competitiveness of the energy sector, a key part of the British economy.
1. 3. Energy UK welcomes Ofgem's Simplification Plan, and the opportunity to respond to Ofgem's consultation. We are 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.

2. Executive Summary

2. 1. RFIs can prove a significant burden on suppliers' resources. In order to reduce the impact of RFIs, Energy UK believes that Ofgem should take efforts to ensure that RFIs are proportionate, effective, consistent and do not represent a duplication of information provided elsewhere by suppliers. A forward work plan of intended RFIs would support suppliers planning.
2. 2. Energy UK supports Ofgem's use of pre-consultation workshops as this early engagement improves the consultation process.
2. 3. As Ofgem moves towards Principles-Based Regulation (PBR), Energy UK would welcome the development of innovation criteria (as developed by the FCA) to foster customer-focussed innovation.
2. 4. Impact Assessments (IAs) enable policies to be scrutinised and evaluated to ensure that they support industry and, ultimately, customers. Energy UK would like to reassert the importance of IAs and urge Ofgem to ensure they are undertaken consistently and in line with Ofgem's guidance as members do not feel that this has consistently been the case.
2. 5. Energy UK would like to note that this response does not differ significantly from issues identified in response to Ofgem's last Simplification Plan. Energy UK would, therefore, encourage Ofgem to publish an annual review of progress against its Simplification Plan.

3. Improvements to forward planning

Requests for Information (RFI)

3. 1. One of the methods Ofgem uses to assess the market and inform its decision-making is through RFIs. This is an established activity and industry understands the importance of RFIs in supporting a healthy, communicative relationship between suppliers and Ofgem to ensure that the policy-making process is well informed and evidence-based.
3. 2. The complexity and the volume of data that is required, can however command significant resource, particularly when multiple RFIs are ongoing. This can at times prove burdensome and costly for suppliers. Proportionality is a key principle for good regulation, ensuring resources are commanded only when necessary and in a cost effective manner. Therefore, it is important that RFI processes ensure that requests are effective and made only when necessary.
3. 3. Ofgem detailed its RFI process in the Policy Statement 'Transparency of Ofgem Data - A Statement of our Policy' (March 2014)¹. Amongst other things, this provides assurance that Ofgem will:
 - Assess whether equivalent information is already held or whether other RFIs are planned which could be used to collect the required information;
 - Assess the burden of RFIs on businesses, including whether this burden might fall disproportionately on some businesses; and
 - Wherever possible consider the timing of RFIs, with consideration to holiday periods and simultaneous RFIs.
3. 4. Energy UK continues to support these processes. We believe it is in all parties' interest to have a robust and clear approach to RFIs to facilitate suppliers' compliance with requests, benefitting Ofgem, suppliers and customers.
3. 5. Over the past year Ofgem has increasingly shared draft RFIs ahead of formal issue and this behaviour is welcomed by suppliers as it enables them to prepare appropriately and better engage with requests. This process could be improved by Ofgem ensuring it engages with suppliers to provide an explanation where the formal RFI differs significantly from the draft, especially where the RFI has a short deadline.
3. 6. However, our members continue to report that Ofgem's RFI process, as set out in its policy statement, is not consistently adhered to and that the number of Ofgem-issued RFIs continue to be challenging to manage.
3. 7. Suppliers have also highlighted changes associated with subsequent amendments to RFIs that have already been issued and unclear supporting documentation/guidance.
3. 8. Energy UK urges Ofgem to follow the processes set out in its policy statement, when issuing all future RFIs. Energy UK would also support improved forward planning on RFIs, and would propose that Ofgem publish a forward work plan of RFIs. This forward work plan of RFIs would align to Ofgem's Forward Work Programme. Such a forward view would provide greater transparency to the reporting process and support suppliers in resourcing and responding to requests. It would also help the likes of Citizens Advice and DECC to better manage their use of RFIs and help to prevent the issue of duplication and facilitate greater co-ordination of activity.
3. 9. As Ofgem transitions towards PBR the RFI process will need to evolve. Ofgem must, therefore, review its monitoring activity to ensure that it is risk-based and proportionate.

¹ <https://www.ofgem.gov.uk/publications-and-updates/transparency-ofgem-data-%E2%80%93-statement-ourpolicy>

4. Accessible regulatory process

Pre-consultation workshops

4. 1. Over the past year, Energy UK's members have noted that within Ofgem, some teams have arranged pre-consultation workshops. Members believe that this has proven useful and improved the subsequent consultation process, and as such we would encourage Ofgem to use this approach on a more consistent basis. The earlier the engagement with suppliers, large and small, the more this practice benefits them, supporting their ability to access the market and enhancing competition for the benefit of consumers.
4. 2. Energy UK also welcomes Ofgem continuing to demonstrate an awareness of the needs of small suppliers by hosting smaller supplier workshops to support these businesses' understanding of regulatory policy intent.
4. 3. Ultimately, Energy UK believes that a simple, predictable regulatory framework is the most effective way of ensuring consistent supplier access to the market, driving competition and delivering the best outcome to consumers.

Innovation

4. 4. As recently highlighted by the Competition and Markets Authority (CMA), innovation is an important part of a competitive market and benefits customers. As Ofgem moves ahead with its Future of Retail Regulation programme, PBR should provide suppliers with more flexibility to innovate. However, as part of the transition to PBR, Energy UK proposes that Ofgem adopts innovation criteria to encourage trials in the energy sector. Innovation criteria would make it easier for suppliers to conduct trials, to test new products and new ways of communicating, without the need for a formal derogation from any prescriptive rules.
4. 5. Energy UK notes that a similar process is already used by the FCA² to encourage innovation. The FCA uses criteria such as:
 - The trial is customer-focussed with a good prospect of identifiable benefit which will promote effective competition;
 - There are sufficient grounds to believe that the party is currently constrained by existing regulations, and that the party has sought to understand these as far as appropriate;
 - The trial will be appropriately carried out to achieve statistically significant and informative results.

5. Transparency

Impact Assessments (IAs)

5. 1. IAs provide transparency and accountability to support robust, evidence-based policy development and evaluation. These enable policies to be scrutinised and evaluated to ensure that they support industry and, ultimately, customers. Energy UK would like to reassert the importance of IAs and urge Ofgem to ensure they are undertaken consistently and in line with Ofgem's guidance.
5. 2. Each IA produced by Ofgem should be quality assessed to ensure consistency of analysis to ensure that all costs are accounted for and all potential options are considered.
5. 3. To facilitate this Energy UK supports the proposal in the Enterprise Bill to bring economic regulators under the scope of the Business Impact Target (BIT) and for Ofgem's IAs to be reviewed by an external body, such as the Regulatory Policy Committee. We believe that all Ofgem proposals for intervention should be subject to the BIT requirement unless there are very good reasons to do otherwise. For instance, we would not agree with the statement in the November 2015 GEMA minutes which suggests that Ofgem interventions designed to promote competition would be exempt from the BIT. The Retail Market Review (RMR) for instance was designed to promote competition and such major interventions should be subject to IA.

² Project Innovate: <http://www.fca.org.uk/your-fca/documents/innovation-hub-criteria-for-support>

5. 4. Energy UK also notes that it is important that risk and/or market failure is identified by Ofgem before seeking to develop remedies. If there is not clear evidence that a problem exists, Ofgem should not be seeking to introduce regulatory change.

6. Conclusion

- 6.1. It is vitally important Ofgem, industry and stakeholders work closely together when developing policy to protect consumers and promote a competitive market. In line with the principles of Better Regulation, forward planning and transparency support a consistent and proportionate regulatory approach. Energy UK believes the points made above support these principles and are conducive to an accessible regulation process that will produce balanced and effective policy outcomes.
- 6.2. Energy UK notes that it raised similar challenges in its response to Ofgem's 2015-16 Simplification Plan. Ofgem acknowledged many of these concerns in their final Simplification Plan and some improvements have been noted by members. As a matter of best practice, however, Energy UK would support Ofgem publishing a review of its performance against commitments made in its Simplification Plan on an annual basis.
- 6.3. Energy UK's members are always willing to discuss with Ofgem ways in which we can work together for the benefit of consumers and the industry. Should you have any questions please feel free to contact me on the details below.

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