

Appendices



Appendix I

Key Performance Indicators

Effective Competition			
Metric (KPI's)	Details of what is being measured	Annual target 2018-19	Actual
Offshore Transmission Processing	Licence grants within 70 days of commencement of Section 8a consultation	70 working days	43.5 working days
Offshore Transmission Processing	Preferred Bidder selection within 120 days of ITT submission (excluding Best & Final Offer)	120 working days	97.3 working days
Licence Applications	Make decisions on Licence Applications within 45 days	100%	100%
Code Modifications	Make code modification decisions within 25 working days (or 3 months if 'minded to' consultation / Impact Assessment is needed).	90%	55%
Customer Contacts	Time taken for first response to customer contacts	93% - 10 working days	91%
Whistle-blowers	Time taken for first response to whistle-blower contacts	100% to receive initial engagement within 1 working day.	92%

E-Serve KPIs 2018/19			
Metric	What is being measured	Target	Actual
DRHI	Responding to enquiries about applications within 10 working days	90%	76.4% ¹³
NDRHI	Responding to queries within 10 working days	90%	95.1%
RO	Responding to enquiries about applications within 10 working days	90%	86.8% ¹⁴
FIT	Responding to enquiries about applications within 10 working days	90%	93.5%
ECO	Responding to queries within 10 working days	90%	96.2%
WHD	Responding to obligated party submitted Warm Homes Discount schemes for approval, within 28 days	100%	100.0%
DRHI	Maintaining system availability during business hours	99%	99.99%
NDRHI	Maintaining system availability during business hours	99%	99.97%
RO	Maintaining system availability during business hours	99%	99.82%
FIT	Maintaining system availability during business hours	99%	99.90%
ECO	Maintaining system availability during business hours	99%	99.85%
DRHI	Making payments within 30 working days	95%	98.0%
NDRHI	Making payments within 40 working days	95%	88.0% ¹⁵
RO	Issuing the main batch of Renewables Obligations Certificates following the generators' output data reporting deadline, within 17 working days (Apr-Jun) and 12 working days (Jul-Mar)	95%	98.8%
FIT	Completing the levelisation process within 22 working days	95%	100.0%
ECO	Processing the measures submitted in one calendar month by the end of the following month	100%	100.0%

¹³ We flexed resources across operational teams to meet a 37% increase in application demand in the last six months of the financial year. This prioritisation resulted in a reduced enquiries service.

¹⁴ Due to the complex nature of remaining scheme applications, including those received during grace periods, a number of queries took longer than usual to resolve. This resulted in the overall KPI falling below the target.

¹⁵ Payments for the first half of the year fell below KPI due to a number of aged data queries being counted within this metric incorrectly. This was reviewed and the metric adjusted to reflect only activity sitting with Ofgem

Appendix II

Investigations and enforcement action 2018-19

Details of our cases are available on our website¹⁶ in accordance with our policy as set out in our Enforcement Guidelines.¹⁷ We will usually publish brief details of the facts and nature of the investigations on our website,¹⁸ although policy is different for cases relating to the Regulation¹⁹ on Wholesale Energy Market Integrity and Transparency (REMIT).²⁰

Below you can find details of the investigations that we have completed this year. In investigations where we secured redress, the companies made payments either directly to consumers and/or to the voluntary redress fund, administered by the Energy Savings Trust (EST).²¹

Company	Issue	Decision	Date of decision
SSE	Compliance with SLC 25C and SLC 31A – not treating customers fairly by providing incorrect information to customers on their annual statements.	No formal finding of breach. SSE has accepted non-compliance; case resolved via alternative action; remedial actions taken and voluntary redress of £1m paid to the voluntary redress fund.	June 2018
British Gas	Compliance with SLC 24 and SLC 25C - not treating customers fairly by issuing incorrect terms and conditions to some customers, incorrectly charging some customers termination fees and failing to apply fixed term supply contract prices to some customers' final bills in the protected period following a switch.	No formal finding of breach. BG gas accepted non-compliance; case resolved via alternative action; remedial actions taken, a total sum of £1.8m paid (compensation paid direct to customers affected; and a sum paid in voluntary redress to the voluntary redress fund).	August 2018

¹⁶ <https://www.ofgem.gov.uk/investigations>

¹⁷ https://www.ofgem.gov.uk/system/files/docs/2017/10/enforcement_guidelines_october_2017.pdf

¹⁸ The fact that we have opened an investigation does not imply that the companies involved have breached licence conditions or other obligations.

¹⁹ Regulation No 1227/2011 of the European Parliament and of the Council of 25 October 2011

²⁰ Our Remit Procedural Guidelines can be found at: <https://www.ofgem.gov.uk/publications-and-updates/consultation-decision-remit-penalties-statement-andprocedural-Guidelines>

²¹ <https://energyredress.org.uk/>

Company	Issue	Decision	Date of decision
npower	Compliance with SLC 12 – failures in relation to the installation of advanced meters.	Formal finding of breach. Penalty of £2.4m imposed. ²²	August 2018
Iresa	Compliance with SLCs 14, 23, 25C (SLC 0 from October 2017), 27 and the CHSR 2008 – concerns relating to complaints handling, customer service, switching, issuing refunds and debt recovery and considering ability to pay.	No formal finding of breach. Investigation closed when Iresa Limited ceased trading in July 2018 and its licences were revoked.	August 2018
Spark Energy	Compliance with Article 68 of the Renewables Obligation Order 2015 (as amended) and Article 44 of the Renewables Obligation Order (Scotland) 2009 - failure to make RO payment.	No formal finding of breach. Investigation closed when Spark Energy ceased trading in November 2018 and its licences were revoked.	December 2018
Extra Energy	Compliance with SLCs 7B, 14, 21B, 25C, 27, 31A and with the CHSR 2008 - Concerns relating to treating customers fairly, frequency of billing, timely provision of final bills, provision of annual statements, return of credit balances, handling meter readings appropriately, transfer blocking, and complaints and call handling.	No formal finding of breach. Investigation closed when Extra Energy ceased trading November 2018 and its licences were revoked.	December 2018
Economy Energy	Compliance with SLC 25 - concerns relating to sales and marketing practices.	No formal finding of breach. Investigation closed when Economy Energy ceased trading in January 2019 and its licences were revoked.	January 2019
Economy Energy	Compliance with Article 68 of the Renewables Obligation Order 2015 (as amended) and Article 44 of the Renewables Obligation Order.	No formal finding of breach. Investigation closed when Economy Energy ceased trading in January 2019 and its licences were revoked.	January 2019

²²This was a contested hearing with a formal finding of breach by the Enforcement Decision Panel on behalf of the Authority. On a contest, the penalty imposed goes to the consolidated fund.

Below are details of redress that the Authority has secured through alternative action or compliance work. This gives a company a chance to put things right for consumers swiftly, without us exercising our statutory enforcement powers.

Company	Issue	Decision	Date of decision
Cadent	Compliance with Guaranteed Standards of Performance 2 and 12 – concerns relating to reinstatement of customer premises.	Closed through alternative action. Cadent paid £1,660,050 in compensation to customers affected; and paid £278,050 in voluntary redress to the voluntary redress fund (sum totalling £1,938,100).	June 2018
NGN	Compliance with Guaranteed Standards of Performance 2 – concerns relating to reinstatement of customer premises.	Closed through alternative action. NGN paid £247,440 in compensation to customers affected; and paid £15,000 in voluntary redress to the voluntary redress fund (sum totalling £262,440).	June 2018
EDF	Compliance with SLC 44.4 of the Electricity Supply Licence and SLC 38.4 of the Gas Supply Licence - EDF missed its 2017 targets to install smart meters for its customers.	Closed through alternative action. EDF paid £350,000 in voluntary redress to the voluntary redress fund.	June 2018
Green Star Energy	Compliance with SLCs 25 and 31A – concerns relating to Informed Choices and the provision of annual statements.	Closed through compliance action. Green Star paid £361,415 in compensation to customers affected; and paid £317,868 in voluntary redress to the voluntary redress fund (sum totalling £679,283).	September 2018
SSE	Compliance with Standard Licence Condition 33 A, Part 3, Paragraph 3. SSE had overstated generation payments in their Feed-in Tariff (FIT) annual levelisation submission for 2016/17 by £9.88m.	Closed through alternative action. The overpayment paid to SSE was repaid to the levelisation fund. SSE paid an additional £455,705 to the FIT levelisation fund and made a payment of £250,000 in voluntary redress to the voluntary redress fund.	February 2019
Foxglove	Compliance with Standard Licence Condition 33 A, Part 3, Paragraph 3 and the Feed-in Tariff Order 2012 Foxglove had failed to make its Feed-in Tariff payment.	Closed through alternative action. Foxglove paid £497,691.80 to pay off its outstanding Feed-in Tariff debt, which was used to reduce the mutualisation amount due from other suppliers.	February 2019
Eversmart	Compliance with Article 68 of the Renewables Obligation Order 2015 (as amended) and Article 44 of the Renewables Obligation Order (Scotland) 2009 - failure to make RO payment.	Closed through alternative action. Eversmart paid £439,149.82 to pay off its outstanding Renewables Obligations debt, which was used to reduce the mutualisation amount due from other suppliers.	March 2019

Provisional Orders

Below you can find details of the provisional orders made during the report period (April 2018 to March 2019).

Provisional Order issued	Company	Concern
September 2018	npower	Compliance with SLC 32A - the behaviour of concern giving rise to the provisional order was that npower refused to comply with a direction from Ofgem requiring npower's participation in the Active Choice Collective Switch Autumn Trial. (These trials were introduced by Ofgem in response to the recommendations made by the CMA following the Energy Market Investigation).
January 2019	Economy Energy	Compliance with SLCs 0, 27 and the CHSR 2008 – concerns relating to treating customers fairly, customer service, complaints handling and billing and payment issues.
January 2019	E (Gas and Electricity) Ltd (EGEL)	Compliance with SLC 14A and SLC 0.3a, - concerns relating to the transfer of customers from Economy Energy to EGEL, with the likelihood of such transfer to EGEL causing potential confusion to affected customers, who would have anticipated an orderly transfer to OVO instead via the Supplier of Last Resort Process.
February 2019	Solarplicity	Compliance with SLCs 0, 14, 22, 27 and the CHSR 2008 – concerns relating to treating customers fairly, customer service, complaints handling and debt recovery/ability to pay and treatment of vulnerable consumers.

Of the four orders made, 2 ceased to have effect within this reporting period.

The provisional order issued to Economy Energy ceased to have effect by reason of the company ceasing to trade on 8 January 2019 and its supply licences being revoked on 12 January 2019.

Having established that the transfers of former customers of Economy Energy to EGEL were properly cancelled and were not completed, the Authority revoked the provisional order issued to EGEL on 25 February 2019.

Ofgem successfully applied to the High Court for an injunction compelling npower to comply with the provisional order issued to npower, the first time Ofgem has used these powers. Also, Ofgem successfully defended a legal challenge to the direction and statutory challenge to the provisional order in the High Court.

The provisional order issued to Iresa issued in March 2018 (i.e. during the previous report year) was confirmed in June 2018 but ended in July 2018 when Iresa ceased trading and its licenses were revoked.

Final Orders

In March 2019, Enforcement issued a final order on URE Energy.²⁶ The final order relates to URE's non-compliance with its obligations under Article 7 of the Renewables Obligation Order 2015. The order required URE to pay its outstanding Renewables Obligation debt of £209,000 by 31 March 2019.

Final Notices

There were no final notices issued by the Authority under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 in this reporting year.

Open cases

Below are the open investigations as at the end of March 2019. The opening of an investigation does not imply that we have made any finding(s) about non-compliance.

Company	Date opened	Issue
Economy Energy, E(Gas and Electricity) and Dyball Associates	September 2016	Investigation into whether there has been an infringement of Chapter I of the Competition Act 1998 in relation to possible anti-competitive agreements and concerted practices
Not disclosed	February 2017	Investigation into whether there has been a breach of REMIT.
Not disclosed	April 2017	Investigation into whether there has been a breach of REMIT.
Undisclosed	April 2017	Investigation into whether there has been a breach of REMIT.
Undisclosed	May 2017	Investigation into whether there has been a breach of REMIT.
Undisclosed	May 2017	Investigation into whether there has been a breach of REMIT.
Not disclosed	August 2017	Investigation into whether there has been an infringement of Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning of the European Union, concerning potential abuse of a dominant position by a company providing services to the energy industry.
Ovo	February 2018	Investigation into whether Ovo has complied with SLCs 31A and 25C/0 in respect of information on Bills, statements of account and Annual Statements. In September 2018 this was expanded to include SLCs 22C, 26, and 27
Cadent	April 2018	Investigation into Cadent Gas Limited and its compliance with its obligations under its gas transporter licence (Standard Special Conditions A40, A50 and A55) and as a consequence section 9 of the Gas Act 1986.
National Grid	May 2018	Investigation into National Grid Electricity Transmission (NGET) and its compliance with its obligations under the Standard Licence Condition 16 of the Transmission Licence.
Utility Warehouse	June 2018	Investigation into Utility Warehouse's compliance with Standard Licence Conditions (SLCs) 25C/0, 27.5, 27.8 and 28B of the Electricity Supply Licence and the Gas Supply Licence.
Not disclosed	December 2018	Investigation into whether there has been an infringement of Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning of the European Union, concerning potential abuse of a dominant position in relation to wholesale trading activities.

Appendix III

Off-payroll appointees

Off-payroll engagements as of 31 March 2019, for more than £245 per day and that last for longer than six months.

The following table summarises the situation on off-payroll engagements as at 31 March 2019:

No. of existing engagements as of 31 March 2019	2
Of which:	
No. that have existed for less than one year at time of reporting.	2
No. that have existed for between one and two years at time of reporting.	0
No. that have existed for between two and three years at time of reporting.	0
No. that have existed for between three and four years at time of reporting.	0
No. that have existed for four or more years at time of reporting.	0

All existing off-payroll engagements, outlined above, have at some point been subject to a risk based assessment as to whether assurance is required that the individual is paying the right amount of tax and, where necessary, that assurance has been sought.

New off-payroll engagements, or those that reached six months in duration, between 1 April 2018 and 31 March 2019, for more than £245 per day and that last for longer than six months.

No. of new engagements, or those that reached six months in duration, between 1 April 2018 and 31 March 2019	2
Of which:	
No. assessed as caught by IR35	0
No. assessed as not caught by IR35	2
No. engaged directly (via PSC contracted to department) and are on the departmental payroll	0
No. of engagements reassessed for consistency / assurance purposes during the year	0
No. of engagements that saw a change to IR35 status following the consistency review	0

Off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, between 1 April 2018 and 31 March 2019

No. of off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, during the financial year.	0
Total no. of individuals on payroll and off-payroll that have been deemed "board members, and/or, senior officials with significant financial responsibility", during the financial year.	2

Appendix IV

Trade union facility time

Table 1
Relevant union officials

What was the total number of your employees who were relevant union officials during the relevant period?

Number of employees who were relevant union officials during the relevant period	Full-time equivalent employee number
12	816

Table 2
Percentage of time spent on facility time

How many of your employees who were relevant union officials employed during the relevant period spent a) 0%, b) 1%-50%, c) 51%-99% or d) 100% of their working hours on facility time?

Percentage of time	Number of employees
0%	0
1%-50%	12
51%-99%	0
100%	0

Table 3
Percentage of pay bill spent on facility time

Provide the figures requested in the first column of the table below to determine the percentage of your total pay bill spent on paying employees who were relevant union officials for facility time during the relevant period

Provide the total cost of facility time	£8,367
Provide the total pay bill	£53,292k
Provide the percentage of the total pay bill spent on facility time, Calculated as: (total cost of facility time ÷ total pay bill) x 100	0.016%

Table 4
Paid trade union activities

As a percentage of total paid facility time hours, how many hours were spent by employees who were relevant union officials during the period on paid trade union activities?

Time spent on paid trade union activities as a percentage of total paid facility time hours calculated as: (total hours spent on paid trade union activities by relevant union officials during the relevant period ÷ total paid facility time hours) x 100	100%
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Appendix V

Statutory arrangements under Section V of the Utilities Act 2000

Section 5(1) of the Utilities Act 2000 requires that the Authority makes a report to the Secretary of State each year on:

- the activities of the Authority during the year; and
- the activities of the CMA during that year in respect of any reference made to it by the Authority.

The activities of the Authority during the year are reported on throughout this report. [There have been no references made by the Authority to the CMA on which to report]

Section 5(2) of the Utilities Act 2000 requires that the annual report of the Authority includes the following:

- A general survey of developments in respect of matters falling within the Authority's functions, including in particular developments in competition between persons engaged in, or in commercial activities connected with:
 - the shipping, transportation or supply of gas conveyed through pipes; and
 - the generation, transmission, distribution or supply of electricity;
(These developments are referred to in the Performance Report)
- A report on the progress of the projects described in the forward work programme for that year;
(Progress is reported on page 7)
- A summary of final and provisional orders made by GEMA in that year;
(This can be found in Appendix II)
- A summary of the penalties imposed by GEMA during that year;
(This can be found in Appendix II)
- A summary of any final notices given by GEMA under REMIT in that year;
(This can be found in Appendix II)
- A report on such other matters as the Secretary of State from time to time may require.

Section 5(2A) of the Utilities Act 2000 requires the Authority to include in its annual report a report on

- (a) the ways in which the Authority has carried out its duties under section 132(1) and (2) of the Energy Act 2013 in relation to a strategy and policy statement designated by the Secretary of State (so far as the statements designation was in effect during the whole or any part of the year); and
- (b) the extent to which the Authority has done the things set out in a forward work programme or other document as the things the Authority proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the strategy and policy statement.

(The Secretary of State has not designated a strategy and policy statement applicable to this reporting year)

Section 5(3) of the Utilities Act requires the Authority to set out in its annual report any general directions given by the Secretary of State under s34(3) of the Gas Act 1986 or s47(2) of the Electricity Act 1989.

(The Secretary of State has not made any such general directions)

