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Dear Supplier Licensing team

## Good Energy's response to the Supplier Licensing Review statutory consultation

Thank you for the invitation to respond to the statutory consultation on the Supplier Licensing Review's Ongoing Requirements workstream. Good Energy supplies 100% renewable electricity and carbon-neutral gas to homes and businesses across the UK. Good Energy is working towards a renewable future, helping to support technologies including wind, solar, biofuel and tidal. Our purpose is to power the choice of a cleaner, greener future together.

### Summary

- **We are supportive of the aims of the Ongoing Requirements workstream, but many of the new regulations add unnecessary burdens to suppliers or could simply be achieved by other means.**
- **The Financial Responsibility Principle is a more proportionate measure than the cost mutualisation proposal from the prior consultation.**
- **We agree with the aims of both the Operational Capability and Open & Cooperative Principles but do not feel extra license conditions are required.**
- **Milestone and Dynamic Assessments should be designed to minimise reporting burden.**
- **More clarity is required on the scope and manner with which Ofgem expect suppliers to conduct Fit and Proper Assessments.**
- **Despite being an improvement on initial proposals, the task of keeping Customer Supply Continuity Plans up to date will be onerous, while delivering limited benefit to customers or the regulator.**
- **The Independent Audit requirement, and the situations under which it may be used, should be defined more clearly.**
- **We support Ofgem in their effort to hold administrators to account, but do not believe the proposed measure will have the desired effect.**
- **We encourage Ofgem to continue their work on portfolio splitting, as we believe this could lead to positive outcomes for consumers.**



## Financial Responsibility Principle

We were pleased to see that after considering industry feedback Ofgem have taken the approach of a financial responsibility principle, rather than the cost mutualisation protections suggested initially. It was very clear during stakeholder events in 2019, that a prescriptive requirement to protect 50% of credit balances and environmental costs would unevenly burden market participants of different sizes. The cost to certain parts of the market – and their customers – of obtaining a letter of credit to cover this amount could conceivably add more to consumer bills than the mutualised costs of a supplier failure.

## Operational Capability and Open & Cooperative Principles

All suppliers should be able to serve their customers effectively, preventing them from detriment while complying with legislative and regulatory obligations. However, it is not immediately clear to us that the Operational Capability Principle as proposed here gives Ofgem any additional or useful oversight and powers than those which it already holds. Implementation of this proposal will add to supplier workload without delivering proportionate benefit.

The Supply Licence continues to grow ever larger despite prior commitments by Ofgem to move to sleeker, more efficient regulation. Ofgem have powers to compel market participants to share pertinent information with them under SLC 5, and so it is not clear that the Open and Cooperative Principle improves Ofgem's ability to gather details about the behaviour of suppliers. Clarificatory guidance for existing requirements could achieve the desired change without the need for new SLCs.

## Milestone and Dynamic Assessments

Many of the supplier failures over the last several years can be indirectly attributed to the supplier in question growing unsustainably large over a short period of time. For this reason, it makes sense to introduce points at which Ofgem can 'check in' with suppliers as they gain customers, and ensure they are able to continue to grow without sacrificing consumer outcomes.

All responsible suppliers should already have the constituent information for the proposed milestone assessments. However, even when one has all the required information for the submission of an RFI, the onerous part is often curating it to fit a requested template or format. Allowing suppliers to submit the required to Ofgem in a format of their choice – likely to be the format in which it is kept for internal use – would achieve the aims of assessment without placing undue burdens on suppliers' reporting.

We would also appreciate more details regarding the likely deadlines involved – specifically when suppliers should inform Ofgem they are approaching either milestone, as well as how long they will subsequently have to complete the assessment. Ofgem should also clarify what happens in the event that a supplier passes 50,000 customers, passes an assessment, and then dips back under the threshold. It is unclear whether they need to repeat the process. We would suggest it is reasonable to allow a certain amount of time to pass before repetition becomes necessary.

## Fit and Proper assessments.

Individuals in positions of significant influence within any organisation should of course be deemed fit and proper to hold such a post – as is already required by the Companies Act 2006. However, we do understand that there are certain pieces of sector-specific information – such as an individual's prior involvement in a SoLR event - which might not be explicitly captured by existing employment regulations. We appreciate that the Fit and Proper Requirement implemented as part of Ofgem's Supplier Entry work may have been necessary to alert market entrants to such 'red flags.'



However, it is not clear that the same benefit will be derived by making this an ongoing requirement, without adding significant burden on those who already have responsible hiring processes. The scope of the proposed Ongoing Fit and Proper Requirement is imprecise, and suppliers across the market may interpret it very differently. There is a risk that this may simply increase workload for responsible organisations, and those with fewer scruples will simply skirt this regulation. Any confusion or discrepancy this might cause can be avoided by applying this requirement to recruitment of company directors only, as they should be ultimately responsible for the decisions made by senior members of staff who report into them.

We would welcome clarification on whether Ofgem will require suppliers to retrospectively apply fit and proper assessments to all current members of staff who fit within the scope outlined, and what, if any, documentation should be produced to evidence this.

### **Customer Supply Continuity Plans**

During discussions earlier in the development of these proposals, it was suggested that suppliers create a living will outlining what will happen if they were to fail – including both financial and operational information. Stakeholders were quick to point out that it is unlikely that a supplier approaching failure will take too much trouble to (a) update, and (b) adhere to any financial commitments made while they were in good health. We are pleased to see that these concerns were reflected in the regulation drafting, and financial data has been omitted from the CSCP. However, even when it contains predominantly operational information, unless the ailing supplier has kept the CSCP in good working order, the plan will be of little use to any incoming SoLR - It may actually increase costs depending on the extent of its inaccuracy.

We do recognise the logistical difficulty faced by previous SoLRs, when onboarding the customers of a supplier whose approach to data upkeep has been poor. If possible, this problem should be addressed through a greater level of cooperation with central industry systems, rather than exiting suppliers who may not have even recognised the flaws in their systems and processes, let alone documented them.

### **Independent Audits**

There is relatively little information provided in the consultation with regard to the precise scenarios in which Ofgem intend to request independent audits, nor where this power sits within the regulator's toolbox. We would encourage Ofgem to use this power as a last resort, after other means of gathering information – such as mandatory RFI under SLC 5 – have been exhausted. Independent audits are both time consuming and costly, and it is not immediately clear that burdening a struggling supplier with one will lead to better outcomes for consumers, compared with stepping in with more constructive approaches. Where independent audits have been conducted under this requirement and no fault to the supplier is found, they should be compensated to the cost of the works undertaken.

If Ofgem intend to use this power to monitor the supply market's financial health, we suggest instead that all suppliers should be required to undertake the disclosure regime required of publicly listed companies – Good Energy already has to do this each year at significant expense.

### **Administrators**

We are aware of the detriment caused to some groups of customers due to inappropriate behaviour by insolvency practitioners and are fully supportive of Ofgem's aim of holding them to account. We also appreciate that administrators are outside of Ofgem's remit, which makes doing so more difficult. However, we do not feel that the proposed solution will deliver substantial benefit to consumers.

Suppliers are already required to reflect certain parts of the license in their terms and conditions. SLC 21BA, for example, requires licensees to ensure back billing provisions are included in domestic contracts. It has been reported, however, that this has not prevented rogue administrators of failed suppliers from breaching both SLC and contract terms and chasing debt to which they are not entitled.



Instead, we would encourage Ofgem, and suppliers, to work with insolvency practitioners and the Insolvency Service, to increase awareness of the obligations administrators are expected to meet when working in the supply market. One possible solution would be to produce a code of practice outlining the levels of conduct expected of them when recovering debt from domestic consumers.

### **Portfolio Splitting**

We are pleased to see that Ofgem are working to overcome barriers to splitting portfolios of failed suppliers to deliver better outcomes for their customers. Different cohorts of customers may be best served by different suppliers, depending on their characteristics and preferences. While it might be most appropriate for customers using prepayment meters to be transferred to a supplier specialising in that payment type, other customers may have chosen a tariff based on environmental claims, and should be transferred to an offtaker who is able to provide similar or even improved green credentials.

I hope you have found our response helpful. If you would like more information, or have any questions about our views, please do not hesitate to let me know.

Kind regards,

**Kit Dixon**  
Regulatory Affairs Officer