

Square1 Energy Limited & Mississippi Energy Limited
1st floor John Comyn Drive, Worcester, Worcestershire. WR3 7NS

OFGEM Licensing,
10 South Colonnade, Canary Wharf, London, E14 4PU

Dear Sir,

Square1 Energy and Mississippi Energy welcomes the opportunity to share our views on the statutory consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements. We believe the only differentiator in this competitive market is treating customers fairly and providing the highest levels of customer service in everything we do, whilst reducing the risk and costs to customers.

Our response to the statutory consultation questions are as follows:

Overarching question:

1. Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail?

We agree that the proposed package of reforms could reduce the likelihood of disorderly market exits and market disruption in the future, however some of the reforms bring new risks to the industry, e.g. increasing barriers to entry and reducing competition in the market.

Are there other actions you consider we should take to help achieve these aims?

Before concluding this review the following additional actions should be considered:

- Behaviour of agents and distribution businesses in the case of supplier failure
- Lessons learnt from recent event such as COVID-19 should also be included if these are deemed to highlight potential precursors to supplier failure.

Other actions have been identified throughout this consultation and detailed in the relevant consultation question response.

Questions for the impact assessment:

2. Do you agree with the outputs of our impact assessment?

We agree with the outputs of the OFGEM impact assessment. However, we recommend a full forensic analysis of the events leading up to failure of a supplier to ensure that the measure currently proposed continue to address the root causes of failure in the future.

As an example, more suppliers and their agents may fail as a result of consumers being unable to pay their energy bills caused by high unemployment and the effects of COVID-19, nationwide lockdowns and social distancing.

To reduce the impact of payment default of government schemes, Ofgem should consider invoicing Suppliers more frequently, for example, Suppliers should be required to pay Renewables Obligations monthly based on a forecast charge and reconcile annually. In this way default payment would be smaller and remedial action could be taken sooner.

3. What further quantitative data can industry provide to inform the costs and benefits of the impact assessment, particularly for cost mutualisation protections?

Further quantitative data to inform the costs and benefits of the impact assessment is available from other industry parties not subject to Ofgem's licence conditions and those parties should be involved in this review.

4. Do you agree with the assumptions used to calculate the costs and benefits in our impact assessment? If not, please provide evidence to support further refinement.

In principle, we agree with the assumptions used to calculate costs and benefits in your impact assessment.

Promoting better risk management:

5. Do you agree with our proposed option to cost mutualisation protections? Are there other methods of implementing this proposed option? Please provide an explanation and, if possible any evidence, to support your position.

We agree with your proposed option to cost mutualisation projections.

6. Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers' may be in financial difficulty?

We agree with your proposal to introduce new milestone assessments for suppliers and the proposed factors to be assessed.

More responsible governance and increased accountability:

7. Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, that you believe suppliers should assess in conducting checks?

We agree with your proposal to introduce an ongoing fit and proper requirement.

Increased market oversight:**8. Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?**

We agree with your proposal to require suppliers to produce Living Wills. As a minimum criteria Living Wills should contain the following:

- a. Plans for engaging with Ofgem, industry central bodies and consumers during the wind down process.
- b. An assessment of any barriers the supplier may face to an orderly market exit.
- c. Arrangements that would ensure continuity of services by key service providers.

9. Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.

Suppliers should only be compelled to undertake independent audits if Ofgem have reason to believe that the supplier is preventing them from performing their statutory duties. In effect, an independent audit would serve as the escalation route for Suppliers who fail to engage with Ofgem in an open and cooperative manner.

If Ofgem have serious concerns about a supplier's financial resilience, then to compel a supplier to undertake an independent audit would be too late in preventing a supplier failure and will only confirm what is already known. In this case an audit would be effectively conducting a 'postmortem' on a supplier who is about to fail and provides Ofgem with forensic analysis and root causes which resulted in the failure event.

To minimize the event of supplier failure more emphasis should be placed on suppliers to demonstrate compliance with the 'fit and proper' requirement. This approach is a preventative measure which:

- increases the accountability of individuals with significant managerial responsibility or influence in energy supply companies.
- requires suppliers to assess whether individuals are fit and proper before employing them in senior positions, and on an ongoing basis.
- helps to raise management standards across the industry and prevent those with an inadequate track record from re-entering the market.
- incentivises a failing supplier to exit the market in a more responsible way whilst engaging with Ofgem in an open and cooperative manner.

Exit arrangements:**10. Do you agree with the near terms steps we propose to take to improve consumers' experience of supplier failures? Are there other steps you think we should be taking?**

We agree with the near-term steps proposed to improve consumers' experience of supplier failures. As part of the Living Will, selection and appointment of an Administrator must be included and subject to Ofgem review and approval.

11. Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these steps? Are there any potential difficulties you can foresee?

It is our understand that Ofgem already have processes available to invoke if/when a large Supplier fails and that these processes include portfolio splitting. If these processes do not exist, then work should be undertaken to develop them, and work undertaken to change the multiple code and systems required to support such an event. Failure of a large supplier will have a huge impact on the industry and consumer, and the industry must be prepared to act quickly to mitigate damages.

Once available these new portfolio splitting processes should be applied with equal rigour to all failed Supplier portfolios. The SoLR process is effectively an acquisition process and as such must be subject to a full and comprehensive due diligence, to ensure that a SoLR supplier is able to provide the required assurances that their infrastructure (i.e. people, process and systems) will cope with the failed Supplier portfolio.

Adequate protections need to be in place to avoid the scenario whereby a SoLR is appointed, a portfolio transitioned and shortly after the appointed SoLR then fails.

In the case of a trade sale, it is incumbent on the buyer to ensure risks are clearly understood prior to execution of the sale. It is also true that the 'buyer', in this case, the Supplier is also required to demonstrate compliance with SLC 0 - 'Treating Customers Fairly'. The Suppliers directors (Top management) are responsible for ensuring this happens and it is in the interests of the company that 'fit and proper' individuals hold these posts to make these decisions.

Appendix 1

12. Do you think our draft supply licence conditions reflect policy intent?

Given the legal wording used in the draft supply licence conditions it is difficult to determine whether they accurately reflect policy intent.

For suppliers to engage in an open and cooperative manner with Ofgem it would be helpful if the supply licence conditions were redrafted in plain English in this way policy intent would be clearly communicated and understood.

In conclusion, we welcome the opportunity to work with OFGEM to further develop options in support of the Supply Licence Review.

Yours faithfully,

Andrew Hancock
Managing Director