

Cathryn Scott
Director of Enforcement & Emerging Issues
Ofgem
10 South Colonnade
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By email: RetailFinancialResilience@ofgem.gov.uk

18 February 2022

Dear Cathryn

RE: Ofgem's Updated Action Plan on Retail Financial Resilience: Supplier Control over Material Assets

We are writing to you with a high-level industry view in response to Ofgem's update to its action plan on retail financial resilience: Supplier Control over Material Assets. Energy UK's members may hold different views on particular aspects of the consultation. 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.

Energy UK remains supportive of Ofgem's underlying intention to improve financial resilience in the retail market to minimise the likelihood of Supplier of Last Resort events, and the resulting costs for consumers. However, we have significant concerns regarding the process that Ofgem has opted to undertake to bring these new requirements on suppliers forward, which we would urge Ofgem to reconsider.

Scope of the Changes Underestimated

We do not believe that Ofgem has sufficiently assessed the potential scale of the changes it is proposing, which are likely to have significant consequences to the running of many suppliers across the energy market. Suppliers may have their current legal structures as a result of diversification to support innovation, decarbonisation or particular services that provides value for consumers, which would need to be rearranged in order to comply with the updated guidance Ofgem is proposing. The costs and expected benefits of these proposals, which have not so far been set out, need to be properly understood to justify any additional costs being added to the operation of a supply business, particularly in current market conditions.

Insufficient Consultation Process

Given the potential impact upon the running of suppliers' businesses and consumer costs, Ofgem needs to undertake a full and robust consultation process with an accompanying Impact Assessment. Attempting to introduce such significant and prescriptive requirements into the guidance of a principles-based licence condition, with only a 3-week window for consideration and scrutiny by industry, is not good regulatory reform practice from Ofgem. On the Operational Capability Principle in particular, Ofgem is not at all clear on the justifications for adding this measure into the guidance, nor what the specific issue is (with evidence) that it is trying to solve. With a proper consultation process and Impact Assessment these could be better understood, and more informed responses offered by industry.

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It is important for Ofgem to ensure that it does not proceed with proposals that would introduce additional and unnecessary risk into the market. For example, forcing suppliers to undertake speedy corporate restructures could result in unintended consequences, such as requiring certain hedging agreements to be re-contracted at a time of significantly high wholesale prices. These and other potential impacts are risks that Ofgem need to consider in full and weigh up against expected benefits, seeking feedback from industry through a robust consultation process.

Alternative Actions & Timelines

While we recognise that Ofgem is seeking to act swiftly to improve financial resilience in the retail market, we believe that it should consider whether there are any alternative legal approaches that could achieve the same outcome, but minimise the risks and impacts highlighted above. It should engage with industry ahead of a full and robust consultation process, with accompanying Impact Assessment, to ensure that any reactive regulation in the wake of recent market instability does not undermine Ofgem's underlying intention.

Whether Ofgem goes ahead with its proposed approach or opts to pursue alternative approaches towards the same aim, it must ensure that any timelines for compliance are realistic, align with other regulatory change occurring in the market, and minimises any disruption or cost impacts for consumers. We would urge Ofgem to engage further with industry on its proposed approach to understand any required timelines for compliance, potentially considering transitional periods for suppliers to comply with whatever approach Ofgem ultimately decides upon following a robust consultation period.

For further information or to discuss our response in more detail please contact me on 0207 747 2931 or Steve.Kirkwood@Energy-UK.org.uk.

Yours sincerely,

Steve Kirkwood
Senior Policy Manager
Energy UK