

Philip Cooper  
Programme Management  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Sent via e-mail: [philip.cooper@ofgem.gov.uk](mailto:philip.cooper@ofgem.gov.uk)

18 February 2013

**Ofgem Forward Work Programme 2013-14 – Draft for consultation**

Dear Mr Cooper,

I am pleased to attach Energy UK's response to Ofgem's consultation on its Forward Work Programme 2013-14. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2963 or [daisy.cross@energy-uk.org.uk](mailto:daisy.cross@energy-uk.org.uk)

Yours sincerely

Daisy Cross  
Policy and External Relations Executive

# Ofgem Forward Work Programme 2013-14 – Draft for consultation

## Energy UK response

18 February 2013

### 1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. Energy UK has over 70 companies as members that together cover the broad range of energy providers and supplies 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. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. We are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and independent regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.
- 1.3. These high-level principles underpin Energy UK's response to Ofgem's Forward Work Programme. This is a high-level industry view; Energy UK's members may hold different views on particular issues. 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.

### 2. Executive Summary

- 2.1. Energy UK welcomes Ofgem's Forward Work Programme, and will continue to support Ofgem in its objective to promote a competitive energy market that produces good outcomes for domestic and business consumers, and which enables energy customers to trust and engage with their energy suppliers.
- 2.2. The format of this response follows the outline of the forward work programme consultation document. In future forward work programmes Energy UK would like to see more detail on how Ofgem will measure its performance against the targets set out in its forward work programme, and more clarity around its budget. We have suggested that, considering the scale of Ofgem E-Serve and its deliverables, a separate Ofgem E-Serve Forward Work Programme should be published.

- 2.3. Energy UK members have already been active in developing reform which enhances customer engagement alongside competitiveness. For example, Energy UK has facilitated a voluntary agreement for suppliers to publish their complaints data, which we hope will empower consumers to hold suppliers to account and drive improvements in customer service. We also set up the Home Heat Helpline in 2005, funded by suppliers, which provides free, independent advice to those who are worried about being able to pay their bills. We look forward to working with Ofgem as they implement their programme over the coming 12 months.

### **3. Promoting Value for Money**

- 3.1. Energy UK's members are committed to strengthening consumer trust and promoting competition, and support the principles of the Retail Market Review. However, Ofgem must ensure that its reforms do not damage the customer experience, which would further serve to undermine trust. An example of this could be the removal of tariffs in an effort to make the market simpler. While Energy UK welcomes moves to ease possible confusion, Ofgem must bear in mind that removing tariffs that customers like or trust may lead to negative customer reactions. It is also worth noting that energy companies have already made a number of changes to make their tariffs easier to compare, such as reducing their number and simplifying their structures, as well as making their bills clearer and easier to understand.
- 3.2. Ofgem has an important responsibility to paint an accurate picture of the energy market, since this impacts on consumer perception, trust, engagement and ultimately competitive pressures. Ofgem's consumer research found that the most important driver of consumer distrust in the energy market is the perception of excess profits. All objective evidence suggests that this is a misperception. While we recognise that some work has been done on improving transparency, Energy UK calls on DECC, Ofgem and others to work with us to develop a communications strategy which will aim to dispel the myths around excess profits and explain the factors that have contributed to rising energy prices. In this regard, we note that Ofgem has not included its communications strategy or plans in the forward work programme; we would urge them to do so.
- 3.3. Also, it is important that Ofgem takes care when establishing a reliable mechanism for measuring the health of a competitive market; this cannot be measured on switching figures alone, for instance. Equally, when assessing suppliers' fair treatment of consumers, Ofgem should consider how it will define and measure suppliers' dealing 'effectively' with a complaint. Ofgem must also make clear how it will measure how each aspect of the RMR reforms contributes to its ultimate goals.
- 3.4. Energy UK applauds Ofgem for recognising that the effects of the Standards of Conduct will partly be determined by how they are enforced and for developing a bespoke approach as part of the RMR process. We recommend that the way in which the SOC's are enforced is established as a formal written policy to which Ofgem must adhere, and that the enforcement regime and SOC's are established in parallel, with the commencement date absolutely clear.
- 3.5. RMR will also mean licence conditions will have to change. Energy UK urges Ofgem to provide the energy industry with clear timescales on when this will happen, and assurances that the reforms will not lead to regulatory overlap. We strongly believe that a separate, dedicated

consultation process should be applied to the draft licence conditions between the closing of the previous consultation on 21 December 2012 and the statutory phase.

- 3.6. To acknowledge Ofgem's shift toward principles-based regulation Energy UK encourages Ofgem to consider a review of existing licence conditions, with a view to removing any prescriptive conditions that inhibit suppliers' ability to meet the spirit of the SoCs and in fact result in the continuation of the old regulatory regime.
- 3.7. Energy UK fully supports Ofgem's review of regulation of Third Party Intermediaries (TPIs), and believes this is an important step to improve consumer trust in the energy industry. Energy UK believes that Ofgem should be given the powers to regulate TPIs directly, and has supported Ofgem's campaign to become able to enforce the Business Protection from Misleading Marketing Regulations (BPMMRs).
- 3.8. When approaching the implementation of the EU regulation on wholesale energy market integrity (REMIT) Energy UK urges Ofgem to work closely with the Financial Services Authority to police the market effectively, and to avoid duplication of regulation and over-reporting.
- 3.9. While reception to the proposed DECC Transmission Constraint Licence Condition has been mixed – with some of our members considering the existing measures to be adequate - Energy UK members agree that it is unacceptable that plant despatch decisions should knowingly create short term gains in the Balancing Market, and welcome further opportunities to work with Ofgem on this issue.
- 3.10. Energy UK members are all supportive of a well-run and liquid market. However, there is some division regarding the most appropriate approach to improving liquidity, depending on individual business models. Energy UK is keen to help Ofgem and DECC find suitable options to promote market liquidity, and we look forward to discussing our consultation response on this issue.
- 3.11. Energy UK welcomes Ofgem's action on electricity theft, the costs of which are ultimately borne by customers. Theft poses serious health and safety risks for those who commit the crime and any others in close proximity. Furthermore, where electricity is stolen, it is often used inefficiently, thus negatively impacting on the wider aim to reduce carbon emissions. Energy UK members look forward to working with Ofgem as plans are brought forward. However, as part of any review it remains crucial that suppliers ultimately retain the ability to disconnect; where there is a threat to safety, repetition of the crime, or where a customer is not prepared to pay for their energy despite being able to do so.

#### **4. Promoting security of supply**

- 4.1. Energy UK encourages Ofgem to clarify its proposals on Electricity Market Reform to ensure suppliers understand exactly what is expected of them. Uncertainty impacts negatively on investment and Ofgem's proposals need to be certain, predictable and proportionate.
- 4.2. Energy UK recognises the importance of the third package and supports the development of integrated EU markets in electricity and gas, which should bring benefits for the UK in terms of greater market efficiency, improved security of supply and more competitive customer prices.

- 4.3. Energy UK believes Ofgem must continue to take a leading role on ACER's Board, and should engage with UK stakeholders as early and as comprehensively as possible, so they have the opportunity to input into discussions. However, care must be taken to ensure Ofgem's domestic regulatory agenda is fully aligned with EU developments, and initiatives which could cut across areas of future EU work should be avoided. An example is the Significant Code Review on balancing – in future it is important that Ofgem takes EU codes into account, connecting work effectively with ACER to ensure it does not launch unnecessary work or duplicate regulation.
- 4.4. Government has set out its intention to introduce a capacity market with enabling powers set out in the Energy Bill. We understand that Government intends for the first capacity auction to take place in 2014. Before a capacity mechanism is introduced, clarity is needed on the purpose of a capacity market and what it aims to deliver. Further detail is needed on how the mechanism would be designed and what would trigger an auction. The penalty regime must be proportionate to ensure there is an incentive to participate in the market. Furthermore, consideration is needed on the role and contribution of demand-side measures, interactions between the capacity market and Ofgem's Electricity Balancing Significant Code Review and compatibility with EU policy direction.
- 4.5. Energy UK fully supports Ofgem's independent review on charging, Project TransmiT, and is fully engaged in this process.

## **5. Promoting Sustainability**

- 5.1. Energy UK welcomes Ofgem's acknowledgement that demand-side-response and reduction measures will play an increasingly important role if we are to address future energy challenges. Energy UK has done some exploratory work on Smart Demand Response with the ENA, Good Energy and Ecotricity to help inform debate.
- 5.2. In 2012 Energy UK and its members reviewed the propositions in Ofgem's promoting smarter energy markets consultation and agree the priority areas covered are worthy of further work. Engaged and informed customers are essential to achieving energy reductions and Energy UK has been tasked with establishing the Central Delivery Body on behalf of large suppliers. The Central Delivery Body will supplement supplier led engagement by providing independent advice and guidance to customers. Energy UK would like to highlight the need for maintaining a cross-industry future vision (a common vision shared by industry, DECC and Ofgem) along with a road map of changes required to deliver that vision, so that the industry can align to, and prepare for a path of implementation over the coming years. There is value in firming up timescales for changes as soon as is possible as this reduces costs and increases quality of preparation and implementation.
- 5.3. Energy UK worked closely with Ofgem on its Climate Change Adaptation work in 2011, developing a template to enable generators to report easily and comprehensively. We look forward to continuing this work with Ofgem in future as government develops its National Adaptation Plan.
- 5.4. Energy UK is supportive of the five key themes put forward by Ofgem as part of their proposed Consumer Vulnerability Strategy. In our response to Ofgem's consultation we suggested an additional sixth theme for the Strategy; we would like Ofgem to consider how it could better

leverage its position as an independent voice with consumers and third parties to help rebuild trust in the industry and raise awareness of the support already on offer. Energy UK welcomes Ofgem's recognition that customer vulnerability should be considered on a case-by-case basis. However, more information is needed to understand how and whether Ofgem intends to translate its proposed 'risk based' approach into clear, workable practices for suppliers to adopt and for the regulator to measure compliance against. A 'risk based' approach is likely to add significant complexity to identifying, recording and evidencing vulnerability. Energy UK encourages Ofgem to work with suppliers to build upon existing best practice and the evolution of processes, rather than mandating new approach via top-down change.

- 5.5. Energy UK looks forward to seeing Ofgem's revised guidance on its approach to impact assessments, and would welcome a consultation on Ofgem's methodology in this area.

## **6. Ensuring Efficient Delivery of Government Consumer and Environmental Programmes**

- 6.1. Energy UK recognises that the Ofgem letter on excess actions helped offer more certainty in the industry during the last months of 2012. We welcome this transparent and collaborative approach, and we would like to see a continuation of it while Ofgem prepares the final reporting and determination on obligated parties' performance against their targets. It is important that communication channels remain open, to ensure that lessons are learned and taken forward for ECO.
- 6.2. We look forward to continuing working with Ofgem on the Energy Company Obligation (ECO). The ECO is a new type of obligation and an indispensable part of a wider energy efficiency and carbon reduction environment which includes the Green Deal and brokerage. As such we believe that the Ofgem guidance should be ECO guidance, effectively targeted to all parties delivering aspects of the ECO, and not just supplier obligated (i.e. energy company) guidance. Energy UK already submitted a response to the Ofgem consultation on 'Energy Companies Obligation (ECO) 2012 – 2015: Guidance for Suppliers' and our main points are asking for flexibility and transparency in administration, while offering certainty of processes and timelines. Energy UK knows that Ofgem is instrumental in delivering obligations in a timely and cost-effective way, and we look forward to continuing to work with Ofgem to learn from each others' experiences and improve obligations delivery.
- 6.3. Energy UK welcomes the development of the Renewable Heat Incentive, and would support steps to ensure the opportunity for fraud was minimised.

## **7. Budgets and Spend**

- 7.1. Energy UK notes that Ofgem budget forecasts show an increase in gross spending of around £5.3m in the coming year. Energy UK feels it is important to note that Ofgem's funds are provided by those it regulates, and that increases in Ofgem's budgets will be met indirectly by energy suppliers, the upshot of which could be the passing of these costs on to consumers. With this in mind, it is important that Ofgem is careful to ensure that only increases that are absolutely necessary should be imposed.

- 7.2. Budget and spend is clearly linked to the resources required for each project. In this regard, we feel that more clarity is necessary on how Ofgem intends to deploy resources, and also further detail on the projects themselves. For example, a detailed breakdown of expenditure on E-Serv would be beneficial in contextualising this large area of expenditure.
- 7.3. In line with government's review of accounting discipline for regulators<sup>1</sup> we would encourage Ofgem to work with government to accurately quantify the impact it has on industry.

## 8. Additional Concerns

- 8.1. While our members are committed to working with Ofgem to protect the interests of current and future gas and electricity consumers, Energy UK would like clarification on the intentions behind Ofgem's language on making enforcement: "swifter and more effective". It is vital that Ofgem retains due process, fairness and proportionality in making enforcement decisions. Disproportionate enforcement could reduce the desirability for existing companies to invest in the UK energy market, or prevent new entrants from breaking into the market. To get the best energy market for consumers, Ofgem should continue working to ensure that regulation and enforcement are balanced against the need for investment, and that are in the interests of consumers and the competitive market. This is even more important considering that those companies regulated have limited grounds to appeal any enforcement decision that the regulator makes.
- 8.2. Ofgem has set a wide-ranging and ambitious programme for the year ahead which responds to its duty to protect the interests of gas and electricity consumers. Energy UK notes, however, that little detail of concrete performance indicators is included in the publication, and would urge Ofgem to consider and communicate more information on how it will measure performance against its objectives.
- 8.3. Energy UK suggest that, considering the complexity of Ofgem E-Serve, the size of its budget and the scale of the tasks it must deliver, Ofgem should publish a separate Ofgem E-Serve Forward Work Programme.
- 8.4. Not all elements projects listed in the work programme are listed as deliverables in Appendix Three; for example finalising the Consumer Vulnerability Strategy proposals and taking forward the vulnerability annual work plan.

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<sup>1</sup> Autumn Statement 2012 [http://cdn.hm-treasury.gov.uk/autumn\\_statement\\_2012\\_complete.pdf](http://cdn.hm-treasury.gov.uk/autumn_statement_2012_complete.pdf)