



## **Response by Energia to UR Consultation**

***Revising our Enforcement Procedure and Financial Penalties Policy***

**Date 9<sup>th</sup> April 2018**

## **1. Introduction**

Energia welcomes the opportunity to respond to the Utility Regulator's consultation on Enforcement Procedure and Financial Penalties Policy. While we welcome the publication of this consultation the Enforcement process is incomplete as an appeals mechanism has been omitted. We are calling for the inclusion of an appeals mechanism as part of the enforcement process and in line with previous Energia submissions a wider appeals mechanism to cover regulatory decisions.

### **Appeals Mechanism**

A complete enforcement process must contain a regulatory appeals mechanism. Given the substantial fines and significant reputational damage that a supplier could incur it is a concern that there is no inclusion of an appeals mechanism to dispute flawed findings. The addition of an appeals mechanism strengthens rather than weakens the regulatory enforcement process and is not only best practice in terms of good regulation but is required by the EU Commission's 3<sup>rd</sup> package; *Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.*"

We therefore call for an energy-only appeals mechanism to apply to enforcement and wider regulatory decisions. It is expected that the appeals mechanism would hear relevant appeals brought by a licensee against any decision/direction of the UR; e.g. regulatory decision papers (UR & SEMC).

### **Responding to the Statement of Case**

An information notice as described in the enforcement and procedural document and under Article 51 of the Energy Order is understandably quite broad and does not specify type, quantity or timespan of the data to be requested. Obtaining and delivering data for a broad range of historical data could be time consuming. As such, there should be a reasonable amount of time allowed for the collation and submission of the requested information. Whilst 28 days has been outlined as indicative in Annex 1 it has also been caveated that in certain cases it will be shorter than this. While there may be urgency in relation to enforcement procedure there is still a minimum amount of time needed by parties to collate the required information. The UR should be cognisant of the time needed to collate certain information when setting a lower threshold.