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12th Sept 2003

Email message sent 12th Sept 2003

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Dear Annette,

Making markets work for consumers: Ofgem's approach to securing compliance with supply licence obligations and consumer protection legislation

ScottishPower Energy Retail Ltd welcomes the opportunity to respond to the issues raised in the above consultation document.

We note your comment that when Ofgem removed regulatory control from domestic prices from April 2002, it was made clear that Ofgem was not countenancing a policy of inactivity, but that with regard to retail markets its duties to consumers could be fulfilled best by *ex post* enforcement.

While we accept that Ofgem have declared their preference for *ex post* enforcement, it is questionable whether this approach is always in the best interests of consumers. It is clearly beneficial for all market participants to understand where their policies and procedures may be in conflict with Ofgem's views and we believe that for the benefit of suppliers and consumers alike, Ofgem should not focus solely on *ex post* enforcement but should give greater consideration to giving wider guidance and support on issues where there is scope for ambiguity and misinterpretation on compliance obligations.

Supply compliance strategy

Section 4.3 - The last sentence 'As a general matter, therefore, Ofgem aims not to regulate the aspects of quality that are or are likely to become dimensions of competitive differentiation', is a very general statement. In the context of the document it is unclear as to what Ofgem see as needing regulated and not needing regulated. Further clarification would be welcomed.

Section 4.15 – The role of Ofgem in encouraging compliance amongst supplier businesses is recognised by the industry and is expected of the regulator. In the past however, Ofgem appear to have been concerned that were they to provide views on compliance issues to suppliers they may fetter their discretion in dealing with similar

issues in the future. The concern perhaps in some way contributed to the use of *ex post* enforcement but we believe that greater focus should be given to providing clarity in *ex ante* regulation where this is consistently applied and understood by all market participants. Such an approach would clearly demonstrate Ofgem's commitment to work with suppliers to developing compliance strategies.

This will benefit consumers because they can be more certain that suppliers are acting in a compliant way. It also means that consumers will not be affected by changes by suppliers, which the latter might have otherwise had to make due to an Ofgem finding.

Section 4.20 – We fully support Ofgem's recognition of the importance of applying a predictable and consistent enforcement regime. To facilitate this we believe that Ofgem should look at enforcement as not only a method of modifying inappropriate behaviour by suppliers but also a vehicle for clarifying and communicating industry best practice in the areas under consideration. We repeat our comment in section 4.15 in the context of this section.

Section 4.21 – From the information contained within this paragraph it is unclear as to what information would potentially be published. Further clarification on whether it is Ofgem's intention that it would publicise the names of suppliers which are being investigated or only that an investigation is taking place but without naming the supplier would aid our understanding.

Until we receive clarification and fully understand the format that any published information would take we are unable to comment further with regard to this point.

Supply compliance priorities

Section 5.4 – ScottishPower are of the view that the priorities for action concerning this section of the consultation should focus on issues that could have safety implications. This may concern areas of work such as Theft of Gas, Theft of Electricity and gas safety checks.

Monitoring and enforcement in practice

Section 6.1 – Ofgem list a number of sources from where they gather information to monitor supply compliance. Whilst we can understand most sources further information surrounding the use of former employees and the media would be helpful. We would question the use or value of former employees as they may use this opportunity, if aggrieved against their former employer. In addition any media source could be very subjective and therefore distort the facts behind a particular issue. An explanation of the level of importance Ofgem apply to such sources would be useful.

Section 6.2 – We note that Ofgem believe that it would be appropriate to “take enforcement action against suppliers who may not be in a worse compliance situation than others”. Given that Ofgem have stated that one of the key principles of their compliance programme is the taking of “targeted” and “consistent” action (Section 4.18) it would be difficult to reconcile taking action against one supplier and not others where widespread non-compliance was suspected.

While we accept that Ofgem does not have a statutory duty to only act in the most serious of cases, it would seem to be a fundamental principle of any compliance

programme to target resources to priority areas where the worst aspects of non-compliance are prevalent. Ofgem appear to contradict themselves within this section. The sentence “If Ofgem becomes aware of non-compliance then it is required to act” does not sit comfortably with the view expressed earlier in this section. Failure to act could only serve to damage the credibility of Ofgem’s role as the regulator of the Supply Industry.

Again, in order to fully understand the thinking behind Ofgem’s view, clarification would be helpful.

Section 6.12 – This section gives reference to certain exemptions where the publication of information relating to an investigation would be prohibited. Again for reasons of clarity would Ofgem be able to provide an explanation of what constitutes “general market phenomena”?

With regard to the second paragraph of this section, Ofgem make reference to the fact that the identity of a complainant would not be publicised except in certain circumstances. If Ofgem decided to adopt the process of publishing the names of suppliers being investigated then it would be consistent, in certain circumstances, to extend similar principles to the publication of the names of complainants. Ofgem may wish to consider the rules governing the publication of complainant’s names used by the Advertising Standards Authority as an example.

Section 6.13 – The view of ScottishPower Energy Retail on Ofgem’s proposal to publicise its decision to undertake a formal investigation is that it would be useful to have more transparency as to not only what particular areas Ofgem may be investigating at any particular time but also the number of investigations that are taking place. However, we would not support any announcement which included the identity of a party facing investigation or indeed the identity of any complainant.

Should you wish to discuss any of the views expressed in this response or indeed require any additional information then please contact me using the direct telephone number shown above. I look forward to hearing from you in response to the areas where I have sought further clarification.

Yours sincerely

Euan Norris
Regulation, Legal & Commercial