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Dear John,

Fuel Mix Disclosure – Proposed Supply Licence Amendment

Thank you for the opportunity to comment on the above proposed supply licence amendment. We have a number of concerns about the detailed proposals contained in Ofgem's draft licence condition and we have set these out in turn below.

1. Process for licence modification

   We do not believe that it is appropriate or indeed reasonable for the new licence condition on fuel labelling to be implemented by the Secretary of State by means of regulations under section 2(2) of the European Communities Act, rather than under the statutory 28-day voluntary licence amendment process. This process by-passes the normal right for licensees to appeal changes to licences to the Competition Commission. We consider this to be poor regulatory practice, which may also be inconsistent with Human Rights legislation.

   We also note that Government and Ofgem have implemented a number of European Directive obligations via the normal statutory voting procedures to date, for example recent changes to licence conditions relating to distribution charging methodologies. We do not believe that the implementation of the fuel labelling licence condition should be treated any differently from these earlier licence amendments.

In addition, in our view the DTI does not have the power to lay regulations under section 2(2) of the European Communities Act to incorporate a new licence condition into suppliers' licences which would, in effect, extend Ofgem's powers significantly and which goes beyond the narrow requirements of the Directive. This specifically affects the treatment of promotional materials and the process for verification. This is clearly well beyond the scope of the European Directive. We have commented on each of these in more detail below.

However, more generally, we would consider the implementation of the draft licence condition in its present form via regulations under section 2(2) of the European Communities Act as a significant abuse of process. We therefore firmly believe that the fuel mix licence changes should be implemented through the normal licence modification route.

2. Promotional materials

We firmly believe that the definition of promotional materials contained in the draft licence condition is too wide and open-ended. Indeed, as presently drafted, the licence condition could be interpreted as requiring suppliers to include information on their generation fuel mix on *all* advertising, fliers, magazines, etc. This is clearly not what the EU directive or the DTI intended. A significant extension of the scheme in this way would be unacceptable. Indeed, if Ofgem's proposals are to go beyond the scope of the Directive, we consider that it would be an abuse of process to implement these changes through the Secretary of State's powers under section 2(2) of the European Communities Act, rather than the usual 28-day voting mechanism for voluntary licence changes.

Rather, we believe that the aim should be to ensure that all prospective customers should receive information on a suppliers' generation fuel mix at least once before actually becoming a customer of the supplier concerned. In this way, all customers-to-be will be provided with the information before transferring their supply. Clearly all existing customers would receive the information at least once a year via their bills. We would therefore strongly urge Ofgem to re-draft the draft licence condition to reflect this view. This could be achieved fairly easily by amending paragraph 2(b) to read "in promotional materials at least once before a customer transfers their supply."

3. Verification, compliance and audit

Paragraphs 11 – 13 in the licence condition would significantly extend Ofgem's powers to request information, which are already substantial. While we accept that it is reasonable for Ofgem to require licensees to produce copies of the evidence and any other information that may be relevant to support the information provided on their fuel mix (paragraph 10), we do not believe that the Directive provides justification for extending Ofgem's existing powers as provided for under paragraphs 11 - 13. Indeed, since this licence condition is to be implemented using the Secretary

of States powers under section 2(2) of the European Communities Act, we would consider such an extension of Ofgem's powers as an significant abuse of process. We would therefore strongly urge Ofgem to remove paragraphs 11 to 13 from the draft licence condition.

4. Timing of compliance cycle

Paragraph 2 of the draft licence condition states that the information must be provided to customers "at least once in a 12 month period, to each customer that receives a bill or a statement in that period". However, paragraph 5 of the condition states "it [the licensee] shall provide the information required to be produced under paragraphs 2 and 3 no later than 1 July immediately following the end of the disclosure period". The disclosure period is defined as ending on 31 March each year. In our view, the above two requirements are inconsistent.

It is apparent that there requires to be a period of time allowed following the end of the disclosure period for the accurate verification and reconciliation of information. In addition, suppliers would need at least two months from receipt of the fully verified information to design and complete their print runs and prepare to disseminate the new information. As the information is to be provided to customers on or with bills, it is likely that this will occur over a three-month period (where bills are issued quarterly).

Against this background, therefore, we believe that the timeline for production and dissemination of the information to customers must be realistic and practical. In particular, the requirement currently included in paragraph 5 for the information to be provided no later than 1 July immediately following the end of the disclosure period should be removed from the draft licence condition. Alternatively, it could be amended to refer to 1 July the following year, thus allowing three months for verification and reconciliation and then 12 months in which to distribute the information to customers.

5. Best practice guidance

The main elements of the label (including the content and design) have been determined following the conclusion of the DTI's consultation exercise. This in itself will ensure a high level of standardisation across suppliers thus ensuring that customers can easily and clearly undertake comparisons.

It is vital that Ofgem's best practice guidance does not seek to further regulate the detail of the label but rather acts as guidance for suppliers only. That is, the guidance should be voluntary not mandatory. Moreover, we believe that it should not be overly prescriptive as we do not believe that this is the DTI's intention behind the issuing of such guidance and would simply act to stifle market innovation.

I hope you find the above comments helpful. If you would like to discuss further, please call.

Yours sincerely

Rob McDonald
Director of Regulation

CC: Sue Harrison, DTI