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Dear Michael

Draft Guidance on Impact Assessments

Thank you for the opportunity to comment on the issues raised in the above consultation document.

Overall we support Ofgem's proposed framework for the consideration and completion of Impact Assessments. In many respects this has taken account of external guidance on the completion of impact assessments (in particular that of the Cabinet Office). This is welcome. However, we do have a number of specific comments on Ofgem's proposals and these are set out below.

Chapter 3 - Legal & Policy Framework

Decisions outside the scope of an Impact Assessment - We suggest that where Ofgem decides a proposal does not warrant an impact assessment then it should always explain why.

Chapter 4 - Criteria for Determining Importance

Given that the test in s5A of the Utilities Act for determining whether a proposal is important is itself a subjective one (e.g. use of words such as "major" and "significant"), it would be helpful if Ofgem could clarify further its thinking on this matter. For example, a proposal could be regarded as important if it imposes an increase in costs on market participants above a certain percentage level. Ofgem should formally set out its policy on, and the approach it will take, in determining whether a proposal is important. This should be consulted upon and approved by the Authority.

Chapter 5 - Impact Assessment Consultation Procedure

We broadly support the impact assessment life-cycle described in the document though greater clarity on the process and linkage to Ofgem's established consultation process would be welcome. It is important that Ofgem ensures that the objectives and content of an impact assessment during its various stages (e.g. initial/partial/final) meet the relevant Cabinet Office guidelines.

Chapter 6 - Scope and Content of Impact Assessments

The Cabinet Office guidelines on regulatory impact assessments provide a standard template for the production of impact assessments that helps to ensure that assessments are



comprehensive, thorough and robust. Ofgem should ensure that it follows this template, suitably modified for the specific requirements imposed by s5A of the Utilities Act 2000. Any weighting of factors considered as part of the impact assessment should be made clear.

Chapter 7 - Industry Code Impact Assessments

Content of a modification impact assessment - By undertaking an impact assessment in respect of a code modification Ofgem will have decided that the modification is important. We envisage, therefore, that to be of maximum use, a modification impact assessment will always require Ofgem to set out its provisional thinking on whether it is minded to accept or reject a modification proposal.

Other - Impact Assessments on NGC Charging Methodologies

Ofgem will be conducting an impact assessment to inform its decision as to whether to approve the initial GB charging methodologies that are expected to be submitted by NGC shortly. DTI's current consultation on the implementation of EC Directives 2003/54 and 2003/55¹ suggests that Ofgem will also conduct impact assessments in respect of future changes to the GB charging methodologies where those changes fall within paragraph 2 of s5A of the Utilities Act 2000.

We would welcome Ofgem's confirmation of this, and in particular an explanation of how Ofgem will determine whether future charging methodology modifications fall within paragraph 2 of s5A of the Utilities Act 2000 given that typically the impact of such changes on market participants does not become apparent until the subsequent tariffs are published (which occurs sometime after the original decision by Ofgem).

We would suggest that given the importance of charging methodologies generally, Ofgem should always conduct an impact assessment in respect of modifications to them.

Yours sincerely,

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¹ Implementation of Article 23/25(5) and (6) of EU Directives 2003/54 and 2003/55 Concerning Common Rules for the Internal Markets in Electricity and Gas, DTI August 2004