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Dear Michael Fews

### **Draft guidance on impact assessments**

I refer to Ofgem's July consultation providing guidance on how it will carry out regulatory impact assessments (RIAs). Shell Gas Direct (SGD) is a licensed shipper and supplier to non-domestic customers. SGD welcomes the introduction of the use of RIAs when Ofgem is considering major changes to the gas market environment.

While we welcome the introduction of the use of RIAs, we remain concerned that the structured approach to policy development that this document suggests that Ofgem will follow is not used consistently. We consider it a key task for Ofgem to ensure that it can meet its commitment to the principle of best regulatory practice as it is now required to do with the Energy Act. We would welcome a clear framework for identification of problems, development of solutions, involvement of industry and analysis of impacts is established. While this document refers to Ofgem's consultation policy published in June 2002, we have been unable to find a copy of it on Ofgem's website.

We have sketched out one approach below to consultation process below:

- **Identification of issue** This stage needs to consider whether there is a clearly identified problem. If yes, is it correctly scoped out? This section could include a seminar before close out of any initial thoughts consultation. Ofgem should avoid prescriptive solutions at this time. Too often we are asked to start looking at how to implement "solutions" before there is any certainty about what the problem is (if any).
- **Outline of possible solutions** Following the initial consultation, there should be greater understanding of what the problem to be addressed

is. Ofgem should outline issues raised and carry out additional analysis if necessary. Only at this stage should workgroups be set up; terms of reference should be developed by all to ensure buy-in to the process.

- **Focus on best solution(s)** Workgroups (when used) and/or Ofgem should focus on developing a favoured solution with the maximum of 2 preferred ones presentation. Consultation at this stage should focus on whether these are the correct ones. More work on implementation issues can be considered at this stage.
- **Final consultation** Only when solutions are well identified, can there be any sensible analysis of costs and benefits. At this stage, data can be requested from industry participants.
- **Authority decision**

We consider that such a structured approach would contribute to ensuring that the objectives outlined in the draft guidance, ie building understanding of Ofgem's work and progression towards a solution by consensus, are achieved.

The quality of many of the RIAs produced by Ofgem so far have been disappointing. While documents produced as part of the DN Sale have been labelled "Regulatory Impact Assessments", we do not consider that these meet the criteria of being RIAs. There were too many options, unclear identification of problems etc for these document to provide the comfort expected from RIAs. These documents were consultation documents. We are particularly concerned that the outcome of the consultation on the offtake document led to a decision not originally consulted upon through this document. With so little detail, costings can only be approximated and may be subject to significant re-appraisal once the proposal is developed. We note that recent "RIA" documents did not detail risks to the project which could result in net benefits not being achieved.

We welcome Ofgem's commitment to extend its standard consultation period to 6 weeks, but cannot understand why Ofgem considered 4 weeks to be practical in the first instance. Even 6 weeks makes it difficult to understand issues completely and consult internally. This is made more difficult by the level of consultation documents being produced by Ofgem as well as other areas of work. We recommend that a minimum of 8 weeks is instead established and that explanation of shorter consultation periods, on the rare occasions this is necessary, is always under the name of a member of the Authority. Ofgem should allow at least 4 weeks for responses to requests for cost information; gathering this data can be an extensive exercise and will contribute to Ofgem's objective of not placing unnecessary burdens on the industry.

The proliferation of workgroups makes it very difficult to participate fully, or understand, all of Ofgem's initiatives. There is value in workgroups under some circumstances but it remains Ofgem's responsibility to ensure that proper consultation takes place and to not fetter its discretion by following workgroup discussions. Ofgem should look at ways to improve communications, perhaps

by quarterly overviews of its work. Ofgem should think about how it can prioritise work to allow for greater participation. It appears that sections of Ofgem are unaware of the impact of work in other areas and little effort is made to ensure that deadlines etc do not overlap.

To ensure that areas of discussion are not unnecessarily repeated, we recommend that when publishing document, Ofgem not only outlines its previous views on the issue but also reviews previous responses and addresses issues outstanding. It is frustrating to need to rehearse previously stated concerns and requests for analysis and undermines Ofgem's objective of finding solutions by consent, whenever possible.

We consider that establishing a transparent, accountable process for conducting consultations and carrying out RIAs should be a key aim for Ofgem over the coming year. An approach which would contribute to this would be to replicate that used by the DTI (and other government departments) whereby respondents are given separate details to raise issues regarding how a consultation has been carried out. Ofgem should set up formal mechanisms to allow participants to raise issues about the process of consultation through staff not involved in policy formation.

We welcome the consultation on the draft guidance. We hope that any final guidance is subject to regular review so that it can be developed in response to Ofgem's and the industry's experiences with RIAs.

Yours sincerely

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