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Dear Michael,

**Draft guidance on impact assessments  
Consultation document  
July 2004**

Thank you for the opportunity to respond to this consultation. This response is submitted on behalf of ScottishPower UK Division, which includes the UK energy businesses of ScottishPower, namely ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Energy Retail Ltd.

We have welcomed Ofgem's commitment to produce impact assessments (IAs) including environmental impact assessments for all new significant policies from July 2003. We support the view that conducting an assessment of impacts is an integral part of policy development. It is not just about publishing reasons for a decision but rather about a structured approach to decision making. It is also not just about justifying a decision but is about justifying the approach that has been chosen against a range of possible outcomes including approaches proposed by other bodies such as industry groups and consumers.

**The impact assessment process**

IAs have improved since first introduced in July 2003 but we believe further improvement is necessary. Some of the recent IAs, particularly those related to the potential sale of gas distribution networks, appear to be consultation documents rather than assessments. Recent IAs have focused on summarising the issues concerned rather than the detailed impact of proposals on the parties involved. A more transparent link is required between the IA and policy proposals and options at each stage of the consultation process to assist parties in understanding the influence of IAs on the consultation process and the final outcome.

The draft guidelines recognise that under the Energy Act 2004 Ofgem must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and that IAs have a vital contribution to make in this regard. However, in many of the IAs to date we do not believe it has been made clear that the measures being proposed are those which best meet the above requirements of better regulation when compared to other alternatives either identified by Ofgem themselves or proposed by other stakeholders.

## **Stages of consultation**

We believe it is important that for potential major projects an initial draft IA is produced at as early a stage in policy development as possible to ensure there is sufficient justification for the project to proceed. We agree that where proposals are likely to have a significant effect on stakeholders that a partial IA could be produced along with Ofgem's proposals and a final IA with the decision document. We would support the initiation of IAs before the formal consultation process commences. This would enable initial comments from industry members and other relevant stakeholders to be incorporated into initial proposal papers, enhancing the overall consultation and decision making process.

## **Assessment of costs and benefits**

The draft guidance recognises that some issues are more amenable to robust quantification than others and that IAs will always be a mixture of qualitative and quantitative assessments. The guidance fails to recognise, however, that costs are in general much more quantifiable than benefits. This has not come out clearly in many of the IAs and there is a tendency to attempt to quantify benefits without any underlying rationale in order to offset costs which can be estimated with some greater certainty. It is not acceptable to justify proposals on the basis that the benefits would only require to be a small proportion of the total market costs in order for them to offset the costs of the proposals.

## **Impact on licensees**

Ofgem recognises that it imposes indirect costs on companies, including the costs of engaging with, and responding to, Ofgem consultations. We are, however, concerned at the growing number of workgroups being established making it difficult for companies to participate and keep up to date with workgroup activities. We are particularly concerned that Ofgem considers discussion in the workgroups to be a replacement for full consultation. We suggest that Ofgem takes responsibility for producing monthly summaries of the key issues discussed in each group.

We welcome Ofgem's decision to extend its standard consultation period to 6 weeks. However, this is still a relatively short period. The Cabinet Office recommends 12 weeks. There will be occasions when a shorter consultation period is necessary but this should only be introduced when absolutely necessary and with appropriate senior authorisation from GEMA/Ofgem.

I hope that you find these comments useful. Should you have any queries on the points raised, please feel free to contact us.

Yours sincerely,

**Alex MacKinnon**

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ScottishPower Energy Management Limited