

07 June 2005

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Dear Andy

### **Gaz de France ESS response to Ofgem's proposed Corporate Strategy and Plan 2005-2010**

Thank you for the opportunity to respond to your proposed Corporate Strategy and Plan 2005-2010.

We are encouraged that Ofgem note that in carrying out your functions you will have *'regard to being transparent, accountable, proportionate, consistent and aim to only target cases in which action is needed'*. However, we believe that in order to deliver against such aspirations your proposed workload requires some amendment. Our response focuses on your seven themes with our observations regarding opportunities to deliver improved transparency.

We note that there were 26 responses to your August 2004 consultation. As a market participant who has taken the time to respond to this consultation and notes your intention to be 'fully informed by the views of all interested parties' we look for evidence of that in your final Strategy and Plan to be published at the end of March 2005.

#### **Theme 1 - Creating and Sustaining Competition – Forecast budget £13.913m**

Market participants have seen a multitude of regulatory initiatives over the last decade from the introduction of competition in supply through to the introduction of the new electricity trading arrangements (NETA) and most recently initiatives within gas metering services. We face at present the prospect of an extension of the NETA arrangements into Scotland and sale of four of the Transco owned gas distribution networks.

Gaz de France ESS believes that these last two initiatives should mark the point at which the market is allowed to stabilise and participants given an opportunity in which to fully understand and react to the impact of the changes delivered to date. There have been numerous occasions recently when Ofgem have asserted that the market is working well. With successful implementation of both major deliverables this should mark a regulatory point in time where the industry be allowed to take stock and adjust to the new regulatory market model.

We all need to see how the new relationship between National Grid Transco (NGT), the two Scottish Transmission Operators and four Independent Gas Network Operators will evolve. How all of these initiatives impact security of supply and network efficiency. How we can improve the arrangements around competitive gas metering introduced in 2004 but which require significant additional effort to enable delivery of the 'benefits' promised at implementation. It would be useful for example if the industry were privy to the result of Ofgem's post implementation assessment regarding the introduction of Meter Asset Management. Most importantly we need to be able to evaluate whether the forecast consumer benefits in many of the Ofgem led initiatives are actually delivered.

We believe that the priority activities in the area of 'Creating and Sustaining Competition' requiring future Ofgem commitment are around delivery of improvements to the severe lack of market liquidity and the assessment of the impact of Vertical Integration. Burdensome credit arrangements lead to limitations to choice and responsiveness and ultimately increased costs for our customers. Ofgem should facilitate investigations into potential improvements in these areas.

We are concerned that a your recently concluded probe into gas price movement was necessary in the first instance and took so long to publish any conclusions. If Ofgem were monitoring market activity adequately then we would have expected that the relevant information should have been more readily to hand? We accept that under certain circumstances markets do experience high prices however we should be able to understand very quickly why exceptional prices have occurred. This is often the case on the electricity side of the market due to the general availability of market data. Perhaps more detail regarding the specific operations within the monitoring and surveillance sections would provide comfort to participants in future. In this regard we would also expect that Ofgem and energywatch work closely together sharing information in order to ensure early warning of any inappropriate market activity.

We welcome steps to improve the availability of gas related market data along the lines of that enjoyed by the electricity industry. This will assist all players in the market to operate on a more level playing field and may go some way to removing the elements of market sentiment which Ofgem suggest adversely impact upon gas price. However the forecast costs and lengthy timescales quoted by Transco are of concern although not an area that market participants can readily challenge.

Ofgem mention the potential for a 'lighter touch' regime change to their approach to industry governance but still insist upon final determination on modifications of a housekeeping and routine nature. Perhaps it is time to assess whether the current governance arrangements are still appropriate with regard to the future stabilisation of the market?

Ofgem have been seen to take action against abuse by Suppliers in the area of mis-selling and obstruction to facilitate customer transfer. We would suggest that Ofgem seek to work with the Treasury regarding the redirection of the fines imposed towards assistance for those falling within the fuel poor categories. For example to charities such as the National Energy Action who seek to educate in the area of improved fuel management as well as offering direct assistance.

Ofgem's corporate plan includes a Review of Supply Licences stating that the current raft of Licence Conditions may be imposing unnecessary barriers to entry. Prior to embarking upon a vast project of review it would seem appropriate to establish that there is clear evidence supporting this assertion.

## **Theme 2 - Regulating Network Monopolies – Forecast budget £13.629m**

As an active participant in both the gas and electricity markets Gaz de France ESS and our customers are totally reliant upon the existence of reliable and reasonably priced transmission and distribution systems. We are concerned therefore that we have recently faced Distribution Network Operators changing their Distribution Use of System (DUoS) charges and structure several times and in some cases at short notices. Such behaviour is difficult to manage from a budgetary and administrative point of view and disturbing for our customers especially when this occurs within the same financial year. The industry requires more visibility and stability. DUoS or Transmission charges should not attract amendment more than once in any financial year. In addition new charging arrangements should be flagged to market participants well in advance of their effective date. We will watch network developments with interest and support Ofgem's approach towards

initiatives that will ensure that investment is undertaken to ensure enduring security of supply.

Gaz de France ESS has been far from a sole voice when stating that we are concerned about Ofgem's determination to introduce amendments to the gas exit arrangements concurrent with the sale of the four gas distribution networks proceeds. Both our customers and competitors echo this sentiment. We believe that the industry will require a period of time to adjust to the new regime and that the issues around exit arrangements must be decoupled from the sales process. This would afford the time to assess the efficiency of the exit arrangements at some future point once the new arrangements have been seen to bed down. This would enable Ofgem then the opportunity to fully clarify how the adjusted exit arrangements would deliver further improvements to competition.

### **Theme 3 - Security of Supply – Forecast budget £702k**

At the introduction of NETA we were told that part of the rationale around the introduction of the new trading arrangements was that this would facilitate improvements to increased demand side participation. On the gas side we expected that the removal of the Top Up arrangements at the end of 2004 might also see improved demand side opportunities.

Gaz de France ESS is encouraged to see Ofgem acknowledge that '*greater demand side response will be an important component of providing security of supply*'. In addition however there will be additional environmental benefits should the demand side be encouraged to respond when opportunities arise. Demand side initiatives offer additional approach towards achievement of targeted reductions in CO<sub>2</sub> emissions. Encouragement of initiatives in this area is paramount. However Suppliers and their customers cannot deliver improvements in isolation and we would look to Ofgem to ensure that NGT will be encouraged to provide appropriate support and acceptance of the innovative products emerging in this area whilst undertaking their role of System Operator responsible for System balancing actions.

### **Theme 4 – Europe – Forecast budget £2.123m**

The magnitude of the total budget for this Theme surprised us, especially when compared to under Theme 3- Security of Supply and Theme 6 – Fuel Poverty. Gaz de France ESS will observe with interest Ofgem's progress with regard to their aspirations to become a leading voice in Europe.

We acknowledge that Ofgem were clear to explain at their Licensees meeting of 22<sup>nd</sup> February 2005 that whilst undertaking this role they will be 'giving their views on behalf of the consumer and not acting as a trade association for the industry'. We would appreciate however communications regarding Ofgem's agenda here in order to assess the impact to our business of any formal policy decisions. Transparency of any business undertaken, and paid for via our licence fees, would be appreciated.

#### **Theme 5 – Environment – Forecast budget £4.362m**

Ofgem note that there have been suggestions around the potential opportunity for outsourcing some of their administrative work associated with the Governments environmental programmes. We concur with other market participants. The Ofgem forecast budget in this area alone has significantly increased from last year. We would suggest that there would appear to be a potential opportunity to seek efficiencies in this area and that Ofgem should pursue alternative administrative support in this area.

There have been many occasions in recent years when concerns about the derivation of Line Loss Factors have been raised. This is an area of work many were expecting to see included in the Ofgem Corporate Plan which appears however to have omitted. An urgent review has been requested. It would be opportune for Ofgem to indicate when work in this area will be initiated.

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As stated above we would ask that Ofgem closely monitor developments that would encourage more demand side participation in the market as an additional option to deliver reductions to our carbon emissions.

#### **Theme 6 - Fuel Poverty – Forecast budget £870k**

Although our business is not active in the domestic market we would look to Ofgem to review activities around disconnections for those who are vulnerable and need additional protection, especially during the winter months.

#### **Theme 7 - Ofgem's Own Efficiency**

It is very disappointing to see that Ofgem have not delivered significant budgetary savings, including staff reductions, at a time when it is professing adoption of 'a *lighter touch regime*'. Ofgem must be seen to be trying harder to deliver efficiencies in the coming year. Descoping or delaying some of the activities listed in the appendices could achieve this. For example, the proposed revision of gas exit arrangements could be re-evaluated on conclusion of the

sale of the four gas distribution networks and once the industry has had time to adjust and fully understand the intricacies around the final arrangements. As the most expensive and over manned European Regulator Ofgem must be delivering evidence of a real budgetary challenge.

We applaud the fact that Ofgem will endeavour to deliver 70% of decisions relating to modifications of industry codes and charging arrangements within five weeks, although we would hope that they achieve a much higher outturn rate here. What is missing however is an end date for final determination. Whilst the industry is heavily constrained by the requirements procedures outlined in the various industry codes Ofgem itself is under no obligation to respond in any formally negotiated manner. The industry requires some form of regulatory certainty around the submission of modifications. It is difficult to plan our work around a 'guesstimate' of how long Ofgem will take to deliver their determination. Indeed a modification that resides with Ofgem for an extended length of time may actually require reassessment if the process takes too long. Only adding to the cost of the whole process and surely also an issue for potential appeal?

Ofgem become aware of all modification proposals at the same time as, indeed in some cases prior to, the rest of the market and attend many modification meetings, though do not always participate in the debate, which is not always a helpful approach. Therefore Ofgem should be able to indicate at an early point in the process whether their determination process will extend beyond the five-week timetable. In addition participants find that an early indication in the form of a 'minded to' statement is often helpful. This is always seen as non-binding and should be a practise adopted for all panel business, not just those relating to gas.

Participants appreciate the opportunity for dialogue with Ofgem however are at times overwhelmed by the number, and length of, consultations produced. Lack of resource is a consistent problem we face, be it for attendance at industry meetings or simply finding the time to develop our responses. Ofgem must seek to ensure that sufficient response time is factored into any consultation they circulate in order to ensure that Participants are able to best manage our workload in this area.

Following on from Licensees meeting with Ofgem 22<sup>nd</sup> February 2005 we look forward to reviewing the output from the recent review of Regulatory Impact Assessment procedures undertaken by Professor George Yarrow on your behalf as outlined at that meeting.

### **General observation regarding improved transparency**

Improved transparency is an aspiration repeated throughout this consultation document and Gaz de France ESS welcomes any initiative in this area that will assist market understanding of the internal decision making processes undertaken by Ofgem. Indeed without improved transparency it will be difficult for the market to fully appreciate performance against indicators referenced in appendix two of this document.

Our industry works in an environment that insists upon a high degree of transparency as a standard requirement of the various codes to which we must, by Licence Condition, become signatories. We would urge Ofgem to adopt a similar approach to their business. We hold all our industry meetings in open session with all relevant non-confidential paperwork published on industry websites for ease of access.

We feel strongly that it would be prudent for Ofgem to consider improvements to their own business practise and adopt a more open approach around the availability of internal meeting agendas and papers of interest. Improvements around transparency of proceedings would we believe enhance the impending appeals provisions including those dictated by the Freedom of Information Act. Improved transparency around the decision making process may help inform that process as it would mean that affected parties will then have information about the total proceedings leading to an Ofgem determination. Similarly if documentation is more readily available then it is possible that forecast requests for documentation under the Freedom of Information Act might decrease. This activity would need to be resourced. It is possible that voluntary provision of more information now may limit the potential for additional information disclosure requests later.

In conclusion we trust the above comments are of value however should you require further information please do not hesitate to contact me on 0113 306 2122 or 07736 107 020.

Yours sincerely

**Barbara Vest**  
**Regulatory Affairs Manager**