

Andy MacFaul,
Head of Government Affairs,
Ofgem,
9 Millbank,
London SW1P 3GE

Your reference:

Our reference:

3rd March 2005

Direct line: 020 7717 6241

Dear Mr MacFaul

OFGEM PROPOSED CORPORATE STRATEGY 2005-2010

Ofgem's work programme, as outlined in its Corporate Strategy for the next five years, will have a significant impact on the gas and electricity industries and covers a number of areas for which the Health and Safety Executive (HSE) has both an interest and an important role to play. Although Ofgem's duty to consult the Health and Safety Commission (HSC) about all gas and electricity safety issues is well established and understood by both parties and will influence the consideration of such issues, the publication of Ofgem's strategy provides a useful opportunity to outline HSE's key areas of interest at the present time. Nevertheless, highlighting this statutory duty as part of Ofgem's overall remit is welcomed as a useful reminder to all interested parties.

It is worth noting initially that the method of consultation between the two parties will need to be clarified from both an administrative and legal point of view. The legal duty is for consultation with HSC although projects are progressed via the working relationship between Ofgem and HSE. However, it is a requirement for final proposals and decisions by the Authority that have safety implications to also be sent to the Commission for comment. This and other matters will be taken forward in a scheduled review and update of the Memorandum of Understanding between Ofgem, HSC and HSE.

Overall remit

HSE agrees that Ofgem's intention to retain the seven themes outlined in last year's strategy will help maintain regulatory continuity and predictability, which will reinforce industry's expectations of regulatory involvement and practice in the coming years. HSE shares this approach of independent and consistent regulation in its work, which also contributes to meeting the government's principles of better regulation. Equally Ofgem's commitment to publish the results of formal investigations and impact assessments on significant decisions contributes to transparency in both

enforcement and consultation. In relation to this HSE previously responded in a positive manner last year to Ofgem's consultation on Impact Assessments.

Creating and sustaining competition

Ofgem has invested significant resource into the introduction of a single British wholesale electricity market through the BETTA programme. HSE has monitored developments with respect to any implications on the safety of the employees of the companies involved and is very appreciative of the openness and dialogue with the Ofgem team. Ofgem is committed to closely monitoring the market following the introduction of these changes to ensure the arrangements are working properly and this should include any impact on routine and emergency safety procedures encountered under the new system. The transmission licensees intend to continue to discuss safety issues arising from the new interfaces on an enduring basis following the Go Live date within operational liaison meetings. HSE would be interested in any proposed modifications resulting from this forum.

There are aspects of other areas within the competition framework where HSE retains an interest. Issues associated with the theft of energy will include potential effects on the direct safety of both metering employees and the public whilst the competence of employees is a factor arising from the extension of market participation in both metering and connections. Again HSE has input into these programmes where appropriate. Public safety is a factor in some of the gas and electricity complaints that are reported and, as part of Ofgem's programme of joint working with Energywatch, HSE has provided guidance on the types of complaints where safety is both an issue and within its remit. In all of these areas HSE will continue to provide support and advice as necessary.

Ofgem is understandably seeking to withdraw from regulation where this is no longer necessary or appropriate and is keen to promote effective self-regulation where possible. This is a principle adopted within HSC/E's strategies, albeit for different reasons. However, HSE agrees that Ofgem's independent governance role in both monitoring market operation and as arbiter in code modifications and disputes should be retained. Similarly comparative analysis of company information is also a useful tool for both Ofgem and HSE and Ofgem's concerns at future corporate restructurings affecting the extent and impact of its regulation of the networks is noted. One of the benefits of increased market participation should be the opportunity to highlight more examples of best practice and this would be reduced if the number of industry mergers and acquisitions increases.

Regulating network monopolies

Ofgem has made it clear that within its framework of incentive based regulation it expects significant investment in the electrical networks to accommodate renewable and distributed generation. The catalyst for this promotion is the desire to meet the government's long-term targets on renewable energy and carbon emission levels. A similar commitment is expected of the gas industry in order to accommodate a growing diversity of supply sources to ensure that short and medium term goals of

replacing the dependency on diminishing UK gas supplies are met. This investment policy is necessary in order to secure Britain's energy needs, but must be in addition to existing transmission and distribution network investment required for continued safe and reliable supplies. Reference is made to the proposals for extra investment in addition to that already allowed under the current transmission price controls, which have been introduced as part of the programme to align both gas and electricity price controls from 2007. These too must retain incentives for investment in capital expenditure and asset replacement projects required at the present time as well as those needed to meet future policy initiatives.

This need to accommodate new gas sources and larger numbers of smaller electricity generators will, as Ofgem highlights, encourage the development of innovative equipment and solutions as part of the process of reinforcing and adapting the networks. This is already being promoted through incentive schemes and industry working groups. HSE supports such development and the government's wider policies, but is mindful of its objective to help improve safety levels within the gas and electricity industries wherever possible. New or modified undertakings should ideally reduce the degree of risk arising from work activities and at the very minimum maintain them at existing levels. It is also important that procedures and guidance issued governing the connection and use of new equipment and networks not only address these local issues, but also consider any wider, national impacts on industry.

One example of this is the proposed sale of four of National Grid Transco's (NGT) distribution networks (DN), which has been subject to detailed discussions between Transco, Ofgem and HSE (Hazardous Installations Directorate). HSE is in the process of assessing the safety cases of the NTS, Transco's retained DN's and the DN's due to be sold to third parties. Obviously acceptance of these cases is one of the conditions necessary for final approval of the sale by the Authority, as stated in the strategy. However, there will also be implications for any new and existing owners in relation to the gas mains replacement programme and Ofgem will need to take account of the companies' duties within its comparative price control system. The overall implications of any sale of Transco's DNs will still need to be subject to constant monitoring and review following implementation, as per the introduction of BETTA in the electricity market.

Security of supply

Currently the key concern for HSE of the work to secure Britain's future gas supplies is the quality of gas that will need to be imported to meet demand. Again the work is being progressed within HSE by the Hazardous Installations Directorate, which is working with Ofgem, DTI and others to determine both quality and safety limits that are acceptable to Britain. Quality limits are governed by the Utilities Act 2000, whilst safety limits are prescribed within the Gas Safety (Management) Regulations 1996. Any proposed widening of the safety specification in Britain, which could arise from the development of a common EC gas specification, would have significant domestic and industrial implications both in terms of safety and cost. The long-term investment

in gas storage and interconnector facilities will therefore need to be matched by progress in securing acceptable future quality and safety limits. This work will be a priority for both Ofgem and HSE and both parties will need to devote appropriate resources.

It is noted that Ofgem has highlighted the need for government to consider important public policy issues on other forms of generation that may play an increasing role in meeting Britain's energy demand. Reference is made to the intermittent nature of wind generation, but there will also be safety and environmental aspects to consider. One source of back up generation within the low carbon emission category is nuclear power and this would have a significant effect on HSE's work should the government reconsider its generating options.

Improving Ofgem's efficiency and effectiveness

The strategy refers to comments from stakeholders in previous years on the number and prioritisation of Ofgem projects run concurrently, which impacts on stakeholder time and resource in providing full and effective responses. HSE welcomes Ofgem's aim to continually monitor and where possible improve its consultation procedures in this respect. In addition to the overall intention to make published documents clearer and more concise, HSE requests that the salient points with respect to safety issues are highlighted, thus enabling a more efficient and timely response to the benefit of both parties.

This represents HSE's views on the range of Ofgem's current and future work and, through consideration and adoption of the above, looks forward to a continued productive working relationship.

Yours sincerely

Mike Leppard
Policy adviser