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Our ref: CT.06/184

28 December 2006

Dear Mr Hussain

Open Letter: Review of Policy on Licence Revocation

Thank you for your letter of 24th November 2006.

Wales & West Utilities' comments are as follows:

We agree with Ofgem's proposed policy in relation to revocation of licences where a licensee has ceased to carry on business or a licensee has not commenced business.

We do not however agree with Ofgem's policy either as currently operated or as proposed in relation to insolvent licensees.

While we accept that this may be a difficult for the Authority, as it may be reluctant to be seen as a body which precipitates insolvency, we suggest that it is unlawful to have a policy which rules out exercising its functions fully in accordance with the terms of the Gas Act and Licence. As you correctly note, under the revocation schedule to the terms of the Licence the Authority has the discretion to revoke a licence for insolvency. As that discretion is one of its functions it clearly must be exercised proportionately (to comply with the Human Rights Act) but also in accordance with the Authority's statutory duties set out, in particular, in section 4AA of the Gas Act 1986 (as amended). In particular, of course, the Authority must exercise its functions in a manner best calculated to protect consumers.

One of the grounds for revocation is if the licensee "is unable to pay its debts (within the meaning of Section 123 (1) or (2) of the Insolvency Act 1986)" subject to the proviso as to the monetary threshold in the licence. That aspect of the test does not necessarily require the licensee to have formally taken an insolvency step.

It is therefore open to the Authority to determine that under Section 123 of the Insolvency Act 1986 a company fails the statutory solvency test and therefore should have its licence revoked, so enabling the Authority to invoke the Supplier of Last Resort regime, for the benefit for customers. That might be particularly true where a larger licensee was about to become insolvent in circumstances where a domino effect might ensue affecting other

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shippers and suppliers and their customers. The Authority would have to therefore balance the commercial interests of the failing company with those of consumers generally. We would suggest that such a policy would provide the relevant stimulus to the failing company and its insolvency practitioner to act promptly to find a commercial solution/sale which would also have the effect of mitigating the impact of the company's failure on the industry and consumers at large. In default of such a policy the failing company will know that it can do as it pleases for its own benefit and that of its creditors without reference to the wider industry. It does not appear to us that such a policy is consistent with the Authority's duties to act in the manner best calculated to protect consumers.

While we accept that it should be rare that the Authority would take what would appear to be a pre-emptive step, it should as a matter of policy at least recognise that it should leave that option open to itself.

Yours faithfully

C J Talbot
General Counsel