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Your Ref: Ofgem doc 201/06

Dear Ikbal

Open letter: Review of policy on licence revocation

energywatch welcomes the opportunity to respond to the issues raised in the open letter. This response is non-confidential and we are happy for it to be published on the Ofgem website.

We agree with the general thrust of Ofgem policy as outlined in the letter. We agree with Ofgem that where a licence is not being used or where the licensee has become insolvent, the licence ought to be revoked after the relevant period of notice. The particular licensee's individual circumstances should be considered case-by-case, with revocation occurring subject to safeguards ensuring that all enforceable licence obligations are met prior to revocation. We see no benefit to consumers in having parties in the market who hold licences but who consciously have no intention of actively participating in the market.

Ofgem must not allow licensees to hold onto licences if there are no outstanding obligations to fulfil or reasonable expectation that Ofgem can enforce licence conditions. This is a matter of practical consideration but should not allow licensees which would otherwise have had their licences revoked (on grounds of insolvency or otherwise) to use the period to re-emerge using the existing licence instead of re-applying for a new one. We are concerned that licensees should be subject to Ofgem enforcement action if this causes detriment for consumers even if this may then create reasons for licence revocation on other grounds. Ofgem's duty to consumers is of paramount consideration, not whether a licensee ought to retain its licence because it is expedient to do so, unless the non-fulfilment of other licence obligations will also adversely impact consumers. Any re-emergence of such licensees in another guise needs to be carefully scrutinised by Ofgem.

Those licensees who are insolvent ought to have their licences revoked because they have failed the test of financial solvency which would allow them to participate in the market. All consumers, but particularly the most vulnerable, would require protection against those licensees specifically as there may be implications if consumers paid monies which could subsequently become irrecoverable.

Accordingly, we agree that Ofgem should write to all the relevant licensees and clarify their positions regarding the use of their licences. If it is shown that, on an

individual basis, they fail to use their licences as expected, Ofgem ought to revoke those licences. This approach would also assist Ofgem to administer licensing and the market in general more effectively. We agree that Ofgem should write to supply licensees and also those who are insolvent first as these constitute the licensees with most direct impact on consumers.

It would be helpful if Ofgem could explain why there is a distinction in the 'Specified Time' definition for gas supply licence holders compared to electricity supply licence holders (3 years v. 5 years). We would also like to understand why there is no 'Specified Time' for other licence holders. Would a uniform 'Specified Time' definition not be more appropriate?

On a related matter, we are concerned about Ofgem's policy of granting licences to those who may have had licences revoked in the past. Ofgem ought to be particularly careful in its approach in this respect. While we accept that any policy on granting licences must meet the requirements of general company law, we believe that consumers would find it difficult to appreciate why a licensee which had previously or recently had a licence revoked due to failure to meet its financial or other obligations to them may be able to re-emerge in the market, perhaps under a different name, and be granted a new licence(s). Clearly, our concern is focused on the supplier market, although it would apply to other licensed parties as well. We believe that Ofgem should consider its policy regarding the criteria to apply when a licence is granted to parties who are de facto the same as those who may have exited the market after having a licence revoked.

We appreciate that there will be a balance to be struck between ensuring a level playing field amongst licensees in a competitive market, while also ensuring that adequate safeguards are in place to prevent a repetition of a previous revocation. Consumers must feel that Ofgem is undertaking its primary statutory duty to protect their interests effectively in this regard.

Going forward, we will continue to keep these issues under review as and when they are raised, always considering the possible impact on consumers, so we may be able to comment further if necessary.

If you do wish to discuss our response further please do not hesitate to contact me on 0191 2212072.

Yours sincerely

Carole Pitkeathley
Head of Regulatory Affairs