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Dear Pamela,

Proposed enforcement guidelines on complaints and investigations

This is RWE npower's response to your consultation on proposed enforcement guidelines.

Generally, the guidelines are helpful in bringing together Ofgem's policies and processes, thereby improving transparency. Our remaining comments are limited to the specific issue of enforcement and industry code compliance.

During the Supply Licence Review and subsequent Codes Compliance Review, we sought the right balance between self-governance and licence regulation, consistent with better regulation. Minimising regulatory risk and potential double-jeopardy were recognised as valid objectives.

We note that in considering whether to investigate or take enforcement action, Ofgem will take into account sanctions already being imposed or proposed by Code governing bodies (which assumes the governing body has already been made aware of the issue and therefore had the opportunity to address it). We believe the guidelines could go further, by stating that Ofgem would in the first instance, ordinarily look to Code bodies to deal with matters and for industry procedures to be exhausted, prior to intervention. Indeed, Ofgem may on occasion invite a Code body to investigate supplier performance. As recognised during SLR discussions, this tends to be Ofgem's 'policy' in practice and it would seem appropriate that such a principle is explicitly acknowledged in the enforcement guidelines.

This would enhance regulatory certainty, without seeking to fetter Ofgem's discretion in appropriate cases, e.g. serious consumer harm. It would also send a signal and encourage the industry to ensure that self-governance arrangements are usable and fit for purpose.

We continue to believe there are strong arguments for reducing Ofgem's role in overseeing industry Codes and, to the extent possible, devolving responsibility to the industry. This applies in terms of both the micro-management of code modifications

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and the scope of Ofgem's enforcement role. We were pleased to note that in its 'ICCR way forward' letter of 27 June, Ofgem considers such a framework to be a good aspirational target and that it may be appropriate for the industry to bring forward proposals in the future, taking into account other demands at the time. In the meantime, we look to Ofgem to keep its role under review to ensure that it is proportionate in protecting the interests of consumers and the operation of the market, minimising regulatory risk associated with what are often commercial agreements.

I hope these comments are helpful.

Yours sincerely,

Paul Finch
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