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18th January 2008

Dear Simon,

Electricity Distribution Licence Review: Proposals

I am writing in response to your consultation published on 25th October 2007.

We note this process commenced in March 2007 with the formation of a workgroup to take forward the detailed work of reviewing the licence and developing initial proposals. We are disappointed that Ofgem chose not to include suppliers in this group as it may have been beneficial to be part of this process at an earlier stage to understand some of the rationale behind some of the changes and to be able to take part in discussions as new drafting was being developed. We therefore hope that due regard will be paid to comments we make in this response.

Please find answers to your specific questions below.

Chapter One

Question 1.1: Do you agree with the detailed proposals for modifying the standard conditions of the distribution licence, as described by this consultation document and in particular Appendices 3 and 4? Please give reasons for your answer.

British Gas broadly supports the proposals for modifying the standard licence conditions as set out in the consultation document. Where we have concerns on specific proposals we have commented in our response below.

Question 1.2: Do you consider that those proposals maintain the obligations and underlying policy captured by the current standard licence conditions? If you consider that obligations or policy have changed, please describe how you think this has happened and whether you think the change is appropriate.

We believe the proposals broadly capture the current standard licence conditions but we have noted where we have specific concerns with the drafting.

Question 1.3: Do you consider that the proposals achieve the aims of the Distribution Licence Review and adhere to the principles of Better Regulation? Please give reasons for your answer.

As distribution activity is an area where no choice for customers exists, we believe robust regulation is required. Suppliers require improved visibility of performance and price control information including details of pass through costs and incentive payments as well as assurance of robust control over non-discrimination in the provision of distribution and related services.

Question 1.4: Are there any changes which have been made as part of this review which you consider go beyond the scope of this review and should be considered under different terms of reference? Please give reasons for your answer.

We have highlighted our areas of concern in this response.

Question 1.5: We have thoroughly reviewed the defined terms used in the standard licence conditions. As a consequence in some cases we propose to introduce, replace and remove certain terms. Are our proposals appropriate? Do they maintain existing licence obligations and underlying policy? Will our proposals have consequential effects on industry codes and arrangements outside the scope of the Distribution Licence Review? Please give reasons for your answer.

Where terminology and definitions exist in the current licence we would prefer to see these continue in the new licence. We do not understand the justification for amending terms such as “basic meter operation services” where the underlying policy and obligation in the licence has not changed.

We believe the changes may have consequential effects on industry codes such as DCUSA, BSC and MRA and suggest that a review of those codes is conducted to ensure they are amended appropriately.

Question 1.6: Do you have any general comments or observations that you think should be taken into account as part of this consultation?

Our general observation as highlighted above relates to the lack of supplier involvement from the start of the process.

Chapter Two

Question 2.1: This chapter sets out specific significant changes and related issues. Do you consider that we have captured and explained these changes and issues adequately? Are there other changes and issues which you consider should be covered in more detail by this review? If so, please could you explain why they are significant and how we could address them?

We believe Ofgem has captured all the relevant issues in this chapter and do not have any other issues to raise at this time.

Question 2.2: We propose to significantly consolidate the obligations on DNOs and IDNOs in relation to financial ring fencing. As a consequence of consolidating these obligations we have identified issues and proposed solutions. We welcome your views in relation to how appropriate our proposals are for consolidating these obligations.

In principle we do not support changes to governance arrangements that would allow one category of market participant to be able to affect the outcome of proposed changes that do not materially affect themselves. On the face of it the solution proposed in section 2.6 would seem the most sensible option.

With respect to revenue reporting we are keen to ensure licensees have an obligation to continue to publish forecasts of allowed and actual price controlled revenue on their websites three times a year as a means of continued improvement to industry transparency.

Question 2.3: Are our proposals to consolidate obligations in relation to codes of practice and vulnerable customers appropriate? In particular, do our proposed changes maintain adequate protection for vulnerable customers? Please give reasons for your answers.

Proposed licence condition 10 covers the requirement for the licensee to ensure statements are prepared that set out its arrangements for complying with its obligations under 10.2 to 10.8.

As DNOs and IDNOs are not directly customer facing organisations we would like to see an obligation to ensure they consult with suppliers and key stakeholders whenever these are statements are prepared or updated.

In relation to statements we support the proposal for licensee to provide assistance or advice to customers whose first language is not English and see this building on licensees' existing obligations

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in the Disability and Discrimination Act. However, in common with our requirements on the GDPCR Second Licence Drafting Consultation, we believe that this requirement should be subject to a “reasonableness” provision.

Question 2.4: A consequence of consolidation is that the obligations in relation to requiring that licensees do not restrict, distort or prevent competition will become broader but weaker. We welcome views as to whether our proposals substantially reflect existing obligations and are appropriate.

We are concerned that the proposed wording within, Condition 8,19,42,Y and MF3 not to “show undue preference to, or unduly discriminate” is a substantial weakening of the licensees’ existing obligations.

The notes explain that the words “undue” and “unduly” have been inserted to ensure that justified differentiation is permitted. However, it is our assertion that the term “discrimination” already permits justified differentiation and therefore the words “undue” and “unduly” are not necessary and could widen the scope significantly beyond justified discrimination.

Furthermore, we have considered the consolidation into new Condition 4 the various obligations not to restrict, distort or prevent competition. We note that this obligation now also clearly relates to competition in Metering Equipment, Metering Services, Data Retrieval, Data Processing and Data Aggregation and we welcome that specific clarity. In order to be sure that those services themselves are to be carried out in such a way as not to affect competition in relation to generation, transmission, distribution or supply of electricity, we want confirmation that they are included within the word “activities” as it appears in the first line of clause 4.2 of condition 4. To make that clear, we suggest the following additions:

1. insertion of “any of” after “at all times carry on”,
2. insertion of “but not limited to” after “including”.

We also would require/suggest deletion of “in the manner most likely to” as we believe that introduces an unacceptable level of discretion in how this clause could be interpreted. Similarly, we would suggest deletion of “its conduct of them” and replace with “it”.

In sub-paragraph (a), the “and” before “supply of electricity” should be changed to “or” so that it is not necessary for competition to be affected in all areas listed for the clause to be effective.

We suggest deletion of “(where appropriate)” from the start of 4.2(c) as it is unnecessary.

Question 2.5: Is our proposal to clarify that licensees should comply with a single Distribution Code appropriate? Please give reasons for your answer.

We support the proposal that licensees should comply with a single Distribution Code. We see this as supporting our view that we need more single consistent arrangements across the country that are not customised by region or industry participant (except where necessary or justified by the facts).

Question 2.6: SLCs 53 A, B and C relate to assistance for areas with high distribution costs, which in practice only apply to Scottish Hydro-Electric Distribution within its distribution services area. Is it appropriate for these conditions to be removed from the standard licence and should they be added to Scottish Hydro-Electric Distribution’s licence as special conditions? Please give reasons for your answer.

We agree that if licence conditions only apply to specific distribution businesses these should be removed from the standard licence and be included in the relevant distribution businesses’ special conditions. We assume that these special conditions are available to all industry participants for scrutiny. We also believe that the assistance given to licencees with high distribution costs should be regularly reviewed to ensure the continued appropriateness of this cross subsidy.

Question 2.7: In relation to the implementation of the modified standard licence, we welcome your views generally in relation to our proposals for performing statutory consultations. In particular, we welcome views in relation to our proposal to amend special condition A1.

Providing appropriate consultation and review takes place on licence changes we do feel that the proposed modification process is appropriate.

Question 3.1: Should any of the projects highlighted by this chapter be incorporated into the scope of the DLR and therefore its proposed changes? Please give reasons for your answer.

We do not believe any of the projects highlighted by this chapter should be incorporated into the scope of the DLR.

Question 3.2: Have we failed to mention related projects that in your view should be considered within the scope of the DLR and its proposals? If so, what are these and how should they be incorporated into the review?

We do not believe there are any other related projects that need to be incorporated into the review.

Question 3.3: Should the three month notice period that licensees must give when changing UoS charges be maintained in relation to all licensees, or reduced in relation to IDNOs and DNOs operating out of area? If you consider the notice period should be reduced what would be an appropriate notice period for IDNOs and DNOs operating out of area? Please give reasons for your answer.

Where the IDNO or DNO intends to change its UoS charges we believe the obligation to provide three months notice should be maintained. This will allow suppliers to reflect changes in customers prices where necessary.

Question 3.4: Is it necessary to maintain the requirement on IDNOs and out of area DNOs to have a charging methodology in relation to charges for which they have adopted the host DNO's charges? Please give reasons for your answer.

Where the IDNO and out of area DNO adopts the host DNO's charges we do not believe it is necessary to provide a separate charging methodology.

With regard to charging methodologies in general we strongly believe that the governance of these should be such that users can propose changes to them. Presently there is no mechanism for suppliers to initiate improvements, or to formally dispute, vary or appeal changes proposed by licensees.

We would propose that these should be placed under the governance of the DCUSA.

Chapter Four

Question 4.1: Is it appropriate to review the policy areas identified in the future? If so, what aspects of these policy areas do you consider should be reviewed and why?

With regard to the policy areas identified for future review, we would strongly oppose any weakening of the present licence requirements in relation to the separation of distribution and supply activities, as seems to be implied by the proposal of a review of SLC 40 and compliance. Separation of network and supply is recognised as a key principle of the competitive energy market in this country and across Europe, which must on no account be compromised. We do not accept that the development of supply competition could in any way justify relaxation of the compliance regime in relation to such a key element of the competitive framework. Rather, it is essential that the present separation requirements are maintained and that there is confidence in the effectiveness of the compliance arrangements underpinning them, so that healthy supply competition and a level playing field is preserved.

We do not believe it would be appropriate to review metering obligations on DNO businesses until we have greater clarity on the intended implementation of smart metering technology.

We do not see any reasons to remove the obligation to prepare regulatory accounts at this time. Indeed we believe they represent an important control and enhance transparency. To the extent that duplication exists with other reports, any specific areas should be identified and amended (after consultation).

We do not see any reasons to remove any of the obligations relating to Metering Point Administration Services at this time.

Question 4.2: Are there other policy areas which in your view should be subject to future review? If so, which areas and why?

We have highlighted above our belief that the governance arrangements for Charging Methodologies should be reviewed.

Chapter Five

Question 5.1: Taken as a package, please indicate whether, in principle, you would accept or object to these proposals. Please give reasons for your answer.

We have highlighted in our response where we have particular concerns especially with regard to the obligations in relation to requiring that licensees do not restrict, distort or prevent competition and any proposals to review the obligations around separation of supply and distribution activities.

Should you wish to discuss in detail any aspect of this response please do not hesitate to contact me.

Yours sincerely

Kevin Woollard
Regulatory Manager
British Gas