

Arrangements for responding in the event that an energy network company experiences deteriorating financial health: Consultation Document

Document type: Consultation

Ref: 49/09

Date of publication: 11 May 2009

Deadline for response: 22 June 2009

Target audience: All network licensees. Network company investors, debt holders and equity analysts. Consumer groups, suppliers, generators and gas shippers. All other interested parties.

Overview:

This consultation document accompanies our draft guidance document that sets out our arrangements for responding in the event that an energy network company experiences financial distress. A number of aspects of the guidance document relate only to protected energy companies (PECs). The document provides guidance on the procedures Ofgem may use, including in the event that a PEC is placed into energy administration.

We already have in place robust arrangements for dealing with network company financial distress. The network companies understand these arrangements. This document forms part of our process to review, test and, if necessary, enhance these arrangements to ensure that they remain fit for purpose. This document has not been prompted by concerns about any particular network company.

Contact name and details:

Hannah Nixon, Director, Regulatory Review
Grant McEachran, Senior Manager, Electricity Transmission Policy

Tel: 0207 901 7165/ 0141 331 6008

Email: hannah.nixon@ofgem.gov.uk / grant.mceachran@ofgem.gov.uk

Team: RPI-X@20 and Regulatory Finance, Networks

Context

Our primary statutory duty is to protect the interests of current and future consumers. Should the financial position of a network company deteriorate, that company may struggle to continue to invest appropriately and maintain its network and deliver acceptable network performance and customer service. If those conditions prevail over time it may threaten the security and reliability of that network company's customers' energy supplies.

The legislative and regulatory framework in place for Britain's energy networks is designed to manage the risk of financial distress affecting network operators harming consumers. This framework provides for a suite of arrangements designed to manage the risks to and impact of deteriorating financial health of a network company on consumers.

In December 2008 we published a Position Paper. This noted that while we consider our existing arrangements for addressing financial distress to be robust, they had not been tested to date. Prevailing economic conditions, in particular recent events in the capital markets, could increase the financial pressure on some energy network companies. We concluded that it was important to test the robustness of our existing arrangements to ensure that consumers do not face any undue risks associated with financial failure or distress.

We set out our intention to develop a guidance document setting out the arrangements we have in place to respond to the deteriorating financial health of a network company and our intention to test this guidance document by running a simulation or 'War-Games' exercise. We also set out our intention to publish a draft of the guidance document for consultation.

This consultation document accompanies the draft guidance document. The guidance document has been tested through a simulation exercise and is now being published for consultation before it is finalised. The document and this exercise have not been prompted by concerns about any particular network company.

Associated Documents

- Arrangements for responding in the event that an energy network company experiences deteriorating financial health – Draft guidance document - Ofgem, May 2009 #49/09
<http://www.ofgem.gov.uk/Networks/Policy/Pages/Policy.aspx>
- Arrangements for responding in the event that a network company experiences deteriorating financial health: Position Paper - Ofgem, December 2008 #158/08
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=245&refer=Networks/Policy>
- Supplier of last resort: revised guidance – Ofgem, December 2008
http://www.ofgem.gov.uk/Licensing/Work/Revoc/Documents1/SoLR_revised_guidance_-_December_2008.pdf

Table of contents

Summary	1
1. Introduction and background	3
Purpose of this document.....	3
Background.....	3
Ofgem’s duties	4
2. Overview of the guidance document	5
Overall structure of the guidance document	5
3. Process overview and background information	6
Chapter 1 - Purpose	6
Chapter 2 - Background to the energy administration regime	6
4. Guidance Document - Pre-administration arrangements	8
Chapter 3 - Pre-administration arrangements	8
Chapter 4 - Reopening a price control.....	9
5. Guidance document - Administration arrangements	10
Chapter 5 - Energy administration arrangements - process	10
Chapter 6 - Appointing an energy administrator.....	10
Chapter 7 - Process of energy administration	10
Chapter 8 - Restructuring/sale.....	11
Chapter 9 - End of administration process.....	11
Chapter 10 - Interactions with key stakeholders	11
6. Guidance Document - Appendices	13
Appendix 1 - Overview of the relevant legal framework	13
Appendix 2 - The Authority's duties and powers.....	13
Appendix 3 - Network licensees and group owners	13
Appendices 4-6 - Overview of existing arrangements	13
Appendix 7 - Glossary	14
7. Way forward	15
Next steps	15
Annexes	16
Annex 1 – Consultation response and questions	17
Annex 2 – The Authority’s powers and duties	20
Annex 3 – Glossary	22
Annex 4 – Feedback questionnaire	24

Summary

Ofgem's principal duty is to protect the interests of present and future consumers. The implications of a network company experiencing financial distress and struggling to maintain and develop its network may impact consumers through a reduction in service and/or reduced security or quality of supply.

We do not consider it should be our aim to prevent the financial failure of a network company or to bail out a company that has encountered financial difficulties as a result of its own actions (or inaction). The primary responsibility for the financial integrity of a network company lies firmly with that company's management and shareholders. Ofgem's primary responsibility is to manage effectively the risks of deteriorating financial health of a network company impacting on energy consumers.

In addition, we expect protected energy companies to act responsibly and to inform Ofgem at the earliest stage possible of any potential or actual financial distress. The earlier that a case of financial distress can be identified, the more response options we have available that may help to mitigate and/or contain the situation.

Arrangements for responding to financial distress

We consider that we have robust arrangements in place that manage effectively the risks to and impact of deteriorating financial health of a network company on consumers. These arrangements are well understood by those companies and include:

- requirements on companies to provide to Ofgem on an ongoing basis a series of statements providing details of their financial health – these include an annual 'Certificate of Availability of Resources', which requires each company to provide a certificate, signed by a company director, setting out that the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities to enable it to carry out its activities for a period of 12 months;
- procedures for collecting and monitoring additional network company financial and operating data;
- financial ring-fencing conditions, which place constraints on the operation of network companies including provisions for cash-lock up;
- provisions for reopening/disapplying price controls; and
- the ability, with the consent of the Secretary of State, to apply to the Court to place a protected energy company (PEC) into special administration.

These arrangements are set out in a range of documents. In the interests of better regulation, in particular transparency, we consider there to be merit in developing and publishing a single guidance document. The purpose of the guidance document is to set out the arrangements we have in place to respond to the deteriorating financial health of a network company. We have tested these arrangements via a

simulation exercise. We are publishing the draft guidance document for consultation alongside this consultation document. We aim to publish the final guidance document in the summer.

We note that a number of the arrangements do not apply to all network licensees. Most notably, the energy administration arrangements only apply to 'protected energy companies' (PECs). PECs are holders of a licence granted under:

- section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
- a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters).

The primary focus of the guidance document is the arrangements that apply to PECs.

Structure of the guidance document

The guidance document broadly comprises three parts:

- Part 1 sets out a Process Overview. This defines the key steps in each stage of Ofgem's response to a case of financial distress.
- Part 2 is the main body of the document and sets out the steps Ofgem may take both pre-administration and in the event of energy administration in responding to a case of financial distress.
- Part 3 is divided into a series of appendices that set out more detail on specific aspects of Ofgem's arrangements.

Disclaimer

Any case of network company financial distress or failure that occurs will likely turn on its own particular facts. As such, neither the guidance document published alongside this document, nor the version that we propose to publish on our website, are intended to fetter the scope of the Authority's powers or the exercise of its discretion whether under licence, statute or otherwise. Neither document should create any legitimate expectation that specific cases will be dealt with in a particular manner.

1. Introduction and background

Chapter summary

This chapter sets out the purpose of this document.

Purpose of this document

1.1. We are developing a document setting out, for guidance purposes, the arrangements we have in place to respond to the deteriorating financial health of a network company. The primary focus of the guidance document is the arrangements that apply to a 'protected energy company' (PEC). The Energy Act 2004¹ defines a PEC as the holder of a licence granted under:

- section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
- section 7 of the Gas Act 1986 (licensing of gas transporters).

1.2. The purpose of this document is to outline the content of the guidance document that we are developing and set out the issues on which we are particularly interested in hearing stakeholder views on. A draft version of the guidance document is published alongside this consultation document.

Background

1.3. Financial distress describes a situation where an affected party cannot access the financial resources required to discharge its obligations. In the case of a network company, this means that they may struggle to finance their licensed activities.

1.4. We have arrangements in place to address a case of financial distress. These include ring-fencing licence conditions and associated monitoring arrangements, enforcement actions and the option of re-opening a price control during a regulatory period. The arrangements also include an energy administration regime established through primary legislation in the Energy Act 2004. The aim of the energy administration regime is to ensure that essential services to consumers remain secure and uninterrupted in the event of a PEC becoming insolvent.

1.5. While there have been a number of significant company failures in the energy sector, no PEC has faced a period of significant financial distress since privatisation. Consequently, the arrangements for dealing with a PEC in financial distress and the energy administration regime are untested.

1 Sections 154-156: http://www.opsi.gov.uk/acts/acts2004/ukpga_20040020_en_1

1.6. In December 2008, we published a Position Paper setting out the arrangements for responding in the event that a network company experienced financial distress. As set out in that paper, given the increased risk associated with the prevailing economic conditions, in particular recent events in the capital markets, we consider it important to test and review the existing arrangements for monitoring and responding to the financial distress of a network company to make sure these were as robust as possible.

1.7. As a key part of the proposed approach to testing the existing arrangements, we stated that we would develop a guidance document that would be tested by running a simulation or 'War-Games' exercise. We also stated that we would publish a draft version of the guidance document for consultation.

1.8. The draft guidance document is published alongside this document and has been tested via the simulation exercise. We will finalise the document following this consultation.

Ofgem's duties

1.9. Ofgem's principal duty is to protect the interests of consumers, present and future. The implications of a network company experiencing financial distress may directly impact consumers. In addition, Ofgem has a duty to secure that licensees are able to finance their obligations under the Gas Act and Electricity Act. This does not mean Ofgem would provide regulatory relief to alleviate financial distress in all circumstances. We would consider why a licensee faced financial distress and to what extent they had acted reasonably and had financed and operated the relevant network efficiently. Network licensees have an obligation to develop and maintain efficient and co-ordinated systems. Where financial distress arises despite the company operating in an economic and efficient manner, Ofgem would consider at its discretion what tools, if any, are appropriate to respond to that distress.

1.10. Further information on our duties and powers is set out in Annex 2.

2. Overview of the guidance document

Chapter summary

This chapter sets out a high-level overview of the contents of the draft guidance document.

Question box

Question 1: What are respondents' views on the overall structure of the guidance document?

Question 2: Do respondents consider that any other aspect of the response plan should be addressed in the guidance document?

Overall structure of the guidance document

2.1. The guidance document is divided into three main parts.

2.2. Part 1 sets out a Process Overview which sets out the key sections of the guidance document. The aim of this part is to provide an overview of the high-level process thereby making the remainder of the guidance document more accessible.

2.3. Part 2 is the main body of the document and sets out the actions that Ofgem may take both pre-administration and during administration to address a case of financial distress. The aim of this part is to set out the various arrangements which may be used to respond to a PEC entering administration and then our role during an energy administration process.

2.4. Pre-administration these arrangements include Ofgem's monitoring arrangements, the financial-ring fence provisions and price control reopeners. During administration the guidance document sets out the key stages of the administration process. The aim of the guidance document is to ensure that progress between the stages is as efficient as possible.

2.5. Part 3 sets out additional information on the arrangements for responding to financial distress. This includes an overview of the relevant legal framework, an outline of the companies impacted by the guidance document and more detailed information on the existing monitoring, ring-fencing and price control provisions.

3. Process overview and background information

Chapter summary

This chapter relates to Part 1 of the guidance document that comprises of the two background chapter, Chapters 1 and 2.

Question box

Question 1: Do respondents agree with the stated purpose of the guidance document as set out in Chapter 1 of that document?

Question 2: Do respondents have any comments on the background to energy administration as set out in Chapter 2 of the guidance document?

Chapter 1 - Purpose

3.1. This chapter states that the purpose of the guidance document is to set out, for guidance purposes, a detailed response plan to a case of financial distress.

3.2. The aim of this chapter is to determine at a high level what the guidance document is intended to do. It also details the limitations of the guidance document including the fact that:

- it is only concerned with the financial health of PECs, not generation and supply companies;
- it is focused on the procedures for responding to financial distress and does not consider the monitoring arrangements in detail; and
- it is not designed to, and indeed could not, prevent all cases of financial distress.

3.3. It confirms that responsibility for keeping the guidance document up to date would lie with the Regulatory Finance team within the Networks Directorate of Ofgem.

Chapter 2 - Background to the energy administration regime

3.4. This chapter outlines the core concepts relevant to financial distress including the potential indicators and causes of deteriorating financial health. It also notes that the prevailing economic conditions increase the likelihood of financial distress for all companies.

3.5. This chapter also sets out an overview of the parties to whom the guidance document will apply. The aim of this section is to clarify the parties who will and those who will not be impacted by the document. It notes that while interconnector companies are network licensees, a significant number of aspects of the guidance

document will not be relevant for those parties. A number of aspects of the document will only apply to PECs. This reflects the fact that, among other things, interconnector companies do not have any financial ring-fence provisions and are not subject to the energy administration provisions in the Energy Act 2004. It also notes that, going forward, the arrangements may also apply to offshore transmission owners (OFTOs). However, it also notes that the regulatory arrangements for OFTOs have not been finalised at this stage and that other arrangements are being considered, including 'OFTO of Last Resort' provisions.

3.6. Finally, the chapter also sets out at a high level the key aspects of the Authority's legal powers relevant to energy administration.

4. Guidance Document - Pre-administration arrangements

Chapter summary

This chapter sets out a high-level overview of the contents of the individual chapters that comprise the pre-administration section of the draft guidance document.

Question box

Question 1: Do respondents consider the guidance document accurately reflects the individual stages in the pre-administration process as set out Chapter 3? Are there any other stages that should be reflected?

Question 2: Do respondents have any views on Ofgem's existing arrangements for monitoring financial health set out in Chapter 3 and Appendix 4 of the guidance document? Do respondents consider these should be augmented and, if so, in what ways?

Question 3: Do respondents have any comments on the existing financial ring-fencing provisions as summarised in Chapter 3 and Appendix 5 of the guidance document? Do respondents consider these are effective? Do respondents consider these arrangements should be augmented and, if so, in what ways?

Question 4: Do respondents have any views on the proposed process and triggers for reopening/disapplying price control as set out in Chapter 4 of the guidance document? Do respondents have any views on potential improvements to these arrangements?

Chapter 3 - Pre-administration arrangements

4.1. There are a range of potential measures that can be taken to seek to improve the financial health of a PEC that may avoid it being placed into energy administration as a result of becoming insolvent. These include monitoring financial health, enforcing the financial ring-fencing provisions, reopening a network company's price control and/or the trade sale of a company. Chapter 3 summarises these stages at a high level.

4.2. This chapter sets out a high-level overview of our existing monitoring arrangements and details of the financial ring-fencing arrangements that are set out in the licence conditions of a number of the network companies.

4.3. The monitoring section sets out the basis on which we collect and assess information on network businesses. It notes the basis of the detailed annual cost and revenue reporting arrangements and that we developed Price Control Reporting Rules, Instructions and Guidance (RIGs) for each category of the price controlled network licensees. It also notes that we separately collect and monitor information

on general market indicators, including share price and credit rating on an ongoing basis.

4.4. The financial ring-fencing section provides details of the purpose of the conditions both individually and collectively. It also sets out the powers Ofgem has to enforce the conditions.

4.5. The aim of this chapter is to provide an overview of the processes by which we collect and assess information and take actions to enforce breaches of the financial ring-fence provisions.

Chapter 4 - Reopening a price control

4.6. One option that can alleviate financial distress is to reopen an existing price control. Chapter 4 of the guidance document considers the scope for reopening a price control, the factors that are likely to constitute justification for a reopener and the key element of the process for reopening a control.

4.7. Chapter 4 notes that price controls can be reopened by using a specific 'reopener' provision or via disapplication provisions. It notes that whereas re-openers tend to be defined to apply to specific events, disapplication provisions enable controls to be reset for a broader range of reasons. It therefore notes that disapplication is likely to be the more applicable route for providing relief in a case of financial distress.

4.8. The guidance document notes that we would not reopen price controls in all cases and that we would only be minded to consider disapplication requests where:

- the cause of financial distress was beyond the company's control; and
- re-opening the settlement could reasonably be expected to relieve the financial distress in a timely manner.

5. Guidance document - Administration arrangements

Chapter summary

This chapter sets out a high-level overview of the contents of the individual chapters that comprise the administration section of the draft guidance document.

Question box

Question 1: Do respondents consider the guidance document accurately reflects the individual stages in the administration process as set out Chapter 5? Are there any other stages that should be reflected?

Question 2: Do respondents consider that Chapter 6 of the guidance document provides an appropriate summary of the arrangements for appointing an energy administrator?

Question 3: Do respondents consider that Chapter 7 provides an appropriate summary of the key elements of the core administration work?

Question 4: Do respondents have any views on the legal, licensing and price control issues identified in relation to the restructuring/sale of a PEC in Chapter 8?

Question 5: Do respondents consider the arrangements set out in Chapter 9 of the guidance document would provide for the efficient end to an energy administration process?

Question 6: Do respondents consider that Chapter 10 of the guidance document accurately reflects the roles of Ofgem, the Department of Energy and Climate Change (DECC) and HSE in the administration process?

Chapter 5 - Energy administration arrangements - process

5.1. There are a range of stages in the administration process. These include applying for an energy administration order, appointing an administrator, core administration period, facilitating the restructuring/sale of a licensee and the end of the administration process. Chapter 5 summarises these stages at a high level.

Chapter 6 - Appointing an energy administrator

5.2. The process for appointing an administrator contains a number of steps including identifying a qualified administrator, completing the necessary documentation and the Court Hearing. Each of these steps is set out in Chapter 6 of the guidance document.

Chapter 7 - Process of energy administration

5.3. During the core administration process the administrator is appointed and is responsible for the day-to-day running of the PEC. The administrator is therefore responsible for the key decisions during this stage. However, there are a number of areas where Ofgem would interact with the administrator including the provision of

information to the administrator on a PEC's existing financial position and its regulatory arrangements. Ofgem may also have to consider proposals from the administrator for restructuring the company including changes to price control terms or capital expenditure plans.

5.4. We may also have to deal with the resignation of an existing administrator and the appointment of a new administrator.

5.5. These issues are considered in Chapter 7 of the guidance document.

Chapter 8 - Restructuring/sale

5.6. In accordance with the Energy Act 2004, there are two means by which it becomes unnecessary for an energy administration order to remain in force. The principal means is to rescue the company as a going concern. The other means is the sale of a company's assets to another company or companies.

5.7. The rescue of a company is likely to involve restructuring the company and its finances. The energy administrator will lead this process but Ofgem may have to respond to requests for reopening a price control.

5.8. The issues associated with the sale of a licensee are much greater for Ofgem and potentially have legal, price control, licensing and operational dimensions. These issues are particularly significant in the event of an industry merger when we may be required to advise the Office of Fair Trading (OFT) in its role as decision maker under the Enterprise Act 2002 or the European Commission where mergers fall under the European Commission Mergers Regulations (ECMR). We would also need to decide whether to make apply a 'merger tax' to the price control revenues of a consolidated company.

Chapter 9 - End of administration process

5.9. Chapter 9 sets out the range of possible means by which an administration process may be brought to end. Those means include creditor's voluntary liquidation and dissolution. It highlights where documentation has to be completed by the applicant for the Energy Administration Order.

Chapter 10 - Interactions with key stakeholders

5.10. There are a number of key stakeholders with whom Ofgem may interact in the event of a case of network financial distress. The principal interactions will be with DECC. DECC is responsible for managing network crisis issues and therefore there are likely to be interactions during the later stages of the pre-administration phase and throughout administration.

5.11. In addition to DECC, there may be interactions with HM Treasury in relation to matters of funding and with the Health and Safety Executive (HSE) in the event of any public safety issues.

6. Guidance Document - Appendices

Chapter summary

This chapter sets out a high-level overview of the appendices in the draft guidance document.

Question box

Question 1: Are there any other aspects of the legal framework that should be covered in Appendix 1 of the guidance document?

Question 2: Do respondents have any views on the accuracy of the list of PECs and other network operators set out in Appendix 2 of the guidance document to whom it is proposed that document would apply?

Appendix 1 - Overview of the relevant legal framework

6.1. Appendix 1 sets out an overview of the legal framework relevant to financial distress and energy administration. This includes details of the Authority's principal objective and general duties as well as the relevant legislation, such as the Insolvency Act 1986 and the Energy Act 2004.

Appendix 2 - The Authority's duties and powers

6.2. Appendix 2 sets out the Authority's duties and powers.

Appendix 3 - Network licensees and group owners

6.3. Appendix 3 sets out a complete list of the current network licensees. This includes all interconnector licensees to whom a number of aspects of the guidance document will not apply. In particular, interconnector licensees are not PECs and therefore the special administration regime does not apply to these parties.

6.4. This appendix also sets out details of the group owners of the licensees. This is important as a network licensee could experience financial problems as a result of an issue within a wider company group.

Appendices 4-6 - Overview of existing arrangements

6.5. Appendices 4 to 6 set out further detail on core aspects of Ofgem's existing arrangements in relation to monitoring, financial ring-fencing and the network price controls.

Appendix 7 - Glossary

6.6. Appendix 7 sets out a glossary of the key terms used in the guidance document.

7. Way forward

Chapter Summary

This chapter sets out the next steps for finalising the guidance document.

Question box

Question 1: Do respondents have any views on the proposed process for finalising the guidance document?

Next steps

7.1. We welcome comments on any aspects of this consultation and, in particular, on the draft guidance document that we have published alongside this document. Comments should be provided by no later than 22 June 2009.

7.2. In finalising the document, we will carefully consider the views expressed by respondents to this consultation. We intend to publish the final version of the guidance document in summer 2009.

Annexes**Index**

Annex	Name of Annex	Page Number
1	Consultation responses and questions	17
2	The Authority's powers and duties	20
3	Glossary	22
4	Feedback questionnaire	24

Annex 1 – Consultation response and questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. In particular, we would like to hear the views of PECs.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 22 June 2009 and should be sent to:

Hannah Nixon
Regulatory Review Team
9 Millbank, London, SW1P 3GE
0207 901 7165
hannah.nixon@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem intends to review its draft guidance document and to publish its revised guidance document on its website.

1.7. Any questions on this document should, in the first instance, be directed to:

Grant McEachran
Regulatory Review Team
70 West Regent St, Glasgow, G2 2QZ
0141 331 6008
grant.mceachran@ofgem.gov.uk

CHAPTER: Two

Question 1: What are respondents' views on the overall structure of the guidance document?

Question 2: Do respondents consider that any other aspect of the response plan should be addressed in the guidance document?

CHAPTER: Three

Question 1: Do respondents agree with the stated purpose of the guidance document as set out in Chapter 1 of that document?

Question 2: Do respondents have any comments on the background to energy administration as set out in Chapter 2 of the guidance document?

CHAPTER: Four

Question 1: Do respondents consider the guidance document accurately reflects the individual stages in the pre-administration process as set out Chapter 3? Are there any other stages that should be reflected?

Question 2: Do respondents have any views on Ofgem's existing arrangements for monitoring financial health set out in Chapter 3 and Appendix 5 of the guidance document? Do respondents consider these should be augmented and, if so, in what ways?

Question 3: Do respondents have any comments on the existing financial ring-fencing provisions as summarised in Chapter 3 and Appendix 5 of the guidance document? Do respondents consider these are effective? Do respondents consider these arrangements should be augmented and, if so, in what ways?

Question 4: Do respondents have any views on the proposed process and triggers for reopening/disapplying price control as set out in Chapter 4 of the guidance document? Do respondents have any views on potential improvements to these arrangements?

CHAPTER: Five

Question 1: Do respondents consider the guidance document accurately reflects the individual stages in the administration process as set out Chapter 5? Are there any other stages that should be reflected?

Question 2: Do respondents consider that Chapter 6 of the guidance document provides an appropriate summary of the arrangements for appointing an energy administrator?

Question 3: Do respondents consider that Chapter 7 provides an appropriate summary of the key elements of the core administration work?

Question 4: Do respondents have any views on the legal, licensing and price control issues identified in relation to the restructuring/sale of a PEC in Chapter 8?

Question 5: Do respondents consider the arrangements set out in Chapter 9 of the guidance document would provide for the efficient end to an energy administration process?

Question 6: Do respondents consider that Chapter 10 of the guidance document accurately reflects the roles of Ofgem, the Department of Energy and Climate Change (DECC) and HSE in the administration process?

CHAPTER: Six

Question 1: Are there any other aspects of the legal framework which should be covered in Appendix 1 of the guidance document?

Question 2: Do respondents have any views on the accuracy of the list of PECs and other network operators set out in Appendix 2 of the guidance document to whom it is proposed that document would apply?

CHAPTER: Seven

Question 1: Do respondents have any views on the proposed process for finalising the guidance document?

Annex 2 – The Authority’s powers and duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This Annex summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Annex are to Part 1 of each of those Acts.²

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Annex must be read accordingly³.

1.4. The Authority’s principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁴;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁵

2 entitled “Gas Supply” and “Electricity Supply” respectively.

3 However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

4 under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

5 The Authority may have regard to other descriptions of consumers.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed⁶ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁷ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁶ or persons authorised by exemptions to carry on any activity.

⁷ Council Regulation (EC) 1/2003

Annex 3 – Glossary

A

Administration

A mechanism for dealing with an insolvent company whereby a qualified insolvency practitioner is charged with attempting to restructure the company so that it may resume normal trading.

The Authority (Ofgem)

Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (GEMA), the body established by Section 1 of the Utilities Act 2000 to regulate the gas and electricity markets in Great Britain.

D

DECC

Department of Energy and Climate Change.

G

GB Transmission

The system of high voltage electric lines providing for the bulk transfer of electricity across Great Britain.

H

Health and Safety Executive (HSE)

The system of high voltage electric lines providing for the bulk transfer of electricity across Great Britain.

I

Insolvency

Where a company's liabilities exceed the value of its assets and it is unable to pay its debts.

O[Ofgem](#)

See definition of the Authority.

[Offshore electricity transmission networks](#)

Offshore electricity transmission networks will be required to transmit electricity from offshore renewable generators to customers via the onshore transmission and distribution networks.

P[Protected energy company \(PEC\)](#)

Under The Energy Act 2004, a PEC is a network licensee that holds a licence granted under:

- section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
- a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters).

R[Reopener](#)

A process to re-set revenue allowances (or the parameters that give rise to revenue allowances) under a price control before the scheduled next formal review date for the relevant price control.

W[War Games Exercise](#)

A simulation exercise to test the robustness of a set of arrangements.

Annex 4 – Feedback questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

Andrew MacFaul

Consultation Co-ordinator

Ofgem

9 Millbank

London

SW1P 3GE

andrew.macfaul@ofgem.gov.uk