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Dear Hannah

**Responding in the event that an energy network company experiences deteriorating financial health – draft guidance document.**

You have invited comments on the above consultation document, published on 11 May 2009, and which included the draft guidance document on the procedures which Ofgem may use in the event that a protected energy company (PEC) experiences deteriorating financial health.

Overall, we believe that the draft guidance document pulls together the options available to Ofgem, the process and the information requirements, in a clear and sensible way, and is welcome.

However, it is not made clear in the document what happens, once a company is in special administration, if the administrator is not able to rescue the company as a going concern or transfer the PEC company assets to another company. It is entirely feasible that no buyer may come forward, for example if there is uncertainty about the condition and/or safety of the PEC's assets and hence the potential liabilities which may be incurred (including how the costs of bringing the network up to the required standard would be recovered). It would not be acceptable to us to transfer the obligations in such cases. We recognise that Ofgem could re-open the price control and/or the Secretary of State has powers to facilitate spending of money on the network (ultimately funded by customers through transmission charges), in order to make it more attractive to a potential purchaser (although it is not clear from the document whether both remedies can be applied at the same time), but if no willing transferee is found then presumably special administration would continue indefinitely? Legislation or other Government action may be required in such circumstances.

In addition, and following on from the point made above, a prospective purchaser would also need certainty of the price control arrangements and that Ofgem would not seek to re-open the price control post-transfer of the assets.

Our next point relates to para. 2.3 of the draft guidance document, where reference is made to the aims of special administration being to ensure that essential services to consumers remain secure and uninterrupted in the event that a PEC becomes insolvent. We note that no mention is made of safety, which has a big cost implication. Gas distribution networks have a statutory obligation to carry out their mains replacement ("repex") programme, which cannot be stopped. We suggest that the word "safe" should be added to the sentence "... the PEC's system is, and continues to be, maintained and developed as a safe, efficient and economical system.

Finally, it seems perverse that the merger "tax" would still be payable in the circumstances discussed in this consultation.

I hope our comments above are helpful. If you would like to discuss any point further, please call.

Yours sincerely

Rob McDonald  
**Director of Regulation**