



Guy Johnson
Company Secretary
General Counsel
Director of Regulation

Mr Neil Barnes
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15th September 2009

Dear Mr Barnes

**Proposed Modification of Standard Licence Condition(s):
19A in Electricity Supply Licence (Financial Information Reporting)
19A in Gas Supply Licence (Financial Information Reporting)
16B in Electricity Generation Licence (Financial Information Reporting)**

This letter replaces our letter of 9th September 2009 and is in response to the statutory notices dated 7th August 2009 in respect of the above proposed modifications. This notice constitutes a statutory objection to those proposals on behalf of all the licensed companies within the RWE npower group. I confirm that I am duly authorised to give this notice on behalf of each such licensed company.

Financial Information Reporting

We object to the implementation of these licence conditions.

We are concerned that these proposals have changed significantly since they were first made. The initial proposal was that companies would provide information to Ofgem to assist in its market monitoring; Ofgem would then publish information on an aggregated basis. The final text proposed an obligation for individual companies to publish detailed information together with reconciliation to statutory accounts on their websites. We believe that this obligation is disproportionate to Ofgem's objectives which can be achieved through the provision of aggregated information.

In addition to aggregated data we would suggest that Ofgem could also publish individual company data (albeit with the specific company not being identified) of the two individual companies with the highest and lowest weighted average cost of gas and electricity. This would address Ofgem's wish to give specific information without a significantly adverse effect on the competitive position.

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We believe that the proposed licence conditions would potentially restrict and distort competition. They will restrict competition by driving companies towards adopting similar purchasing and hedging strategies. They will also restrict competition by disclosing and allowing other companies to monitor or mimic innovative or other effective approaches to hedging and other costs adopted by other companies. They will distort competition by providing information which will not necessarily be directly comparable between competitors and hence result in potential mis-information for interested stakeholders as well as providing competitors both within and outside the licence obligations with information that could assist their own commercial objectives.

We have for some time been concerned at the implications of certain actions by the regulator on the competitive market. The domestic supply market in gas continues to be dominated by British Gas, with a market share in excess of 40%, and its share of the domestic dual fuel market was stated to be 36% by Ofgem in its energy supply probe of October 2008 (paragraph 3.16). We believe that companies should be restricted as little as possible in their ability to develop and adopt competitive strategies to seek to compete on price with the major market player and others and seek to gain market share. It is for this reason that we are concerned about the new undue discrimination licence condition which for example constrains our ability to adjust our pricing in particular areas, perhaps for example those still dominated by a former incumbent supplier, where we would wish to differentially price. The proposed financial information reporting licence conditions would result in the disclosure individually by named supply companies of for example its weighted average cost of electricity or gas, separated between domestic and non domestic customers. Wholesale costs make up more than half of the average dual fuel bill. The disclosure in this way of such information, and the ability of other companies to thereby deduce hedging strategies, takes away what could otherwise be a source of competitive advantage. We do not see why our innovative or efficient strategies in these areas should not continue to be of advantage in the competitive market.

More specifically we have the following comments on the requirements of the licence conditions:

- Business models and transfer price rules are different between each of the companies and therefore the separation of generation and retail results will be affected by these issues. Lack of consistency between the companies means comparisons and assumptions made could be inappropriate. Whilst discussion on this inconsistency could be performed privately with Ofgem, detailed public discussion of business models and transfer pricing rules could remove some competitive advantages.
- The template for generation profitability provided by Ofgem is not compatible with the way the RWE npower business model operates.
- Publication of WACOE/WACOG provides a data point for evaluating each other's hedging strategies. It will be possible to derive a view of the hedging strategy adopted by each company. This is a vital source of competitive advantage which will be removed from the market.

- It is discriminatory as it does not apply to companies which only generate or supply nor to those not exceeding the supply threshold.
- The timescales for publication of the accounts are not consistent with those set for the publication of statutory accounts.

We believe the provision of information to Ofgem by all generators and suppliers (whether integrated or not) on a confidential basis, with Ofgem publishing aggregated data and individual anonymous highest and lowest data, strikes the appropriate and proportionate balance between providing interested stakeholders with information on the profitability of the sector compared to the anti-competitive effects of individual disclosure identified above.

Yours sincerely



Guy Johnson
Director of Regulation