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Industry Codes and Licensing Manager
Ofgem
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15 March 2012

Dear Dora,

RE: Open letter consultation on changes to Ofgem licensing policy for gas traders

Thank you for the opportunity to respond to this consultation. This response is submitted on behalf of the Centrica Group of companies excluding Centrica Storage Limited.

We have been engaged in the various discussions on this topic from the outset. During this time we have raised concerns which we are pleased to see have broadly been highlighted in this consultation. However, we do not necessarily agree with Ofgem's initial views on each of these points.

Given the wording of the Gas Act, it is difficult to argue that Ofgem should continue to require gas traders to hold a gas shipper licence. However, overall we believe that removing this requirement is a retrograde step.

Our primary concern is the reduction in Ofgem's ability to require the provision of information by the full cross section of gas wholesale market players. Removing the requirement to hold a shipper licence will concentrate information gathering powers only on a sub-set of market players, leading to incomplete information being collected and a reduction in Ofgem's analytical and decision making effectiveness.

It is not appropriate to rely on informal requests to traders to provide information voluntarily, where matters at stake could well include GB security of supply which in turn could have a direct bearing on public safety. Given the time and resource pressures on businesses, we believe there is a possibility that a response to any request for information will at best be seen as optional, and at worst any such requests will simply be disregarded.

Ofgem continues to demonstrate its willingness to investigate and enforce compliance with licence requirements where it believes transgressions have occurred. It is able to do this effectively because it is able to use its information gathering powers to assess the context, extent and harm of any suspected licence breaches.

Conversely, where breaches of the UNC are suspected, the burden will fall on contractual counterparties to gather evidence and undertake legal action, yet they will be in a much weaker

position than Ofgem would be, since UNC counterparties cannot require each other to provide information. The cost may also prove prohibitively expensive especially for smaller players. As far as we are aware there has never been legal action by one UNC counterparty against another in respect of a UNC breach. Therefore, it seems evident to us that the compliance hurdle presented by a UNC requirement will be lower than an equivalent contained in a licence which is policed by Ofgem.

This is particularly concerning where the subject matter could be the extent to which a UNC party may have acted improperly thereby causing or exacerbating a network emergency. Indeed, we believe that any relaxation of the compliance regime, particularly in respect of network emergency situations, is serious enough to require close examination by the HSE, since it could have a material impact upon transporters' safety cases.

We are equally concerned at Ofgem's suggestion that UNC obligations are an effective vehicle to manage the loss of licence enforcement powers against traders. Such a move risks creating a two-speed compliance regime. Similarly, if it is appropriate for gas trader obligations to be moved from a regulatory licensing regime to a commercial contract - the UNC - then it must surely be appropriate for the same obligations to be removed from all shipper Users' licenses and placed in the UNC in order to avoid discrimination, yet this is not proposed.

We believe that the barrier to entry presented to potential new entrants from having to obtain a licence – both in terms of the extremely limited administrative burden and the financial commitment (£350), is nugatory. Compared to the magnitude of other regulatory burdens which could be tackled, removing this requirement should not be considered as a priority or a win in facilitating new market entry.

We believe that trader users are also likely to benefit from a lower overall regulatory compliance burden, and that this may be seen as a reduced market entry barrier, however this comes as a result of the removal of obligations to comply with certain information requests and investigations from Ofgem. While we recognise that certain of these licence obligations are being transferred to the UNC, we feel that these will in future be seen as having "less teeth".

Overall, we are led to the conclusion that the shipper licence currently serves as a valuable tool for monitoring and ensuring compliance with essential energy market operational matters, and we are concerned about this loss of regulatory oversight.

If Ofgem feels it does not have powers under the Gas Act to insist that gas traders hold a shipper licence, the correct course of action would be to amend the Gas Act such that Ofgem can continue to insist on this. If this cannot be reasonably achieved, an alternative would be to seek to protect Ofgem's information gathering powers through another route e.g. a UNC obligation on parties to comply with an Ofgem information gathering exercise when this relates to matters of market security.

Rather, the protracted process that we have been through including Ofgem consultations and the development of UNC Modification proposal 0338V feel too much like a sticking plaster, which could have fairly serious unintended consequences, in the event that it increases the likelihood, severity or duration of a network emergency. Finally, we note that such an outcome would appear to run directly counter to the thrust of Ofgem's gas SCR on supply security.

I trust that this response is helpful, however do not hesitate to contact me should you wish to discuss any aspects at all.

Yours sincerely,

Chris Wright
Commercial Manager