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Dear Dora

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

Thank you for providing SSE with the opportunity to comment on the above open letter. We have detailed our answers to the questions asked below.

1. Do you agree that traders who are not involved in the activities prescribed by the Gas Act should not be required to have a gas shipper licence?

Yes. As stated in our response to Ofgem's 2010 'Proposed Changes to the Application Regulations and Revocation Schedules of Future Licences' consultation, we believe that if a party intends to carry out activities that do not involve gas shipping, it is inappropriate to require that party to hold a shipper licence. We support the proposal to remove the requirement to hold a shipper licence as we believe it may increase liquidity in the gas market. We also believe that the proposal is consistent with Ofgem's duty in respect of Better Regulation and the Government's red tape challenge.

However, it is important that the transition from a licensed activity to non-licensed activity is managed carefully to ensure that it does not create a governance gap and that no party is exposed to additional risk as a result of the change.

**2. Do you agree with our assessment of the issues raised in the proposal? &
3. Do you agree with our initial views on addressing these issues?**

No. In the open letter, Ofgem note that the industry has raised concerns that security of supply could be hindered by the loss of Ofgem's enforcement powers which are contained in the shipper licence. In response to these concerns, Ofgem stated that it believes these obligations are best placed in and enforced through the Uniform Network Code (UNC).

We have two key concerns regarding this approach and do not believe that our concerns have been addressed by either the open letter or UNC MOD338V.

1. Loss of licence requirement to comply with the UNC

By removing the requirement for a trader to hold a shipper licence, Ofgem will also remove the licence requirement for the trader to comply with the UNC. If this licence requirement no longer exists, the industry will have to rely on contractual arrangements to impose this requirement, rather than through a legal obligation. This clearly will provide a lower level of safeguard than was provided by the prospect of Ofgem enforcement action.

2. UNC does not have sufficient enforcement powers

Even if our first concern can be overcome and all traders become party to the UNC, we do not believe that the UNC has sufficient enforcement powers to enforce the obligations. We are unclear which parties would have responsibility for the oversight of the accession to the UNC, and how potential lack of compliance will be identified and addressed.

At present, if a trader does not comply with the obligations contained within the UNC, Ofgem is able to use its enforcement powers to take action against the trader as it would be in breach of its licence. We believe the ability for Ofgem investigate and take enforcement action, currently acts as a significant deterrent for traders that may consider breaching an obligation or may consider putting in place measures which may not be sufficient for compliance. As it is proposed that this deterrent will be removed, we believe it is vital to clarify the status of the UNC enforcement powers. We also consider



that there may be a need to assess which additional powers will be required, to ensure the change does not create a governance gap and that no party is exposed to additional risk as a result.

Other comments

As currently proposed under MOD338V, we believe that it is vital that the UNC be amended to no longer require traders to hold a shipper licence in order to accede to the UNC, and that the UNC obligations that traders are required to comply with and are able to influence, are ring fenced from the wider UNC shipper obligations and areas of influence.

Although it is outwith Ofgem's remit, we wish to notify Ofgem that we believe that the industry credit arrangements will need to be reviewed, to ensure that they remain fit for purpose in light of the proposal to remove the requirement to hold a shipper licence. Although, as Ofgem has previously highlighted, the possession of a shipper licence should not be viewed as providing any guarantees, industry may have wrongly relied on the shipper licence to provide guarantees regarding company registration, directorship, ownership etc. We believe such a review is especially necessary given Ofgem's proposal under the Gas Emergency Arrangements Significant Code Review to allow the cash out price to reach £20/therm.

We hope you have found our comments helpful. If you would like to discuss any of the points we have raised in further detail, please do not hesitate to contact me.

Yours sincerely

Claire Basil-Rathey
Regulation