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Consultation on the extension of Undue Discrimination Prohibition Standard Licence Condition

Dear Jemma,

RWE npower welcomes the opportunity to comment on Ofgem's consultation on extending the sunset clause (25A.9) by two years to 31 July 2014 in SLC 25A Prohibition of Undue Discrimination in Supply.

As RWE npower stated throughout the introduction of and in particular in the representations on this licence modification, we continue to have misgivings about its impact on the operation of the competitive market.

Furthermore, the licence condition does not appear to meet best regulatory practice as required by the Electricity Act 1989 and the Gas Act 1986 in terms of the principles and in particular transparency described as simple and user friendly regulation. SLC 25A imposes a prohibition of undue discrimination without objective justification, where objective justification is determined by Ofgem. In addition, as set out in the Guidelines, there is then an exception for social tariffs and a statement that Ofgem is not likely to target action where additional costs are not reflected in PPM charges; all of which is before consideration of whether there is a material impact on domestic customers. A recent example of the SLC 25A's effect has been the uncertainty around the regulatory compliance of the collective switching proposals.

However, we do consider the approach on enforcement set out in the Guidelines where the first stage is that Ofgem writes to the supplier outlining its concerns on compliance allowing the supplier to justify its position is helpful and could be more widely applied if this is within a framework of regular updates on progress and deadlines for taking action from Ofgem.

We also have concerns regarding Ofgem's approach on the operation of the sunset clause. In line with the BIS approach to sunset clauses we consider that a full review to extend SLC25A is needed to consider whether it is still required, still effective, has resulted in any unexpected costs and the intended benefits have been realised. Ofgem's approach that now is not the best time to carry out a full review of SLC25A's impact due to introduction of further measures under the Retail Market Review (RMR) would seem to create a precedent for continually extending the operation of

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regulation with sunset clauses. However, even if we were to accept Ofgem's approach, as Ofgem's Forward Work Programme 2012–2013 states Ofgem intends to complete its RMR proposals this year, this would indicate that a one year extension should be sufficient.

If you would be like to discuss any of these issues further, please contact me.

Yours sincerely

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