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Dear Dora,

“Minded to” consultation on Ofgem’s licensing policy for Gas Traders and consequential acceptance of the related Uniform Network Code (UNC) modification proposal 338V

SSE welcomes the opportunity to respond to Ofgem’s consultation.

The SSE Group is the UK’s broadest utility with various interests including networks, electricity generation, energy supply and upstream gas production. SSE is the largest shareholder in Scotia Gas Networks, the UK’s second largest gas distribution network which operates Scotland Gas Networks and Southern Gas Networks.

As per our response to the open letter consultation published in January 2012, SSE highlighted two key concerns regarding the proposed changes to Ofgem licensing policy for gas traders:

1. The loss of the licence requirement to comply with the Uniform Network Code (UNC)
2. The UNC does not have sufficient enforcement powers

We have set out below our responses to Ofgem’s ‘minded to’ position to remove the UNC requirement for a gas trader User to hold a Gas Shipper Licence.

1) Do you agree with our “minded to” position to accept UNC338V and with our assessment of the modification proposal against the relevant objectives, as discussed in Annex 1?

Inability to effectively enforce penalties or sanction

We do not agree with Ofgem’s “minded to” position, as we do not believe that the obligations are best placed in and enforced through the UNC.

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 shipper licence. We still believe that the ability for Ofgem to investigate and take enforcement action currently acts as a significant deterrent for traders that may consider breaching an obligation. As it is proposed that this deterrent will be removed, we believe that it is vital to clarify the status of the UNC enforcement powers before the proposed modifications are made. For licensed entities, failure to comply with the UNC potentially means breach of licence and the ultimate sanction for Ofgem is a fine of up to 10% of turnover. This sanction is not equalled by anything in the UNC at present. If Traders are not exposed to this then a specific UNC equivalent should be introduced. A more thorough review of the UNC is required to ensure the new type of User is carved out and new obligations and sanctions are put in place to ensure compliance and to equalize risk.

Many of the powers that Ofgem refers to under the Competition Act will be irrelevant for the type of activities and failures that a Trader could be involved in. Therefore, we do not agree with Ofgem that there will be no governance gap. In particular, there is need to ensure that there is a clear obligation for Traders to accede to the UNC before they can trade, to ensure they are obliged to arrange for the correct IT equipment to be installed and access the necessary systems for NBP nominations etc.

The fact that Ofgem has not taken enforcement action against a Shipper in the past is not relevant as arguably this proves that the Licence acts as a deterrent and is therefore required.

The changes proposed create new barriers and distort competition as a Trader will not be exposed to the same risk, consequences or governance regime as Shippers. In fact, the creation of a new type of User also adds complexity to the gas trading arrangements and new and different obligations.

We believe that all Users should be subject to the same set of UNC rules to avoid unnecessary complexity, unforeseen consequences and potential discrimination.

Impact on security of supply

We are concerned that Traders may be able to avoid increased cash out penalties and compensation payments, which licensed Shippers would be exposed to, by failing to post credit margins and then entering into administration. The unpaid costs will then be socialised to the remaining licensed Shippers. The Trader can then re-enter the market under a replacement Trader user identity without penalty and Ofgem will have no say in the matter. This will result in an uncompetitive trading advantage due to the lesser costs of risk mitigation compared with those required of licensed Shippers.

2) Do you agree with the wording of the proposed changes to the Licensing Guidance, as described in Annex 2?

The change provides clarification of when a person requires a gas shipper licence and does not.

3) Do you have a preference on when this licensing change should come into effect: 1 October 2012 or 1 January 2013?

We would suggest a delayed implementation to give the industry time to consider and raise consequential changes to the UNC to address the concerns raised above. In particular we need to ensure there is a clear obligation to accede to the UNC before the new User can trade and access necessary systems for nominations etc. We do not believe that even the latter proposed date, 1 January 2013, provides sufficient time for this and would urge Ofgem to delay the proposed implementation until a more thorough review of the UNC has been undertaken, to ensure additional obligations for the new type of User are put in place.

Conclusion

We are concerned that the issues we have identified above have not been adequately addressed and this must be done before the requirement for a gas trader to be licensed is relaxed.

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,

Lois Wares
Regulation