

Paul Darby
Senior Financial Manager
Ofgem
9 Millbank
London
SW1P 3GE

Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

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Tel: 01738 456571

Dear Paul,

Updated proposals for changes to ring fence conditions

This letter is SSE and Scotia Gas Networks' (SGN's) response to the updated proposals for changes to network operators (NWOs) ring fence conditions and their impacts.

For the avoidance of doubt, both SSE and SGN continue to be strongly opposed to the imposition of sufficiently independent directors (SIDs) on to NWO Boards. Our arguments against this are well documented and latest consultation does not alleviate our concerns. For example, we believe that the imposition of SIDs on to NWO Boards is massively disproportionate to the perceived threat; and Ofgem's argument regarding a high risk, low probability event (and its comment regarding SIDs adding value even if no full blown financial distress event occurred) has not been quantified. We would urge, once again, that a full Regulatory Impact Assessment is carried out prior to implementing such a material change.

Notwithstanding these concerns, we welcome the opportunity to comment on the updated proposals. Taking the changes to the proposed new SIDs licence condition first, our comments are as follows:

Sufficiently independent directors

We note the newly defined term 'associate' of the licensee to replace existing references to 'affiliates' and 'related undertakings'. We have no objection, in principle, to the inclusion of this term. However, we will be writing to Ofgem separately to clarify the appointment of SIDs to the SGN Board.

We note Ofgem's view that the licence drafting makes it clear that it would be acceptable to have a gap in appointments of SIDs, subject to taking the required steps in the meantime. However, the proposal to replace the wording 'take all appropriate steps within its power' with 'use its best endeavours' does not appear to be in line with this. We would suggest the use of 'reasonable endeavours' in this instance.

Disposal of assets

Whilst we understand that the Authority's statutory duties and the requirements of law should preclude the taking of an unreasonable approach to the consideration of a notice, the paragraph stating that the Authority shall not '... unreasonably withhold its consent ...' is a standard backstop clause used in other licence conditions. On balance, we believe it should be retained.

Availability of resources

We welcome the clarification that the first set of new certificates will not be due until 31 July 2014. We also welcome the proposed removal of the words 'at all times'. However, we note that these have not been reflected in the 'extracts' at Appendix 1 of the consultation.

Undertaking from ultimate controller

We welcome the clarification that only undertakings made after 1 April 2013 are to follow the new form. However, we continue to believe that there is no requirement to reappraise ultimate controllers annually. It is simply good business practice to keep ultimate controllers appraised of regulated activities, new licence modifications etc; a licence obligation to this effect does not reflect 'better regulation'.

We have no comments on the minor changes to the Credit rating of licensee or Restrictions on indebtedness licence conditions.

Finally, we note that the efficient costs involved in appointing SIDs can be recovered under the price control arrangements. Such costs have not been allowed for in the RIIO-T1 or GD1 Initial Proposals and we would therefore expect to see either a simple re-opener at Final Proposals or, perhaps more pragmatically, an acknowledgement that such costs can be recovered through the miscellaneous pass-through term (MPt).

If you wish to discuss any of the above further, please do not hesitate to call. I am copying this letter to James Grayburn as some of our comments impact the RIIO price control settlements.

Yours sincerely,

Malcolm J Burns
Senior Regulation Manager