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Guidance on Ofgem's Approach to Conducting Impact Assessments

Dear Mark,

We welcome the opportunity to respond to the 'Guidance on Ofgem's Approach to Conducting Impact Assessments', that reflects changes to Ofgem's duties and best practice.

Our response is provided on behalf of RWE Npower plc, RWE Generation SE, RWE Supply and Trading GmbH and RWE npower Renewables (part of RWE Innogy GmbH).

As requested, we have provided comments to the questions stated within the consultation letter, as well as more general viewpoints on the guidance and Ofgem's approach.

As a summary, we consider that any impact assessment (IA) framework must ensure a transparent and consistent approach, whilst providing for a process that allows a case-by-case basis to be addressed in a proportional and realistic manner as distinct from long-run, more complex issues. Any IA process must be able to be reviewed, challenged and justified, particularly where more qualitative rather than quantitative considerations are being presented.

Industry must also be able to contribute to discussions regarding any key tests that Ofgem will be proposing, and how they are to be applied. Furthermore, any IA framework that Ofgem devises, especially where it encompasses environmental and strategic sustainability considerations, must be mindful of overlap with other government departments and other regulatory authorities, to ensure minimal 'double-accounting' occurs.

Question 1 – “We are proposing to revise the structure of the guidance to place greater emphasis on Impact Assessment (IA) as a continuous, iterative process.” Do you agree with the approach?

We welcome the iterative approach to Impact Assessments as outlined at Stage 3 of Figure 1 on page 7, as we see this as giving industry greater opportunity to comment on the balance that Ofgem has chosen with any particular issue. We would encourage the use of the suggested staged process and emphasize the importance that this is applied vigorously and objectively. However, it is not clear what are the iterative parts of the process. Examining Figure 1 on p.7 and the listed stages of the process from p.15 onwards, reveals a more linear process without clear indication of the obvious feedback loops into the various stages. We suggest more clarity is provided

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here as to how stakeholders are able to engage in the iterative process in order to allow comment on assumptions made and the analysis process.

We also recognise the importance of :

- the potential of using independent consultants to conduct impact assessments, to ensure an open, transparent, and unbiased approach,
- using methodologies that are both rigorous in the questions asked as well as being accountable for the decisions that are reached,
- publishing guidance that is periodically revised to ensure that due process has been followed and can be challenged where necessary and appropriate.

We encourage the idea that the process of conducting an Impact Assessment should always be started at the beginning of any proposal or project, in order for it to be an effective part of the process, to develop accordingly and to form a core part of any policy-making decision.

We would also suggest there is some value in considering a third party panel of technical experts to be established (similar to the current EMR process), in order to check the adherence of due process and output of the Impact Assessment procedure.

Question 2 : “Our proposed approach to assessing impact, costs and benefits is to develop an iteration of options between three aspects. These are: monetised, aggregate cost-benefit analysis; distributional effects; and long-term, hard-to-monetise considerations. Do you agree with our approach to assessing impacts?”

We agree that increased understanding in how costs and benefits are monetised is the way forward, but we consider that it is currently not clear how these monetary aspects will be quantified against sustainability issues and requirements. There is certainly a need for a clear methodology and framework for both industry and Regulator to follow, in order to demonstrate a more transparent and accountable decision making process.

Question 3: “We have interpreted our duty to have regard to sustainable development by considering a mid-term stress and security assessment and a long-term natural asset and greenhouse gas assessment. Do you agree with our approach to considering long-term, complex and hard-to-monetise issues?”

Although we see benefit in dividing sustainability development into broad categories (as mentioned at stage 3 of the approach to impact assessments) we question how Ofgem will be able to compare issues across these categories, as there will ultimately be a subjective methodology for comparing with the monetised impacts. However, we do see that this categorisation could provide an indication to industry as to where to prioritise and concentrate efforts, and we welcome this potential secondary benefit.

On p.22 section 3.39, we would comment :

- consistency with UK's 2050 GHG target is important, but the assessments referred to in paragraph (2) need to also take into account delivery of the UK's targets through the EU ETS and the resultant impacts,
- in considering the interaction of the energy system with wider environmental assets, Ofgem must take account of where this will have been previously considered by bodies such as the Environment Agency as part of the permitting and planning regimes, and ensure there is no duplication.

Question 4: “Are there any other substantive changes that we should consider incorporating in the guidance, as appropriate to our statutory duties and functions?”

In our opinion, we are aware that a large number of impact assessments are conducted by Ofgem, and would query whether all are necessary and in the interests of business or consumers. Impact assessments should always be carried out where there will be major changes to relevant industry arrangements or significant impacts on consumers, and we support Ofgem’s proposals to clarify how and when different forms of IAs should be applied, such as defining which proposals are ‘important’ as understood by Section 5A of the Utilities Act 2000. However, we would urge some caution to be exercised with those additional instances where Ofgem might seek to develop IAs under situations not defined by the Act.

The principle of proportionality should always be applied, whereby a decision that is likely to have a wide-ranging impact or impose significant costs on consumers or stakeholders, will therefore be subject to a more comprehensive IA than a decision which is likely to have a less significant impact. This impact should be clearly highlighted by Ofgem at the beginning of any impact assessment process, and will ensure transparent communication to industry.

Yours sincerely,



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