

Megan Forbes
Legal and Enforcement Partner
Sustainable Development
Ofgem
9 Millbank
London
SW1P 3GE

17 May 2013

By email to enforcementguidelines@ofgem.gov.uk

Dear Megan

Review of Ofgem's enforcement activities – consultation on strategic vision, objectives and decision makers

Thank you for the opportunity to comment on the above consultation. This letter and the accompanying appendix should be treated as a collective response on behalf of UK Power Networks' three licensed distribution companies: Eastern Power Networks plc, London Power Networks plc, and South Eastern Power Networks plc.

We have set out our feedback to your specific questions in the appendix and hope that you will find our comments helpful. If you have any queries, please do not hesitate to contact Paul Measday in the first instance.

Yours sincerely



Keith Hutton
Head of Regulation
UK Power Networks

Copy: Paul Measday, Regulatory Returns & Compliance Manager, UK Power Networks

Appendix

Q1. Do you agree that this is the right Vision for Ofgem's enforcement work? Please provide us with any comments you have on the Vision.

We agree with Ofgem's overall vision "to achieve a culture where businesses put energy consumers first and act in line with their obligations". However, the two elements of the vision are ordered such that greater emphasis may be placed on the first (i.e. putting consumers first) and consideration should be given to whether this emphasis is correct.

Q2. Do you agree with Ofgem's proposed Strategic Objectives, and principles for achieving them, and do you think it would be helpful to adopt annual strategic priorities? Please explain the reasons for your answer and any aspects which you think we should consider.

We support the proposed Strategic Objectives and principles for achieving them. However, we believe that the third principle ("being transparent and fair in enforcement processes and visible in actions taken") could be enhanced by the addition of a reference to proportionality in terms of both the scale of an investigation and any enforcement action.

In terms of an annual review of strategic priorities, this should be a light-touch approach so as not to create a burdensome process and the direction for the forthcoming year should be published as part of the principle of Ofgem being visible in terms of the actions undertaken.

Q3. What obstacles do you consider that Ofgem may encounter in achieving its Vision and Strategic Objectives?

We believe that an open and honest approach coupled with fair and proportionate treatment by Ofgem will encourage licence holders to ensure any potential obstacles are minimised.

Q4. Do you agree with the proposals for an Enforcement Decision Panel and Secretariat to take decisions in contested enforcement cases? Please explain the reasons for your answer.

While we support the need for a decision-making body and secretariat, we do not believe that Ofgem has provided enough information in its letter to justify the establishment of the proposed new Enforcement Decision Panel and Secretariat. It is unclear from the published details whether the costs of the new functions outweigh the benefits they may bring.

We propose that Ofgem publish more details on the expected workload and costs of the Enforcement Decision Panel and Secretariat to enable industry parties to come to an informed decision on whether the proposals are suitable. For example, the following information would be of benefit:

- The expected volumes of enforcement decisions in the future and the justification for these volumes
- The proposed FTE of both the Panel and Secretariat and approximate total salary costs

Q5. Do you agree with the proposals for settlement decisions? Please explain the reasons for your answer.

The proposals for settlement decisions appear to be broadly unchanged from those currently in place. We are not aware of any problems with the current settlement processes and therefore are supportive of the proposals. It is however worth noting that flexibility and good communication between all parties is key to the success of any settlement process and we believe that this should be encouraged.

Q6. Do you agree with the proposed arrangements for the Authority's oversight of the Panel's work? Please explain the reasons for your answer.

While we support the proposed arrangements in principle, we would ask Ofgem to note the query and caveat we raise below.

It would be helpful if Ofgem could clarify whether cases will have Authority oversight before or after they are settled. We believe that the Authority should have oversight of cases before they are settled. If the Authority has oversight of cases after they are settled then the settlement decision should not be reopened. Otherwise there is a risk that Ofgem and the licensee's efforts to arrive at a settlement will be wasted and the licensee will be less inclined to settle, due to a lack of certainty over the decision that is reached.

The caveat is a simple reference back to our answer to question 4 and the need to provide more detailed justification for the Panel.

Q7. Do you have any additional comments on the matters covered in this Letter?

We believe that it is important that the enforcement function within Ofgem is as far as is reasonably practicable separate from the business as usual functions within Ofgem (i.e. the policy makers) to ensure that there is independence in the enforcement actions taken. Such independence should include management reporting and separate physical location within the Ofgem building estate.