



Andrew Shipp
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Dear Andrew

Consultation on Ofgem Criminal Prosecution Policy Statement

Drax Power Limited ("Drax") is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. The 4000MW station consists of 6 separate generating units which together produce around 7-8% of UK generation. Drax is currently embarking on a project to convert at least half of its generation capacity to biomass. Drax also owns an electricity supply business, Haven Power Limited ("Haven"). Haven is an electricity retailer and supplies small and medium (SME) sized business customers and larger Industrial and Commercial (I&C) customers.

I am writing in regard to Ofgem's consultation on its proposed Criminal Prosecution Policy Statement published on 2 July 2015. Please find our responses to the questions below:

Question 1 - Do you agree with our proposed approach to the decision to prosecute criminal offences?

Yes in broad terms we would agree with the approach and while this does appear to be in line with other regulatory authority approaches, we would make the following comments:

Ref

- 3.2 Clearer recognition should be provided by Ofgem that the decision as to whether to bring criminal sanctions is a serious one.
- 3.2 The appropriateness of a criminal sanction should be assessed on a constant basis throughout an investigation and the individual concerned should be notified of the decision as soon as possible.
- 3.4 Public Interest Test – This should be a positive obligation – a prosecution should be brought if it is in the public interest to do so.

On point v) where it asks 'is prosecution a proportionate response – clarification should be provided as proportionate to what?

Question 2 – Do you agree that the additional factors set out for consideration in relation to REMIT market abuse offences are relevant and appropriate?

Yes although we would make the following comments and suggestions:

Ref

- 3.10b It should be clear whether, where the offender is an individual, the factor is looking at whether the individual is likely to commit a repeat offence or whether it is looking at the likelihood of similar offence being committed elsewhere within the market
4. A legally qualified panel member acting alone should not be allowed to make the decision on whether or not to prosecute. Lawyers are available to provide advice as to the law and the likelihood of success but the decision as to whether to prosecute should also consider non-legal factors.

We would suggest that the following are included within the additional factors considered in relation to REMIT market abuse offences:

- I. Whether there are victims who have suffered loss as a result of the misconduct: where there are no victims a criminal prosecution is less likely to be appropriate
- II. The extent of any profits accrued or loss avoided as a result of the misconduct: where substantial profits have accrued or loss avoided as a result of the misconduct, criminal prosecution may be more likely to be appropriate.
- III. The personal circumstances of the individual may be relevant to a decision whether to commence a criminal prosecution.

Question 3 – Are there any additional factors you feel we should set out in this policy statement?

The criminal REMIT regime specifically states that an individual can commit an offence without intent if he is reckless in his actions whereas the civil regime is less clear on this. It would be useful for the guidelines to state that a criminal action should not be brought solely because the wording of the criminal test provides Ofgem more prospect for successful enforcement than under the civil regime.

Question 4 – Do you have any other comments on this policy statement?

No

Should you wish to discuss this letter, please feel free to contact me (email: Karen.monaghan@drax.com; telephone: 01757 612576).

Yours sincerely,

Submitted by email

Karen Monaghan
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Regulation and Policy