MAJOR ENERGY USERS' COUNCIL

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Mr Peter Swan
Appeals Manager
Firmus Licence Modifications Appeal
Competition and Markets Authority
Victoria House
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Dear Mr Swan,

COMPETITION MARKETS AUTHORITY CONSULTATION ON FIRMUS ENERGY (DISTRIBUTION) APPEAL ON GD17

The Major Energy Users Council represents the views of large energy users across the United Kingdom including Northern Ireland. In our membership, we have users operating in the Industrial, Commercial, Retail and Public Sector arenas accounting for 25% of all gas and electricity volumes across the country.

We are pleased to respond to the Competition and Markets Authority consultation on the Firmus Energy (FE) appeal against the NI Utility Regulator's (UR) Price Control GD17. The arguments on both side are complex and technical and our comments and observations below are more of a general than specific nature. Nevertheless, we hope you will still find them of value.

REGULATORS RESPONSIBILITIES

FE have in their appeal accused the Regulator of not fulfilling their responsibilities adequately but they fail to appreciate that the regulator has two main responsibilities. Protecting the interests of customers, which is their prime responsibility and ensuring that energy companies have sufficient revenues to conduct profitable businesses in this monopoly activity. FE's appeal makes little reference to the Regulator's customer responsibilities.

BENCHMARKING

FE's appeal makes reference to benchmarking across other GB GDN's as being inappropriate. We welcome this benchmarking approach, provided sufficient safeguards are applied in respect of geographic location, customer base, etc. The ten towns operating area in which FE operate is not uniquely sparse and deserving of special treatment. There are equally sparse areas in GB. East Anglia Fenland, Devon and Cornwall not to mention the Highlands and Border Regions of Scotland. We would be very surprised if these had not been considered by the Utility Regulator in apportioning an appropriate weighting on FE.

However, we do not accept that geographic location and size are a barrier to good benchmarking. We understand that similar benchmarking activities where involved in GD14 and in the latest electricity price control RP5 and in our view are a very welcome tool in assessing operational activities and the inclusion of best practice techniques amongst similar monopoly businesses.

MARKET DEVELOPMENT

FE make the point that they are operating in a market which is "significantly in the early stages of development." This market has been in operation more than ten years and we would not accept the view that it was at a significantly early stage. It is certainly in a developing stage and will continue to develop over the six years of the proposed price control. A factor we believe is well understood by the Utility Regulator.

EXPERT OPINION

Both parties have made use of expert opinion. FE have three consultants who appear to be taking the lead in challenging the price control. Presumably they are invoicing their costs to FE and as such support their client's case for appeal. The Regulator's office also employs consultants and expert witnesses which in our view will give a more balanced finding as the impact on customers will also be part of their remit.

We would respectively suggest that the Regulator office takes the broader view of all the issues and is best placed to present a proposal which should benefit all stakeholders in the supply, distribution and utilisation of gas.

WEIGHTED AVERAGE COST CAPITAL

This is a complex issue but in our view the WACC approach has been used in other Utility Regulatory Price Controls to good effect, including GD14. This is contrary to the views in 2.32 that this is the first time the WACC has been used on FE. We don't fully understand the process but the fact that it has been used extensively before without challenge suggests that it is a process well understood in the Regulator's office. The WACC is probably the largest element affective the overall profitability of FE but is also the element which will impact most on customer bills. We fully support the revised level of WACC proposed at 4.3%.

It should be appreciated that customers in NI are subjected to some of the highest energy tariffs in the European Union. Two major industrial employers in the ten towns area (served by FE) are closing in 2017/18. Michelin and JTI Gallagher are closing with the loss of thousands of direct and indirect jobs and high energy charges are quoted as one of the contribution factors.

COST OF UNDER RECOVERY

There has been much discussion between user groups, UR and FE on this matter since the consultation at the GD14 Price Control. We are happy that the proposed Libor+2% rates for under recovery is a reasonable way forward and will have a positive result on present and future customer bills.

CONCLUSION

Working with the Utility Regulator over the last five year. We have found them generally to be supportive of the customer base. We have had our differences of course but our view is that they produce a balanced, well researched and reasonable position that all parties can work with. This remains our view on the GD17 Price Control.

We could easily take the position that they have erred too far towards the operators on GD17 as consumers always desire prices to be as low as possible. We are after all, competing in international markets. In the last UR Price Control the electricity distribution operator appealed to the then Competitions Commission who ruled that the NI Regulator had not gone far enough in challenging the distributor and that customers should benefit further from the process.

Considering that failed appeal, we were surprised to hear that FE had taken a similar position on gas and can only conclude that there must be an ulterior motive afoot than customer care.

We hope the CMA can resolve this appeal quickly as the Price Control period is supposed to take effect from 1st January 2017 and customers will be shortly compiling Budgets for 2017-18 financial year.

We are of course available to give oral evidence by telephone or in person, should the need arise.

Yours faithfully

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