

Third Package Consultation Team
Department of Energy and Climate Change
Area 4C
Whitehall Place
London
SW1A 2HD

19th October 2010

Dear Sir/Madam

Consultation Response: Implementation of the EU Third Internal Energy Package

Scottish Renewables is the representative voice for the renewable energy industry in Scotland, influencing the legislative, regulatory and financial framework to deliver the best possible conditions for the industry's growth on behalf of over 300 member organisations¹.

The renewables industry is playing a crucial role in Scotland's efforts to tackle climate change and increase the nation's energy security, and must continue to do so in order to meet our renewable energy and greenhouse gas emission reduction targets.

Scottish Renewables welcomes the opportunity to contribute to the consultation. Our key points are as follows:

- We support the availability of the Article 9(9) derogation within the GB market, which recognises that existing structural arrangements ensure independence between transmission undertakings and any generation or supply activity.
- We have concerns regarding the removal of existing objection arrangements for licence modifications in favour of an ex post appeals led process.

The consultation covers a range of proposed changes to the energy market to achieve compliance with the European Union's Third Energy Package. We shall be limiting our response to those sections most relevant to our members – 'Transmission and Distribution Networks' and the 'Role of the National Regulatory Authority'.

¹ For more information please visit www.scottishrenewables.com



Transmission and Distribution Networks

Question 4 - Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?

The separation of transmission undertakings from energy supply and electricity generation set out within Article 9 of the Electricity Directive (2009/72/EC) aims to remove the incentives for vertically integrated undertakings to discriminate against competitors with regards access to the network and commercially sensitive information, in addition to network investment.

On this basis, we support DECC's proposal to make available the Article 9(9) derogation. This recognises that existing and established structural arrangements, including a strong set of licence and code obligations, ensure effective independence between Scottish transmission companies any generation or supply activity. In addition, National Grid performs the functions of system operator, ensuring any market related activity is kept separate from any vertically integrated undertaking. This separation coupled with those licence and code obligations, ensures a greater level of independence than that provided within the Article 9(8) derogation (ITO Model).

Role of the National Regulatory Authority

Question 7 - Implementing Binding Decisions

We appreciate the necessity for Ofgem to implement decisions in an efficient and expedient manner. However, the proposal to remove the collective licence modification process and replace with an ex post appeals process goes beyond the requirement set out in Article 37(17) of the Electricity Directive, which sees that Ofgem as the National Regulatory Authority is "granted the powers enabling them to carry out the[ir] duties...in an efficient and expeditious manner"². By removing the existing collective modification process, DECC is proposing a fundamental change in the nature of Ofgem's relationship with government and industry. A fundamental redesign of existing procedures jeopardises the current industry balance which serves the industry, market and regulator well.

The existing collective licence modification process *does not* prevent Ofgem from implementing binding decisions. Instead, it encourages Ofgem to engage with industry and allows for independent examination prior to a decision being implemented. This level of stakeholder input allows for more effective long term decision making, and whilst it may not be as expedient as an ex post appeals led

² Directive 2009/72/EC of the European Parliament and of the Council (of 3 July 2009)

process, this has to be moderated with just how successful such a system would be for delivering effective decisions.

One potential outcome of the proposed appeals led process is an increase in the concentration of influence among larger market participants. Whilst this process allows for all parties to possess a right of appeal, the reality of bearing such a cost internally precludes all but the largest market participants from mounting an appeal. We would like to point you to SSE's response to the consultation, where the expense associated with launching an appeal is detailed further. Moreover, any additional costs that industry is required to endure are eventually factored into consumer prices.

We hope you find the above comments helpful. If we can help by clarifying any of the points made, please get in touch.

Yours sincerely

[Redacted signature block]

