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Third Package Consultation Team
Department of Energy & Climate Change
Area 4C
3 Whitehall Place
London
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19th October 2010

Dear Sir / Madam,

Consultation on the Implementation of the EU Third Internal Energy Package

Drax Power Limited ("Drax") is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. In March 2009, Drax acquired an electricity supply business, Haven Power Limited ("Haven"); Haven supplies some 27,000 business customers and provides an alternative route to market for some of Drax's power output.

Drax welcomes this opportunity to feed into DECC's consultation on the implementation of the EU Third Internal Energy Package. This response aims to address Question 7 in the consultation document relating to the National Regulatory Authority's ability to implement binding decisions.

Drax believes that the proposed approach to licence modifications is inappropriate. The approach (a) goes beyond that required by the Third Package, (b) has the potential to create greater regulatory uncertainty and (c) may not improve the ability of small parties to challenge licence modifications.

Ofgem currently enjoys a comprehensive set of powers that include the ability to propose changes to a relevant licence and the ability to direct changes to industry codes via Significant Code Reviews (SCRs) (where the transmission licence holder is directed to raise a modification to an industry code document in order to implement a SCR's binding conclusions). As such, Drax does not agree that the proposed changes to the GB regulatory regime are required.

Whilst Drax agrees that Ofgem is not currently able to *force* licence changes, this does not mean that the current collective licence modification process is incompatible with the Third Package; in fact, Drax believes that the current process does comply with the Third Package, allowing the regulator to implement change in an "efficient and expeditious" manner and is, therefore, fit for purpose.

The current process ensures that the regulator is able to propose the required changes to licences, whilst providing the licence holders with an associated process to collectively challenge the chosen approach should such changes appear unworkable or unjustified. Implementing a process that effectively allows the regulator to modify licences at will, would increase regulatory uncertainty and potentially undermine market, thereby investor, confidence. Furthermore, whilst an appeal route has also been proposed, consideration must be given to any costs that a party may incur if they were to appeal a licence modification; if the licence modification appeal route were to work in a similar way to the code modification appeal route, the associated costs may make the appeal route unviable for many market participants, particularly small parties.

Finally, Drax would like to reassert a point made in response to the recent DECC call for evidence regarding the role of Ofgem¹. Drax believes that it is the Government's role to set policy and the role of Ofgem to act in the capacity of an independent economic regulator. As such, it should be the Government that interprets European legislation and sets the high level policy framework for GB, raising and / or amending legislation where required; this should not be the work of the independent National Regulatory Authority. Historically, market participants have been cooperative in the delivery of licence and code changes that have resulted from national legislation and EU requirements; there has been no indication that such cooperation will not be forthcoming in the future.

We look forward to viewing both DECC's and industry participants' responses to this consultation. In the meantime, if you would like to discuss any of the views expressed in this response, please feel free to contact me.

Yours sincerely,

By email



Drax Power Limited

¹ Ofgem review: a call for evidence, July 2010, <http://www.decc.gov.uk/assets/decc/Consultations/ofgemReview/239-ofgem-review-call-for-evidence.pdf>