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Date: 23rd November 2010

Dear [REDACTED]

Consultation on the provision of third party access to licence exempt electricity and gas networks

Thank you for providing SSE and SGN with the opportunity to comment on the above document. We are generally supportive of the proposals set out in the document providing third party access to licence exempt electricity and gas distribution networks, as required under Article 32 of the Electricity and Gas Directives. However we have a few specific comments and concerns regarding aspects of the proposals, particularly:

- the level of detail to be set out in the Acts,
- the commercial regime required to support arrangements and
- implementation timescales.

Further details are set out below.

Regulatory Framework

We support proposals to specify requirements to allow third party access on licence exempt electricity and gas networks in the Gas and Electricity Acts and to appoint Ofgem as the regulatory authority with powers to gather information and enforce provisions. This regime is already well established and understood by parties. By adopting a similar framework for licence exempt networks this will help ensure consistency is maintained where appropriate. That said, we recognise that licence exempt networks can be diverse and circumstances unique to each situation. Whilst arrangements must be robust, they must also be proportionate and may need to provide some flexibility. We believe this should be provided for within the Acts but with regulatory oversight.

We also support proposals to develop a guidance document. We believe this should help provide clarity in relation to the circumstances in which arrangements might apply, high level obligations and processes. This should also help ensure compliance.

Charging Methodology

One of the key elements of third party access is the requirement for charging methodologies and tariffs to be approved by the national regulatory authority, published prior to entry into force and applied objectively without discrimination. As set out above, we agree with DECC's proposals to set out these principal obligations in the respective Electricity and Gas Acts. However we have some questions regarding the associated details. For instance, the consultation document suggests the Act will require a common methodology. Given the diverse nature of such networks we believe the degree of commonality should be a matter for Ofgem to determine when approving the relevant documents, taking account of the individual circumstances. Providing the Act states that methodologies and tariffs should be applied objectively and without discrimination we believe this should provide sufficient protection for customers.

Changes are currently being made to relevant industry codes to allow relevant parties to raise modification to network charging methodologies. It is not clear whether it is envisaged that parties should also be able to raise changes to methodologies associated with exempt networks and if so how, but it is important to recognise that changes in governance arrangements could result in some level of divergence. As such it would be inappropriate to restrict developments on exempt networks at this stage by requiring a common methodology.

Unless licence exempt distribution network operators request, we do not believe it is necessary for Ofgem to develop and determine the initial methodology for the transition. We believe licence exempt networks will already have a methodology for charging on their network and should be given the option to develop or use this as their starting position, subject to Ofgem approval.

Trigger for Implementing Third Party Access Obligations

Paragraph 2.22 states that relevant obligations e.g. installing meters or publishing tariffs will not be imposed before there is a realistic prospect of a request for third party access i.e. the customer informs them in writing that they wish to consider an offer from a named third party supplier. Whilst we support this pragmatic approach we are unclear how this fits with paragraph 2.21 which states that a network operator may not delay third party access pending approval. We believe it is unlikely that a supplier would want to progress a contract with a customer before he had some certainty regarding the methodology and tariff. As such we believe this will ultimately lead to a delay. It would be helpful to understand how DECC believes this would operate in practice, particularly given new obligations to facilitate change of supply within 3 weeks. It would also be helpful to have some clarity regarding which aspects will be set out in the Act and which will be set out in guidelines.

Connection Activities

The objectives set out in the executive summary refer to the competitive market and focus on the changes necessary to ensure customers are able to change energy supplier. However paragraph 2.15 refers to connection arrangements. We believe connection arrangements should be dealt with separately as they are primarily a matter between the customer and the network operator and should be dealt with outside the change of supply process. They should not impinge on the arrangements set out in this document.

Commercial Arrangements

Whilst we agree that high level obligations should be set out in the Act e.g. requiring all parties to facilitate and support the relevant activities, specific details would normally be set out in the relevant Licence and Industry Codes. It is not clear how standards or arrangements would apply to licence exempt network operators. Further clarity on this point would be appreciated.

In relation to metering and settlement arrangements, we are not able to provide detailed comments at this stage. We believe further work is required to consider the various alternatives, in particular the system implications, costs, benefits and implementation timescales.

Implementation

We would appreciate further more detailed information regarding the planned implementation timescales and process. The consultation document states that the Government plans to issue a response to this consultation document and an impact assessment. It would be helpful to understand whether this will include details in relation to the commercial arrangements such as metering and settlement, as mentioned above. We are concerned that timescales are very tight to achieve this and make the necessary changes to legislation by 3rd March 2011.

We hope you find these comments helpful.

If you have any questions please contact me at the above address.

Yours sincerely



