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## **SSE response to the Utility Regulator's reviewing our consultation guidance discussion paper**

**26<sup>th</sup> February 2013**

Dear Greg,

Thank you for giving SSE the opportunity to comment on the Utility Regulator's consultation guidance discussion paper.

SSE is one of Ireland's leading energy utilities, the largest generator of renewable electricity in the all-island Single Electricity Market and Northern Ireland's second largest energy supplier. We are the largest British investor across the island of Ireland, with a considerable proportion of that spent on Northern Ireland's energy infrastructure. SSE requires a stable, credible and well defined regulation framework to make long-term investments.

SSE is pleased to see the publication of this discussion paper, and hope that any recommendations will help to build constructive dialogue between the Utility Regulator and its stakeholders. As the Electricity and Gas Directives (EC/2009/73 and EC/2009/72) state:

*"Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information."*

Consultation is generally the best way to ensure that decisions are transparent and reasoning is tested with sufficient intellectual rigour. Stakeholders should be involved in the process from initial identification of issues, informing solutions, challenging assumptions and ensuring that final decisions are designed around implementation.

At present, we would suggest that transparency is an issue of concern, and that final decisions do not necessarily clearly outline the reasoning behind them. Any decision must, at the least, contain all of the supporting elements of the decision and not rely on supplementary documents or separate discussions to support them.

### **General format of consultation guidance (and 2012 Cabinet Office Guidance on Consultation)**

We would agree that a brief 'Consultation Standard' would serve as a more practical reference point for staff conducting consultation, although a single page document might be

overly ambitious. If this is taken forward, we would suggest the reasons why consultation is worth conducting should be clearly defined at the start of the paper. We would note two things:

- The current consultation guidance note stresses compliance as a key driver for consultation (enables Utility Regulator to comply with statutory requirements to consult/is in line with central Government policy).
- The Utility Regulator is not bound by the Civil Service Reform principles introduced in 2012 along the updated consultation principles<sup>1</sup> referenced in the paper, which shape and support them. Without the supporting commitment to improve informal means of consultation, the 2012 Cabinet Office Guidance on Consultation has less relevance to the Utility Regulator.

An updated consultation standard should reflect these two factors, by properly defining when and for what reasons consultation is valuable (so that consultation resource is better targeted), and by incorporating some elements of the Civil Service Reform Plan that focus on improving policy making capability.

We'd suggest that while many of the collaborative aspects may be too far reaching for aspects of an economic regulator's work, there are two specific points that we think are worth consideration:

- A move toward earlier consultation to properly define a potential problem, rather than consulting at the point at which solutions are to a large extent defined.
- Ensuring that, if required, delivery experts are involved in a regulatory process to ensure that decisions can be practically implemented<sup>2</sup>.

## Process and Engagement

The Utility Regulator has a well defined formal process for consultation, and we would agree that consideration of responses and the provision of feedback are central to that process. However, we would suggest a few additions based on Ofgem's guidance document<sup>3</sup>.

While it is difficult to define the point at which a fully informed final decision can be reached, there are certain factors that can be fully considered. A properly functioning consultation process cannot consist of a conveyor belt of proposed decisions, with their formal start and finish defined by publication. Ofgem state that:

*"Ofgem will give appropriate consideration to all responses received within the deadline [.....W]hether the next document is a decision document, or a further consultation in which final decisions have not been reached, will depend on a range of factors. These include the complexity of the issue, the degree of controversy, the extent to which we have already set out detailed proposals, the nature of the responses to the earlier consultation and timescales."*

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<sup>1</sup> Cabinet Office (2012), Consultation Principles: Guidance

<sup>2</sup> We would note that this is increasingly important when considering decisions that would require multiple changes to retail IT systems and processes.

<sup>3</sup> Ofgem (2011), Guidance on Ofgem's approach to consultation

A process that allows a little more flexibility in terms of matching resources to consultations that require it would be welcome, and hopefully would develop an overall approach that is better targeted.

Similarly, the open letter approach, referenced in the accessibility section of the consultation paper, where Ofgem publish a paper setting out a potential area of work or concern is worth trial and consideration.

## Timing

More flexibility in terms of targeting resources would likely require more flexibility in terms of timelines. We would agree that categorising consultation in terms of a long, medium and short timeline would be helpful. However, for issues of significant interest or impact, twelve weeks should remain the default.

A four week consultation period should only be considered where timelines are constrained by a license, or other statutory/regulatory requirement and this should be fully justified within the paper.

If a less intensive, informal process of consultation (i.e. a workshop or briefing) is more appropriate for the specific issue, it should be considered and if used, it should be referenced and fully justified in a final decision.

## Accessibility

The consultation document suggests some accessibility improvements. We would express some slight caution about introducing *“greater use of online formats for responding to consultations.”*

Pro forma surveys or forms in which to respond to an issue or decision will restrict the quality and quantity of information available to both the Utility Regulator and the stakeholder, leading to less well informed final decisions.

## Regulatory Impact Assessments

While Cost Benefit Analysis does tend to be used as a tool by the Utility Regulator as part of consultation on certain items, relatively few Regulatory Impact Assessments (RIA) are used, even when major regulatory change is proposed. This is in contrast to Ofgem, who are statutorily required to produce and consult on impact assessments where it is making “important” proposals.

We think that RIA is particularly important in Northern Ireland, which has a small customer base on which the fixed costs of regulation that hasn’t been designed around practical implementation will have to be levied. If it is decided that an impact assessment is not required for a proposed decision, we think that the decision should at least be justified in the paper. A presumption should be in favour of conducting an impact assessment, particularly when concerns around cost or practical implementation have been raised in the consultation process.

I hope that you find SSE's comments on this consultation helpful, if you wish to discuss any aspect of our response in more detail, please do not hesitate to contact me.

Yours sincerely

(Sent electronically)  
Connor Powell