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Utility Regulator
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SSE response to the Utility Regulator's consultation paper on further technical modifications to Gas and Electricity Licences

Dear Briega,

I am writing on behalf of SSE in response to the Utility Regulator's consultation published on the 19th March 2013.

We have reviewed the proposed technical modifications and have no objections to the amendments, with the exception of the proposed Gas and Electricity Licences Accounts condition. As explained below, this condition goes beyond Directive requirements and is a duplication of existing right-of-access powers.

All Gas and Electricity Licences Accounts Condition

Three aspects of the proposed modification to the "accounts condition" are of concern to SSE; they "gold-plate" powers to require information, they duplicate existing right-of-access powers and they are not adequately justified.

Gold-plating

Existing legislation under the Electricity and Gas Orders, states that right-of-access to undertakings accounts is for the purpose of ensuring compliance with the requirements of the relevant Articles. Identical requirements existed under Directives 2003/54/EC and Directive 2003/55/EC¹ and no licence modifications were required to achieve full compliance. The consultation fails to explain why a licence change is now considered necessary in order to change the implementation arrangements for a power that has existed for almost 10 years.

The European Commission considers 'gold-plating' to be a risk to its Better Regulation policy, and considers it bad practice for regulatory authorities to impose costs that could otherwise be avoided.

Duplication

Under Article 51 of the Energy (Northern Ireland) Order 2003, the Authority has powers to require information from electricity and gas undertakings where it appears that a licensee may be contravening or may have contravened any relevant condition² or requirement. All electricity and gas licences already require licence holders to prepare accounts, and these

¹ The text in each Directive is referenced as an Annex.

² A relevant condition in relation to a licence holder means any condition of their licence

can be requested if the Authority believes the licence holder is or may be contravening the requirement to produce accounts.

Unjustified

These powers are already sufficient to comply with the requirements of domestic legislation and the Third Package Directives. The consultation states that *'there will be limited costs associated with this modification and that it will not be necessary to allow any additional costs for price controlled companies'*, but any additional requirement inevitably requires additional resource.

Either the modification provides additional regulatory powers, in which case the Utility Regulator has no basis for its assertion as to the associated cost. Alternatively it provides no additional powers and is unnecessary without further justification for the modification. This should be clarified.

As explained in the Commission's interpretative note on the Directives, accountability requires that the Utility Regulator should set out the full reasoning underlying proposals in order to properly justify modifications.

Concluding remarks

The consultation does not justify why the Utility Regulator feels that its existing right of access powers are insufficient for full compliance, what benefits customers may gain from a proposed condition that goes beyond the transposition of the Directives and why those benefits exceed the additional cost of each licensee potentially being required to prepare accounts and statements more than once each year.

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely,

Connor Powell

Annex 1: Earlier articles under Directive 2003/54/EC and 2003/55/EC are identical to the articles under Directive 2009/72/EC and 2009/73/EC and have a clearly defined scope

First article

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article [...], shall, insofar as necessary to carry out their functions, have right of access to the accounts of [...] undertakings as set out in Article [...].

2. Member States and any designated competent authority, including the regulatory authorities referred to in Article [...], shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Second article

1. Member States shall take the necessary steps to ensure that the accounts of [...] undertakings are kept in accordance with paragraphs 2 to 3.

2. [...] undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive 78/660/EC of 25 July 1978 based on Article 44(2)(g)(12) of the Treaty on the annual accounts of certain types of companies(13). Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. [...] undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, [...] activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.