

## Innogy plc

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Dr Eileen Marshall  
Managing Director – Competition and Trading Arrangements  
Office of Gas and Electricity Markets  
9 Millbank  
London SW1P 3GE

Dear Dr Marshall,

### **Comments on Electricity Standard Licence Condition 18: Generating Unit Availability**

Innogy welcomes the opportunity to comment on the above consultation.

In your consultation, "Ofgem Proposed Corporate Strategy 2003-2006", you state that competition is now established in the gas and electricity wholesale and retail markets. You go on to say "competition has enabled Ofgem to withdraw from directly regulating many parts of the market which were subject to regulation at the time of privatisation."

Ofgem enforces compliance through many routes: Licence conditions, codes of practice, competition and consumer law, drawing on its powers under the Gas Act 1986, Electricity Act 1989 and the Competition Act 1998. It is within this context that we seek to express our views on this consultation.

The predecessor to Standard Licence Condition 18 (SLC 18) was introduced into market conditions that were very different to those that exist now.

It is our view that given the remaining Licence conditions (in particular SLC 13) and the powers under the Competition Act 1998, SLC 18 is no longer required and therefore we would urge you to move to the removal of this licence condition by way of a licence modification.

This in no way lessens Ofgem's powers but shows it to be acting in line with present market conditions. If circumstances change and it was thought necessary to reintroduce a licence condition then there are appropriate tests before this is done.

The removal of the licence condition would be our preferred route but we thought it might be helpful to prioritise the options listed. This is done below.

1. **Option 5 - Removal of SLC 18 as a Standard Licence Condition in all generation licences.**  
As stated above, this would be our preferred solution.
2. **Option 1 – Disapplication of paragraphs 7 to 17 inclusive of SLC 18 in Powergen's Licence.**  
We agree with Powergen that having this condition switched on in the licences of some generators unfairly restricts its commercial freedom in a competitive generation market.
3. **Option 2 – Disapplication of paragraphs 7 to 8 inclusive and 10 to 16 inclusive of SLC 18 in Powergen's licence.** We do not see the logic in retaining part of SLC18 within the licences of some generators. This in our mind would still be inequitable.
4. **Option 4 – Switch on SLC 18 in all generation licences.** Clearly a backward step in a competitive wholesale electricity market.

5. **Option 3 – Retention on SLC 18 as a SLC in Powergen’s licence, with all provisions remaining operative.** As Powergen say, it is inequitable for this condition to be switched on in its licence when it is switched off in the licences of other generators of an equivalent size.

This predecessor to SLC 18 was introduced under very different market conditions than those we have now. Ofgem has powers under the Competition Act 1998 to investigate anti-competitive behaviour and other licence conditions which allow it to call for information. For these reasons SLC 18 should be removed rather than just switched off.

We would be happy to discuss any aspects of this response.

Yours sincerely

Alan McAdam  
Economic Regulation