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Our Reference:

Your Reference:

Rochelle Ladd
Strategy and Corporate Transactions Manager
Ofgem
9 Millbank
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29 October 2002

Dear Ms Ladd

SSE Energy Supply Ltd's acquisition of Dynegy Hornsea Ltd

Dynegy Storage Ltd welcomes the opportunity to comment on Ofgem's consultation, as part of the merger process, following SSE Energy Supply Ltd's purchase of Dynegy Hornsea Ltd. Dynegy fully agree with Ofgem's establishment of the substitutes for physical storage in assessing the "relevant" market, as Dynegy defined when purchasing BG Storage Ltd in 2001. The energy market in the UK will benefit from the increase in the number of storage providers.

Dynegy believes that the storage facilities should be subject to general competition law. Competition law is a robust framework in which to regulate these assets and allows significant penalties if SSE were to be found in breach of the law, a real deterrent for all companies. In Ofgem's consultation they point out that SSE has no dominant position as a result of their purchase of Hornsea in any of the relevant markets, or related markets, such as interruptible, gas fired power stations. Dynegy therefore believes that general competition law is sufficient for the regulation of the owners of Hornsea.

Dynegy does not believe that there is any need for "informal assurances", along similar lines to Dynegy's own statutory undertakings. While we appreciate that there were competition issues around the purchase of BG Storage Ltd, by Dynegy, given the size of the assets in terms of both physical storage space and deliverability, with the narrowest definition of the market. However, this is not the case with Hornsea. Ofgem hold no other "assurances" with companies operating on the basis of 13% of a market. Dynegy do not believe that Ofgem has made the case that such "assurances" are appropriate for the owners of Hornsea rather than shippers or suppliers with 13% of their market.

While we feel there is no case for requiring "assurances", if Ofgem insists on "assurances" that are in line with Dynegy's they would only stand for a year, when all the capacity of Hornsea is already sold out for that year. This further makes us believe that "assurances" provide no benefits in the regulation of storage.

Finally, Dynegy would argue that “informal assurances” are non-enforceable and are therefore meaningless. Dynegy feels that such documents create a need for regulation for its own sake. Unless there is a competition issue with the provision of storage and/or associated competitive markets, Ofgem should keep its regulatory remit to a minimum. There is already an extensive set of regulations and laws that force companies to operate in a competitive manner, including the EU Gas Directive. Ofgem’s consultation makes no case as to why further regulation is necessary or desirable. Regulators should always try to use the tools already available to them before adding further regulations to businesses. Regulation can stifle competition and the development of services that best meet the needs of the customers. Dynegy has worked to develop new services and discussed with customers their requirements. Allowing companies greater commercial freedom will directly increase the efficiency of the industry and therefore will benefit all UK gas customers.

Dynegy very much hopes that Ofgem will advise the OFT that the purchase of Hornsea by SSE should be cleared without any ongoing regulation by the OFT or Ofgem.

If there are any issues raised in this letter that you wish to discuss further please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Lisa Waters". The signature is written in a cursive, flowing style.

Lisa Waters

Director, Government Affairs