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Dear Pamela

SSE ACQUISITION OF ATLANTIC ELECTRIC AND GAS

We agree with Ofgem that this transaction is unlikely to result in a substantial lessening in competition in any market. However, we would like to take the opportunity to comment on two regulatory issues arising from it.

We note in paragraph 2.21 of the consultation paper that Ofgem does not expect Scottish & Southern Energy (SSE) to meet the liability associated with Atlantic's renewable obligations for the compliance period April 2003 to March 2004. Atlantic's renewable obligations (RO) for this period are estimated to be £8m. There will also be a default in respect of the month of April 2004.

As stated in paragraph 2.22, the shortfall of nearly £24m in the renewables buyout fund caused by the default of both TXU (UK) and Maverick Energy in 2003 caused reduced confidence in the renewable obligation certificate market. This further shortfall can only reduce confidence still further, which in turn will damage delivery of the government's climate change policy targets.

This event further reinforces the need to amend the RO legislation, including the associated statutory instruments, to avoid further shortfalls arising from this type of event in the future. We urge Ofgem to join with the industry in advising the government to make appropriate further provision in the Energy Bill going beyond the measures already in the Bill when it moved from the House of Lords into the Commons.

We would also ask Ofgem to make an enforcement order against Atlantic in respect of RO compliance in both years, so as to establish the rights of ROC holders to gain such redress as may be available to unsecured creditors.

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The consultation does not acknowledge that there will be liabilities to distributors and other service providers that may have a regulatory impact. It is expected that distributors will require pass-through of some costs and will need Ofgem's endorsement of this. The position has been exacerbated by the fact that SSE has accepted liability for use of system payments only from the point of the customer transfer, despite the fact that we believe there is no corresponding obligation on SSE to pass any recovered revenue or energy refunds, relating to that period, to the administrator.

We believe that this raises a number of regulatory concerns. Any losses that Ofgem allows to be passed through by distributors will be met by the general body of consumers, but the acquiring party will be recovering money that could go towards offsetting some of these losses. Ofgem should take steps to satisfy itself that this arrangement is not unnecessarily being subsidised, at least in part, by the general customer body.

It is also understood that some discussions may have taken place between Atlantic and SSE before the former declared that the business was to be placed into receivership. While the content of those discussions is clearly confidential between the parties, it would be helpful if Ofgem were to consider at what time parties might have had an obligation to consult distributors and/or other parties, in confidence, on how to best manage any financial exposure during the transfer period.

This situation does again continue to highlight the urgency with which Ofgem needs to declare its position with regard to a revised industry credit cover policy. We therefore urge Ofgem to bring this work to a speedy conclusion. However, in doing so, we believe it is essential to ensure that the proposals take full account not only of previous cases but also of the circumstances associated with Atlantic's demise.

I hope that you will find these comments helpful.

Yours sincerely

Denis Linford
Head of Regulation