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11th April 2006

Dear Bridget,

Reform of the requirement for distribution licensees to seek derogation in respect of compliance issues with standard licence condition 5 of the distribution licence.

Thank you for your open letter of 28th February 2006 providing us with the opportunity to comment on the proposed simplified P2/5 regulation arrangements. In general SSE are supportive of initiatives to reduce the burden of regulation.

With regard to the proposal to simplify the arrangements relating to the management of compliance with P2/5, we believe that such an initiative could potentially be of benefit to all stakeholders. P2/5 was developed in the late 1970s using probabilistic analysis of potential failure scenarios to identify the required levels of security for six bands of demand. Circumstances have changed significantly since that time and distribution licence holders are now under very different pressures and incentives, from both the regulator and from increasing customer expectations, with regard to security of supply. In our view, therefore, the proposed simplified P2/5 arrangements are timely.

However, we believe that further clarification is required before we could give unqualified support to the proposal. Firstly, what exactly are the specified circumstances under which derogation would be given? We would expect such circumstances would include unexpected third-party action and delay in obtaining way-leave or planning consents, but exclude inaccurate demand forecasting or failure of the licensee to plan and develop the distribution system in accordance with statutory obligations.

Secondly, we believe that the self-regulation criteria are vague and could be open to interpretation. This transfers risk to the distribution licensees, which we do not consider to be an acceptable consequence of the reduced regulatory burden. For example, the criteria will need to be clear on what constitutes 'a significant impact on the performance of the overall system'. Furthermore, we would want to be sure that the requirement to maintain documentation and develop measures to mitigate the impact of non-compliance does not impose an administrative burden that outweighs the benefit of reduced regulation.

Given the need for such clarification, we would suggest a workshop be convened to discuss the practical implementation of the proposed simplified P2/5 regulation arrangements. The workshop should seek to agree a list of specified circumstances where the simplified arrangements apply, define what constitutes a significant impact on the performance of the overall system, agree a standard for monitoring such non-compliant networks and, ideally, update the Derogation Guidance Note to include all of these details.

Notwithstanding this need for further clarification, we would be supportive of a staged implementation plan as outlined in the open letter. However, we would wish to see a review of the impact of the proposed new arrangements more frequently than simply at the end of a two-year assessment period. We would suggest that the arrangements be reviewed biannually over the two years.

If you have any queries on the above, please do not hesitate to contact me.

Yours sincerely,

Malcolm Burns
Regulation Manager