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Dear Mrs Geitona,

ERREG consultation implementation of the “Third Energy Package”

Scottish and Southern Energy plc (SSE) is a vertically integrated Energy Company based in Great Britain. It has interests in gas distribution and supply, electricity generation, transmission, distribution and supply and other non-energy interests such as telecoms, contracting and water. We operate predominantly in the GB and Irish markets but have wider European interests in electricity generation and supply.

The third package of energy legislation will be important in establishing a consistent market framework for energy throughout Europe. The particular features of this package that will facilitate this are the cross border Codes that will be developed by the new ENTSOs and the Agency. It is therefore essential that the creation of these and the governance arrangements regarding their initial creation and subsequent modifications are transparent and accountable. It is also important that stakeholders are fully involved in their creation.

We have set out below our views on each of the specific questions in the consultation. Our response is not confidential.

Stakeholder Interaction

- A *Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for later decision by the Agency as its own process.*

The development of Codes for the implementation of the Third package could potentially involve a very large number of consultations. It is therefore important at the initial stages to group the work into packages so that several aspects (and possibly several codes) can be covered by a single consultation. The consultation process itself should be largely as set out in annex 2 and we welcome the recognition that adequate time should be allowed for responses, taking into account the complexity of the issues and the time of year that consultations are undertaken.

The extensive nature of the proposed consultation is a concern as it appears that there is the potential for duplicate consultation. For example, ENTSO consults on the drafting of a Code and, having taken into account any relevant comments from that consultation, makes a recommendation to the Agency. The Agency then carries out a second consultation on the

ENTSO recommendation. This could be confusing and time consuming unless well structured.

As a general point on consultations, we would welcome greater transparency from ERGEG as to the ERGEG work group responsible for a particular consultation and the particular regulator(s) leading the work. This would allow for written consultation responses to be followed up with, for example, a phone call to expand on or clarify aspect of the written response, or to seek clarification on particular aspects of the consultation.

B *Could the fora (i.e. Florence, Madrid, London) be further enhanced to allow stakeholders to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?*

At present, the current fora do not adequately represent all stakeholders. This is because individual stakeholder views are invariably represented through the relevant trade Association. This means that a legitimate view might not be considered, because the Trade Association necessarily presents a consensus view of its members. This might mean that the trade association is silent on particularly difficult or contentious issues. A possible way to enhance the fora would be to invite stakeholders with opposing viewpoints to present their opinions.

C *Could focused ‘ad hoc panels’ of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation) to the **Florence, Madrid, and the new London Fora** to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the Fora in close cooperation with energy consumer and network user representatives?*

It is important not to have a proliferation of consultation arrangements as this will be confusing and resource intensive for stakeholders. We believe that any ad-hoc panel of experts should contribute to the development of consultations that are already in preparation so that the consultation can, as far as possible, present a balanced view of all stakeholders.

D *Are proposed measures to ensure the **proper public accountability** of the Agency broadly adequate?*

We agree that the Agency should produce an annual report and an evaluation report. However, it is not clear to what extent the Commission can control or limit the expenditure of the Agency. In the best interests of customers, the Agency should have to account for its expenditure and budgets should be rigorously reviewed.

E *What do you consider to be the key elements for the successful establishment of the Agency? What are the most important issues relating to the NRAs and their role within the Agency?*

Since the key tasks of the agency are in providing opinions and, in some cases, decisions the key elements involve the Member States establishing National Regulatory Authorities having sufficient authority and powers to participate effectively in the decision making process.

Development of framework guidelines and technical codes

A *Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?*

The priorities seem reasonable, but it should be recognised that all aspects are important to complete the overall framework for European trading.

B *Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?*

We believe that the areas could more simply be grouped into two main headings, Technical and Market Codes

Under the heading of Technical Codes, we would include

- Security and reliability
- Operational procedures in emergency
- Interoperability
- Network planning
- Energy efficiency

And under Market Codes would be

- Grid Connection and Access
- Data exchange and settlement
- Capacity and congestion management
- Transparency
- Balancing rules and reserve power rules

Each volume of Codes could then be populated by individual Codes for each topic. For example, Market Code 1 might relate to Grid Connection and access. Such a grouping would also be helpful in identifying the key stakeholders. For example, in determining the technical Codes, it is mainly the TSOs that would be affected, whereas the market Codes could affect all market players. This would lead to a more efficient consultation process.

C *Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?*

We believe that the first priorities for full harmonisation should relate to security of supply such as the security and reliability Codes, interoperability and operational procedures in an emergency.

D *Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?*

As a first pass the list would appear comprehensive. Certainly the key areas have been covered, but it is possible further areas of work will appear through the detailed work in developing the codes.

Interaction between Agency and ENTSOs

- A *Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?*

We agree that ENTSO should open its work groups to experts from the Agency and the Commission. This could help to deliver first drafts of Codes that are closer to meeting the requirements of all stakeholders than if ENTSO drafts the Codes in isolation.

Regional Coordination

- A *Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?*

We agree that it is very important to ensure that measures adopted at regional level are fully consistent with later integration at European level. It therefore seems sensible to adopt the proposals in paragraph 69 to ensure that, for example, issues which emerge at regional level that have wider European implications are subject to scrutiny and wider consultation before adoption.

- B *How do you envisage the Regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of network codes at EU level?*

We believe that their role will diminish over time as regional differences are eliminated and market rules are more closely aligned EU-wide.

I hope this information is helpful and if you have any questions or need further information please give me a call.

Yours sincerely

David Densley
Head of European Affairs