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## HEALTH AND SAFETY COMMISSION

### AN OVERVIEW OF HSE'S RELATIONSHIP WITH THE OFFICE OF THE GAS AND ELECTRICITY MARKETS (OFGEM)

A Paper by Mike Leppard

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Cleared by Jane Willis on 10<sup>th</sup> December 2003

#### Issue

1. A scheduled update on projects and issues of concern to HSE arising from its relationship with the Office of the Gas and Electricity Markets (Ofgem) and the current and future resource implications for HSE of this work.

#### Timing

2. Routine.

#### Recommendation

3. The Commission is asked to note the current Ofgem projects and initiatives that have implications for both health and safety and resources within HSE (**Annex A**) and agree that the Chair write to the new Chairman of Ofgem along the lines of the draft in **Annex B**. The Commission is asked to support HSE's view that earlier and more effective consideration of safety matters by Ofgem is required.

#### Background

4. It was agreed in 2001 that the Executive would periodically update the Commission about safety issues arising from the work of the Government's economic regulators. HSE has established a good working relationship with the following regulators: the Office of Water Services (Ofwat); the Postal Services Commission (Postcomm); the Office of Communications (Ofcom) and Ofgem.
5. The level of safety risk is greater within the gas and electricity industries and therefore the majority of HSE's contact is with Ofgem. HSE's relationship with Ofgem is framed by a Memorandum of Understanding (MoU), which highlights their statutory duties under the Utilities Act 2000 to consult the Commission on issues of safety and take into account any advice given.

6. HSE's Solicitor's Office has advised that the Commission can ask for an explanation where HSE guidance has not been followed. Consultation at a late stage is not considered proper and effective consultation and contravenes the Utilities Act. There have been examples of Ofgem initiatives where this has been the case.
7. At a practical working level, a number of HSE Directorates work with Ofgem; on-going projects and safety issues are reviewed and discussed as appropriate. Further dialogue with Ofgem is conducted through bi-annual HSE/Ofgem liaison meetings.
8. An outline of some of the gas and electricity industry initiatives in which HSE has an interest is included for information in Annex A. This highlights both the current developments within these projects and HSE's safety concerns. There are no such outstanding concerns with the water, postal and communication industries.

## **Argument**

9. Some projects produce a conflict between Ofgem's approach to deregulation and HSE's remit of ensuring that levels of safety are either maintained or improved. For example, Ofgem impose continuity of supply requirements on electricity distributors and penalties for interruptions. This can lead to operators working on or excavating around live cables during routine maintenance, whereas HSE regulations place the emphasis on making lines dead first if possible. These differences can result in the need for HSE to implement remedial action. Ultimately, such conflict could lead to proposals for change in health and safety legislation. This is an inefficient and resource intensive way of working for HSE.
10. Ofgem is now committed to producing Regulatory Impact Assessments (RIAs) on all new significant policies as outlined in the Government's Energy White Paper, published in February 2003. The assessments will include any impact on security of supply and the environment, but ideally should also assess the impact on health and safety legislation. Ofgem also requires every project to be approved by a Project Initiation Document (PID) prior to commencement. Ofgem have promised to review this process to ensure that there is adequate reference to health and safety. It is expected that effective use of both these systems will address potential safety issues of future projects at an earlier stage.
11. At present where projects are handled by Ofgem personnel with a technical background the safety issues and associated risks are usually addressed. The majority of Ofgem staff, however, have an economic background and are more familiar and naturally concerned with maximising the economic benefits of deregulation; it is these staff that need to be encouraged to give more consideration to the impact of their work on health and safety. This would help ensure that Ofgem initiatives do not result in reduced levels of safety within industry. To help with this HSE took part in a seminar at the Ofgem offices in November on safety issues in the gas and electricity industries with presentations from field operations staff.
12. Although the emphasis should be on Ofgem to identify and address safety issues, HSE must also take advantage of opportunities to voice its opinions and concerns when

Ofgem publishes forward-looking consultation documents. One such key document is Ofgem's annual corporate strategy. This is produced every year and the strategy for 2004-2007 will be issued early in 2004.

13. Despite recent encouraging signs, both HSE and HSC need to continue to reinforce the message that it is Ofgem's responsibility to carry out suitable and sufficient health and safety risk assessments of its economic policies. Ofgem produce appreciable numbers of proposals and publications and need to develop a more systematic process to screen for health and safety issues. This screening must be carried out at an early stage so that HSE's expertise is called upon only as a last resort as opposed to significant reactive involvement being required later on; current levels of policy and inspector input are only sufficient to respond to specific points. If Ofgem addressed and dealt with safety considerations as an integral part of their daily work then the drain on current resource levels would be reduced.
14. Continued liaison with Ofgem and other economic regulators is essential. Aside from new projects, several issues have arisen from developments within industry and are ongoing concerns requiring HSE's input. These include live working on electrical systems and matters relating to domestic gas safety.
15. It is important to recognise, however, that effort has been made by both HSE and Ofgem to improve the liaison and consultation arrangements currently in place and progress has been made. HSE will continue to build effective working relationships with key Ofgem personnel, but the message needs to be continually reinforced. With both a new Chairman, Sir John Mogg, and Chief Executive, Alistair Buchanan, officially in post from 1<sup>st</sup> October, it is an opportune time to express HSC/E's views and concerns at a high level.

### **Consultation**

16. Internal consultation with Policy Group, Hazardous Installations Directorate, Field Operations Unit (Utilities Section), Corporate Topic Group for Electrical Control Systems and Solicitor's Office.

### **Presentation**

17. No external interest.

### **Costs and Benefits**

18. There is no expected change to the cost to HSE arising from Ofgem's work. If the regulator becomes more proactive, however, only calling on HSE for advice and guidance in particularly difficult areas, then the benefit will be a lower demand on HSE time and resource. A greater emphasis by Ofgem on addressing the impact on safety arising from its projects will keep the business risk to HSE at an acceptable level.

## **Financial/Resource Implications for HSE**

19. Earlier and more effective consideration of safety issues by Ofgem will have a positive implication for HSE; existing staff levels should be sufficient despite less access to specialist expertise. However, problems such as those experienced with the gas meter unbundling initiative place an additional burden on existing resources, which are then focussed disproportionately in one area.

## **Environmental Implications**

20. None.

## **Other Implications**

21. The potential exists for problems of safety in the water industry as Ofwat progresses deregulation. Again early consideration of safety issues by the regulator is important, but the associated risks are less serious due to the nature of the utility. HSE are working with Ofwat to raise awareness of safety within the industry.

## **Action**

22. The Commission is asked to note the current status of the initiatives and work of Ofgem and the safety issues associated with these developments (Annex A). The Chair is asked to support HSE's message that Ofgem must consider safety issues at an early stage of their work by sending a letter along the lines of the draft in Annex B to the Chairman of Ofgem.

## ANNEX A

### CURRENT OFGEM PROJECTS AND INITIATIVES

#### Electricity Issues

1. The British Electricity Trading and Transmission Arrangements (BETTA) will develop current arrangements in England and Wales to create a British-wide market for the wholesale trading of electricity. Competition will be extended to Scotland for the first time by removing commercial barriers on the use of the Scotland-England interconnector. A System Operator (National Grid Company), independent of electricity generation and supply, will control access to and operation of the transmission system and interface with regional Transmission Owners. HSE is interested in the effect of these interfaces on the application of and responsibility for safety instructions and asset operation and maintenance.

Nuclear Safety Directorate (NSD) are interested in the effect of BETTA on the reliability of electricity supplies to nuclear installations. Existing agreements contain special procedures for planning transmission line outages in the vicinity of nuclear power plants and these will need to be maintained in Scotland when BETTA goes live. NSD liaise with Ofgem and the National Grid Company on this and other supply reliability issues such as outages near smaller sites not connected to the grid, including Sellafield.

2. The issue of live working impacts several project areas including the quality of supply and the construction and maintenance of underground services. HSE and Ofgem are seeking agreement over the requirements of both the Electricity at Work Regulations 1989 (EAWR), which places a strong emphasis on working on dead systems, and the Electricity (Standards of Performance) Regulations 2002, which details penalties payable by Distribution Network Operators (DNOs) following the interruption of supplies. HSE have drafted a Sector Information Minute (SIM) for the benefit of HSE inspectors and this has been passed to Ofgem for approval and circulation amongst DNOs such that a common stance is adopted.

Note: a review of the EAWR will also recommend further reinforcement of the legal restrictions on live working (section 14) through the addition of Approved Code of Practice (ACoP) guidance.

3. The EAWR review may also recommend that the installation of all new cables should be recorded during construction and that information relating to existing lines be included when located by excavation work. These requirements would be in line both with proposed amendments to HSE regulations and with other departments' legislation. Ofgem have also recently indicated that they would like to develop a system for identifying the presence of underground cables similar to that adopted by Transco in the gas industry.
4. DTI and Ofgem co-chair the initiative on distributed generation, which seeks to meet the government's target of generating 20% of electricity from renewable sources by 2020. These sources include microgeneration, wind power and combined heat and power units. Some of these are designed to feed excess generated capacity back into

electrical networks. The development and application of this technology is not currently expected to meet the government's target, however. A Technical Steering Group (TSG), which HSE attends, oversees this initiative and reports to the Distributed Generation Co-ordination Group. The full safety implications of the initiative are unclear, but again there are issues of live working and asset operation and maintenance. Safety cases will also be required on the introduction of new equipment and technology.

## **Gas Issues**

5. The main cause of concern with the gas market is the unbundling initiative related to liberalisation of domestic meter services. HSE is concerned over the inclusion of the pressure regulator in the scheme, the potential for unqualified DIY work and the maintenance of suitable safe working pressures. A code of practice for meter installers has been developed, but the governance and legal status of this is not yet clear. An independent risk assessment has been commissioned and is planned to be complete by January 2004, but HSE want to see a commitment from Ofgem to the implementation of its recommendations and to maintain its responsibilities with regard to safety in the industry. This and other projects below have implications for the Gas Safety (Management) Regulations 1996 (GSMR) and the Gas Safety (Installation and Use) Regulations 1998 (GSIUR), both of which are currently under review.
6. Agreement was previously reached between HSE, Ofgem and Transco on a 5 year accelerated mains replacement programme for the period 2002 – 2007, which would put Transco in a position to decommission the remaining 'at risk' iron gas mains within the following 25 years. The priority need to replace medium pressure ductile iron mains is already complete. HSE is content with the current policy and will approve replacement programmes in accordance with amendments to the Pipelines Safety Regulations 1996 in due course. Transco's compliance in meeting these programmes will continue to be monitored.
7. The above replacement programme, along with public safety issues of security of supply and emergency service provision, will be a concern if Transco proceeds with Project Blackwater, the proposed sale of a number of its eight regional distribution networks to independent operators (MISC/03/14). HSE is working closely with Transco and Ofgem on these proposals, particularly concerning safety case issues for both Transco and any future operators of the networks. Material changes to Transco's safety case and new safety cases will have to be accepted by HSE before the changes can be made. HSE must be satisfied that as a minimum there is no dilution of safety standards and again there will be legal and policy implications for GSMR.
8. The UK is likely to change from being a net exporter to a net importer of gas within the next five years and some predictions are that by 2020 three quarters of the UK's gas demand will be imported. As well as security of supply issues, there may be implications for safety due to the potential for gas sources to fall outside the current UK quality specifications. DTI have commissioned a study in this area and this will be followed by input from HSE and Ofgem to develop possible options. This work will tie in with the Ofgem led Joint Energy Security of Supply (JESS) group.

## ANNEX B

### DRAFT LETTER TO OFGEM CHAIRMAN

Sir John Mogg,  
Chairman,  
The Office of Gas and Electricity Markets,  
9 Millbank,  
London SW1P 3GE

Ref: HSE/Ofgem relationship

Dear John,

I would like to congratulate you on your recent appointment as Chairman of Ofgem.

This seems a good time to affirm the relationship between Ofgem and both the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE).

I am encouraged by recent discussions that have taken place between our organisations at working level concerning important safety issues arising from Ofgem's initiatives. Clearly it is important that, at all levels, we develop an effective working relationship and foster mutual understanding of our respective roles and responsibilities. In particular, we believe it is important that Ofgem considers and addresses health and safety issues at an early stage in project development, by carrying out suitable and sufficient risk assessments of its policies. This will further enhance the implementation of both Ofgem's and HSE's statutory remits.

I know that Ofgem and HSE have been actively seeking ways to ensure that our organisations work well together in the future. HSE intend to continue to work closely with Ofgem to be in a better position to understand and respond to issues affecting safety within the utility industries.

HSE welcomes being consulted by Ofgem, including the opportunity to comment on matters outlined in Ofgem's forthcoming three-year strategy document for 2004-2007. I was also pleased to learn that HSE staff had been invited to take part in your lunchtime seminar programme; I hope events such as these will further strengthen our relationship.

Yours sincerely,

Bill Callaghan