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Dear Peter

Digital Britain Report: consultation on proposed new duties for Ofcom on resilience – secondary information

Scottish and Southern Energy plc (SSE) is, as you may know, a major energy company¹ and relies on communication networks to carry out the work of its core businesses in electricity generation; transmission and distribution of electricity; and the operation of gas storage facilities and gas pipeline networks – all forming part of the UK's critical national infrastructure. This is in addition to the normal business reliance on communications networks and services to support commercial business operation and contact with customers. SSE is also active in the communications market in two respects: we offer retail telephony and broadband products; and we have a telecoms operator subsidiary that uses its own private network to provide capacity and bandwidth services to other communications providers and to large business customers.

SSE is therefore interested in the development of the communications markets and has contributed views to the Digital Britain project. We have responded to the recent consultation on the proposed changes to Ofcom's duties and welcome the further opportunity to respond on matters related to resilience of the communications infrastructure in particular.

¹ SSE owns around 10,700MW of electricity generation capacity, including its share of joint ventures and associates. This makes it the second largest electricity generator across the UK and Ireland.

SSE supplies electricity and gas to over 9 million customers within the UK's competitive electricity and gas supply market. It is the second largest supplier of energy in the UK.

SSE is responsible for around 127,000km of overhead lines and underground cables, distributing electricity to 3.5 million homes, offices and businesses in the north of Scotland and central, southern England. SSE also owns and maintains the 132kV and 275kV electricity transmission network in the north of Scotland.

SSE holds 50% of the equity of Scotia Gas Networks plc, which owns and operates the Scotland and the Southern gas distribution networks. The networks comprise some 74,000km of gas mains, delivering gas to around 5.7 million industrial, commercial and domestic customers in the UK.

Our response to the consultation questions is attached as an appendix and below we set out our major comments on resilience issues.

Resilience in communications networks

We welcome this Government initiative to seek to establish a framework for developing and increasing focus on the resilience of the UK's main public communications networks. We agree that these networks support and underpin the activity of nearly every business in the UK as well as connecting private individuals with each other and to an increasing variety of services, including emergency services. This factor alone would be reason enough for Government to seek to ensure that the resilience of the networks had adequate focus both at Government level and within the regulatory framework.

Resilience of Critical National Infrastructure

Beyond the general areas of economic and social reliance on communications infrastructure mentioned above, we believe the Government should consider the dependency of the country's wider Critical National Infrastructure (CNI) on communications networks. For energy utilities such as our own company activities, these communications networks are vital to maintain the operation of power generation, transmission, distribution and supply of energy on a day-to-day basis. While utilities self-provide much of the required communications infrastructure, there is a degree of reliance on the operation of parts of the public communications networks and on ongoing, uninterrupted access to key communications infrastructure such as spectrum for local, regional or national business radio networks.

Examples of recent and ongoing issues in these areas include:

- The potential impact of BT developing its core networks towards the internet-protocol "21st Century Network" architecture on the continuing availability of leased circuits used for protection signalling in electricity networks;
- Against the background of spectrum liberalisation and trading, the efforts by the energy companies, with Ofcom's assistance, to secure the spectrum used for "fuel and power" purposes against inadvertent loss of assignments;
- Current Ofcom proposals to make more information available on radio spectrum assignments, including those used by companies in the fuel and power sector, unless exemptions can be shown to apply.

It appears to us that Ofcom's ability to assist in these areas would be enhanced if the framework of duties within which it works included recognition of the ways in which communications networks and infrastructure are used to support CNI and the vital importance of Ofcom's own work in maintaining the security and resilience of this wider national infrastructure.

Ongoing Role for Government

In the energy sector, there is a long history of ongoing coordination of resilience and security issues through Government-led fora. The primary forum is the Energy Emergency Executive Committee (known as 'E3C') which has been established by DECC. The energy regulator Ofgem is part of these arrangements as are all relevant

major companies and trade associations in the energy sector, plus the Health & Safety Executive and Consumer Focus. We believe this is an effective model for developing a common cross industry understanding of relevant issues of national interest, testing preparedness, dealing with ad-hoc issues and developing best practice with respect to resilience matters. In practice, regular liaison at senior level between industry, regulator and Government on these resilience issues develops contacts, ensures progress is being maintained on identified issues and provides a framework for rapid coordination on any emerging issue.

We recommend that Government develops a similar framework for the communications industry. It would be important, in our view, for the Government to retain leadership of the coordination activity in order to establish appropriate authority for the relevant groups and to promote links with other Government activity such as the energy sector E3C forum mentioned above. Given the UK's increasing dependence overall on communications technologies, we consider that there are likely to be a number of areas where such wider coordination across communications, energy and potentially other sectors on resilience and security matters would be beneficial.

Identification of industry roles within the communications sector

In order to establish which companies would be covered by proposed obligations to provide information on communications infrastructure resilience, we believe it would be necessary for a clear designation of a “public communications infrastructure provider” to be developed, potentially backed by legislation. This would clarify which companies would be affected and allow them to provide information on the costs of the proposals to help the Government complete its impact assessment.

We think it would also be helpful for this definition to be developed for other reasons associated with the development of the communications market. For example, in order to further the Government's aims in the development of *Digital Britain*, we believe it will be necessary for such public providers to be required to provide various types of interconnection to other potential infrastructure providers who could become involved in the provision of next generation networks. Similarly, we believe that such public providers should be required to provide open and non-discriminatory access to their infrastructure so that the market for service provision over the national infrastructures can develop on the basis of a level playing field. The development of appropriate obligations can more readily proceed when there is clarity on the companies to which they would apply.

Another example of a role for these providers is that of maintaining accurate information about network use and the types of product in use at different “end use” connection points to their communications networks. As the aspirations of the *Digital Britain* project for digital inclusion are taken forward, comprehensive information on the take-up of different publicly available services and other network-specific information on traffic and quality measures are likely to be useful reference material for Government policy development.

Conclusion

We believe that it may be appropriate to give Ofcom a further role in communications network resilience issues but, for such a fundamental area of the UK's infrastructure, we believe that it is also appropriate for the Government to become and remain involved. As the Government is considering legislation in this area, we believe there

is also an opportunity to align Ofcom duties with the wider overall interests of UK on resilience – in other words, to include consideration of the Critical National Infrastructure reliance on communications products and infrastructure. Finally, for a number of reasons, we believe it would be helpful to have a clear identification of the relevant public communications infrastructure providers that the Government sees as being required to provide resilience-related information. We expect that these same providers will form the backbone of the “digital utility” infrastructure in the future.

I hope these comments are of interest and would be happy to discuss them further.

Yours sincerely

Aileen Boyd
Regulation Manager

Consultation Questions**Q1: Do you agree that Ofcom should have the power to require that electronic communications operators report to Ofcom on risk assessments carried out?**

We agree with the intention of this obligation but, as discussed in our covering letter, we believe that the Government should coordinate the body to which the relevant communications providers report on their risk assessments. It may be appropriate for Ofcom to collate and report on the information but, as discussed, we believe its role is best established as being part of a wider group formed to address issues of resilience and security across the communications sector as a whole (in a similar way to the E3C arrangements in the energy sector).

Q2: Do you consider that Ofcom should have the additional power to require that further risk assessments be undertaken by relevant companies if those supplied are deemed insufficient. If so, how should this assessment process take place?

No. As discussed above and in our covering letter, we believe that Government needs to take the lead in assessing what actions are needed to improve communications infrastructure resilience and security. Through regular engagement with relevant companies, the use and evaluation of exercises to test resilience and seeking voluntary cooperation to deal with any individual company issues arising, we consider that the Government is best placed to progress and develop overall resilience. As a backstop, it would also have resort to legislative measures if company cooperation was not forthcoming. We do not believe it is necessary to require Ofcom to become involved, given (as discussed in the consultation) the uncertainties involved in Ofcom's own resource requirements and the likely increase in regulatory uncertainty for the relevant companies.

Q3: Should risk assessments be based on existing Government processes?

No comment.

Q4: Do you agree there should be a duty on relevant companies to provide information to Ofcom on their emergency plans?

No. We do agree with the comment at paragraph 3.2.4 of the consultation document that "it is important to have a collaborative approach to testing industry plans and coordinating this with Government" and have set out in our covering letter how we believe that this necessary coordination could be achieved. While Ofcom would have a role in the coordination arrangements, which might entail collating information from relevant companies, we believe that it is important for the Government to lead the coordination on emergency planning just as set out in response to questions 1 and 2 in relation to risk assessments.

Q5: Do you agree that there should be a duty on such companies to a) test emergency plans and b) participate in Government exercises as and when necessary to ensure overall resilience?

Yes.

Q6: Are there any other issues concerning the resilience of networks that you believe should be addressed in legislation?

As discussed in our covering letter, we believe that the role of the communications sector in the wider context of the UK's Critical National Infrastructure should be more fully recognised in legislation. To facilitate this, we suggest that Ofcom's duties could be amended so that consideration is given to the effect of its activities in regulating the sector on the CNI use of communications infrastructure. Alternatively, a provision

for the Government to provide guidance to Ofcom on policy objectives (as in energy and water sectors for “social and environmental guidance”) may be a flexible means of ensuring that Ofcom works within the overall policy framework set by Government, including on matters of national security and infrastructure resilience.

Q7: Do you think that the proposals in this consultation document are in line with the expected outcome of the Framework Review?

From the information presented, the proposals appear to be in line with expected developments in European legislation.

Q8: What do you think the economic impacts of these proposals will be upon your business and do you have any comments on the impact assessment?

SSE does not expect to be directly affected by the proposed requirements to provide information as our communications network is not a “public” one. As noted in our covering letter, we believe that in order for Government to complete its assessment of costs for the impact assessment, there would have to be clarity on which companies would be covered by the new measures so that they could provide cost estimates.

As a user of the communications infrastructure, we would expect a positive benefit over time from increased Government and regulatory focus on the resilience and security of the public networks – particularly if there is also coordination with the Government-led activity to maintain the resilience and security of the energy networks.

Q9: Are there any other points you wish to make in relation to the issues covered in this consultation?

We have addressed a number of points in our covering letter.