

Locking the Stable Door

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The likely next government has, it appears, said it will cut Ofgem down to size and repatriate its strategic powers. A announcement of the details is expected some time before Copenhagen (7-18 December).

The new role appears to be an odd combination of 'pure' market regulator and consumer protection body. What makes the latter especially odd is that various consumer bodies have only recently been collapsed into one and taking the energy function out of that big brand new consumer body and plugging it back into Ofgem has no obvious rationale. (The Tories *do* know these bodies have merged, don't they?)

So far as the 'pure economic regulator' bit of the new role is concerned, it seems clear where one might want the slimming regime to focus. Right now Ofgem has on its non-core agenda:

- ◆ Analysing the markets' capacity to cope with the credit crisis and its reliance on imported gas;
- ◆ Changing the industry rule-making processes to unseat what it calls "vested interests";
- ◆ Running a new, expensive, unwanted and widely derided off-shore transmission regime;
- ◆ Pushing for smart meters;
- ◆ Contributing to "the European energy scene"; and
- ◆ Advising "government how to meet its 2020 target and, along the way, how to mitigate fuel poverty.

Since all this work essentially involves policy or its addendum, it should all be expected to go back to government if Ofgem were restricted to what was, once upon a time, its day job. Is there any chance that will happen?

A fly in the ointment of any retrenchment is the law. Late last August new European Directives came into effect, forcing Member States to arm their energy regulators with a range of powers.

These powers include, predictably, opaquely and vaguely, whatever may be needed to "promote a competitive, secure and environmentally sustainable internal market in electricity". If one took that

phrase to court to argue that the regulator did or didn't have the relevant powers, it's hard to know what the outcome might be. To that extent it is broadly meaningless and is to be understood as just a hand-wave.

Much more meaningfully, however, the regulators are to have powers to monitor investment in generation capacity and they are to have powers to promote system adequacy. These are substantive powers that go way beyond 'pure economic regulation', no matter how broadly one construes the phrase - and several of the items on the regulator's non-core agenda listed earlier clearly aim at these outcomes. So even though these were once 'extra-curricular' activities, they are extra-curricular no more.

Now is not the time to be complaining that with this massively political agenda the regulator is stretching the boundaries of its powers by straying into policy matters. It's too late; the horse of pure economic loss bolted some time ago and the Tories will have a hard time getting it back in its stable.

That doesn't mean everything on Ofgem's agenda must stay. The new government should repeal, *immediately*, the bizarre, anti-competitive offshore transmission regime that began life this year. And Ofgem should be prohibited from having any kind of role in the market. It should also be pushed back from the more clearly political of its activities.

But trimming the regulator back still leaves it with wider powers than anyone expected. That is something, with whatever bad grace, we have to accept - while blaming our politicians that they have left us with regulation by a body that is substantially free of government direction but is subject to direction by the European Commission. It is a regulatory regime of a kind no-one could possibly have wanted. Although the Tories cannot do what they say they will do, what they *can* do - what they *must* do - is devise a regime to ensure that issues of this kind are brought before its own constituents to enable them a say in the matter before they become enshrined in law.