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31 March 2023

Dear Louise,

### **Call for input on the Non-Domestic gas and electricity market**

EDF is one of the UK's largest electricity suppliers to non-domestic customers, across SME, mid-market and large customers. In 2021 we supplied over 30TWh of electricity to over 230,000 business customers. We share Ofgem's interest in a non-domestic market where customers receive great service and fair prices, from suppliers that are financially resilient and able to invest and provide customers with access to services and products that enable the transition to net zero.

EDF welcomes the opportunity to contribute further to Ofgem's ongoing review of the non-domestic electricity and gas market, via this call for input. Whilst we appreciate Ofgem has a duty to ensure any reports of harm to customers are thoroughly investigated, it is important, that as a responsible regulator, Ofgem properly validates the concerns raised using a detailed analysis of the facts, supported by robust data.

As Ofgem acknowledges in this call for input, the energy market in Great Britain (GB) has been subject to significant sustained turbulence and wholesale market volatility, exacerbated by the invasion of Ukraine, and other factors. Alongside widespread supplier failures in the domestic market, resulting in significant mutualisation of costs, numerous suppliers have also exited the non-domestic market due to insolvency, and others have withdrawn from specific segments.

Despite the challenges, EDF has chosen to stay in the market to serve existing and new customers, continuing to invest in improved services and offerings, particularly products and services that will support our customers to achieve net zero, helping our business customers reduce their overall costs and exposure to volatile energy markets. Investing in these services for the future benefits of British business requires a profit to be made by suppliers. EDF has always maintained a position of offering fair and competitive prices to our customers. We believe that customers' interests are best served through the operation of a competitive supply market where customers have a choice of products and suppliers.

As Ofgem has noted in its initial Request for Information (RFI) findings, recent falls in the wholesale market are already showing signs of the non-domestic supply market recovering from this period of instability and returning to more normal conditions. However, much is still uncertain, such as the impact of a potential recession in a falling wholesale market. In addition, significantly reduced

levels of Government support will also create major challenges and risks for customers and their suppliers.

Given this, based on our experiences as one of the largest suppliers in the non-domestic market, we would invite Ofgem to consider the following key areas for action to support non-domestic customers and suppliers:

- **Energy Bills Discount Scheme (EBDS):** Government support has been crucial to the survival of UK businesses and to controlling the critical debt risk to suppliers. Careful consideration should be given to what will happen when this scheme ends. Given the ongoing uncertainty and enduring risk in the market, it is important that businesses and suppliers are provided with a clear position on any potential future support as early as possible.
- **Wholesale market liquidity:** UK wholesale market liquidity remains poor, increasing risks for suppliers and creating a barrier to entry. Government and Ofgem should continue the work already started, collaborating with suppliers and generators, to find solutions to improve market liquidity.
- **Customer engagement:** Despite the maturity of the market, a significant level of customer disengagement still persists, particularly amongst customers on Deemed tariffs. We're working hard to engage and educate our customers on the energy market and would welcome further collaboration with Ofgem and Government in this space.
- **Third Party Intermediaries (TPIs):** The vast majority of the non-domestic market is intermediated by TPIs. While most operate with high levels of integrity, in customers' interests, this is not always the case. We welcome the progress Ofgem has made on TPIs, in particular, introducing Alternative Dispute Resolution requirements. While we appreciate that other issues have taken priority more recently, we urge Ofgem to return to this work and build upon the progress already achieved. Promoting high standards in this market is crucial to protecting customers.
- **Regulation:** As the market recovers from this period of instability, it is essential for the Government and Ofgem to ensure the market remains attractive to investors and new entrants. This must be a consideration for future regulation of the market. Energy suppliers will be critical partners for GB as we transition to Net Zero and continued investment in the sector will be vital.

We note many of the questions in this call for input are directed to customers, regarding their experiences of the market. In our response below, we have sought to add context which reflects EDF's practices, relevant to the areas Ofgem has included. Ofgem may note that much of the detail supporting our comments below reflects our submissions in response to the recent RFI issued by Ofgem on similar matters. We hope this insight assists Ofgem with its ongoing review of the non-domestic market.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Mark Hatton, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink, appearing to be "DA", enclosed within a light gray rectangular box.

Dan Alchin  
Head of Customers Policy and Regulation

## Attachment

### Call for input on the Non-Domestic gas and electricity market

#### EDF's response to your questions

**Q1. Do you have evidence of suppliers not being proportionate or reasonable regarding charges necessary to secure a contract, including security deposits? If so, please provide us with details.**

EDF does not have any specific evidence regarding the conduct of other suppliers.

As a responsible supplier, it is crucial for EDF to operate in a sustainable and financially prudent fashion, and not expose our business to unreasonable financial risks, while additionally ensuring we treat our customers in an appropriate manner. Where we do ask mid-market and large customers for security deposits, we ensure these reflect an appropriate consideration of relevant risks and invoice values, and are in line with our robust credit policy. Across our SME segment we do not make use of security deposits to secure a contract.

**Q2. Do you have suggested solutions to the concerns around high costs requested to secure a contract and manage risk?**

As we set out below in our response to Question 7, where creditworthiness is potentially creating a barrier to market engagement for specific customer segments, Ofgem should engage with the Government on establishing Government-backed Trade Credit Insurance scheme. EDF is working with Energy UK and ICoSS to develop proposals for consideration by Ofgem's Consumer-Supplier roundtable sub-group.

**Q3. Do you believe there has been an improvement in terms to contract as market conditions start to show signs of improvement? Please explain your answer.**

Yes. EDF notes that from early 2023, we have observed an increase in new, competitively priced products entering the market. While significant uncertainty remains, the real and forecast reductions to wholesale prices are encouraging.

**Q4. Do you have evidence to support the allegation that suppliers have been inflating prices in response to the introduction of the Energy Bill Relief Scheme? If so, please provide us with details.**

EDF does not have any specific evidence regarding the conduct of other suppliers.

To reiterate comments set out in EDF's response to Ofgem's letter of 15 November 2022, we are acutely aware that rising and volatile prices have caused significant challenges for businesses. We have worked closely with Government to develop and implement the Energy Bill Relief Scheme

(EBRS) and its successor, the EBDS. We would like to reassure Ofgem that we have not increased any standing or management charges for customers as a result of the introduction of EBRS. With regard to EBRS Qualifying Financially Disadvantaged Customers (QFDC), we have applied this discount across all our Deemed and Extended customers, going above and beyond the scheme's requirements in support of our customers.

**Q5. What issues are you aware of businesses having in relation to deemed contracts?**

EDF wrote to Ofgem earlier this year, in response to its recent RFI, providing significant data relating to our deemed contract pricing and the supporting methodology. To reiterate this response:

We share Ofgem's interest in a non-domestic market where customers receive great service and fair prices from financially resilient suppliers. This will enable suppliers to invest and provide customers with access to services and products which support the net zero transition. This has been central to the approach we have taken in all our decisions relating to our non-domestic customers.

As acknowledged by Ofgem, the market conditions of the last 18 months have been extremely challenging, due to unprecedented levels of uncertainty in the energy market, and the economy more broadly. It is particularly challenging in respect of deemed contracts, where suppliers do not have the ability to object to non-domestic customers switching suppliers due to an outstanding balance, and where there is significantly more uncertainty on volumes, and extreme difficulty in securing engagement with customers.

In addition, there is heightened risk of customers facing insolvency, resulting in a loss to EDF where we must sell energy back to the market at a loss. This scenario, for example, contributed to our retail business suffering an overall loss of c.£100m in 2020. In 2022, the impacts of unprecedented volatility and liquidity in the global energy markets has materially impacted energy prices, and significantly increased risks for energy suppliers. It would be financially irresponsible for any supplier not to be mindful of such significant risks, and not to properly factor these into pricing decisions. The risk of supplier failure inevitably increased for those not acting prudently.

Despite this, EDF has tried to keep selling during these extremely risky conditions, and we believe we are unique in having grown the size of our non-domestic portfolio during this period. Clearly, to have been able to continue to offer such support during this period, it has been necessary to ensure the risks we face had been properly factored into our pricing decisions. But we have done this responsibly, and will continue to do so in future.

**Q6. Are there any other matters not discussed above related to pricing and contractual behaviour that you would like us to explore? Please provide details and your reasons.**

No. EDF does not have any additional comments.

**Q7.** Do you believe there has been an increase in offers to contract in the past year as wholesale market conditions improved, or are there are segments of the market that are still struggling to secure contracts?

We refer to our comments in response to Question 3 above.

We also note in Jonathan Brearley's letter to the Chancellor 14 March 2023, he expresses concerns regarding the current state of the market for certain sectors (namely hospitality), despite overall conditions showing signs of improvement. With regard to the hospitality sector, EDF operates a fair and reasonable approach to contract offers, within the framework set out in our internal credit policies. We do not start from a position of blanket rejection to these customers, and assess each customers' creditworthiness on an individual basis. However, we are mindful that across the hospitality sector, creditworthiness tends to be less robust than in other sectors. As a responsible supplier we are obliged to assess these risks in a reasonable and appropriate manner, and reflect this in the terms of the contracts we offer. In this regard, we encourage Ofgem to engage with government on establishing Government-backed Trade Credit Insurance scheme. EDF is working with Energy UK and ICoSS to develop proposals for Ofgem's Consumer-Supplier roundtable sub-group.

In the 14 March letter, Jonathan Brearley also expressed concerns regarding customers who have previously agreed fixed contracts which do not reflect current and forecast wholesale prices. It is common for contracts fixed for longer periods to diverge from wholesale prices, often in the customer's favour, and note that these prices will generally reflect the price of energy at the time it is hedged, when the contract is agreed. But, while fixed contracts offer many benefits to customers, not least predictability of costs and peace of mind, EDF has been proactive in considering this situation with regard to customers in our mid-market segment. We have launched a new proposition called Fix + Reset, which we are offering to customers who agreed fixed contracts in September and October last year, with an end date later than the end of April 2023. This enables them to extend their contracts and blend the higher contract rates with the new extended lower rates and pay them over the entire length of the contract. We note this broadly reflects the proposal Ofgem makes in the letter. We have already engaged with several thousand customers in this regard, and intend to extend this for future dates. For new customers and customers coming to the end of their contracts, we offer a range of products which allow fixed or flex terms for multiple lengths of contracts and start dates.

Within SME it is more challenging to look at blending contracts due to customers agreeing longer term deals initially (in some instances out to 2026), as wholesale market liquidity remains very poor at these horizons.

**Q8.** Are suppliers following the best practice steps around debt management and disconnection that we highlighted in our December 2022 letter or do you think that licence conditions need amending? Please provide evidence for your views and details of any specific examples.

EDF is sympathetic to the financial pressures faced by our non-domestic customers, and we always seek to engage with customers who are struggling to pay in a constructive fashion. For our SME customers, we have deployed our CARE+ framework which sets out how we work with customers in payment difficulty to ensure we are able to provide reasonable and sustainable solutions to debt and arrears.

With regard to the Ofgem letter in December 2022, and the follow up in February 2023, we responded to the latter, setting out our board's findings regarding our performance against Ofgem's ten good practice expectations. While noting that the expectations in the December letter did not specifically align with the relevant regulatory obligations, we were pleased to report that we did not find any evidence of non-compliance with the regulations on the part of EDF. In measuring our processes against the expectations themselves, we were pleased to reassure Ofgem that we meet eight of the ten expectations.

For the remaining two: regarding Ofgem's expectation that suppliers will publish their non-domestic collections process on their websites. We do already publish some information about our collections process on our website. This is deliberately high-level because our collections journeys are tailored to different customers' circumstances, and it would therefore not be feasible to publish all end-to-end journeys. In line with our continuous improvement approach, we will continue to review and seek to make improvements to our website and customer journeys, to ensure they maximise engagement and deliver the best outcomes for our customers.

On the remaining expectation, we have undertaken to improve the signposting for Citizens Advice small business debt advice to customers in our large business segment. While this information will be broadly less relevant to these customers, we recognise that this may nevertheless confer some benefit to customers in this segment, so we are happy to make this change.

As a result of this useful exercise we have identified additional opportunities to build on our good service to non-domestic customers, and intend to move forward to improve our customer experience accordingly.

**Q9. Are suppliers' complaints process easy to find on their websites, or elsewhere? Do you believe we need to strengthen the rules around complaints processes? Please explain the reasons for your response.**

EDF takes customer complaints extremely seriously. We set out information regarding our complaints procedures and relevant contact details for non-domestic customers on a dedicated page on our website<sup>1</sup>, and adhere to relevant regulations in this regard.

**Q10. To what extent do you believe the communication you receive from your nondomestic supplier is clear and transparent? Please provide examples where possible.**

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<sup>1</sup> <https://www.edfenergy.com/sme-business/help-advice/customer-complaints>, <https://www.edfenergy.com/large-business/customers/complaints>



EDF takes great care to ensure customers receive the right information, in the right form, at the right time, regularly review our communications to ensure accuracy, and monitor customer engagement with the messages we deliver. As we note in our response to Question 15 below, across our SME segment, we apply the microbusiness rules, including price transparency information.

In our mid-market and large segment we also conduct regular webinars open to all our larger non-domestic customers which set out to explain various aspects of and events in the market. We aim to empower these customers to help them understand how to better manage their interactions with the energy market, engage with GB's net zero ambitions, and potentially save money.

**Q11. Do you think the issues around Change of Tenancy/Occupier are significant? What potential solutions would you suggest to address the perceived shortfalls in the existing Change of Tenancy and Change of Occupancy processes, that do not exacerbate the potential for fraud?**

No. EDF's Change of Tenancy (COT) procedures aim to balance customer ease with a responsible approach to fraud prevention. In our SME segment, we do not recognise a significant level of customer dissatisfaction with regard to COT, with only c.1% of COTs processed resulting in a recorded complaint in our SME business for the year to date.

Where we require a SME customer to provide supporting evidence of a COT (e.g. a lease or tenancy agreement, with a photograph of the relevant meter at the premises, or a proof of insurance document), we offer a range of options to customers by which they can satisfy this requirement. Our current typical turnaround for these requests is between 3 – 7 days, depending on whether the request has come via a TPI or directly from a customer. We advise customers to allow up to 10 days to complete the process to ensure we appropriately manage their expectations. We believe this strikes an appropriate balance between swift resolution for customers, and preventing the potentially significant financial impact of a fraudulent COT.

EDF takes the prevention of fraud extremely seriously, and we ensure our processes are robust and appropriate to detect and address fraudulent activity effectively. For example, we employ an additional process, where, if a staff member is concerned about an account, we utilise a licensed system called TracelQ which can identify at a granular level the ownership and responsibility history of premises in the UK. This activity is rigorously monitored in our business and, where circumstances warrant further investigation, this is fed into our fraud team to address.

In our mid-market and large segments, we operate a similar COT process, which employs an online form to gather necessary information from customers in a convenient and recordable manner. Where necessary, these details are subsequently verified with the outgoing and incoming parties, to ensure they are accurate and valid. As we do for SME, this process is closely monitored to detect and prevent the occurrence of fraud, such as parties seeking to evade legitimate debt collection, or attempting to subvert agreed contract terms.



We encourage Ofgem to consider how COT fraud can be better countered across the industry with a joined-up approach to reporting this problem.

**Q12. Are there any other issues you would like to highlight related to competition in the non-domestic supply market? Please provide detailed explanations.**

EDF notes that the non-domestic market does not have a fit for purpose industry procedure for resolving non-domestic supplier insolvency. As we refer to above, while the market is showing signs of improvement, ongoing uncertainty means the risk of supplier insolvency remains significant. Given the portfolios of non-domestic suppliers will often include large bespoke contracts, and will entail other differences to typical domestic portfolios, Ofgem should consider a new process to facilitate the bidding process more effectively, and smooth the transition of customers to the appointed supplier.

**Q13. Do you believe that there are segments of the non-domestic supply market, other than microbusiness customers, where there is not sufficient market pressure to correct any potential inappropriate supplier behaviours? Please provide detailed descriptions of these customers and evidence to explain your view, including what aspects of harm the regulations would need to help protect against.**

No. EDF has not seen evidence which supports the creation of an additional category of protected non-domestic customers. Where a supplier is not abiding by the relevant regulatory standards in relation to a specific customer or customer segment, we encourage Ofgem to use its enforcement powers to address this conduct, curtail any inappropriate supplier behaviour, and set out redress to affected customers.

**Q14. If you responded yes to question 13, please suggest how these customers could be defined in the supply licence and identified by suppliers and customers.**

N/A

**Q15. If we expanded the definition of microbusiness customers or created a new class of customers, what are the possible implications and costs of doing this?**

EDF applies the established microbusiness consumer protections inclusively across our SME customer base, regardless as to whether customers meet the criteria set down by the definition. This ensures a consistent customer experience and minimises the risk of microbusiness customers falling between the cracks, e.g. where minimal data is available to determine eligibility, or if a business' circumstances change to effect that they require additional support under these protections.

As per our comments in response to Question 13, EDF is not aware of any evidence which would support the expansion of the microbusiness definition, or the creation of a new protected class of customer in the non-domestic market.

**Q16. What additional protections do you think might need to be put in place to protect domestic customers who are supplied via a non-domestic contract? Please provide an explanation or evidence of the areas of harm any new regulation would protect against.**

With regard to the Government various customer support schemes implemented over the winter; including the EBRS, Energy Price Guarantee (EPG), Energy Bills Support Scheme (EBSS) and Alternative Fuel Payments (AFP) schemes, we note that during the development of these schemes DESNZ and suppliers looked at how support could best be delivered to domestic energy end-users supplied under non-domestic contracts.

We note that with regard to the EBRS, the Government determined the best way to ensure these customers received the benefit was to place pass-through requirements on the contract holders to ensure that domestic end-users' energy costs reflected the discount applied to the contracted tariff. For EBSS, the Government has established an Alternative Funding scheme, administered by Local Authorities, to ensure domestic end-users have access to equivalent support with energy costs to domestic customers with a direct contractual relationship with an energy supplier. We note for AFP, Government has established equivalent Alternative Funding schemes for domestic and non-domestic customers to ensure customers off the gas grid have appropriate support.

These outcomes reflect a key aspect of the supply to domestic end-users. Energy suppliers do not have a contractual relationship with these end-users, rather, this is usually via a third party who holds a commercial contract with the supplier, and is responsible for passing through Government support, and providing for various relevant services, as acknowledged by Ofgem in this call for input. Suppliers are unlikely to hold sufficient or consistent data on domestic end users (where no contractual relationship exists between the parties) to facilitate equivalent monitoring and provision of services to that set out under the supply licence. As has been established via the Government schemes above, these customers are best served by support from parties which already hold a legal duty with respect to their wellbeing, and the provisions of their contractual relationships.

**Q17. Do you agree with the definition of, and clarifications around, what is a domestic customer as described in Appendix A? Are there other areas where further clarification is required?**

Regarding the wording of SLC 6. Classification of Premises, and the associated accumulated guidance set out by Ofgem (in 2002, 2012, and 2015). EDF notes we have recently observed an increase in customer requests to switch from a non-domestic to a domestic contract. For scenarios such as landlord supplier lighting for communal areas, or shared supplies under a managing agent for residential properties, suppliers and customers could benefit from additional clarity from Ofgem. EDF recommends that the various existing guidance should be consolidated

into an updated form to provide clarity and consistency for suppliers and customers. This should be accompanied by reference to the applicable HMRC VAT guidance for the relevant scenarios.

**Q18. Do you have any further comments about how the non-domestic market is currently segmented?**

EDF does not have any additional comments.

EDF  
March 2023