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31 January 2024

Dear Louise,

### **Non-domestic market review: Statutory consultation on licence changes**

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore, offshore wind and solar generation, and energy storage. With around six million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

Throughout Ofgem's non-domestic market review, EDF has endeavoured to engage helpfully and constructively to support the best outcomes for our customers. EDF broadly supports Ofgem's proposals to extend consumer protections to a greater proportion of small businesses, and in the case of the presentation of Third Party Costs, to all non-domestic customers. However, below, we have set out our reservations regarding some elements of Ofgem's proposals.

With regard to Ofgem's proposal to expand the Standards of Conduct to all non-domestic customers, EDF does not agree that Condition OA should be extended to include the largest non-domestic customers. Given the findings of Ofgem's market review, EDF agrees that smaller businesses, larger than microbusinesses, could stand to benefit from the additional protections, as set out in this consultation.

As a responsible energy supplier, EDF aims to treat every non-domestic customer in a fair, honest, transparent, appropriate and professional manner, aligned with the core principles of the Standards of Conduct. However, the full provisions of Condition OA set out additional consumer outcomes which go beyond these fundamental principles. When the non-domestic Standards of Conduct were first introduced following the Retail Market Review in 2013, they were focused on providing additional support for smaller business customers who may otherwise struggle to engage effectively with the energy market. As such, they are essentially

designed to level the playing field between microbusinesses and energy suppliers, to protect the former from detriment stemming from unbalanced outcomes.

However, the Standards of Conduct were not designed for the largest non-domestic consumers. As Ofgem has acknowledged in this consultation, the non-domestic retail market is diverse, and as such, energy suppliers engage with a range of customers, from sole traders to large multinational companies. Large non-domestic customers have significant resources at their disposal, and are adept at representing their interests in contract negotiations and other commercial engagements. Given the significant expertise and commercial leverage the largest customers possess, it would neither be necessary or desirable for the Standards of Conduct to be extended to the largest end of the market.

While EDF agrees that the requirement to provide Third Party Costs should be extended to all non-domestic customers, we do not agree Ofgem should mandate the presentation of Third Party Costs as cost per unit, in place of the existing full contract duration requirement. EDF suggests better customer outcomes would be achieved by requiring suppliers to present Third Party Costs to non-domestic customers flexibly, by either method, depending on which was most appropriate. Given the comparably low levels of customer exposure to the existing Micro Business Strategic Review outcome which introduced the original requirement, and the lack of compelling evidence to support countermanding the Strategic Review, this compromise offers the opportunity to directly compare both approaches across a range of non-domestic customers, rather than microbusiness customers alone.

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 read 'Dan Alchin', written over a light grey rectangular background.

**Dan Alchin**  
**Head of Customers Policy and Regulation**

## Attachment

### Non-domestic market review: Statutory consultation on licence changes

#### EDF's response to your questions

**Q1. Alongside this consultation document we have published a draft impact assessment. Do you have any comments on the draft impact assessment published alongside this document, including the costs and benefits, competition impacts, and unintended consequences?**

No comments.

**Q2. Is there anything that has not been included in the impact assessment that you believe should be included?**

No comments.

**Q3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.**

No. Ofgem should expand the Standards of Conduct to include customers captured by the Small Business Consumers threshold, to be determined by the outcome of the Government's consultation: *A new threshold for businesses accessing the Energy Ombudsman*, published 7 December 2023.

As a responsible energy supplier, EDF aims to treat every non-domestic customer in a fair, honest, transparent, appropriate and professional manner, aligned with the core principles of the Standards of Conduct. However, the full provisions of Condition OA set out additional consumer outcomes which go beyond these fundamental principles of customer service. When the non-domestic Standards of Conduct were first introduced following the Retail Market Review in 2013, they were focused on providing additional support for smaller business customers in their engagement with the energy market. As such, they are essentially designed to level the playing field between microbusinesses and energy suppliers, to protect the former from detriment stemming from unbalanced outcomes. Given the findings of Ofgem's market review, EDF agrees that smaller businesses, larger than microbusinesses, could stand to benefit from the additional protections, as set out in this consultation.

However, the Standards of Conduct were not designed for the largest non-domestic consumers. As Ofgem has acknowledged in this consultation, the non-domestic retail market is diverse, as such, energy suppliers engage with a range of customers from sole traders to large multinational companies. Large non-domestic customers have significant resources at their disposal and are adept at representing their interests in contract negotiations and other commercial engagements.

Given the significant expertise and commercial leverage the largest customers possess, it would neither be necessary or desirable for the Standards of Conduct to be extended to the largest end of the market. For example, OA.3b) sets out *iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee*. SLC OA's defined Designated Activities includes the provision of Contractual Information. Large customers will usually negotiate bespoke contract terms directly with energy suppliers. In such cases, most of these large customers will hold the balance in achieving favourable commercial terms, due to the conferred value of the scale of their consumption.

We note, in our answer the Question 22 below, as we have also set out in our response to the Government's consultation on introducing a new Small Business Consumer threshold, we have described the activities of larger public and private sector procurement frameworks. These large customers negotiate a framework agreement on the behalf of numerous smaller sub-entities, who are subsequently supplied under a model contract, and enjoy the protection of significant contractual performance standards as part of those umbrella agreements.

**Q4. Do you have any comments on our proposed draft licence text for SLC OA?**

Please see our answer to Question 3, above.

**Q5. Do you agree with our proposal to implement the SoC as soon as the updated licence condition takes effect? Please provide a reason for your view.**

No. Please see our answer to Question 3, where we recommend Standards of Conduct is expanded to Small Business Consumers, rather than ALL non-domestic customers, as Ofgem proposes. As such, suppliers will require additional time to develop systematic approaches to consistently identify relevant consumers and ensure they receive the appropriate protections.

Should Ofgem choose to proceed with its proposal as set down in this consultation, the 56 days standstill period would not be sufficient for suppliers to robustly review and apply necessary changes to answer the outcomes set down in the Standards of Conduct across all their customers. Whilst Ofgem points out this was the timescale afforded when the Standards were first implemented in 2013 for domestic and microbusiness customers, this does not take into account the significant complexity of market practices at the larger end of the non-domestic market, where customer needs, third party interactions, and supplier contractual models are far more diverse. If Ofgem proceeds to include ALL customers, it must be mindful of these additional challenges for suppliers.

**Q6. Do you have any views on the updated draft Standards of Conduct Guidance?**

No comments. Please see our answer to Question 3, above.

**Q7. Do you agree with our proposal to align with government proposals and expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS) to apply to Small Business Consumers? Please provide a reason for your view.**

Yes, EDF agrees. However, we note Ofgem has previously undertaken to review the Consumer Complaints Handling Standards to ensure it remains fit for purpose. Given the significant change across the domestic and non-domestic energy retail market since the current standards came into force, not least significant digitalisation, it is appropriate that Ofgem considers changes to the standards to better reflect the current and future needs of customers and market practices.

**Q8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?**

Please see our answer to Question 7. Ofgem should take this opportunity to modernise the Consumer Complaints Handling Standards to ensure they remain relevant and fit for purpose.

**Q9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?**

Three months is insufficient. While suppliers can feasibly update relevant communications in relatively short order to include customers in the expanded scope, it will be necessary to make system changes to appropriately track complaints across the new customer cohort. We note that this implementation is dependent upon the systematic identification of customers within the proposed new threshold in existing supplier portfolios, and, by nature of the components of the threshold definition proposed by Government, this may require some extensive initial checks and the importation of external data (e.g. employee numbers, balance sheet, and turnover). These datapoints are not stored externally in an easily applicable manner. We have included Ofgem in our response to Government, where we discuss this challenge in more detail.

These changes will also require robust and consistent reporting capability to answer suppliers' regulatory reporting obligations. The adaptability of existing microbusiness system infrastructure will vary across suppliers, depending upon the constituents of their current portfolio. In addition, it is plausible that in some cases suppliers will need to expand customer facing and back-office resource to answer the additional work volumes which this change could precipitate. Where this is the case, time will be required to recruit or retrain staff.

As we have set out in our response to the Government's accompanying consultation, to counter this complexity, and enable suppliers to provide consistent outcomes for customers, we recommend that the application of the Small Business Consumer threshold enables suppliers to depend upon a customer declaration of their status (with regard to the components of the threshold) which could be solicited in a clear and prominent fashion at point of offer, and at key touchpoints throughout the customer journey.

We note that the expansion of the Consumer Complaints Handling Standards includes the simultaneous expansion of the customer remit for Ombudsman Services: Energy, Citizens Advice and Advice Direct Scotland, and that the rules governing referrals to which are included in the standards. Ofgem should not seek to implement the expansion of the Consumer Complaints Handling Standards prior to the completion of the necessarily robust preparatory work undertaken by these organisations.

**Q10. Do you agree with our proposal to require suppliers to inform their Micro and Small Business Consumers (if this is applied) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland? Please provide a reason for your view.**

Yes, EDF agrees. However, as with our answer to Question 9, Ofgem must allow suppliers sufficient time to make necessary system, process and resource changes to identify and serve customers in the Small Business Consumer threshold prior to implementing this change. Additionally, Ofgem must not implement this requirement prior to the completion of the necessary robust preparatory work undertaken by these Citizens Advice and Advice Direct Scotland.

As we have set out in our response to the Government's accompanying consultation, To counter this complexity, and enable suppliers to provide consistent outcomes for customers, we recommend that the application of the Small Business Consumer threshold enables suppliers to depend upon a customer self-declaration of their status (with regard to the components of the threshold) which could be solicited in a clear and prominent fashion at point of offer, and at key touchpoints throughout the customer journey.

**Q11. What measures would suppliers intend to take to meet the obligation to signpost Small Business Consumers to Citizens Advice, and how would this impact costs?**

EDF already signposts Citizens Advice's services via bills, communications and on our website. However, we do not currently have a systematic approach in place to identify Small Business Consumers across our portfolio. As we have previously discussed with Ofgem, our mid-market and large customer portfolio is served in a separate system and business unit to our SME portfolio. It will be necessary for us to consistently identify relevant consumers across both portfolios to ensure these customers receive the appropriate signposting and service. This will require system changes and engagement with external data-sources in the first instance, as we have discussed in our answers above.

As we have set out in our response to the Government's accompanying consultation, to counter this complexity, and enable suppliers to provide consistent outcomes for customers, we recommend that the application of the Small Business Consumer threshold enables suppliers to depend upon a customer self-declaration of their status (with regard to the

components of the threshold) which could be solicited in a clear and prominent fashion at point of offer, and at key touchpoints throughout the customer journey.

**Q12. Do you have any comments on our proposed draft licence text for SLC 20.5A and 20.4A in the gas and electricity supply licences respectively? This proposed definition of Small Business Consumer includes Micro Business Consumers. However, do you think it would be preferable to explicitly set out in the licence condition that suppliers should signpost Micro Business Consumers and Small Business Consumers to Citizens Advice for the avoidance of doubt?**

We have no specific comments to add regarding the proposed drafting. We note that the proposed Small Business Consumer threshold definition would encompass Micro Business Consumers, and therefore any requirement based on the former, would also apply to the latter. Rather than specifically caveat the inclusion Micro Business in the SLC 20 requirement, we suggest this could be referenced in the SLC 1 definition for Small Business Consumer, if Ofgem believes this is necessary.

**Q13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?**

No. Regarding the proposed requirement to signpost Small Business Consumers to Citizens Advice and Advice Direct Scotland, three months is insufficient. Please see our answer to Question 9 regarding the implementation of the Small Business Consumer threshold. While suppliers can feasibly update relevant communications in relatively short order to include customers in the expanded scope, it will be necessary to additionally make system changes to appropriately track complaints across the broader customer cohort. We note that this implementation is dependent upon the systematic identification of customers within the proposed new threshold in existing supplier portfolios, and, by nature of the components of the threshold definition proposed by Government, this may require some extensive initial checks and the importation of external data (e.g. employee numbers, balance sheet, and turnover). These datapoints are not stored externally in an easily applicable manner. We have included Ofgem in our response to Government, where we discuss this challenge.

**Q14. Do you agree with our proposed change? Please provide comments to support your answer.**

With regard to Ofgem's proposal to require from suppliers that any TPI they are working with for a Small Business Consumer must be registered with a Qualifying Dispute Settlement Service (QDSS), EDF supports this as a measure to ensure a level playing field in the energy TPI market, in the interests of all non-domestic consumers.

However, while we support this measure as an interim step, we note that Ofgem's approach to steering TPI behaviours should not be dependent on regulation via suppliers. For this



reason, we support Ofgem's recommendation to Government that it should regulate the TPI market directly and urge Ofgem to pursue this action without delay.

**Q15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?**

No comments.

**Q16. Do you have any comments on the suggested implementation timescale of 8 months?**

From a supplier perspective, eight months appears sufficient. However, TPIs are better placed to comment on the timescale they require to register with an appropriate scheme provider.

We note there are only two QDSS providers at the time of writing. Ofgem should be mindful of the time needed and resource required by these parties to meet the potential demand from TPIs not already registered. Should Ofgem authorise numerous additional parties to become QDSS providers in the future, suppliers would require time to adjust and make necessary accommodations to include new parties in impacted processes.

**Q17. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.**

Yes. EDF supports the expansion TPI commission transparency to all non-domestic customers. TPIs operate widely across the non-domestic retail market, so it is appropriate for all non-domestic customers to understand the costs associated with relevant contract offers, where they engage via a TPI.

As we note in our response to Question 14 above, Ofgem's approach to steering TPI behaviours should not be dependent on regulation via suppliers. For this reason, we support Ofgem's recommendation to Government that it should regulate the TPI market directly and urge Ofgem to pursue this action without delay.

**Q18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.**

No. EDF does not agree Ofgem should mandate the presentation of Third Party Costs as cost per unit, in place of the existing full contract duration requirement. While we acknowledge that Ofgem's rationale for using cost per unit, as set out in paras 6.19 to 6.22, is reasonable, we do not consider a case is therefore made de facto to abandon the lump sum full contract duration value. As Ofgem notes in para 6.10, although the current arrangements have been in place for over a year, it does not appear from Ofgem's comments that a robust case for change has been established, and many customers have not yet been exposed to the lump sum value, as they have not changed contracts since its introduction. Overall lack of customer



awareness of Third Party Costs does not necessarily imply that the methodology for calculating the presented value, determined by Ofgem during its Micro Business Strategic Review, is itself flawed. Furthermore, that Ofgem is prepared to retain the latter value for micro business customers strongly implies that it is not intrinsically flawed.

We note, TPI service fees, levels of service and arrangements with suppliers vary across the market, and, in some cases will not be directly comparable between TPIs or their offers, which Ofgem acknowledges in this consultation. Many TPIs offer differing levels of service to their customers, which naturally confer different costs and represent differing levels of value for money, and charges can accrue differently depending upon the agreed arrangements between a TPI and a supplier.

EDF suggests better customer outcomes would be achieved by requiring suppliers to present Third Party Costs to non-domestic customers flexibly, by either method, depending on which was most appropriate. Given the comparably low levels of customer exposure to the existing Strategic Review outcome to date, and lack of compelling data evidence to support countermanding the Strategic Review, this compromise offers the opportunity to directly compare both approaches across a range of non-domestic customers, rather than microbusiness customers alone (as per para 6.23). Ofgem could then review this position in the future to determine if a subsequent change is required based on more robust consumer data. As Ofgem has acknowledged elsewhere in the consultation, the non-domestic market is not homogenous, and the viewpoint of microbusiness customers alone is not necessarily reflective of non-domestic customers as a whole.

**Q19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.**

Yes, based on our response to Question 18, above.

**Q20. Do you have any views on whether to retain the presentation of a lump sum for Micro Business Consumers and to have only a cost per unit for all Non-Domestic consumers?**

Yes. Please see our answer to Question 18, above.

**Q21. Do you have any views on the proposed wording of the supply licence conditions, in relation to this policy? Note that is SLC20.6 in the electricity supply licence and SLC20.7 in the gas supply licence.**

Yes. Please see our answer to Question 18, above.

**Q22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?**

In our response to the Government's consultation on introducing a Small Business Consumer threshold, for expanding access to the ombudsman, we have described the activities of larger public and private sector procurement frameworks. We ask Ofgem to be mindful of this feedback in its consideration of this consultation.

Framework agreements are prevalent in the non-domestic market, employed by both the public and private sector, and we expect will continue to become more popular in future. Public sector procurement frameworks are a key example, whereby a basket of numerous smaller institutions enter into model contracts with a supplier and counterparty, under an umbrella framework agreement, which includes stringent and significant consumer protections, e.g. customer service KPIs, dedicated account management facilities, favourable commercial contract terms.

In such cases, individual consumers, who would otherwise be captured by the proposed threshold, already receive guaranteed protections and access to remediation beyond the scope of that provided by the Ombudsman (or set out in the supply licence). In such cases, establishing parallel protection tracks will cause confusion for customers and suppliers alike, risk duplication and waste, and create inconsistent outcomes which could be contractually insufficient compared to outcomes set out under a framework agreement.

Additionally, to counter the complexity suppliers will face in systematically applying the new specific elements of the proposed Small Business Consumers threshold, and to enable suppliers to provide consistent outcomes for customers, we recommend that the application of the Government threshold enables suppliers to depend upon a customer declaration of their status (with regard to the components of the threshold) which could be solicited in a clear and prominent fashion at point of offer, and at key touchpoints throughout the customer journey.

**EDF**  
**January 2024**