

Our ref :
Your ref :

Andrew Walker
Ofgem
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15 May 2003

Dear Andrew

Regulation of Electricity Distribution Licence Holders

I am writing with regard to your letter of 16th April 2003. I am pleased to provide the views of East Midlands Electricity.

Firstly, I would like to say that we welcome Ofgem's proposal to consult on the wider issue later in 2003, and we will of course participate fully in the process. However, we would still like to see Ofgem carry out a full Regulatory Impact Assessment of this issue, as it committed to do in its recent Three Year Strategy, as we remain unconvinced that the benefits to customers outweigh the additional costs, complexities and risks that distributed network ownership will bring.

We have a number of specific comments on the 16 April letter, as follows.

Firstly, we support Ofgem's proposal to introduce charge restriction conditions to the new licences. Often, the choice to locate a property on a new licensee's network rather than on an existing DNO's will be made by the developer, not the end customer, and it is the developer who will have gained in terms of a competitive price for connection. It is important that the end customer does not pay for the developer's discounted connection over time through DUOS charges. In addition, a charge restriction condition does not give the customer access to competition in supply. Customers on new licensees' networks should not be disadvantaged, but equally existing DNOs cannot be expected to pick up additional costs, responsibilities and risks in this area, without an appropriate level of reward.

We also welcome Ofgem's move to impose similar standards of performance on new licensees to those already in place for existing licence holders. It is vitally important that the performance of any networks not owned by EME is reported separately from ours, and

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excluded from our own reported performance under IIP. We look forward to participating in the more detailed consultation on this issue later in 2003.

We believe that new licensees should be subject to the same financial restrictions as existing DNOs. There is no reason to assume that the new businesses will necessarily be small – indeed, they could well be subsidiaries of substantial construction businesses. We do accept that some licensees may have difficulty meeting the credit rating licence condition, and understand Ofgem’s motives for considering alternative arrangements. However, we are concerned that this could give reduced protection to customers, as smaller companies are by their nature, inherently less stable than larger ones. The industry has seen apparently robust companies collapse in the retail market, and in the absence of clear arrangements to deal with a failed distributor, we would urge caution. A distributor must have the right to refuse to adopt assets it does not believe are compliant with the ESQC Regulations, which means that any adoption following a company failure could only happen voluntarily, which could lead to a period of uncertainty for customers. Indeed, the situation where no DNO is prepared to take on the failed distributor’s assets, because of reasonable doubt as to their quality, has to be considered.

We welcome Ofgem’s decision to require new licensees to provide specific detailed information regarding the operation of their distribution business in their statutory accounts.

Finally, I would like to reiterate that we are happy with Ofgem’s proposals in this area, but believe that they need to be set out within a broader framework which has yet to be developed. Without proper consideration of the issues surrounding asset ownership and adoption, and the financial and criminal liabilities associated with those assets, any process to facilitate new licensees will be flawed. This could lead to problems for the new companies, the host DNOs they are connected to, for Ofgem and, of course, for the end customer. We would like to see Ofgem adopt a ‘joined up’ approach to this and related issues, and hope that the upcoming workshop on competition in connections will help facilitate the process, and lead to a solution that is workable, practical and that delivers real benefits to consumers.

As always, if you need any more information, or would like to discuss any of the issues raised in this letter further, please do not hesitate to contact me.

Yours sincerely

Lesley Queripel
Regulatory Strategy Manager