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Dear Sonia

POTENTIAL SALE OF GAS DISTRIBUTION NETWORK BUSINESSES

This is EDF Energy's response to Ofgem's formal consultation under sections 8AA and 23 of the Gas Act 1986.

You will be aware that as a company we have identified strongly with the legal advice obtained by the Gas Forum in November 2004 in relation to the Authority's proposals for the restructuring of gas transporter licences. As far as we are concerned, the whole of Ofgem's process for creating an appropriate licensing framework in consequence of the proposed network business sales is vitiated by the Authority's introduction into the licences of a so-called private collective modification procedure, the legality of which is highly questionable.

Ofgem has never specifically addressed the detail of the legal analysis given to the Gas Forum. This concluded that the private CLM approach was outwith the legislative policy that the primary mechanism for licence modifications should not be materially bypassed. Ofgem has simply asserted, without substantiating by relevant argument, that its licensing proposals have been developed in a manner consistent with the current statutory framework.

This is not an example of robust and transparent regulatory practice. On the contrary, it is an example of regulation in which the strict and proper application both of the law and of the wider policy objectives of the statutory framework for licence modification have been subordinated to ideology, or the exigencies of a predetermined timetable, or both.

Yours sincerely

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