



**Ebbsfleet Valley
Utilities**

Ebbsfleet Valley Utilities
c/o EDF Energy – Development Branch
49, Southwark Bridge Road
LONDON
SE1 9HH

22nd May 2006

Ms Heather Glass
Distribution Policy
Ofgem
9 Millbank
LONDON
SW1P 3GE

Dear Heather,

**Response to Ofgem Consultation on Regulation of IDNOs
(implications of licence applications from affiliates of existing licensees)**

Please find attached the response to this consultation from Ebbsfleet Valley Utilities.

We are happy for this response to be placed on the Ofgem website.

If you require clarification of any of the points that we have made or have any further queries please do not hesitate to contact me.

We shall look forward to your further considerations on this matter.

Regards,

John Jordan

Director, Ebbsfleet Valley Utilities
Tel no: 07875 116271

Regulation of independent network distributors: consultation on implications of licence applications from affiliates of existing licensees

Response from Ebbsfleet Valley Utilities

19th May 2006

Summary:

- This response is from Ebbsfleet Valley Utilities (EVU), formerly referred to as Multi Utility Joint Ventures Ltd., the company mentioned in the Ofgem consultation as planning to apply for an IDNO licence. EVU will be a joint venture company owned by Thames Water Services and one of the companies within EDF Energy's Development Branch. Within EDF Energy the Development Branch is a completely separate and independent business from the Networks Branch. It is the Networks Branch that is the DNO for the regulated networks in the Eastern, London and Seaboard areas.
- We believe that the concerns expressed in the Ofgem consultation regarding regulation and competition are unfounded and may be based on misunderstanding of our intent. We can see no evidence of any need for changes in IDNO regulation resulting from what we are planning to do and will be happy to work with Ofgem to provide further explanation and reassurance about our approach and to address any concerns that they may have as we move towards an application for a licence.
- We believe that any effects on host DNOs and customers resulting from an IDNO owning and operating the network would arise regardless of who owns the IDNO and are therefore exactly the same in the case of both "affiliated" and "independent" IDNOs. Consequently, licence changes that apply only to "affiliated" IDNOs are unnecessary.
- We hope that Ofgem will allow the competitive market to develop with a common licence for all IDNOs utilising the regulatory methodology currently in existence. This will encourage continued development of competition by ensuring that all new market entrants compete on a level playing field.
- Based on our experience to date, we see no evidence to suggest that DNO licence amendments are necessary to improve the competitive market.

1. Introduction

- 1.1. We were surprised to see the publication of this consultation at this early date, before we have even applied for an IDNO licence to enable us to own and operate the electricity network part of our multi utility joint venture. As a result, the consultation seems to us to be based on early and somewhat subjective views of what might happen as opposed to firm evidence of what is actually happening or likely to happen, together with some unfounded concerns from third parties who are unaware of the way in which the multi utility joint venture will be operating.
- 1.2. We are also concerned that, in our limited contact to date with Ofgem, an incorrect impression may have been formed about why we are undertaking this multi utility work and that this may have contributed to the general misunderstanding. To try and correct this situation we have included below some background details regarding the overall development that we hope will clarify matters.
- 1.3. It should be noted that we are still in detailed commercial negotiations with the site owner as we move towards signing a contract for this work. Because of this, there are some issues that cannot be disclosed in this response as they are still commercially confidential. However, we will be happy to work separately and confidentially with Ofgem to discuss any issues about competition and network ownership and operation under our planned IDNO licence in order to allay any concerns that Ofgem may have.

2. Background

- 2.1. The development for which we require an IDNO licence is on a large site in the Ebbsfleet area of North Kent owned by Land Securities and is known as the Ebbsfleet Valley (EV) development. It consists of a mixed domestic and commercial development, built in stages over a 20 year period and is one of the largest developments of its kind in Europe. It forms a key part of the overall Thames Gateway development which has the full support of the Government and which is designed to regenerate the run down areas along the Thames to establish sustainable communities for the future.
- 2.2. A key challenge to accomplishing this work is the establishment of a substantial utility infrastructure (electricity, gas, water, sewerage and telecoms) to serve the new community, much of which must be in place before the homes and commercial properties are built and which must be flexible enough to cater for the design and construction changes that will inevitably occur in a project of this magnitude over this timescale.
- 2.3. Land Securities was looking for bids from multi utility network providers with the capability to build the essential utility infrastructure that would facilitate the development and also own and operate the

networks in the long term. They were also looking for a company that could bring innovation and flexibility to the development of the scheme.

- 2.4. We understand that EDF Energy's Networks Branch, which is responsible for the regulated networks in this area, did not pre-qualify in the competitive process to select bidders for the work as it did not have a multi utility capability.
- 2.5. At this time Thames Water Services and EDF Energy's Development Branch had already separately established a multi utility joint venture company (MUJV Ltd) to bid for a large, long term, multi utility, private, unregulated network contract and had reached preferred bidder status. Based on knowledge of this in the marketplace, MUJV Ltd was approached by Land Securities to enquire whether or not it was interested in bidding for the EV work.
- 2.6. We must stress that EDF Energy's Development Branch, which part owns MUJV Ltd, is a completely discrete business within EDF Energy and operates separately from and independently of the Networks Branch which looks after the regulated networks covered by the Eastern, London and Seaboard DNO licences.
- 2.7. Based on the experience gained with the above mentioned private network and other experience that both MUJV's owner companies had with separate, long term (30 years plus) development and management of networks via various Private Public Partnership (PPP) and Private Finance Initiative (PFI) projects, it was concluded that MUJV Ltd had the full range of expertise and resources to bid for this specific project and a bid was subsequently submitted in response to the land owner's approach.
- 2.8. Following a highly competitive bidding process MUJV Ltd was appointed as preferred bidder for the work in November 2005. In order to clearly differentiate between the private network development mentioned above and the EV development it was subsequently decided to create a new multi utility vehicle, Ebbsfleet Valley Utilities (EVU), separate from MUJV, to focus solely on the EV work. EVU will be owned jointly by Thames Water Services and one of EDF Energy's Development Branch companies.
- 2.9. We are currently working closely with Land Securities to develop detailed plans in response to their requirements prior to contract signature later in 2006. In expectation of obtaining closure we have started preliminary design work and are looking to obtain the various licences that we will need to do this work. These include an Independent Network Distribution Network Operator (IDNO) licence from the Authority to allow us to own and operate the electricity network component of our multi utility infrastructure.

3. Response to the Ofgem Consultation – Detailed Issues:

The following section of our response covers the detailed issues raised in the Ofgem consultation and refers to the paragraph titles and numbering used in that document.

3.1. Introduction

Paragraph 1: The consultation refers to the Multi Utility company building “networks”. At present the EV “network” is the only one that we are planning to build and we are currently planning to apply for an IDNO licence that restricts our operations to this single area. EVU will only operate on the EV project and will not be involved in other multi utility work. We have consulted with our parent companies and can report that there are currently no plans to bid for similar multi utility work like EV although consideration of future joint ventures cannot be ruled out if requested by developers.

3.2. Implications for customers from IDNOs

Paragraph 10: Providing benefits for the developer to facilitate the development is exactly one of the things that we have been trying to do with our approach to this project. We must emphasise that Land Securities had already decided on a multi utility approach before we were even approached to bid. Our aim has been to respond competitively by offering an integrated multi utility product to Land Securities (in their role as a customer looking for service) that is commercially acceptable to both parties whilst being within the regulatory framework.

3.3. Impact on existing DNO customers

Paragraph 13: On a technical note we are unsure what is meant by “lowest cost network extensions”. All new networks built to a suitable standard should have lower running costs in the early years than older networks. Differences in construction costs will have to be taken into account by whoever chooses to bid for the work and will be reflected in the price offered. It is difficult to see what a multi utility company such as ourselves would identify as being work for which we might theoretically want to bid that an “independent” IDNO would not also identify. The only issue here is whether or not any IDNO can make a suitable return on the work.

3.4. Paragraph 14: It is not true that the DNO would always incur higher costs. IDNOs may well install networks that save the DNO from having to reinforce the surrounding network and may also help to facilitate embedded generation that could have a similar effect. In any case it is clear that any effect on customers is negligible at this point in time and will continue to be so even with the addition of the Ebbsfleet Valley customer base over a 20 year period. There is no evidence to indicate that customers’ bills will increase as a result of the advent of IDNOs and consequently no need to introduce additional regulation. This is an

issue that may be better looked at when the existing IDNO regulatory methodology is reviewed in future.

- 3.5. **Paragraph 15:** Our reasons for bidding for this work have been explained fully above. At no time have we collaborated with EDF Energy's Networks Branch to decide who should bid for this work and we have no thoughts of such collaboration in the future. In fact, being partly owned by EDF Energy makes us very aware of the extreme regulatory difficulties and financial penalties that could arise as the consequence of such action.

As explained in the previous paragraph, we do not believe that DNO costs will automatically rise as a result of networks being built by any IDNOs so do not agree that our "affiliated" IDNO would make things worse. We believe that any effects on DNOs and customers will be the same regardless of who owns the IDNO. In addition, no account is taken here of the benefits available to the developer, the customers on the new networks and the wider community as a whole by being able to facilitate these developments in the first place through the innovative approaches to network construction and ownership being taken by all IDNOs.

3.6. **Implications for Competition**

Paragraph 16: We believe that the concerns expressed by others are as a result of a lack of understanding about what we are trying to do and how we are trying to achieve it. We have addressed these points above to demonstrate that we are helping to develop competition, not hinder it.

We are very conscious of not placing either of our shareholders in a position where licence conditions of affiliates regarding discrimination and ring fencing are compromised in any way. Regarding the IDNO side of our multi utility business, clear guidance has also been issued by our EDF Energy Development Branch shareholder about our responsibility for ensuring that this must not happen. We believe that the resultant relationship that we have with the Host DNO is exactly the same as that enjoyed by an "independent" IDNO. We therefore see no reason why the DNO licence conditions require strengthening at this time.

- 3.7. **Paragraph 17:** In all our dealings to date with the Host DNO regarding our network connections and to seek quotations to provide some specialist services, we have operated formally whenever contacting the DNO. We believe that the service levels that we have received have been good, particularly given the complexity of the work that we will be undertaking and the services we will require over a period that, for the DNO, will probably cover several price control reviews.

We see no reason why we will not be able to place the same degree of pressure on DNOs in the future as "independent" IDNOs could apply.

We also see no reason why a DNO would wish to treat some IDNOs differently in terms of level of service – this would only result in multiple operating procedures, greater cost and the prospect of regulatory challenge.

3.8. Possible approaches to a licence application from a DNO affiliate / Options

Paragraphs 18 to 20: We see no requirement for a different regulatory approach for “affiliated” IDNOs compared to “independent” IDNOs. At this early stage of IDNO development we believe that the existing regulatory methodology is more than adequate to allow the competitive market to develop.

We are particularly strongly opposed to an “affiliated” IDNO licence than is more restrictive than other IDNO licences. If additions or amendments are made this would unfairly place us on an unequal and uncompetitive footing in comparison to other IDNOs or DNOs operating out of area and could have serious consequences regarding our EV project.

We recommend that the Ofgem option to “treat DNO affiliates in the same way as other potential IDNOs” is the course of action that should be followed. There will be an opportunity to review this policy in the light of greater experience during the IDNO review planned to commence in 2011.

We also see no need to make changes to the DNO licences which we see as operating satisfactorily.

4. Comments on possible detailed licence condition changes listed in Annex 2:

As we do not accept that an “affiliated” IDNO should be treated any differently in regulatory terms from an “independent” IDNO we do not see it necessary to comment in detail at this stage on the possible changes outlined in Annex 2.

However, we note that in general terms these would be extremely onerous in both regulatory and cost terms on an “affiliated” IDNO, would attempt to combine an IDNO financial model with a DNO financial model although they may be substantially different and would not place the affiliated IDNO on a level playing field with its competitors.

If Ofgem decides to pursue one or more of these approaches we hope that we would be given the opportunity to comment further and in more detail.