

**For the attention of Martin Crouch –Ofgem Director- Distribution  
26<sup>th</sup> May 2006**

Dear Mr Crouch,

**Regulation of independent electricity distributors: Consultation on implications of licence applications from affiliates of existing licensees**

Further to Ofgem's letter of the 13<sup>th</sup> April 2006 inviting responses on the issues raised therein, we are pleased to offer the following comments from the ODA's perspective.

The ODA is currently in the process of defining the scope and specification of utilities for the London Olympics project. The intention is to invite tenders, with invitations currently programmed to be issued at the end of this year, for the supply of utility networks, embedded generation and associated infrastructure. It is possible that part of this process will invite proposals for a multi-utility delivery, by a single company or joint venture. The tendering process is currently planned to take place during the first half of 2007, following which the ODA would look to choose its preferred supplier and contract for delivery. These timescales are subject to alteration depending on a number of parameters.

In parallel with this, the ODA is in communication with EDF, as one of the host utility network owners for the Olympic Park area. The ODA has submitted an enquiry to EDF in April this year, for connection to EDF's network as the host DNO. The scope of the enquiry is restricted to connection only, and does not include provision of services EDF, or an affiliate of EDF, may be able to offer in addition to its statutory obligation as DNO to provide connection.

It is understood that the Ofgem Consultation is motivated in part by EDF's involvement, through its multi-utility joint venture with Thames Water, termed MUJV, as the preferred utility provider for Kent Thameside. We understand that, whereas EDF can operate out of area using its existing licence, the MUJV needs a licence (an IDNO licence) and that Ofgem is concerned that the JV would be operating inside EDF's price-regulated area of operations. We have no view to express on the merits of the MUJV's licence application but we are nevertheless very interested to have an early understanding of the outcome of Ofgem's consultation, given our involvement with EDF in its capacity of DNO, the potential for EDF or an affiliate to participate in the tendering process for Olympic project utility infrastructure, and the implications any change to regulation may have on this process.

The ODA's procurement process will look to promote competition for the supply of the utility networks and associated plant and infrastructure. The process will also reflect EU procurement legislation and will look to take advantage of the potential for private sector investment in funding and operation of this utility infrastructure. The level of competition, and the interest generated amongst suppliers, will be influenced in part by the level of certainty that both the ODA and suppliers understand to exist, relating to regulatory constraints and the financial and commercial implications these have. We therefore see it as essential that the tendering process is unencumbered with unnecessary uncertainty over licensing and other regulatory constraints.

To date, the ODA and its consultants have carried out certain market testing to understand what level of interest exists in supplying a multi-utility network and what the competencies are. In principle, we have found strong interest from sizeable companies, providing us with confidence that a workable level of competition would

exist. As Ofgem's paper indicates, experience in multi-utility networks is nevertheless limited. Accordingly, any disadvantage that unaffiliated IDNO's may have relative to an IDNO affiliated to the host DNO may inhibit competition.

Nevertheless, rather than preventing the DNO from participating in competitive tendering for multi-utility opportunities, it would be desirable if a way could be found within the regulations to enable the host DNO to participate in a competitive procurement process on equal terms with other companies. We believe competition would be enhanced if the market has confidence regulation will ensure a level playing field.

There are some subsidiary points:

- 1) As we have explained, ODA has to engage continuously with the incumbent utility companies to secure necessary information, and to deal with diversions. Regulatory arrangements that help ensure that such engagement does not result in a distortion of competitive procurement processes would be welcome.
- 2) Price regulation of DNOs provides an important reference point for competitive procurement, but price regulation for individual investments such as the Olympics would add significantly to transaction costs. What the precise form of price control might be is not of concern to ODA.
- 3) As discussed, the Olympics is being built to a timetable with an inflexible completion date. Clarification of the applicable regulatory regime, for the benefit of all stakeholders, would in our opinion be necessary by the autumn of this year in order to prevent uncertainty having a detrimental impact to our competitive tendering process, including our endeavours to promote public sector financing for the benefit of the Olympic funding strategy.

We would emphasise that, for ODA, the precise nature of regulatory controls are less of a concern than ensuring that Ofgem itself has adequate mechanisms and empowerment to ensure discriminatory practice is prevented between a DNO and an affiliated IDNO, sufficient enough to reassure the market for delivery.

We appreciate the opportunity to provide this feedback and hope these comments have been of some assistance. If you have any queries associated with any of these points please do not hesitate to get in touch using the details below.

Yours Sincerely

**Alan Williamson**

Project Sponsor for New Utilities

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