



Martin Crouch  
Director, Distribution  
Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

30 March 2007

Dear Martin

**EDF Energy's Response to Ofgem's Competition in Connections Proposals**

This response sets out EDF Energy's comments on Ofgem's competition in connections proposals. EDF Energy has significant UK interests in electricity generation, energy trading, supply and distribution, and these comments are submitted on behalf of EDF Energy as a whole. This letter and the attached appendix can be published on Ofgem's website.

EDF Energy continues to support the development of competition as a means of providing customers with choice and value in the connections market. Our detailed comments are provided in the appendix to this letter and the main points are summarised below for ease of reference.

Whilst we support the principle of a licence modification to formalise the current voluntary standards of service, we regard the proposed 90% mandatory performance threshold as unacceptable. In particular:

- It does not provide sufficient headroom for the mix of simple, complex and complicated schemes to change from year to year within each voltage category.
- In order to achieve the targets, particularly in the context of growing activity in the competitive connections market, EDF Energy will need to recruit additional design and other specialist staff – a process which is likely to take some time, as such persons are in short supply in the UK.
- The scope and definition of the targets are different from the voluntary standards they are intended to replace and, therefore, there is no direct historical performance to draw on. Our past quotations to ICPs have typically included contestable design elements outside the scope of the proposed standards, and this will make it hard to assess our ability to achieve a 90% standard.

EDF Energy is unable to agree to a licence modification that creates a high probability of breach. To do so would be inconsistent with the fiduciary duties of the respective licensees' directors. However, in this regard we would be able to accept an initial lower performance threshold of 80% that is subject to review after two years in the light of reported performance levels. EDF Energy will strive to achieve the 90% target over a period of time, should this prove to be a practicable proposition.

We have also identified some material deficiencies in the drafting of the licence condition which could give rise to misinterpretation and so increase the risk of a licence breach. It is our recommendation that Ofgem establishes a drafting working group, to ensure that the reasonable intent behind the licence condition is properly defined and expressed.

We are broadly supportive of Ofgem's best practice measures, many of which have already been implemented in EDF Energy. However, we have reservations in some areas in respect of:

- the proposed implementation timescales;
- the applicability of the proposals to all customer groups;
- the incentives for making customer penalty payments; and
- the balance to be struck between providing more detailed information in quotations and adopting a simpler, plain-English style of communication with customers.

We note that EDF Energy will have an opportunity to contribute to the development of the best practice measures within the ECSG and its sub-groups, and we look forward to providing input in this area.

We have some material concerns in respect of Ofgem's proposals for unmetered connections, which principally relate to:

- the implementation timescales;
- the consistency of data reported under the existing service level agreement leading to the proposed performance targets;
- the requirement for DNOs to agree data with local authorities prior to submission to Ofgem; and
- ICPs undertaking work on DNO-laid mains.

We remain committed to working with Ofgem and the industry to resolve these issues and identify a suitable way forward.

If you wish to discuss any aspect of this response in further detail, please contact me on 020 7752 2200 or Paul Delamare on 01293 657846.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Linford", with a stylized flourish at the end.

**Denis Linford**  
**Director of Regulation**

## **EDF Energy's Detailed Response to Ofgem's Competition in Connections Proposals**

For ease of reference, we have used the same paragraph numbering as is used within Ofgem's proposal documents.

### **3. Metered Electricity Connections: Introduction of a Licence Condition**

EDF Energy is prepared to accept the introduction of a new licence condition, but only if our concerns regarding drafting, performance targets, timescales and applicability are appropriately addressed.

**3.5:** EDF Energy notes Ofgem's intention to enter into a formal section 11A consultation process for the proposed licence condition in April/May 2007. Prior to this, Ofgem will need to consult informally with the relevant licensees on further revisions of the proposed draft licence. EDF Energy will not support a proposed licence condition that contains any material drafting deficiencies of the type described below. We are happy to work closely and quickly with Ofgem and other parties to refine the drafting prior to the formal consultation process. We note that the ENA has recently written to Martin Crouch in this regard.

**3.7:** Whilst it may appear that there is currently limited demand for non-contestable services to be provided by IDNOs, EDF Energy believes that it would be inequitable for them to be exempt from the licence condition and that such exemption may, in some cases, distort competition and act against the best interests of customers.

**3.8, 3.9 and 3.10:** EDF Energy supports the classifications as indicated.

**3.13:** EDF Energy has very strong concerns about the proposed 90% mandatory performance levels for the following reasons:

- The proposed standards do not allow for the mix of simple, complex and complicated schemes to change from year to year within each voltage category.
- Particularly in the context of an increasingly active competition in connections market, EDF Energy will need to recruit additional design and other specialist staff to be in a position to achieve the targets, and such persons are in short supply in the UK and will take time to recruit.
- The targets are arbitrary, and are unrelated to historical performance levels.
- The scope and definition of the standards are not the same as those of the voluntary standards they are intended to replace and, therefore, there are no direct historical performance levels for Ofgem to draw on. In addition, EDF Energy is typically asked by ICPs to include the design of the contestable works within competitive connections quotations, but as these are outside the scope of the proposed standards, we do not have directly comparable historical performance against which to judge the proposed standard and assess the risk of non-compliance.

EDF Energy cannot agree to a licence modification that has a high risk of breach (even if perhaps only for the short term), as such a decision would directly conflict with our directors' fiduciary duties to shareholders.

Taking the above concerns into account, together with our support for the standards in principle, we propose that the target thresholds are initially set at 80% and reviewed after two years in the light of reported performance. EDF Energy will strive to achieve the 90% target over a period of time, should this prove to be a practicable proposition.

It is not clear from Ofgem's proposal documents which DNO services will be subject to the proposed licence condition. Further to recent enquiries made of Ofgem, and responses provided by Roger Morgan in his e-mail dated 15 March 2007, by Nicola Love at a meeting with Michael Dyke on the same day, and from discussions at the ECSG meeting on 21 March 2007, it is understood that the licence condition relates solely to the provision of non-contestable information and services and, in the case of the quotation standards, does not include design and quotation for the contestable works downstream of the point of connection. In this respect, the words 'and any other information reasonably required by the customer', as contained in the proposed licence condition definition of 'quotation', are unhelpful and should be removed.

The proposed standards need to address circumstances where only a low number of services for a particular category are provided within a year. It is not feasible to apply a 90% test where there is a very low instance of service provision.

The standards should not apply where it would be unreasonable in all the circumstances for them to do so – i.e. the proposed licence condition should reflect the relevant drafting used in, say, section 17 of the Electricity Act 1989, or in the Standards of Performance Statutory Instrument (Regulation 20). As currently written, the standards would continue to apply even in emergency conditions. Such a regime would be unreasonable and disproportionate.

We agree with Ofgem's comment at the ECSG meeting on 21 March 2007 that the standards will not apply in cases where the incumbent DNO is asked to provide a statutory and a competitive quotation within a single application. We believe that such an exemption is necessary to prevent instances where customers/developers 'leverage' their competitive quotations in order to secure an equivalent processing timescale for the statutory offer. The draft licence condition needs amendment to confirm this point.

**3.16:** EDF Energy cannot agree to the proposed 10 working day timescale being applied to EHV design approval. Under the existing voluntary standards, the 10 working day timescale was originally only applied to LV and associated 11kV works. EDF Energy will only support this part of the licence condition if EHV works:

- are excluded; or
- are subject to a much longer timescale; or
- refer to the period to notify the ICP of the date when either approval or reasoned rejection will be provided.

If the last of these is chosen, then it would seem appropriate for such a timescale to be set at 50 working days in order to match the associated quotation standard.

EDF Energy's comments regarding the proposed performance target in 3.13 (above) apply equally in respect of 3.16.

**3.18:** There will be many circumstances where the licensee is unable to meet the standard due to factors beyond its control, such as where the highway authority does not permit an opening at the required time. The proposed licence condition must accommodate all such circumstances. For the sake of clarity, Ofgem should be aware that EDF Energy would be reluctant to work to street works notices issued by third parties because of the additional liabilities that could arise.

**3.19 and 3.20:** EDF Energy's comments regarding the performance target in 3.13 (above) also apply in respect of these paragraphs.

**Table 3.1:** EDF Energy does not understand the term 'partial energisation'. If this is meant to refer to 'subsequent connections' (where the DNO is to provide further 'closing joints' subsequent to an 'initial connection'), then we can see no reason for timescales different from those proposed for initial connections (i.e. 10 or 20 working days). Please also refer to our comments on Appendix 6 below.

## Regulatory Instructions and Guidance

Ofgem has an established approach to using Regulatory Instructions and Guidance (RIGs) to support incentive arrangements. EDF Energy does not understand why a similar approach has not been used in relation to the proposed competition in connections standards. In particular, such arrangements would provide both Ofgem and licensees with a less cumbersome change control process.

Ofgem may have concerns about delays in introducing the standards, caused by the time necessary for drafting and agreeing the initial RIGs. However, such concerns would be without foundation in our view, since the initial RIGs need be little more complex than the definitional contents of the draft licence modification in its current form.

## Appendix 6 – Draft Licence Condition

EDF Energy believes that the current draft is not fit for purpose for many reasons and asks that Ofgem set up a drafting working group to ensure that the reasonable intent behind the licence condition is properly defined and expressed. EDF Energy would be pleased to contribute to such a group.

**Paras 5(a) to 5(g):** EDF Energy is concerned by the use of the term 'request', which is undefined (and seemingly unrelated to the relevant SLC4 underpinnings). EDF Energy regards 'enquiries' or 'requests' for information as entirely different from formal 'applications' for quotation, and considers that a valid application is made on receipt of both full and final information and any assessment and design payment that may apply. The date on which both of these conditions are met is referred to as the 'application date' within our respective SLC4 methodology statements.

In some cases, EDF Energy is required to sequence offers using the 'application date' to rank priority for use of spare network capacity under its interactive connection application process (section 2.16 of EDF Energy's approved connection charge methodologies refers), and it would be discriminatory to allow a POC request to take priority over other applications (i.e. under section 16) which are required to reach application date for their ranking. As Ofgem is aware, EDF Energy is required to apply its approved connection charge methodology to all connection applicants (both section 16 and competitive) under operation of its relevant licence conditions.

It is of fundamental importance that the quotation timescales are initiated on receipt of a valid 'application' and not simply 'on request'.

**Para 5(h):** Please refer to 3.16 above.

**Paras 5(l) and 5(m):** It is not clear what task is being referred to here. The definition provided for 'partial energisation' appears to relate to the energisation of a metering point, which can only take place on receipt of an instruction from a licensed supplier. Please also see our comments in respect of table 3.1 (above).

**Para 8:** EDF Energy understands and supports the need for an annual audit in order to provide the necessary level of confidence in its reporting that connections market participants would expect.

**Para 9(b):** It is important for this requirement to accommodate situations where customers have made only a general enquiry and are aware that they have not provided either full information or the appropriate payment for the service. In such cases it would seem inappropriate for the DNO to be required to tell customers what they already know.

It is also important that the condition recognises the requirement for customers to provide the DNO with information and any appropriate payment in accordance with the relevant approved methodology statement.

Whilst it would appear sensible to have a requirement to notify the applicant where information is incomplete, EDF Energy believes that the proposed absolute five working day requirement is particularly onerous and disproportionate (i.e. inconsistent with Ofgem's duties in respect of better regulation). For example, it would be wholly disproportionate for a DNO to find itself in a position of licence breach when, for example, the failure was purely the result of a simple clerical omission. Such a condition is unacceptable to EDF Energy.

#### **4. Promotion of Convergence and Good Practices**

**4.7, 4.8 and 4.10:** EDF Energy fully supports Ofgem's intentions in this area and will carry out a complete review and update of its customer communication channels in 2007.

**4.9:** Ofgem will of course be aware of the various exceptions to the section 16 duty to provide a connection set out in section 17 of the Electricity Act 1989.

**4.13:** EDF Energy supports this proposal and will investigate options as appropriate.

**4.15:** In general we support Ofgem's proposals, although it may be difficult to provide a single point of contact in all situations. However, EDF Energy will review its customer interface arrangements.

Whilst EDF Energy has no objection in principle to amending its connection methodology statement, it does however recognise the need for such statements to contain legally precise drafting, which may negate attempts for the statements to be phrased in plain English. It is better to present such information using other forms of communications as appropriate. This point has been recognised by Ofgem in paragraph 4.7 of its proposals document.

**4.21:** EDF Energy supports Ofgem's suggestion and will explore opportunities for online submission and tracking.

**4.22:** EDF Energy supports Ofgem's proposal and understands that this work will be taken forward within the ECSG.



**4.25:** It is assumed that the proposal is intended to provide a breakdown of ‘contestable’ and ‘non-contestable’ elements, and to provide a description of the works to be carried out. EDF Energy does not believe that the proposal is appropriate for all customer groups, especially for ‘one-off’ domestic connections and major repeat customers, including ‘unmetered’.

Ofgem has recognised the lack of interest in the ICP community in ‘one-off’ domestic connections (Ofgem’s proposals document, 4.23 and 4.55). EDF Energy continues to receive adverse customer feedback resulting from situations where, on request, it has advised ‘one-off’ domestic customers of their competitive options in the unrevealed knowledge that the customer will not find an ICP who is willing to provide a quotation. This is highly misleading for customers, who subsequently feel aggrieved that their time and efforts have been wasted. EDF Energy requests support from Ofgem for DNOs to be honest with this customer group in providing advice that effective competition does not exist. We require this support in recognition that such advice would not be viewed as anti-competitive and would not be considered as a licence breach.

For major repeat customers, on the other hand, the more appropriate solution in this context is simply to meet their individual wishes. There is a balance to be achieved between providing detailed information and retaining simplicity and a plain-English style.

EDF Energy proposes that in order to achieve appropriate alignment between customer communication and regulatory reporting, and to achieve the required degree of transparency, IT modifications will be required in order to mark quotations with the number of days taken to provide the quotation. Ofgem should note that such modifications will take some time to develop, test and implement.

**4.26:** To achieve a proportionate result, the proposed value threshold should be related to an analysis of the market sectors in which ICPs are known to be generally active. We believe that the proposed £20k threshold would be found to be too low if such a test were applied.

For EDF Energy, the £20k threshold would result in virtually all ‘projects’ being included and it is not clear that this would work in the best interests of customers. Given the increased level of customer information that EDF Energy has agreed to make available (as above), it would seem more appropriate for POC information to be provided only ‘on request’. EDF Energy will consider a combined approach which will ensure that all ‘project’ customers are aware that POC information is available ‘on request’. This will ensure that POC information is not routinely provided to customers who do not wish to receive it, which will be particularly important for some repeat customers.

If there is to be a set level of quotation value where POC information is to be automatically provided, EDF Energy would propose that the level is initially set at £150k.

**4.34:** EDF Energy supports Ofgem’s proposal and will make available a named senior manager for connection services referrals within its disputes resolution processes.

**4.40 and 4.41:** EDF Energy supports Ofgem’s proposals in principle, but has concerns about the unrealistically short delivery timescale suggested. EDF Energy will work with the ECSG to develop a national template.

**4.43:** EDF Energy has always been willing to present a high level breakdown of costs and will work with the ECSG to establish robust definitions.

**4.48 and 4.49:** EDF Energy agrees that it is appropriate to wait for the first reporting round before making proposals in this area.

**4.53:** EDF Energy supports Ofgem's proposals in this area.

**4.54:** EDF Energy has previously made it known that it does not support extending contestability to partly funded diversions and reinforcement. However, it does support Ofgem in its proposal to focus efforts on areas which are already contestable.

We continue to believe that transmission connections should be contestable.

**4.60:** EDF Energy agrees that any consideration of price capping one-off connections is best given within the next distribution price control review.

**4.63:** EDF Energy strongly supports Ofgem's proposal and believes that Ofgem should take the lead in developing a standardised approach so that reasonable comparisons can be made of relative DNO performance.

EDF Energy would suggest that the survey is limited to a small number of focused questions covering the full connection lifecycle.

**4.64:** EDF Energy supports Ofgem's proposals in this area.

**4.65:** EDF Energy does not support the further introduction of customer payments to those already in existence within the Electricity Guaranteed Standards. This is on the basis that any reasonable level of payment would be of insignificant value to business customers, who would simply prefer a timely and accurate response to their enquiries. It would also provide a distraction to the service improvement initiatives proposed elsewhere in Ofgem's document.

## 5. Unmetered Connections

**5.3:** EDF Energy cannot support any requirement to agree reporting data with local authorities prior to submission to Ofgem, as such an arrangement is unnecessary and would be unworkable and disproportionate. EDF Energy notes that no other area of regulatory reporting is subject to third party agreement.

EDF Energy is aware that some local authorities do not agree with the data provided to Ofgem but is also aware that there are genuine issues resulting from a lack of guidance on the precise definitions associated with reporting under the existing version of the SLA and from limitations presented by the IT systems of both parties.

From its discussions with local authorities, EDF Energy is aware that reports can be subject to different interpretations in respect of the items to include, and even how the identity of the party making a fault report can affect how the information is recorded in the appropriate IT system and its inclusion, or not, in any subsequent report. We are also aware that there can be differences of opinion on the definitions of categories to be reported.

EDF Energy must point out that it has a legal requirement to make accurate regulatory reports as directed by Ofgem (section 59 of the Electricity Act 1989) and is unable to accept that its ability to do so can be constrained by the inability or unwillingness of a third party to agree the data that are to be provided.

Notwithstanding the above, EDF Energy is willing to work with Ofgem and local authorities to develop a robust guidance document (or RIGs) which would facilitate reporting and minimise the chances of a dispute.



**5.4:** Given the concerns above, it would seem inappropriate for minimum performance levels to have been established from an assessment of reports in which there is generally little confidence. EDF Energy can only support the introduction of performance standards (even on a voluntary basis) once robust definitions and guidance have been established.

**Table 5.1:** It is not clear how the 'report against' figures relate to the proposed minimum benchmark where more than one minimum benchmark has been provided.

**5.9:** EDF Energy supports Ofgem's proposal.

**5.10:** EDF Energy supports Ofgem's proposal.

**5.18:** Given the comments provided by respondents (5.16), it is surprising that Ofgem has not ruled out ICP working on DNO-laid mains. EDF Energy has serious safety-based concerns about the safe identification of cables prior to working on DNO-laid mains and cannot support this aspect of Ofgem's proposal.

**EDF Energy**

30 March 2007