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Dear Paul

Response to Ofgem Consultation on: "Application by EDF Energy (IDNO) Ltd for an electricity distribution licence"

This letter is written for and on behalf of The Electricity Network Company (ENC), a wholly owned subsidiary of GTC and is in response to Ofgem's consultation on an application by EDF Energy (IDNO) Ltd for an electricity distribution licence.

This response should be read in conjunction with our response to Ofgem's previous consultation on this subject.

We do not support EDF Energy (IDNO) Limited's application for an electricity distribution licence because:

- Ofgem's own published figures show that effective competition has not yet been established in the IDNO market, nor specifically in EDF's Energy's distribution service areas.
- The significant barriers to creating a market in which IDNOs may compete on an equal basis can only be resolved by DNOs taking steps now to remove those barriers; however, this application is a thinly veiled attempt by a DNO to exploit the emerging market whilst maintaining practices which prevent IDNO's competing on an equal basis.
- We suggest that EDF Energy is able to use the mismatch in timings of regulatory processes for advantage. Currently Ofgem are investigating a GTC complaint against EDF Energy in respect of, inter alia, alleged anti-competitive behaviour in dealing with connection enquiries. Such investigations can take more than a year for OFGEM to conclude. In the meantime EDF Energy is able to pursue their own IDNO licence application and establish their own market presence in a market where non EDF Energy new entrants cannot compete on a level playing field.
- Granting a licence to EDF Energy (IDNO) Limited will thus inhibit and frustrate competition, rather than promote competition and will deliver no advantages to customers / developers. If EDF demonstrate this can be achieved then other DNO's will quickly follow with their own IDNO applications to protect their own de facto monopolies thus foreclosing the market.
- An IDNO licence is not required by EDF Energy in order to be able to offer multi utility construction services to the market; they are already able to do so.

- EDF energy are already able to compete out of area under their existing licence, so there can be no point to operating an additional licence adding to the regulatory burden both for themselves and OFGEM, unless EDF Energy perceive a method of gaming can lead to advantages.
- We do not believe that licence conditions and safeguards, no matter how carefully worded can be effective against gaming. Policing such arrangements is almost impossible, and even in the event that a subsequent investigation found such events and penalties were imposed, irreparable damage could be done to new entrants and to the market including the loss of new entrants who meanwhile could not survive with the field tilted against them.
- EDF Energy (IDNO) limited would benefit from the buying power of their affiliate DNOs, such benefits are not shared with other IDNOs. As such EDF Energy (IDNO) Limited would have a distinct undue competitive advantage over true IDNOs, or to put it another way EDF Energy (IDNO) Limited would not be independent in all respects.

These points are further developed below.

When Fulcrum Pipelines Ltd was granted an iGT licence competition was well developed in gas connections with the barriers to competition being resolved. This is not the case with electricity connections where competition is embryonic and fragile, and where significant work is still required to remove the barriers to competition. Many of these barriers, such as the DNO connection quoting process, network boundary arrangements and margin squeeze on DUoS income, can only be resolved by DNOs. According to Ofgem's own figures, and from respondents' comments to Ofgem consultations, competition is least developed in EDF Energy's distribution services areas. Granting EDF Energy (IDNO) Limited an IDNO licence to operate within their DNO affiliates distribution services areas will inhibit the development of competition. Although this application is for two geographic locations, we are in no doubt that once granted, further extensions of the licence will be inevitable.

As Ofgem states, its principal objective is to protect the interests of consumers, wherever appropriate by promoting competition. The granting of a licence to EDF Energy (IDNO) Ltd will neither protect the interests of consumers nor will it promote competition.

Ofgem's consultation states that EDF Energy (IDNO) Limited's application for an IDNO licence is driven by developers requiring the provision of electricity infrastructure by an IDNO. Respondents to Ofgem's previous consultation commented that the reason for this was that developers wanted to take advantage of the flexibility and benefits of multi-utility service provision. However, multi utility construction can be carried out without the need for an IDNO licence. A multi utility company can provide assets that, following completion, are adopted by the relevant utility undertaker (in the case of electricity, by a DNO or IDNO; in the case of gas, by an iGT or GDN; and, in the case of water, by the water company or the holder of an inset appointment in respect of such assets). There is nothing to prevent EDF Energy operating in this way with developers with assets being subsequently adopted by its relevant affiliate DNO business. Given the significant similarities between an IDNO licence and a DNO licence there is no more scope for innovation for an IDNO than there is for a DNO. There is nothing to prevent innovation from EDF Energy's existing DNO businesses.

Under standard condition 29 of the electricity distribution licence both IDNOs and DNOs *"...must not conduct any business or carry on any activity other than an activity of the*

Distribution Business except in accordance with the provisions of this condition.”¹ As such EDF Energy (IDNO) Limited cannot operate as a multi utility operator any more than one of its affiliate DNO businesses can.

In establishing an IDNO that is affiliated to a DNO there will not be a level playing field. We do not agree with Ofgem’s opinion that modifications to the licence would adequately guard against anti-competitive effects. Whilst we note the intent of such modifications, we also note the difficulties of policing such arrangements in practice. Even with such licence conditions in place there would be significant opportunity for gaming which, whilst not necessarily constituting a breach of licence obligations, would be to the detriment of competition and consumers. Past complaints about anti-competitive behaviour have failed because there has been insufficient evidence to support them. Gathering such evidence is difficult. This is due to the high costs, and the level of resource required, in pursuing such complaints. Acquiring evidence is even more difficult where an allegation is in respect of inappropriate behaviour between affiliates.

Ofgem has indicated that, if it decides to grant EDF Energy (IDNO) Limited a licence, it proposes to make modifications to the licence. Whilst the proposed modifications may include provisions on restricting cross subsidy, conditions in this area should be much stronger with the IDNO licensee and the DNO affiliates being required separately to demonstrate that EDF Energy (IDNO) Limited doesn’t receive any benefit, financial or otherwise, from the DNO affiliate that isn’t available to true IDNOs. In doing so EDF Energy DNO affiliates should be required to publish a statement identifying any services they provide to their IDNO affiliate business (along with the charges) and confirmation that such services are available to other parties.

In setting up a new licensed IDNO business EDF Energy will be able to discriminate between those developments it wants to own and operate as an IDNO business and those developments it wants to operate under one of its DNO licences. For developments that EDF Energy (IDNO) Limited wishes to own and operate it may offer adoption payments to the developer or enter into arrangements with the developer to share future DUoS revenue streams. If EDF Energy (IDNO) Limited procures its services (for example, the management of dataflows, MPAS provision, DUoS Billing, asset management, fault management and information) from its DNO affiliates on a marginal cost basis it will be in a position to offer higher payments than other DNOs. This would give EDF Energy a distinct and unfair cost advantage over other IDNOs. In effect this would mean that affiliate DNO businesses (and therefore the customers of the DNO businesses) would be funding part of the operation of the IDNOs. The same is true in respect of the procurement of plant and equipment where EDF Energy is the largest DNO group in the UK. EDF Energy (IDNO) Limited would receive the benefit from corporate procurement contracts set up in respect of EDF Energy’s three DNOs. Such benefit would give EDF Energy (IDNO) Limited a distinct advantage over true IDNOs. Such advantage only arises as a consequence to its affiliation to the EDF Energy DNOs.

Also, if EDF Energy (IDNO) Limited’s employees, or any agents acting on behalf of EDF Energy (IDNO) Limited, have access to information held by the DNO affiliates, we would expect the same unfettered access to be offered to true IDNOs on the same terms.

A final point we would make is that we are already concerned at the level of services provided by the DNO affiliates. This is in respect of resolving IDNO DNO issues, responses

¹ Electricity Distribution Licence 1 June 2008, Condition 29, paragraph 1

to connection quotes and the failure to develop IDNO tariffs. It would be of significant concern if resources from the DNO affiliates were to be either diverted or transferred across to the new IDNO business with the consequence that services to connection providers and IDNOs was degraded further.

We would be happy to meet with you to discuss our concerns with the issues raised by this application.

Yours sincerely

Mike Harding

Regulation and Compliance Manager

GTC (for and on behalf of The Electricity Network Company Ltd)