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Our ref: ENERG/E/IDNOEDF/01

Mr Paul Darby
Distribution Policy Manager
The Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

16th June 2008

Dear Paul,

Application by EDF Energy (IDNO) Ltd for an electricity distribution licence

Thank you for your letter of 16th May 2008 inviting views on the application by EDF (Energy) Ltd for an IDNO licence.

Looking at the wider implications of this proposal, there are a number of concerns that have to be addressed to ensure that the establishment of a competitive market for the ownership and operation of electricity networks will remain a primary objective for Ofgem.

Specifically, I would draw your attention to the following points: -

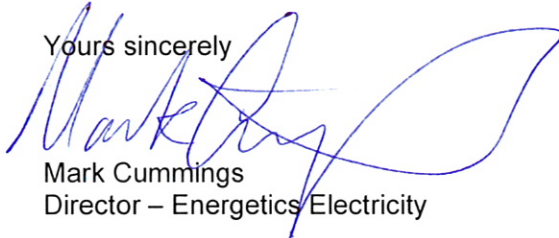
1. The discussion is centred on the reasons why an existing DNO, albeit through an affiliated company, would wish to secure an IDNO licence to operate networks in their own franchise area. My concern is the assertion that the developers wish the networks to be owned by an IDNO and, on the understanding that there are no technical differences between DNO and IDNO connections, my experience of this market is that developers are only interested in the commercial terms on offer.
2. The fact that the developer only negotiated with EDF and did not approach the wider IDNO market raises a doubt in my mind over the nature of these discussions. My suspicion is that EDF could not meet the developer's commercial requests through their existing Condition 4 statements and chose instead to embark on an IDNO solution to give them the commercial flexibility to secure the project thereby avoiding fundamental changes to their Condition 4 Statements which could jeopardise their monopoly position.
3. Your comment under point 8 in reference to Ofgem's principle objective "*to protect the interests of consumers, wherever appropriate by promoting competition*" leaves a very sour taste in light of the conduct of EDF over many years, as evidenced by your 2006-07 Connections Industry Review;

- In both the 2005-06 and 2006-07 reporting years none of the three EDF licensed companies received any enquiries for Simple Schemes.
 - Over the same two years there were only 10 enquiries across the three areas for Complex Schemes.
 - Over the same two years there were only 7 enquiries across the three areas for Complicated Schemes.
 - In comparison, United Utilities processed over 2,400 enquiries across these three categories over the same two year period.
 - The tariff structures under these three licence holders have resulted in significant margin squeeze for IDNO's to the extent that the South East of England is uneconomical resulting in negative margins for the independent licensed operators.
- 4 The fact that Ofgem now chose to quote their principle objective as reason to grant an IDNO licence to EDF (Energy) Ltd whilst ignoring the lack of competition in this sector over many years is extremely disappointing. If Ofgem chose to grant the IDNO licence to EDF (Energy) Ltd then, in addition to their current prohibitive tariffs, EDF would now have a second commercial vehicle to restrict competition in their franchise areas.
 - 5 In Ofgem's initial decision on this subject dated 24th August 2006, the statement was made (Annex 1) that the development of a specific IDNO customer group and tariff would help identify issues. Almost two years have passed and EDF have made no attempt to address this issue and here we find ourselves being asked yet again about our views on the very same consultation.
 - 6 Treating DNO affiliates in the same way as other IDNO's is really not a viable option. By definition they are not independent and it would be naïve to think that the DNO and IDNO would remain separate in every sense of the word. The other consequence of this approach will be the resultant reporting requirements to satisfy Ofgem and the wider industry that the IDNO would not be benefiting financially through a more relaxed approach by the DNO.
 - 7 Refusing to grant a licence is still an option for Ofgem in the strong belief that this, and future, applications must be viewed in a wider context and not just whether it meets the standard criteria or not. The wider objectives of promoting competition, attracting investment and encouraging innovation must be considered in order to support the 'true' independent companies through the current difficulties in this market.
 - 8 In the event that Ofgem are minded to grant the IDNO licence to EDF (Energy) Ltd, modifying the DNO licence and/or price-control could provide some form of protection. However, the formal complaints process must also be reviewed to ensure there is a quicker and more robust investigation from Ofgem when 'gaming' is suspected.
 - 9 Should Ofgem decide to grant the IDNO licence to EDF (Energy) Ltd then I fully expect that Ofgem will insist that LPN and SPN treat them in the same way as any other IDNO in respect of;
 - boundary metering
 - upstream boundary charges
 - technical approvals
 - point of connection approvals
 - separation of shared services i.e. design, commercial, HR etc

- operational response - would EDF continue to hold the line that they will not offer an Operations & Maintenance contract to IDNO's?

As a final comment, I would again express my concern over the underlying strategy of the affiliated company and ask Ofgem to consider refusing the licence. Over time, if Ofgem can assist the wider industry to resolve some of the inconsistent and anti-competitive technical and commercial practises, we may yet see a more open and transparent market which in turn would alleviate many of our current concerns. In short, fix the problem we have just now before making it worse.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Cummings', with a large, stylized flourish extending to the right.

Mark Cummings
Director – Energetics Electricity