

Paul Darby  
Distribution Policy Manager  
OFGEM  
9 Millbank  
London  
SW1P 3GE

Inveralmond House  
200 Dunkeld Road  
Perth  
PH1 3AQ

Telephone: 01738 456571  
Facsimile: 01738 456415

18<sup>th</sup> June 2008

Dear Paul,

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

SSE welcomes the opportunity to comment on EDF Energy (IDNO) Ltd's application for an electricity distribution licence.

It is recognised this application is very similar to one in which Ofgem consulted on in 2006 and which was not proceeded with at the time. Our response to Ofgem's previous request for views on the licensing of any affiliate of a DNO included a recommendation for varying forms of regulation and/or other licence modifications from the 'toolbox' of options proposed by Ofgem. We indicated at this time that the licensing of an IDNO to operate within its affiliate DNO's distribution services area (DSA) will always require very careful attention in order to protect both the development of competition and end customers' interests. We believe EDF Energy (IDNO) Ltd is a business set-up to exploit opportunities in the networks market, potentially at the expense of other IDNOs and DNOs operating out of area, and therefore only the most stringent level of regulation will be appropriate if they are successful with their application.

With regard to EDF Energy (IDNO) Ltd's stated reasons for applying for an IDNO licence to operate in the LPN/SPN DSAs, Ofgem has not provided a clear explanation of the complex contractual requirements that appear to be the key driver for the application. Without this background information it is difficult to understand why the developers cannot simply request EDF Energy's DNO businesses to provide the electricity infrastructure for the two developments and for this to be provided under EDF Energy's standard terms and conditions. It may even be the case that the Olympic development could be treated by Ofgem as a special case due to the scale of work required to be

carried out and the importance of this project to the nation. In which case there may be alternative arrangements that would be more appropriate to these unique and very special circumstances.

It is noted that Ofgem proposes to apply a specific restriction to EDF Energy (IDNO) Ltd's activities under proposed Licence Condition BA4. This will allow the IDNO to request Ofgem to approve additional networks beyond the two specified in the consultation letter. This suggests the driver for the application of an IDNO licence may not be solely to do with the contractual arrangements associated with the two developments referred to in the consultation. It would therefore be helpful to better understand the relevance and importance that these contractual arrangements have in determining whether or not Ofgem approve the application of an IDNO licence.

While Ofgem's proposals will ensure no cross subsidy between DNO and affiliated IDNO, we remain concerned with the precedent that is being set and with the risk that this could stifle the IDNO competitive market. This is particularly the case at the higher voltage levels (HV/EHV) and with very large developments where IDNO competition has still some way to evolve. It is our view that the developers for the two sites mentioned in the consultation paper are seeking to obtain a discount on the connection costs based on future cashflows via use of system charging. This arrangement 'tilts' the playing field in favour of new market entrants in an emerging market. Ofgem need to carefully consider whether their proposals set a precedent that would allow EDF (or other DNOs) to extend this principle to the emerging competitive markets at HV/EHV and larger LV developments. If EDF Energy's intention is to grow a series of such networks in their DSAs, then it may be more appropriate for Ofgem to consider alternative licence arrangements to allow DNOs and IDNOs to compete on a level playing field without the need for DNOs to have a separate IDNO licence.

As noted above, the licensing of an IDNO to operate within its affiliate DNO's DSA will always require the most stringent of regulation in order to protect the development of competition and end customers' interests. In this respect we support Ofgem's views and proposed modifications to the conditions of the applicant's prospective licence and the proposed modifications to the special conditions that apply to EDF (LPN) and EDF (SPN) licences. The implementation of homogenous DNO/IDNO price control treatment in respect of EDF Energy (IDNO) Ltd's activities in the LPN/SPN DSAs and to place restrictions on the extent of its activities in these areas is particularly important to counter the possible adverse effects on competition in electricity distribution. Ofgem's approach to treating the DNO and IDNO relationship as a combined business for the purpose of price control would seem appropriate and relatively straight forward to implement. However, even after taking the above regulatory safeguards into consideration, we believe there remains a serious risk of stifling the emerging IDNO competitive market and Ofgem should consider if alternative licensing arrangements are more appropriate.

I hope that these comments are helpful. If you would like to discuss any of the above, please don't hesitate to contact me.

Yours sincerely,

Malcolm J Burns  
**Regulation Manager**