

Anna Kulhavy
Senior Economist – GB Markets
Office of Gas and Electricity Markets
9 Millbank
London, SW1P 3GE



31 July 2008

Dear Anna

DISTRIBUTED ENERGY – FURTHER PROPOSALS FOR MORE FLEXIBLE MARKET AND LICENSING ARRANGEMENTS

EDF Energy welcomes the opportunity to respond to Ofgem/BERR's joint consultation on further proposals for more flexible market and licensing arrangements for Distributed Energy (DE). The outcome of this consultation will have a direct impact on EDF Energy, as we are already a participant in the DE market, with a number of business activities:

- Owning and operating DE schemes (including Barkentine Combined Heat and Power (CHP) plant in East London).
- Exploring new opportunities for DE, independently, and through the London Energy Services Company (ESCO), our joint venture with the London Climate Change Agency (LCCA).
- Connecting DE to our electricity distribution networks.
- Purchasing the electricity from independent DE schemes, and providing a range of support services (including to large schemes at Woking and Milton Keynes).

The final proposals made in the consultation document are the result of almost two years of analysis and debate which has included a large number of stakeholders. EDF Energy is pleased with the way in which Ofgem/BERR have carried out this work, and is broadly supportive of the final proposals made by Ofgem/BERR, which we believe will be supported by most interested parties.

However, while we believe that the issues covered by the consultation are very important, we would stress that other issues, that are clearly outside the scope of this work, such as Government decisions on a reward for low carbon heat, reforms to the European Union Emissions Trading Scheme, and the future of renewable electricity support mechanisms, will have a more significant impact on the DE market.

Our full response to the questions posed in the consultation document is attached to this letter. Below we have summarised our views on these questions, and commented on other key issues that are not specifically addressed by the consultation questions.

Exemption Limits

We endorse Ofgem/ BERR's decision to support the growth of DE by tackling the costs and complexities of becoming a licensed supplier, rather than expanding licence exemption thresholds. The chosen solution will ensure that customers connected to DE schemes benefit from the protection of the licence framework and the competitive market.

There will still be some smaller DE schemes that fall below the current licence exemption thresholds. These schemes avoid the costs of being licensed, and, in the case of DE schemes operating on a private network, they are currently not required to offer third party access to the network, and can therefore prevent customers from switching to an alternative supplier.

However, in light of the recent Citiworks judgement, questions must now be asked about whether this arrangement can continue in its current form, as in our opinion, the most obvious implication of the Citiworks judgement is that all distributors must be required, on request, to offer terms for access to their systems.

We do not believe that it would be desirable to achieve this extension of the regulatory obligations by means of an extension of the licensing regime, since it is impractical to require distributors operating smaller systems to apply for and obtain a licence. The better approach would be to make the benefit of the Exemptions Order subject to the satisfaction of additional conditions, so that, for example, a distributor in order to be exempt must allow system access. This would have the effect that distributors would be required by this means to meet the basic obligations set out in the liberalisation Directive in order to avoid the duty to hold a licence.

We recommend BERR to ensure, in dealing with the Citiworks implications, that the Exemptions Order is redrafted in plain English. In addition, we do not agree with Ofgem/BERR's view that the 'per company' maximum should remain in place. This rule effectively prohibits any one company from developing several licence exempt small schemes. We believe that this would be counter-productive and inhibit the development of the very small (licence exempt) end of the DE market.

Wholesale Market Trading

We agree that the ongoing cashout review should consider the issues faced by small intermittent generators. The recent Impact Assessment for P211, raised by EDF Energy, has identified that it would provide a better outcome for small intermittent generators relative to the existing baseline. We recommend that Ofgem approve P211 without delay.

With regard to the proposal to designate a third party with the authority to raise BSC modification proposals on behalf of DE, we would not object to this proposal, provided that a suitable candidate comes forward.

Selling to a Third Party

We support the conclusion reached in the consultation document that the market for small generator electricity output is competitive and diverse. We also agree that better understanding of the trading arrangements and the operational environment have benefited DE operators. Therefore, we are fully supportive of proposals to create a DE Information Hub, bringing together information that will be of use to current and prospective DE developers.

Becoming a Licensed Supplier

We agree with the proposal to amend SLC 11.2 so that the Authority is empowered to give a direction to a licensee which would permit it to have arrangements (such as a Supplier Services Agreement) in place with another licensee, who is party to the codes, to discharge the necessary code functions on its behalf.

We would accept a suitably clear amendment to the supply licence. However, we are not convinced that the amendment proposed in Appendix 2 of the consultation document is sufficiently robust, and we have therefore proposed an alternative amendment (Appendix 1 of this response).

We agree that Ofgem should issue guidance on eligibility criteria for switching off parts of the code compliance licence condition. We believe that eligibility should be based simply on the requirement to have put in place appropriate alternative arrangements with a licensed supplier that meet specific defined standards. We do not favour placing further restrictions on eligibility, for example by limiting the size or type of supplier who is eligible.

Establishing a working group to agree best practice guidelines for Supplier Services Agreements would be useful. In addition, this group could examine what arrangements should be put in place to deal with a breakdown of the relationship between the DE scheme party and the supplier services provider. EDF Energy would be happy to contribute to the work of the group.

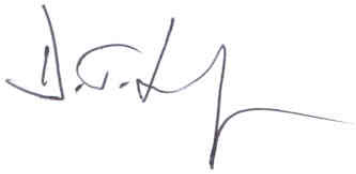
Finally, with regard to the proposals that impact on the distribution network operators (DNOs), we support Ofgem's intention to consider the needs of DE as part of DPCR5, and we also agree with the development of more cost-reflective distribution use of system (DUoS) charging.

We understand Ofgem's frustration with the time taken to develop more cost-reflective DUoS prices for DE. However, Ofgem appear to have embarked on this process in the mistaken belief that each DNO maintains comprehensive load flow models for its networks. Such models are not in place, because it is more efficient to limit load flow studies to particular groups of circuits rather than maintain a comprehensive model.

EDF Energy Networks is currently consulting on nodal DUoS pricing in respect of our SPN area, and will bring forward proposals for EPN and LPN by April 2009.

I hope that you find our response useful. If there are any general queries arising from our comments or if you think that further discussion would be useful, please do not hesitate to contact me on 0207 752 2200, or my colleague Matthew Nunn on 0207 752 2194.

In the event that there are any specific queries concerning the Draft amendment for SLC 11 in Appendix 1, please contact Roger Barnard on 0207 752 2199.

A handwritten signature in black ink, appearing to read "D. Linford".

Denis Linford
Director of Regulation

Attachment: EDF Energy's response to the Ofgem/ BERR consultation on Distributed Energy

Question 1: We welcome views on whether the Authority should exercise its power as provided for under the BSC to designate a third party representative to raise BSC code modifications.

Provided that a suitable candidate comes forward, we would not object to Ofgem designating a third party as a representative of the DE community, with the authority to raise BSC modifications on their behalf.

Question 2: We welcome expressions of interest from stakeholders interested in having the power to raise code modification proposals on behalf of DE schemes. For those interested parties, please highlight specific reasons why this power should be conferred upon you.

EDF Energy does not intend to put itself forward for this role.

Question 3: In terms of the length of designation, we believe that a period in line with the Panel's term (e.g. 2 years) may be a suitable period with which to trial this proposal. We would welcome stakeholders views on the period for which designation might last.

A period of two years seems reasonable.

Question 4: We would welcome views on whether the designated party should be obliged to contribute fees to Elexon in order to participate in the BSC change process. If so, how should the level of contribution be determined?

In the interests of fairness, the DE representative should be obliged to contribute fees to Elexon. If an exception is made for DE then other parties may have just cause to request an exemption.

The level of contribution paid by the DE representative should be proportionate to the cumulative size of the schemes represented – measured in KWh of electricity in the settlement system.

Question 5: Should any other codes be examined in relation to lack of DE representation?

It may be appropriate to consider representation in the industry codes associated with supply point administration and the change of supplier process, such as the Master Registration Agreement (MRA).

The party nominated to raise BSC modifications on behalf of DE Schemes could also be nominated to raise MRA modification proposals on behalf of DE and represent DE in any MRA working groups.

Question 6: We invite stakeholders to identify any good quality information currently available that would be suitable for including in the development of a user friendly information hub on the process of setting up and operating a DE scheme.

We support the concept of a DE Information Hub. This could include the information listed in the table below. Where we are aware of existing information sources, they are noted in the table.

Information Requirement	Existing Sources of Information
General information on setting up a DE scheme ('setting up a DE scheme' process flowchart)	Energy Saving Trust (Section: Community Action for Energy) http://www.energysavingtrust.org.uk/cafe/welcome/
Contact details for providers of legal, regulatory, contractual advice	
Contact details for providers of 'Supplier Service Agreements'	
Details of where DE electricity can be bought and sold (auctions and offers by individual suppliers)	
Contact details for Distribution Network Operators	Ofgem http://www.ofgem.gov.uk/Networks/ElecDist/Pages/ElecDist.aspx
Contact details for providers of DE finance	
Contact details for other DE schemes (to enable information sharing)/ case studies	Energy Saving Trust (Section: Community Action for Energy) http://www.energysavingtrust.org.uk/cafe/welcome/ Carbon Trust (Section: Resource) http://www.carbontrust.co.uk/technology CHPA (Section: Case Studies) http://www.chpa.co.uk/ Sustainable Development Commission (Section: what you can do) http://www.sd-commission.org.uk/pages/forlocal.html

<p>Details of available benefits, and how to claim them (such as capital grants, tax benefits, ROCs, LECs)</p>	<p>Energy Saving Trust (Section: Community Action for Energy) http://www.energysavingtrust.org.uk/cafe/welcome/</p> <p>Biomass Energy Centre (Section: Grants) http://www.biomassenergycentre.org.uk</p> <p>CHPA (Section: About CHP) http://www.chpa.co.uk/</p>
<p>Details of the latest DE related innovations/ technologies: for example, information on technology that could improve forecasting capability for DE</p>	<p>Carbon Trust (Section: Innovations) http://www.carbontrust.co.uk/technology</p> <p>Biomass Energy Centre http://www.biomassenergycentre.org.uk</p>

Question 7: Do you agree with the proposed licence amendment to SLC 11.2 (see Appendix 2)? Suppliers - please indicate whether you would accept the proposed licence amendment.

We agree with the proposal to amend SLC 11.2 to allow licensees to seek a direction from the Authority which permits the licensee to have arrangements (such as a supplier service agreement) in place with another licensee, who is party to the codes, to discharge the necessary code functions on its behalf.

We would accept a suitably clear amendment to the supply licence. However, we are not convinced that the amendment proposed in Appendix 2 of the consultation document is sufficiently robust, and we have therefore proposed an alternative amendment (Appendix 1 of this response).

Question 8: Should Ofgem issue guidance on eligibility criteria for switching off the code compliance licence condition? If so, what should the main criteria be?

Ofgem should issue guidance on eligibility criteria for switching off the code compliance licence condition.

We believe that eligibility should be based simply on the requirement to have put in place appropriate alternative arrangements with a licensed supplier that meet specific defined standards.

We do not favour placing further restrictions on eligibility, for example limiting the size or type of supplier who is eligible. We can see no reason why any such restrictions would be necessary, and are concerned that restrictions would limit the potential size of the market and make it less attractive to potential providers of Supplier Service Agreements.

Question 9: Should Ofgem establish an industry working group to develop a good practice guide on supplier services agreements?

Establishing a working group would be useful. EDF Energy would be happy to participate.

It is important that the guidance is specific enough to enable parties to develop an agreement that Ofgem are likely to be satisfied with, but at the same time flexible enough to allow parties to create innovative agreements that suit their specific requirements.

Question 10: How should the risks of a breakdown in the DE-Agent relationship be mitigated?

The key risks that would arise in the event of a breakdown in the DE-Agent relationship (for example, in the event that the Agent is no longer able to perform its duties due to its financial situation) are as follows:

- The DE operator no longer has a workable Supplier Services Agreement and is therefore in breach of SLC 11.2.
- As a result of non compliance by the DE scheme, the operational integrity of the electricity system, or the operation of the competitive market, is compromised.

While these are significant risks, we believe they can be overcome by putting in place fairly simple arrangements, similar to the Supplier of Last Resort arrangements that already exist in the energy supply industry.

For example, in the event that an agent failed, Ofgem could move swiftly to seek bids from alternative Supplier Service Agreement providers who are willing to step in and take over the provision of services to the DE schemes. This process should be able to move sufficiently quickly to ensure that affected DE schemes are at no time left without a Supplier Service Agreement contract and therefore in breach of their supply licence.

We believe that it would be useful if the proposed Ofgem working group (discussed in question 9) were able to consider this in more detail, and debate the finer details of the arrangements. Such arrangements would need to be supported by a relatively brief extension of the existing provisions of SLC 8 (Obligations under Last Resort Supply Direction) to cover the situation in question.

Finally, we note that we do not see any significant risks for the providers of Supplier Service Agreements. When signing an agreement we will ensure that the terms of the contract do not penalise the provider of the Supplier Service Agreements for any instances outside our control where the DE scheme party takes an action that could put the provider in breach of his own supply licence.

Appendix 1

Draft amendment for SLC 11 (Compliance with codes)

EDF Energy's Comments

1. The text presented by Ofgem in Appendix 2 purports to be a draft amendment for SLC 11.2 but is numbered incorrectly as paragraph 1.1.
2. In line with the principle of drafting for one thought at a time, it is better to impose the substantive obligation (i.e. retain existing paragraph 11.2) and then to incorporate new material immediately following that paragraph which empowers the Authority to exempt the licensee from that obligation: see our proposed new paragraph 11.3.
3. By virtue of paragraph 2.7 of SLC 2, any power of the Authority to give a direction under any provision of the licence is a power to give it to such extent, for such period of time, and subject to such conditions as the Authority thinks reasonable in all the circumstances of the case, and includes power to revoke the direction after consulting with the licensee. The drafting at paragraph 11.3 therefore does not need to refer, in terms, to an exemption from the requirements in whole or in part
4. However, the exemption in question will have the effect of relieving the licensee of some quite fundamental licence obligations, and it is possible that the alternative arrangements initially considered to be satisfactory in lieu of compliance with the 11.2 obligations may not remain fully or effectively in place. It would therefore be sensible to provide expressly, in the text of the licence condition itself, for the possibility of revocation: see our proposed new paragraph 11.4.
5. Ofgem's consultation document mentions the idea of publishing formal guidance on the requirements that the licensee would have to meet to be exempted from the 11.2 obligations. This is a good proposal, and clearly such guidance would be an important regulatory document. So, in the interests of certainty and transparency for all concerned, it would be desirable for the purpose, scope, and general content of the guidance to be properly referenced in the licence condition: see our proposed new paragraphs 11.5 and 11.6.
6. If the above recommendations are accepted, the text of supply SLC 11 would then be as set out in the attachment. This takes the existing SLC 11 as its baseline and shows all of the recommended amendments (including two new section headings and some consequential paragraph renumbering) in yellow highlighter for ease of reference. We hope that this is helpful.

Roger Barnard
Head of Regulatory Law, EDF Energy

Condition 11. Compliance with codes

Industry Codes

11.1 The licensee must comply with:

- (a) the Distribution Code; and
- (b) the Grid Code,

unless, after consulting with the licensee and any other person or body likely to be affected, the Authority has given a direction to the licensee relieving it of its obligations (in whole or in part) under either code.

11.2 The licensee must be a party to and comply with:

- (a) the Master Registration Agreement;
- (b) the Distribution Connection and Use of System Agreement;
- (c) the Connection and Use of System Code; and
- (d) the Balancing and Settlement Code,

from the earlier of the date on which it offers to supply electricity or the date on which it begins to supply electricity to premises in Great Britain.

Power to direct exemption

11.3 The Authority, after consulting with the licensee and any other person or body likely to be affected, may give a direction to the licensee that paragraph 11.2 does not have effect in its licence from the date and for the duration specified in that direction.

11.4 The Authority's power to give a direction under paragraph 11.3 includes power to revoke that direction upon reasonable Notice to the licensee following consultation with it.

11.5 The Authority may issue, and may from time to time revise, guidance about the way in which it will exercise its powers under paragraphs 11.3 and 11.4.

11.6 The guidance may, in particular, set out:

- (a) the process that the Authority will follow in considering whether and to what extent to exercise those powers;
- (b) the type of information that is likely to be required by the Authority as part of that process; and
- (c) the kind of arrangements as between the licensee and another licensee that would be likely to provide a satisfactory alternative to direct compliance with paragraph 11.2.

Consequential Changes

11.7 If a Consequential Change is required, the licensee must (to the extent applicable to it) take all reasonable steps to secure, and must not take any unreasonable steps to prevent or delay, the making or implementation of that Consequential Change.

11.8 Paragraph **11.7** is without prejudice to:

- (a) any rights of appeal that the licensee may have in relation to decisions made by the Authority under the Industry Codes; and
- (b) any rights of approval, veto, or direction that the Authority or the Secretary of State may have in relation to changes to the Industry Codes.

Fuel Security Code

11.9 The licensee must comply with the Fuel Security Code.

11.10 The Fuel Security Code has effect as a standard condition of this licence.