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Dear Ms Fletcher

**Application by EDF Energy (IDNO) for an electricity distribution licence –
Formal proposal of licence modifications**

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 letter is further to our letter of 16 June 2008 on the same subject and also our response to Ofgem's previous consultation launched in April 2006.

In response to the Ofgem notice of 6 August 2008, we are making this representation and objecting to GEMA granting an electricity distribution licence to EDF Energy (IDNO). We do not believe that any licence modifications would be sufficient and we ask that the licence application should be rejected.

We have set out various reasons for our objections in our previous correspondence to you on this subject, and you have also received representations objecting to the licence application from various other parties. We remain very concerned over Ofgem's decision to grant the licence. We will not repeat the points already made though but set out some further reasons in this letter. Since the Ofgem proposed decision of 6 August, new factors have become apparent, and previously known factors have become much more apparent, in particular the potential impact on the British public.

1. Among Ofgem's primary duties is to promote competition:

a. In the Electricity Act 1989, Ofgem's principle objective is to:

*"protect the interests of consumers in relation to electricity conveyed by distribution systems wherever appropriate by promoting competition between persons engaged in, or in commercial activities associated with, the generation, transmission, distribution or supply of electricity."*¹

b. The first line of the Ofgem website says: *"protecting consumers is Ofgem's first priority. We do this by promoting competition"*.

c. In their notice of 6 August 2008, Ofgem acknowledge the danger of the effect on competition: *"we are separately considering the more general issues which may affect the ability of independent distributors to compete with DNOs and we will monitor the competition position"*².

2. Economic conditions have now become apparent:

a. When the Ofgem proposed decision was announced on 6 August 2008, the level of increasing inflation and its impact was not fully known and the additional impact on the general public of reduced competition in energy was not known.

b. With inflation at 4.4%(CPI), more than double the Bank of England target and forecast to reach 5% soon, and a worsening economy, the impact of higher energy prices have come to the forefront of Government and public attention and debate.

c. Monopolies tend to lead to higher prices (in supply and in network charges) and we believe that any actions that reduce competition in a time of rising energy prices and a faltering economy would have an even greater and more adverse impact on consumers and the general public (and would go against Ofgem's primary duties of promoting competition and protecting consumers).

d. We do not believe the proposed decision will help the hard pressed British public with prices rising, unemployment rising and other economic uncertainty. We do not believe that the proposed decision will protect the interests of consumers of electricity.

¹ Electricity Act 1989 Chapter 29, Part 1, 3A (1), (as amended by the Utilities Act 2000)

² Ofgem formal consultation letter, 6 August 2008, 3. f) R

3. DNO A&D charges recently reviewed:

- a. On 14 August 2008, Ofgem announced its views following consultation on Assessment and Design (A&D) charges levied by DNOs, and concluded that A&D charges are in breach of the Electricity Act 1989. We had formally complained about A&D fees in March 2008.
- b. The sense of the Ofgem proposed decision regarding the EDF IDNO application is that we do not need to be concerned about EDF practices as there will be appropriate controls in place to prevent potential anti competitive actions, for example:
 - i. *"However, we do not consider that it would be appropriate to refuse the application if the interests of consumers and other stakeholders can be adequately protected through licence modifications and policy implementation."*³
 - ii. *"Under the conditions of their licences, LPN and SPN are required... and, under standard condition 19 of the distribution licence, are prohibited from discriminating..."*⁴
- c. With regard to the A&D fees, there was a clear breach of primary legislation, yet it took formal complaints and a lengthy consultation process before the breach was discovered. This suggests that even with a highly effective regulatory regime (as Ofgem's is universally acknowledged to be), simply having regulation or legislation is not enough. Uncovering breaches is a lengthy and imperfect process and competition is much more effective in protecting consumers.
- d. A further example of the difficulty regulators face in uncovering breaches relates to Ofgem's investigation into CE Electric UK⁵. This investigation only arose as a consequence of CE Electric UK volunteering information in October 2006 in respect of the years 2004/5. We can only speculate how long it would have Ofgem taken to discover such misreporting if it had not been volunteered. This is not a criticism of Ofgem. The example merely illustrates how difficult it is for regulators to proactively police licence compliance.

³ Ofgem formal consultation letter, 6 August 2008, 3. a) R

⁴ Ofgem formal consultation letter, 6 August 2008, 3. d) R

⁵ Statement by the Gas and Electricity Markets Authority of Yorkshire Electricity Distribution plc's and Northern Electric Distribution Limited's non-compliance with Standard Condition 49 of their Electricity Distribution Licences

- e. This A&D charges issue has come to light only since the Ofgem proposed decision of 6 August 2008.

4. United Utilities licence breach fined by Ofwat

- a. On 22 June 2007, Ofwat announced that it was imposing a fine on United Utilities of £8.5 million for breach of Condition F of its appointment as a water and sewerage undertaker under the Water Industries Act 1991⁶. The fine was for cross-subsidy and lack of arm's length transactions. United Utilities must ensure that all its transactions with any associated company are at arm's length so that neither gives to, nor receives from, the other any cross-subsidy (Condition F6.1); and was also prohibited from making any payments to any associated company which exceed prices ascertained by market testing (Condition F6.8).
- b. Like Ofgem, Ofwat is a diligent regulator, and regularly collects and monitors considerable amounts of information from its regulated companies. Despite this very careful monitoring, the breach continued for many years before action could be taken. Ofwat had been expressing its concerns to United Utilities since the 1999 price review⁷, and yet action was only taken in 2007.
- c. If it is so difficult and takes so long to take action against clear breaches of the licence conditions when the regulator had such considerable access to information, it will be even more difficult to uncover any potential breaches of licence conditions by EDF. It will be even more difficult for IDNOs to prove any breaches of licence conditions by EDF and obtain a resolution.

5. Promoting competition is preferable to licence monitoring

- a. The examples of EDF A&D charges and United Utilities show that the most effective and efficient regulation is not as good as competition in protecting consumers' interests.
- b. Granting an IDNO licence to EDF will also lead to an information asymmetry, where other (true) IDNOs will have less access to information (particularly information relating to potential breaches of licence conditions) than the EDF affiliated IDNO.
- c. This issue has only really become apparent since Ofgem's proposed decision of 6 August 2008.

⁶ Notice of Ofwat's imposition of a penalty on United Utilities Water Plc, 22 June 2007, p.3

⁷ Notice of Ofwat's imposition of a penalty on United Utilities Water Plc, 22 June 2007, p. 21

6. There have been complaints against EDF for abuse of monopoly powers in the past and this has recently become more apparent.
 - a. In 2006 and 2007, electricity prices in the UK (of which EDF was a significant component) were higher than in France⁸. On 25 July 2008, EDF then announced a further 17% increase in its UK retail electricity prices⁹.
 - b. The recent consultation by Ofgem on EDF A&D charges.
 - c. Ofgem 2006-7 Connections Industry Review:
 - i. In both the 2005-06 and 2006-07 reporting years none of the three EDF licensed companies received any enquiries for Simple Schemes.
 - ii. Over the same two years there were only 10 enquiries across the three areas for Complex Schemes.
 - iii. Over the same two years there were only seven enquiries across the three areas for Complicated Schemes.
 - iv. In comparison, United Utilities processed over 2,400 enquiries across these three categories over the same two year period.
 - v. The tariff structures under these three licence holders have resulted in significant margin squeeze for IDNOs to the extent that the South East of England is uneconomic resulting in negative margins for the independent licensed operators.¹⁰
 - d. The conclusion has to be that EDF does not support competition.
 - e. The compliance investigation announced by Ofgem on 4 September 2008 into EPN, LPN and SPN further supports this concern over EDF. We believe it would not be appropriate to grant a licence at the same time as a compliance investigation has been launched against the same group of companies.
7. Competition in the IDNO sector is far from being well established, and less than 2% of new low voltage connections are currently provided by IDNOs. This is different from the gas sector where IGTs (such as GTC) are well established. In a market where competition is so fragile, to further restrict competition in the EDF area can only make the situation worse.

⁸ IEA Key World Energy Statistics 2007 - Electricity for households, \$/KWh - UK: 0.2205, France: 0.1515; IEA Electricity Information 2007 (2006 data) – Electricity prices for households, \$/KWh – UK: 0.186, France: 0.144

⁹ EDF press release, 25 July 2008

¹⁰ Also quoted in letter from Energetics, 16 June 2008

In view of the above and the worsening economic conditions, we believe that to give one company an increased monopoly position (particularly a company with a poor track record in promoting competition) would set a false precedent, would be to the detriment of electricity consumers and would go against Ofgem's primary duties.

We believe that the evidence from the utility sectors demonstrates that promoting competition is far more effective in protecting consumers' interests than any proposed licence modifications could ever be (however well monitored and however effective the regulator) and further, the granting of the IDNO licence to EDF may eliminate the growth of competition entirely.

Based on the new factors that have only recently become apparent, we ask that Ofgem refuse to grant the licence.

Yours sincerely



Clive E Linsdell

Managing Director

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

- cc. Malcolm Wicks, Minister of State for Energy
Lord Mogg, Chairman of GEMA
Alaistair Buchanan, Chief Executive, Ofgem
Steve Smith, Managing Director, Networks, Ofgem