

Ikbal Hussain
Licensing Manager
Ofgem
9 Millbank
London
SW1P 3GE

29 July 2010

Dear Ikbal,

Gas and Electricity Licences – Proposed changes to the Application Regulations and Revocation Schedules of future licences.

EDF Energy welcomes the opportunity to respond to this consultation.

We welcome Ofgem's review of the existing licence application process and revocation schedules. We support moves to enhance the existing regime by implementing proportionate arrangements that allow and support bona fide new entrants whilst providing sufficient scrutiny of applications to minimise the risk to existing participants and consumers of fraudulent applications. We have answered your specific questions in respect of the gas shipper licences in the attachment below. However, we would like to make some general comments in this covering letter on Ofgem's proposals.

Proposed Tiered Application Process

A shift from a 'one size fits all application process' to a new risk based, tiered application process is supported. We consider this to be a prudent approach to the potential risks faced and consistent with the model used by other regulatory authorities. It is clear that not all applicants will pose the same risks to the industry and therefore a tiered risk assessment application approach that reflects these variable risks is appropriate. Such an approach should facilitate a smooth process for genuine new participants whilst at the same time providing greater ability for Ofgem to more intensively scrutinise applications that are incomplete or raise suspicions.

With respect to the proposed risk assessment criteria we would offer the following observations:

- We believe that the risk assessment criteria in Tier 1 could be enhanced in respect of the details provided on any partner, trustee or director of the applicant. In particular additional fitness/propriety measures should be considered in respect of any assessment of previous financial irregularities. Such measures should include a requirement for details to be provided on any investigation of any director of the applicant into

allegations of malpractice or misconduct in connection with any business activity. We believe this information may identify risks with the application that require Ofgem to move the application to Tier 2.

- We note that copies of official documents are to be provided as part of the risk assessment criteria in Tier 2. Clearly there is a need for Ofgem to be able to verify the documentation provided as part of this assessment and we therefore believe that the applicant should be required to provide true certified copies of the official documentation that confirm key details provided in the application.
- The guidance that accompanies the licence application regulations refers to the refusal and appeals procedure. However, we consider the post decision process to be a fundamental part of any governance arrangements and should therefore be placed directly in the application regulations rather than solely in an accompanying guidance document. In addition, consideration should be given to putting in place arrangements whereby any appeal of a refusal to grant a licence should be considered by an independent person/body rather than the Authority.

Unused and dormant licences

We agree with Ofgem that it is not appropriate for licensees to continue to hold an electricity or gas licence that is not currently being used, or will not be used in the short/medium term, for its intended purpose. We therefore support Ofgem's policy of periodically seeking to revoke unused and dormant licences as a healthy house-keeping exercise.

We note that there appears to be an issue in the gas market in respect of trading parties who simply wish to participate in a non physical capacity. In particular the existing gas market arrangements require participants to hold a gas shipper licence in order to be able to access the necessary market systems and trading platforms. These arrangements result in parties acquiring shipper licences even though they have no intention of carrying out the licensed function.

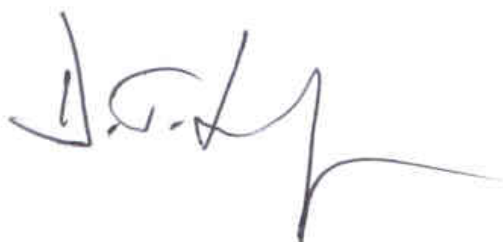
Whilst we fully support the active participation of non physical players in the gas market we do not believe it is appropriate for their participation to be dependent on the possession of a licence. We note that there is no similar requirement in the electricity market for non-physical traders. Consequently, we agree that appropriate market entry requirements, security and other commercial terms for non-physical players should be appropriately dealt with by provisions in the codes and contracts rather than the licensing regime. We therefore believe that the requirements in gas should be amended so that they are aligned with the electricity BSC arrangements such that non-physical traders are not required to hold a Shipper Licence, but are required to become signatories to National Grid NTS' network code.

Changes to Revocation Schedules

The proposal to align the revocation schedules in the gas and electricity sectors appears appropriate. However, we would question whether moving the revocation time period of non-commencement of the relevant licensed activity from 3/5 years to 1 year is appropriate. Whilst we note that Ofgem will apply discretion on this matter and not simply initiate an automatic process when the timeframe is reached we do consider that one year is too short. For example, physical players and in particular physical electricity generators may well apply for its generation licence some years in advance of the asset actually commencing generation. This could be for investment reasons or to use powers granted to licence holders through legislation in respect of access/acquisition of land etc. Consequently, whilst we support Ofgem's discretionary policy we believe a minimum time period of three years is appropriate for at least certain classes of licensed activity e.g. electricity generation.

If you have any queries on this response or would like to arrange a meeting to discuss further, please do not hesitate to contact my colleague Paul Delamare on 020 7752 2187, or myself.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Linford', with a long horizontal flourish extending to the right.

Denis Linford
Corporate Policy and Regulation Director

Appendix:

Chapter 3

Question 1: Do you have any views as to why such a high number of gas shipper licences are not being used for their intended purpose?

We note that the number of Gas Shipper licences have grown over the years with hardly any being revoked in cases where they are not being used. We recognise that the processes for revoking and transferring licences can be cumbersome and time consuming when compared to the process for obtaining a new licence.

We also note that the number of Gas Shipper licences has grown exponentially in the past year and particularly most recently. We believe there are now 307 Gas Shipper licence holders. We are unsure as to the reasons for this sudden increase however we note that many of the companies are foreign energy companies. One explanation therefore could be that as the UK becomes a net importer of gas and is considered the most liquid and reliable balancing zone for the European gas market then many existing or new entrants on the continent are having to enter the UK gas market to either trade or simply understand what is driving continental prices which are invariably pegged against the NBP.

However, we believe this is an interesting market development and would welcome Ofgem's views on the drivers behind this flurry of activity.

Question 2: Do you think further action is necessary or proportionate given the issues raised in the chapter in relation to gas shipper licences?

We agree that a review of Ofgem's processes is appropriate and that licences that are not being used for whatever reason should be revoked to ensure efficient and effective regulatory arrangements are in place.

We agree with the improved process for revoking licences. However, we are unsure whether removing the need for parties who want to simply trade to be licensed shippers will resolve the issues Ofgem has highlighted as they would still have to sign the relevant network codes. We would like to know Ofgem's thinking on what process or changes would need to be made. For example, would a review of the accession arrangements for the UNC be required. Also, we understand that part of the non-physical shipper issue includes having to comply with the whole of the NG NTS network code which covers many parts of the industry that they don't have to, or want to, be involved in such as Maintenance, Entry/ Exit requirements etc. Further more it would complicate analysis of market competition in trying to assess how many parties there were.

It is not clear from the consultation document how Ofgem would see these revised arrangements working. For example, we are not sure whether not having to possess a Shipper licence will have any Gas Act implications. We would welcome Ofgem's opinion on this and if there are no implications then we believe the route could be to simply sign up directly to the relevant Network codes where applicable. If any Gas Act implications are identified then an option could be to modify the existing process by requesting from licence applicants whether they intend to be a physical or non-physical Shipper. The question would then be what arrangements could be implemented to address the necessary code requirements to reflect this distinction.

Question 3: Do you agree that parties should not be required to obtain a gas shipper licence prior to being able to carry out non-physical trades of gas?

Subject to consideration of any Gas Act implications we believe the arrangements similar to the electricity market are appropriate for the gas market.

EDF Energy
July 2010