Kate Thompson
Ofgem
9 Millbank
London
SW1P 3GE

5 December 2014

Email to: sustainable.energy@ofgem.gov.uk

'Licence Lite': proposed updates to the SLC 11.3 operating guidance

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

In principle, EDF Energy is supportive of regulatory measures designed to facilitate market access for parties seeking to adopt a 'non-traditional' supplier business model. However, it is vital that the design of such measures does not confer any unfair advantage to any party, ensures proper market functioning and continues to protect the interests of all energy consumers. We believe the development of appropriate 'licence lite' arrangements has the potential to meet such objectives.

We believe Ofgem's review of its 2009 'licence lite' guidance is timely. The arrangements were originally designed to simplify market access for distributed generators. Since their introduction, the market has undergone many legislative and regulatory changes. Furthermore, it would appear that this licensing arrangement is gaining interest from parties with business models that were not originally envisaged when the initial guidance was produced. There is therefore a clear need for the guidance to be updated and for Ofgem to provide additional clarity over the precise functioning of the arrangements and their intended purpose.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Steven Eyre on 01452 653741, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

Paul Delamare
Head of Customers Policy and Regulation

EDF Energy
40 Grosvenor Place, Victoria
London SW1X 7EN
Tel +44 (0) 20 7752 2187

edfenergy.com

Attachment

'Licence Lite': proposed updates to the SLC 11.3 operating guidance

EDF Energy's response to your questions

Q1. Are further clarifications regarding the functioning of a Licence Lite arrangement required from the regulator, and if so, in what areas?

We welcome the additional clarity provided within the guidance in respect of balance of responsibilities between the two parties and compliance with the Smart Energy Code (SEC) and social and environmental programmes. It is important that the guidance makes it clear at the outset that, in terms of complying with all statutory and licence obligations, a 'licence lite' supplier is treated no differently to any other licensed supplier, except for the industry codes in instances where a direction has been given.

At this time, we are not aware of the need for any further clarifications from that which is provided in the proposed revised guidance.

Q2. Do you agree that our position over the balance of responsibilities and regulatory obligations is: a) sufficiently clear to allow parties confidence to enter into commercial agreements, and b) a proportionate approach?

In terms of the details around responsibilities, obligations and services provision, it is right that these are best left to commercial negotiation and ultimately set out in the supplier services agreement between the 'licence lite' supplier and the Third Party Licensed Supplier (TPLS). To aid such negotiations and the development of robust commercial agreements, it is important that both parties are fully aware of the regulatory risks that each will face by entering into such arrangements and that the guidance clearly identifies who would be ultimately liable for any breaches of regulatory requirements.

Consequently, we welcome confirmation that it is the TPLS who bears the responsibility for any breaches of the industry codes in connection with the 'licence lite' supplier's activities. Furthermore, we welcome clarification that, irrespective of any commercial agreements with third parties to administer responsibilities on their behalf, ultimately the 'licence lite' supplier retains responsibility for meeting all other regulatory obligations.

In terms of the most appropriate method by which clarity on the balance of risks is provided, we believe that provision within the guidance is sufficient. We do not at this stage believe there is a need to make any form of licence modification in this respect.

Q3. Do the Licence Lite arrangements relating to the Smart Energy Code – as set out in this consultation and in paragraphs 1.39-1.41 of the proposed guidance – provide sufficient clarity over roles and compliance obligations between parties?

We believe the guidance provides suitable clarity on the issue of SEC compliance and the fact that any directions issued under SLC11.3 do not apply to the SEC. As set out in the

proposed guidance, parties are free to seek a further direction from Ofgem under SLC48.2 in order to gain relief from the requirement to comply with the SEC.

However, we note that Ofgem would deal with any requests under SLC11.3 and 48.2 separately. We would question the rationale for such an approach and believe that an application for a supply licence from a prospective 'licence lite' supplier should include all requests for derogations that it is seeking at the outset and that Ofgem should process the application in its entirety.

Q4. Do the Licence Lite arrangements relating to the Electricity Market Reform – as set out in this consultation and in paragraphs 1.42-1.46 of the proposed guidance – provide sufficient clarity over roles and compliance obligations between parties?

We welcome confirmation that the 'licence lite' supplier retains all responsibility for meeting its regulatory obligations under the Electricity Market Reforms irrespective of any third party agreements in place.

Q5. Do the Licence Lite arrangements relating to the government's social and environmental programmes – as set out in this consultation and in paragraphs 1.42-1.46 of the proposed guidance – provide sufficient clarity over roles and compliance obligations between parties?

We welcome confirmation that the 'licence lite' supplier retains all responsibility for meeting its regulatory obligations under the Government social and environmental programmes, irrespective of any third party agreements in place.

Many of the existing Government programmes include a trigger threshold that determines which licensed suppliers are subject to the obligations. These thresholds are traditionally based on customer numbers, and, as such, there is a need for the guidance to provide clarity as to how a TPLS should treat a 'licence lite' supplier's volumes/customer numbers in terms of reporting under each programme. In this respect, we welcome confirmation that a 'licence lite' supplier's data should be treated separately and not conflated with a TLPS's consumer data.

We consider the above provides sufficient clarity over the roles and responsibilities in terms of compliance with such programmes. This includes identifying a clear need for the contractual arrangements to address the respective responsibilities in terms of data identification, access and provision.

Q6. Does the potential impact of the MPID restriction warrant a modification to the Balancing and Settlement Code?

We agree that a 'licence lite' supplier's customers should be uniquely identifiable within central systems and thereby distinguishable from the TPLS's own customers. This distinction will aid compliance with social and environmental programmes and allow supplier of last resort arrangements to be effectively initiated in the event of supplier failure.

We acknowledge that the BSC currently restricts the number of Market Participant Identifiers (MPIDs) that a BSC party can create. This restriction may lead to some BSC parties being unable to create an additional MPID for the purpose of a 'licence lite' arrangement on the basis that they have no remaining MPID slots available. As such, we agree that a modification to the BSC should be considered in order to address this potential issue.

Q7. Are there any complications (not identified in the consultation) to uniquely identifying a Licence Lite supplier's customers on central systems?

Whilst we support due consideration of a BSC modification to address the MPID restriction, it is important that any relaxation of the limit does not create any unintended consequences. In particular, it is possible that any significant increase in MPID creation may lead to the need for central IT system upgrades for which all BSC parties will be required to finance. To minimise this risk, we believe the current standard restriction within the BSC should be maintained but include the ability for BSC parties to create MPIDs over and above the current limit for the sole purpose of a operating an agreement between a TPLS and a 'licence lite' supplier.

Q8. Are the risks to Licence Lite suppliers inherent in the current operation of supplier of last resort arrangements in the event of TPLS failure sufficient to justify backstop measures, and if so, what measures would be appropriate and why?

We believe it is right that the guidance provides sufficient clarity on the process that will be followed in the event that either the TPLS or 'licence lite' supplier fails. We believe that in such instances the current standard supplier of last resort (SoLR) arrangements should apply.

We note that in the event of a TPLS failing and a trade sale is not achieved, the customers of the 'licence lite' supplier, together with those of the failing TLPS, will be assigned to a SoLR. Whilst we acknowledge this is a sensible approach in terms of minimising the impact on the relevant customers and on other system users, it will be important that relevant customers are fully informed of such events. For example, there is the potential for customer confusion on the basis that it is the TPLS who has failed and not the 'licence lite' supplier to which they have contracted with. As such, it may be unclear to them as to the reasons why they have been assigned to a new supplier. In the interest of fairness and transparency the appropriate parties should be required to fully inform the relevant customers of the reasons for their transfer and the options available to them.

Notwithstanding the above, we do not believe there is at this time a requirement for a regulatory measure to be introduced in order to minimise the risks of an SoLR event on the 'licence lite' supplier business model. We believe 'licence lite' suppliers should be free to assess and manage such risk as they see fit. We do not believe it is appropriate to require all suppliers to offer commonly agreed services if approached as part of any potential backstop measure.

Q9. Is the information required for a Licence Lite application appropriate for all potential applicants?

We believe the information requirements appear appropriate.

Q10. Are there any relevant milestones which are omitted from the proposed guidance?

We have no further comments.

EDF Energy
December 2014