

Bob Fletcher  
UNC Panel Secretary  
31 Homer Road  
Solihull  
West Midlands  
B91 3LT

07 May 2010

Dear Bob

**EDF Energy response to UNC Modification Proposals 0286 & 0286A: "Extending Modification Panel Voting Rights to Consumer Representatives".**

EDF Energy welcomes the opportunity to respond to this UNC Modification Proposals. We support implementation of both modification proposals. Of the two proposals we prefer implementation of 0286.

The key points of our response are:

- Implementation of either proposal will not have a material impact on code parties to raise a Competition Appeal, and instead ensures that all organisations that are likely to lodge an appeal are represented as voting members on the UNC Panel.
- Both proposals are consistent with Ofgem's Review of Governance arrangements, as recognised in their final proposals consultation.
- Both proposals are consistent with Consumer Focus' remit to provide advice to the Authority and helps to facilitate this remit.
- These proposals will help to ensure consistency across the "major" codes, which was a primary objective of Ofgem's Governance review and would replicate best practice across the codes.

EDF Energy is actively involved with all of the major industry codes, and has been engaged throughout Ofgem's Governance Review. We have supported and raised UNC Modification Proposal 0286 to extend the voting rights to consumer representatives on the grounds that this brings the UNC into line with the CUSC and BSC Panel arrangements, which in our opinion represent best practice. EDF Energy is signatories to these codes and EDF Energy employees sit on both of the panels for these codes as independent panel members. From our perspective we believe that having Consumer Representation at these panels adds to the value of these panels and improves the decision making process. We have seen no evidence of the Consumer Representative at these panels detracting from this work load and are not aware of any occurrences were a Consumer Representative has voted in such a way as to remove the right for a code signatory to raise a Competition Commission Appeal. EDF Energy would note that those UNC parties who are

also signatories to the CUSC and BSC appear to be most at ease with the principles contained within 0286 and 0286A, whilst those who have no experience of Consumer Voting arrangements are uneasy with these proposals.

We therefore believe that implementation of both Modification Proposal 0286 and 0286A will represent an improvement to the current UNC arrangements, align the UNC with CUSC and BSC (where appropriate) and is consistent with Ofgem's decision in the final proposals of their Governance Review.

EDF Energy also understands that concerns have been raised by some UNC only signatories regarding implementation of this proposal. EDF Energy has attempted to address and respond to these concerns below:

**Impact on the ability for parties to raise a Competition Commission Appeal:** As previously noted EDF Energy is actively involved on both the CUSC and BSC where Consumer Representatives have a vote. We are not aware of a single occasion when the Consumer Representatives at these panels have voted in such a way as to remove the right for a party to raise a Competition Commission Appeal on a material issue.

Further we would note that the ability to raise an appeal to the Competition Commission is not limited to UNC signatories, or UNC Panel members; with any impacted party or their representative being able to raise an appeal. This means that consumer representatives, including Consumer Focus, MEUC and EIUG are all able to raise an appeal if they so desired. Of these EDF Energy believes that Consumer Focus is most likely to raise an appeal due to their remit and high cost associated with an appeal. The current panel constitution could therefore also prevent Consumer Focus' ability to raise an appeal.

EDF Energy also believes that it is erroneous to suggest that it will be the votes of the Consumer Representative that will impact on the ability of a party to raise an appeal. As full voting members, it could also be argued that any other panel member could impact on the ability to raise an appeal, including National Grid NTS representative or a Shipper representative. We would note that if the ability to raise an appeal was as material as some parties are suggesting, then we would only expect panel members to vote on issues which had a direct impact on their representative area and to ensure that their presence or vote did not impact on the outcome of the panel recommendation to Ofgem. However there is indisputable evidence of panel members voting on areas that have no impact on their representative areas, including voting on entry capacity UNC proposals and distribution specific proposals.

EDF Energy therefore refutes the suggestion that implementation of either modification proposal 0286 or 0286A will materially impact on the right of parties to raise a Competition Commission Appeal. There is no evidence of this occurring from other codes where there is Consumer Representation and arguably extending voting rights to the Consumer Representatives will ensure that all parties who are likely to raise an appeal are represented and able to vote on the UNC panel.

**Consistency with Ofgem’s Governance Proposals:** Whilst we recognise that this proposal was raised prior to Ofgem publishing their final decisions on the Governance Review EDF Energy believes that modification proposal 0286 is aligned with Ofgem’s final proposals. We would further note that within its final proposals Ofgem has commented on both modification proposal 0286 and 0286A:

“At this stage we do not consider it is appropriate to comment on these proposals other than to confirm that in our view neither conflicts with our proposed licence modification”.

It is therefore clear to see that both proposals are consistent with Ofgem’s Governance Proposals.

**Ability for Consumer Representatives to vote on UNCC and self Governance Proposals:**

Whilst EDF Energy recognises that in the past Consumer Focus has not expressed an interest in voting on self governance proposals, we would note that their ability to vote is a key part of Ofgem’s Governance review. Whether they chose to exercise this right or not will be at their discretion. We also believe that it is important that the Consumer representatives are able to vote on UNCC matters, as these also can have a direct impact on consumers. In particular we would note that the UNCC votes on amendments to UNC Related Documents. These are increasing in number and of importance with User Pays Guidance, reconciliation Suppression Guidelines and Validation Rules all falling under the governance of the UNC. EDF Energy believes that these documents will have a material impact on consumers, especially if proposal 0229 were to be implemented. We therefore believe that Consumer representation should be extended to include the UNCC.

**Providing the Consumer Representatives with voting rights that do not impact on the panel recommendation to Ofgem:** It has been suggested that an alternative to providing the Consumer Representative with full voting rights on the UNC Panel would be to allow them to vote, but to discount this vote in terms of the panel recommendation to Ofgem. It has been argued that this would meet Consumer Focus’ objectives whilst ensuring that the right to launch a Competition Appeal remained unchanged from the current arrangements. As previously noted this argument ignores the fact that Consumer Focus also has a right to appeal and so maintaining the current arrangements may prevent them from appealing a decision. However EDF Energy would also note that this proposal would create a “second” tier vote for the Consumer Representatives. EDF Energy believes that that is the full formal representation from the UNC Panel that will help to guide Ofgem’s decisions as this will determine whether there is a chance of a Competition Appeal being raised. Providing a second rate vote to the Consumer Representatives would not be consistent with Ofgem’s Governance proposals and runs the risks that these votes would be discounted or ignored on the most important decisions.

**Consistency with Consumer Focus’ remit:** It has also been commented that Consumer Focus’ remit is to provide advice to the regulator and introducing the ability for Consumer Focus to vote on UNC proposals would be beyond their remit and represent a conflict of interest. EDF Energy believes that the strongest advice and signal that Consumer focus could give to the regulator would be through a UNC Panel vote. We therefore do not believe that this is beyond their remit or

a conflict of interests, and conversely believe that implementation of either modification proposal 0286 and 0286A would facilitate Consumer Focus' remit.

**Voting rights of other panel members:** EDF Energy would note that some parties have also suggested that voting rights could and should be extended to all non-voting panel members including the Supplier and Terminal Operator Representatives. They argue that it would be discriminatory to not extend these voting arrangements, but that they should not be extended to Ofgem. EDF Energy would note that this is outside of the scope of both 0286 and 0286A and so whilst worthy of discussion in other fora are merely clouding discussions on these proposals. We would further note that arguing that it is discriminatory to not extend voting rights to all panel members and then limiting the application of this does not appear entirely consistent.

In relation to the Modification Proposals EDF Energy would make the following additional comments:

**3. Extent to which implementation of the proposed modification would better facilitate the relevant objectives.**

**Standard Special Condition A11.1 (c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;**

EDF Energy would note that the outcome of the Governance Review is that Licence Conditions will be placed on the Transporters to implement the outcomes of this review. From the proposals it is clear that a Licence Condition will be placed on the Transporters to provide voting rights to the Consumer Representatives. Therefore implementation of both 0286 and 0286A could be seen to facilitate these Licence Conditions (when implemented) and so facilitate this relevant objective at a future date.

EDF Energy believes that 0286 facilitates this objective to a greater degree than 0286A as 0286 extends Consumer Representative voting rights to the UNCC and self governance proposals (when enacted). We believe that 0286 is more consistent with Ofgem's Governance proposals than 0286A and so will better facilitate the Transporter Licence requirements when implemented.

**5. The implications for Transporters and each Transporter of implementing the Modification Proposal, including: ... (d) Analysis of the consequences (if any) this proposal would have on price regulation:**

EDF Energy disagrees that 0286A (or 0286) will have any impact on price regulation. The comments in 0286A relate to contractual risk (covered by Section 6 of the Modification proformas) and not price regulation.

**6. The implications of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal**

Whilst EDF Energy recognises that this proposal may increase the contractual risk of Transporters regarding their right to appeal, we believe that this is marginal. In particular we would note that the right to appeal could be impacted by the voting arrangements of the other Panel members

under the current arrangements and so the impact of this proposal on contractual risk should not be overstated.

**7. The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk  
Consequences for the level of contractual risk of Users**

Whilst EDF Energy recognises that this proposal may increase the contractual risk of Users regarding their right to appeal, we believe that this is marginal. In particular we would note that the right to appeal could be impacted by the voting arrangements of the other Panel members under the current arrangements and so the impact of this proposal on contractual risk should not be.

**8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party.**

In addition to increasing the visibility of consumer views, EDF Energy believes that implementation of this proposal will help Consumer Focus fulfil their remit by ensuring that providing a clear mechanism through their votes to provide advice to the regulator on the impact that a proposal will have on consumers.

I hope you find these comments useful, however please contact my colleague Stefan Leedham ([Stefan.leedham@edfenergy.com](mailto:Stefan.leedham@edfenergy.com), 020 3126 2312) if you wish to discuss this response further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Seb Eyre'.

Dr. Sebastian Eyre  
Energy Regulation, Energy Branch