

Third Package Consultation Team
Department of Energy and Climate Change
Area 4C
3 Whitehall Place
London
SW1A 2HD

29 October 2010

Implementation of the EU Third Package: Consultation on licence modification appeals.

EDF Energy welcomes the opportunity to respond to the above consultation. We are particularly pleased to see DECC consult separately on its proposals since, as they currently stand, they would have profound effects on the UK regulatory regime.

We have given careful consideration to the proposals contained in the consultation document. This letter sets out our high level comments; answers to the specific consultation questions are attached in the Corporate Response Form, provided by DECC.

As stated in our response to the recent consultation on the implementation of the Third Package, we believe that the current GB regulatory framework and market arrangements are already largely compliant with the requirements set out in the Third Package. We note that this was also the Government's initial view. We believe that the arrangements in GB in respect of regulatory independence and possession by the regulatory authority of effective monitoring and enforcement powers are on the whole in line with the requirements of the Directives. We are therefore not convinced that fundamental change is required and that the existing rights of licensees to challenge licence modifications are maintained.

We note that DECC has acknowledged that its proposals go beyond what is required under the Third Package. In particular, the scope for the regulator to make binding decisions relates only to those duties set out in Articles 37.1, 37.3 and 37.6. However, the proposals set out in the consultation relate to all licence modification proposals irrespective of whether they are driven by EU requirements or the regulator's domestic statutory duties. Whilst we accept that it would be problematic to have two different regimes for licence changes we do believe that the proposals are providing the regulator with increased powers that may introduce greater regulatory uncertainty at a time when significant investment is required in the UK energy sector.

Should the Government decide to implement DECC's proposals, it would be essential that appropriate checks and balances are in place. The current arrangements provide a powerful incentive on the regulator to properly consider the merits of its proposals before they are formally put to licensees. An ex-post appeals approach would undermine this incentive unless genuinely merits based appeals were allowed. DECC's current proposals in this regard (failure to have regard or give proper weight to statutory duties, failure to observe due process, and error of fact or law) are overly narrow and resemble more the current grounds for judicial review. In their current form, the proposals would represent a fundamental change to the UK regulatory regime.

Our comments on the individual draft modification reports for each of the proposals are set out in the attachment to this letter.

I hope you find these comments useful, however should you wish to discuss any of the issues raised in our response or have any queries please contact me, or my colleague

[REDACTED] on [REDACTED]

Yours sincerely,

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