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22 February 2008

Dear Chris

**EDF Energy response to xoserve consultation: “Agency Charging Statement”.**

EDF Energy welcomes the opportunity to respond to the consultation on the Agency Charging Statement (ACS) as part of “User Pays”. We do not support implementation of the ACS as it has not been demonstrated that it is cost reflective, it does not include all of the services that will be charged for under User Pays, it is discriminatory and it does not meet the Licence Conditions proposed by Ofgem.

**Cost Reflectivity**

EDF Energy does not believe that the ACS demonstrates that the charges proposed are cost reflective. We note that the ACS document is in total just over two sides, with the first side providing an introduction and background to the User Pays principle and the second side providing a charging methodology that requires Users to trust xoserve’s statement that the charging methodology is cost reflective. The ACS relies on an Activity Cost Base (ACB) methodology to describe how costs are apportioned within xoserve and this is appended to the ACS and so it is not clear whether this forms part of the ACS. Further no information has been provided to allow Users to ascertain whether the apportionment of costs is appropriate or cost reflective.

xoserve have refused to provide the industry with a breakdown of the fixed and variable costs associated with User Pays Services which forces shippers to make assumptions as to how they have developed their proposals. The majority of the costs associated with User Pays have been assigned to the provision of IAD however it is inconceivable that the provision of a website costs £3m. ECOES is provided to the electricity industry at a cost of £356k per annum under far more flexible terms than those provided by xoserve. ECOES was introduced in 2006 and since then the volume of users of the service has grown significantly without imposing increasing costs onto the industry.

The information that has now been provided to Ofgem by xoserve prompts more questions as to how xoserve are intending to manage their business going forward. xoserve are assuming that the industry will reduce its IAD accounts down to approximately 4,500 users, based on recent historic usage. They have used this assumption to produce the figure of £480 per annum per IAD account however they have still not demonstrated the costs borne by xoserve per User. Without a clear demonstration of the ring fenced costs associated with User Pays, xoserve cannot claim cost reflectivity. Further EDF Energy would note that the

4,500 IAD accounts is less than one fifth of the industry's current requirements. Whilst we recognise historic demand may be higher than future demand, we do not believe that this level of demand reduction is appropriate and these charges will result in a significant over recovery for xoserve.

In particular we would note that IAD is central to Shippers' ability to provide their customers with a good level of service. Therefore the ability to significantly reduce demand is limited and the exercise that EDF Energy has been undertaking is essentially one of data cleansing. Therefore whilst we expect our demand to reduce we do not believe that an industry figure of 4,500 IAD accounts is attainable, and our own experience is indicating that our final position may result in the industry requiring a greater number of IAD accounts than we have held historically. This is being driven by the fact that historically IAD accounts and passwords have been shared amongst Users. We have provided an indication of our demand forecast to both Ofgem and xoserve and we believe that as the ACS stands xoserve will be exposed to a significant over recovery in the first 6 months. xoserve have provided no information as to what would happen to any over recovery of revenue.

It has been noted by xoserve in the User Pays Implementation Group (UPIG) that there will be a cost associated with the provision of User Pays, comprised of operational and invoicing costs. The ACS provides no explanation as to how these costs will be apportioned to different service lines, or what these costs are. EDF Energy would also observe that in Paragraph 3.2 of the ACS xoserve state that: "The charges will allow for a reasonable margin to be made when demand is at the forecast level." However xoserve have provided no information as to how this margin has been developed, what risk profile they have employed to identify the appropriate level of return or what margin they are proposing to make. It is therefore impossible for Users to ascertain whether these charges are cost reflective, and so the Transporters can not be viewed as complying with a Licence Condition that requires them to demonstrate that their charges are cost reflective.

EDF Energy's initial analysis of these charges indicates that they are not cost reflective. In particular we would note that EDF Energy does not have a 50% market share of gas supply, and yet our initial analysis indicates that we will be paying in excess of 50% of the £3m revenue that has been excluded for User Pays services. Whilst we are aware that historically User Pays services have been provided to Shippers at a zero marginal cost, and so historic demand will be in excess of future demand under a User Pays approach, we are concerned that the current charges proposed by xoserve are excessive and will result in revenues greatly in excess of the expected £3m. EDF Energy has been proactive in ensuring our IAD demand is appropriate for our business, and yet we are still forecasting to fund a significant proportion of the £3m expected revenue.

It would also appear that in developing a charge for the use of the U01 file for Shipper Agreed Reads (SARs) xoserve has developed their demand based on the assumption that Shippers will develop their systems to utilise these files. However moving from Biscuit files to U01 files will have a significant impact on the majority of Shippers' systems and so a lead time is required to allow for a solution to be identified, the appropriate systems designed, tested and implemented. However xoserve has not taken the required lead time into account when developing their charges for SARs, which we believe will also lead to a significant over recovery. xoserve have been unable to demonstrate the different costs they are subject to in relation to the U01 versus the Biscuit File. We therefore believe that more information is required from xoserve regarding their demand forecasts to support this ACS, without which xoserve are unable to demonstrate that the charges are cost reflective.

We would also note that the changes required to Standard Special Condition (SSC) A15 have not yet been finalised or implemented, and there is a chance that these Licence Conditions

could change. It is therefore impossible to judge whether the ACS meets the requirements of the Licence Condition as it is not clear what the Licence requirements are. The Licence Condition that is published on Ofgem's website<sup>1</sup> has no reference to User Pays or the Agency Charging Statement and finishes after paragraph 6. We note that this is an issue Ofgem has raised regarding pre-emptive mods (e.g. Modification Proposal 0193), and we believe that in the future it would be appropriate to ensure that all Licence changes are completed and implemented with sufficient lead time to allow the associated consultations to be issued and opined upon. We would further note that current industry practice for Charging Methodology Consultations is 28 days, but the ACS has only been issued for 22 days consultation. It is therefore unclear whether or not the Transporters have met their Licence requirements and provided a sufficient consultation period.

### Scope of User Pays

EDF Energy would also note that the ACS does not appear to be complete. In particular we note that under the draft Licence Condition SSC A15.7 (a) the ACS should set out the scope of user pays services. We are aware that xoserve intends to include the Domestic Portfolio Snapshot Report as a User Pays service. However no information is provided within the ACS, or the contract, regarding this report, and so it would appear that the ACS does not meet this potential Licence requirement. We would also note that the ACS charges are based on an IAD account, however it is not clear what xoserve are referring to as IAD. In particular we would note that Shippers are able to access numerous xoserve systems via the internet, including M Numbers, Shipper Portfolio and Conquest. The ACS does not make it clear which services are chargeable on a User Pays basis, and which (if any) are funded as a core service; and it is also not clear which service an IAD account can access. We therefore do not believe that the ACS is complete, and in addition to the areas already identified we believe the following issues need addressing:

- It is not clear what the difference is between a Registered User Account for IAD and a Major Energy User Account.
- The IAD Daily Failure Charge Rate is included as a chargeable item, but no explanation is provided within the ACS as to when these charges will be incurred and how they have been developed to ensure that they are cost reflective.
- Charges per call in excess of annual or monthly band have also been included as a chargeable item, but again there is no reference within the ACS and no explanation of how these charges are cost reflective.
- Xoserve have developed charges for the Registered User Portfolio Report for Users with less than 1 million supply points, but have stated that the cost of this report for Users with more than 1 million supply points is available on application. However no explanation has been given as to why xoserve can develop a charge for one group of Users, but not another.
- Within the "Contract for the Provision of Non-Code User Pays Services" there are numerous penalty charges for changing and/or varying demand for a service. These charges should be included in the ACS along with an explanation of how they are cost reflective.

### Anti Competitive Nature of User Pays

Currently only xoserve is able to provide these services to Shippers, and so are in a monopoly position. All of these services are essential to suppliers to ensure that they can provide good customer service.

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<sup>1</sup> [http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=6551](http://epr.ofgem.gov.uk/document_fetch.php?documentid=6551)

The User Pays Contract and the Agency Charging Statement have been developed in such a way as to encourage the non usage of services rather than usage of them. Shippers have had little ability to contribute to the development of User Pays and do not appear to have many rights to suggest changes to the scope going forward. The contract provided by xoserve is one sided and suggests that shippers will be subject to termination fees for the cessation of usage of User Pays services however no detail has been provided as to the level of these charges.

Further by increasing costs to participants within the industry, this will create a further barrier to entry as the margins on domestic contracts are low, and any potential new entrant would have to look at either developing expensive systems and processes to duplicate this work or making an even smaller margin on their contracts. Thus this proposal not only discriminates against smaller Shippers, but also creates a barrier to entry and so will be detrimental to competition.

#### Contract Issues

The document presented by xoserve as the “Contract for the provision of non-code User Pays services” has very little to do with a contract. A contract is a document entered into by both parties on terms and conditions mutually agreed and not to be modified unless also mutually agreed. This set of documents may be modified unilaterally, at any time and at the absolute discretion of xoserve. This unreasonable and unfair right deprives the Customers from the basic and fundamental rights of a contract i.e. security of the terms entered into and predictability of the terms and conditions to govern the relationship ahead.

We would also note that xoserve has a very limited (if any) liability, where the Customer is liable to xoserve on a wider range of circumstances and without any limitation or cap whatsoever. In particular we would note that under Conditions Clauses 11.1, 11.5 and 11.6 xoserve is only required to use reasonable endeavours to maintain and services and resume performance, whilst the customer is exposed to best endeavours provisions.

We have numerous issues with these documents and believe that it is written solely in favour of xoserve. However xoserve have refused access to their legal team in relation to this contract and do not appear willing to alter the terms, instead informing Shippers that they will be able to take comfort from the Unfair Contracts Term Act. However as businesses with legal teams, Shippers will be unable to rely on this Act as they are expected to fully understand any contract that they may sign. Due to the monopolistic nature of xoserve and the unfairness of this document we believe that were xoserve to continue to require Shippers to sign an unchanged contract the only available option would be to report xoserve for investigation by the Competition Commission.

It is therefore clear that the ACS is not fit for purpose, fails to meet all of the relevant licence conditions, both existing and proposed and is anti competitive under both UK and EU law. EDF Energy believes that xoserve needs to provide an ACS that has sufficient transparency to demonstrate that the charges are cost reflective and the margins and operating costs associated with the User pays regime are appropriate. It would be beneficial for xoserve to share their demand forecasts with the industry, and to consult on the appropriateness of these to ensure that the correct amount of revenue is recovered. xoserve need to ensure that the ACS covers all the charges and services that will be covered under a User Pays regime, and provide a full explanation of these. Once these changes have been made to the ACS, we believe that it would be appropriate for xoserve to re-consult on these changes to allow the industry to re-appraise this document. Finally given the scope and impact of these changes we believe that it would be appropriate for Ofgem to conduct a full Regulatory Impact Assessment into these changes.



I hope you find these comments useful, however please contact either myself or my colleague Rosie McGlynn (07875 111488, [rosie.mcglynn@edfenergy.com](mailto:rosie.mcglynn@edfenergy.com)) if you wish to discuss these in more detail.

Yours sincerely

A handwritten signature in black ink that reads "Stefan Leedham".

Stefan Leedham  
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Energy Regulation, Energy Branch