This document is Ofgem's Front End Document with EDF amendments shown in track change format and with LB Islington amendments also shown (noting that LB Islington has not made any changes to Sections 4 and 5) and EDF further amendments double-underlined

Determination No. RBA/TR/A/DET/

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING THE CHARGES FOR ELECTRICITY CONNECTIONS TO THE PREMISES.

1 INTRODUCTION

1.1 The Gas and Electricity Markets Authority ("the Authority") has been asked by EDF Energy LPN plc ("EDF"), an electricity distributor, to determine a dispute between the London Borough of Islington ("Islington") and EDF in relation to: (i) who is responsible in law for renewing rising and lateral electricity mains ("R&Ls") installed in the multi-occupancy residential building known as Sadler House, the Spa Green Estate; and (ii) who should bear the cost of renewal.

1.2 This dispute has been referred to the Authority for determination under Section 23 of the Electricity Act 1989 ("the Act") which requires the Authority to determine disputes arising under sections 16 to 21 of the Act when so requested by an electricity distributor or a person requiring a connection.

1.3 EDF's request for a formal determination of the dispute under section 23 of the Act was received by Ofgem on 24 January 2008. Ofgem is the office set up to assist the Authority to discharge its statutory responsibilities.

2 BACKGROUND

2.1 The determination concerns a dispute about a request for a connection to be maintained at Sadler House, Spa Green Estate. Details are set out in Appendix 1.

2.2 Islington is the freehold owner of Sadler House, Spa Green Estate and of many other multiple occupancy dwellings throughout the borough. The details of residence and tenure are set out in Appendix 1.

2.3 Details of the installation appear in Appendix 1.

2.4 Each tenant or lessee has a direct contract with a supplier for their metered supply of electricity; Islington neither contracts on their behalf nor collects any charges on their behalf. This arrangement is separate from Islington's landlord supply which provides electrical power to the common parts. Islington's consumption is separately metered and paid for. Necessarily, for each tenant or lessee physically to receive a supply, the R&Ls must be in working order and properly maintained.

2.5 Over the past three years, Islington has inspected the R&Ls in a number of its blocks and has replaced or is in the processes of replacing them where necessary. That includes Sadler House. Islington has borne the costs of these works itself. EDF Energy is not in a position to agree to this but is not in a position to disagree. It is assumed by the parties only for the purpose of this determination of the principles involved that the R & Ls in Sadler House needed replacement. As a result of investigations into the actual state of the relevant cables in respect of that block (being the property now chosen for the purposes of the determination) the parties cannot agree that they did in fact require replacement. The parties have agreed that the determination should therefore deal with matters of principle in order to obviate the need to make detailed findings of fact and that this determination will not in fact set out to decide which party should pay for the replacement of the cables in Sadler House.

2.6 Through correspondence Islington has requested renewal of R&Ls, but the parties are unable to confirm whether they did so specifically in relation to Sadler House. The parties are prepared to proceed as if they did. The correspondence has taken place via Energywatch.

2.7 EDF has also requested determinations in relation to similar disputes with the City of Westminster Council ("Westminster") and the London Borough of

Camden ("Camden"). In this determination, where appropriate, Camden, Westminster and Islington are collectively referred to as "the Councils".

2.8 Provisions relating to statutory obligations relevant to this dispute are set out in Section 5 to this Statement of Facts.

3 VIEWS OF ISLINGTON

3.1 EDF's contentions as to ownership/duty: Islington's understanding is that EDF contends that the R&Ls are owned by Islington. Islington believes this is based solely on EDF's construction of one (or possibly more) of the long residential leases granted by Islington. EDF appears to contend that, if these mains are in Islington's ownership, it cannot owe any duties under section 16 of the Act. Islington does not accept EDF's contentions. Islington also notes that EDF makes numerous assumptions and assertions as to the historic position over the years, with no or limited evidence in support (and relies on correspondence which is, Islington believes, of no evidential worth in determining issues of statutory construction and/or duty). Islington's position is that the Authority has to treat the "evidence" in this case with a great deal of caution and should, further, be cautious about making determinations of a "general" nature, in relation to other blocks of flats owned by Islington. In particular, the R&Ls in Sadler House were installed in or about 1950 - after the coming into force of the Electricity Act 1947, which nationalised the electricity industry. Prior to that Act the Borough of Finsbury (along with many other boroughs) had statutory powers in relation to the supply of electricity. The transmission of the ownership of installations undertaken by those boroughs, pursuant to their statutory powers, was the subject of the provisions of the Electricity Act 1947. Different questions of ownership (and, hence, duty) may, therefore, arise, in relation to any such block.

3.2 Islington explains that those occupying the flats are secure tenants (tenancies granted pursuant to Part IV Housing Act 1985) or long lessees (usually granted pursuant to the 'right to buy' provisions now found in Part V Housing Act 1985). The details are included within the Appendix.

3.3 Islington explains that, in the case of tenants under short leases (which includes weekly secure tenants), as landlord, it is bound by implied covenants under section 11 of the Landlord and Tenant Act 1985 to:

- keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity.

- Where the lease is a lease of a dwelling-house which forms part only of a building, the reference to an installation includes an installation which, directly or indirectly, serves the dwelling house and which either forms part of any part of a building in which the lessor has an estate or interest or is owned by the lessor or under his control (this extended form of covenant applies only in relation to tenancies granted after January 1989, when amendments to section 11 by the Housing Act 1988 came into force).

- *Where, in order to comply with the covenant, the lessor needs to carry* out works or repairs otherwise than in, or to an installation in, the dwelling-house, and the lessor does not have a sufficient right in the part of the building or the installation concerned to carry out the works or repairs, in proceedings to breach of the implied covenant, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain such rights as would be adequate to enable him to carry out the works or repairs.

3.4 Islington submits that Parliament has, for obvious reasons, provided that, as *between landlord and tenant,* the landlord has the obligation to keep the installation for the supply of electricity in good working order. However, it does not follow from this implied obligation that no other third party has an additional duty to either (or both) landlord or tenant. Nor does it prevent the landlord from seeking an indemnity against such a third party for breach of that additional duty, depending on circumstances. Moreover, the implied covenant set out in the first bullet point (above) was previously to be found (in similar, but not identical form) in s.32 Housing Act 1961. Before then, there were no relevant statutorily implied covenants; the relationship between Islington and its weekly tenants would have depended upon the express terms of tenancy, together

with any terms that may have been implied as a matter of common law. Islington does not believe that any pre-1961 tenancy agreements will have contained any clauses of relevance to the instant dispute, or that any pre-1989 agreements contained any relevant clauses in relation to installations in the 'common parts' of buildings.

3.5 Islington submits that certain covenants are also implied, by statute, into long leases made pursuant to the right to buy. In particular Islington refers to paragraph 14(2)(c) of Schedule 6 Housing Act 1985 by which the landlord impliedly covenants "to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services." However, Islington makes the point that only from 1980, when the right to buy was first introduced by the Housing Act 1980, have any leases been granted. Before that date, all of the occupiers will have been weekly tenants only.

3.6 In addition, there are rights and obligations in Islington's model right to buy lease, essentially modelled on the statutorily implied covenants. Islington avers that, if it does replace the R&Ls in Block X, it is contractually entitled to recover contributions to the costs from lessees (and subject to the statutory requirements as to reasonableness within section 19 Landlord and Tenant Act 1985). However, this contractual entitlement does not prevent the analysis set in paragraph 3.4 continuing to apply.

3.7 Islington contends that, following on from the above points, when Sadler House was built and the R&Ls installed, and for many years afterwards, the individual flats will have been occupied exclusively by weekly tenants, whose tenancy agreements will have been silent on the matters in issue, and that only from 1980 will Islington have begun to grant leases of some flats, in accordance with the provisions of the right to buy. This is one reason why the legal relationships between Islington and its (current) weekly secure tenants or right to buy lessees is, Islington believes, wholly irrelevant to the matters in issue and does not support EDF's case in any way. A further reason is the fact, as these Determinations demonstrate, that the issue of ownership/statutory responsibility

for the renewal of R&Ls has been a 'grey area' for a number of years, which may explain why London boroughs have not earlier called upon EDF to perform its statutory duty. That does not, of course, mean the duty no longer applies.

Islington's original understanding was that EDF's statutory predecessors originally installed the R&L's in Sadler House, but it now accepts the position is as set out in the Appendix. However, it remains its position that, once the R&Ls had been installed in or about 1950, they would have been 'adopted' or 'taken over' by the then London Electricity Board which would thereafter have been responsible for them (carrying out works of maintenance of repair), whereas Islington would not have been. This is based upon the recollection of Michael Garrett, the Senior Electrical Engineer employed by its agent (Homes for Islington), as to what was the usual position, this recollection is based on 46 years of experience in the electrical industry. It is on this basis that Islington contends that the R&Ls in Sadler House came to be owned by, alternatively were under the exclusive control of, EDF's statutory predecessors. .

Islington's position

3.8 Islington is of the view that section 16 of the Act provides that:

- An electricity distributor is under a duty to make a connection between a distribution system of his and any premises when required to do so by the owner or occupier of the premises or an authorised supplier acting with the consent of the owner or occupier of the premises for the purpose of enabling electricity to be conveyed to or from the premises.
- Any reference to making a connection includes a reference to maintaining that connection.
- Any reference to requiring a connection includes a reference to requiring the connection to be maintained, and
- Any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

3.9 Islington refers to section 19(1) of the Act:

- Where any electric line or electrical plant is provided by an electricity distributor in pursuance of section 16(1) above, the distributor may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as it reasonable in all the circumstances.

Duty

3.10 Islington submits that under section 16 of the Act, EDF has a statutory duty to make and maintain a connection between its "distribution system" (as defined by section 4(4)) and any "premises" (as defined by section 64 as including "any land, building or structure"). This must include all those sets of premises occupied by Islington's tenants and lessees, all of whom are individual consumers. There is no difference in the position between a substantial, purpose built block of flats and a house converted into three flats.

3.11 Accordingly Islington submits that section 16 places a statutory duty on EDF:

- To make a connection between its distribution system (which includes the R&Ls located within Sadler House, based on the 'adoption' argument earlier set out) and any of the individual flats occupied by consumers when required to do so by either Islington (as owner of an individual flat) or the tenant or lessee (either as the "owner", though this is not defined by the Act, or as the "occupier").

- To maintain any electrical connection to individual flats and to continue to provide the necessary electric lines or electrical plant, including the modification of any existing electric line or plant for the purpose of maintaining any such connection.

- Even if, contrary to Islington's main submission, the Authority determines that the R&Ls were not owned by EDF, nevertheless they were under its exclusive control and became part of its distribution system (and similar considerations apply).

- Yet further, even if the R&Ls at all time were owned by, and under the control of Islington, EDF retains a statutory duty to make a connection between the end of its distribution system (which, on this analysis, would be the cut-out in the basement of Sadler House), and individual consumer's supplies (noting that within Sadler House, as built, the meters were installed within each individual flat, and have not been moved since).

3.12 Islington notes that EDF does not accept this analysis, and contends that Section 16(1) assumes one connection only to one owner of a building or premises. Islington contends that the duty is to make a connection to "any premises" when required by the owner or occupier. Given the wide, inclusive definition of "premises" in Section 64, the fact that a mere "occupier" may make a request (as opposed to someone with a formal legal interest in the premises), and that lessees and tenants are all individual consumers of electricity, there is no basis for giving "premises" the restrictive interpretation urged by EDF. Had it been the intention of Parliament to limit the extent of the duty to "one connection per block" (whether that be a residential or commercial block), Islington considers the Act would have said so. Particularly in the commercial context, there will be numerous examples of tenants of parts of substantial commercial buildings requiring individual connections.

3.13 Furthermore, if Islington is right and a lessee or tenant of a flat may make a request, it does not believe that it matters even if (a) the existing R&Ls are not owned by EDF and/or (b) are not part of its "distribution system" within the meaning of Section 16. By way of example, Islington posits a case where one has a tenant of an individual flat (or a commercial tenant of part) of a multi-occupancy block, in a very poor state of repair, and where (for example) the landlord/freeholder is registered outside the United Kingdom or is a company that has been struck off. If that tenant's supply of electricity is lost or interrupted because the R&Ls are defective or beyond repair, then even if the R&Ls were originally installed by the freeholder, are owned by it, and are not part of EDF's distribution system, Islington contends that Section 16(1) remains apt to require EDF to make a connection from the "end" of its existing distribution system

(presumably in the basement), and all the way up to the tenant's premises or flat (as the case may be). In other words, nothing about Section 16(1) limits EDF's duty to cases where its distribution supply ends at, or immediately adjacent to an individual flat's meter; the reference in Section 16(2) to "electric lines" suggests otherwise.

3.14 Islington further contends that if there is any legislative purpose within the Act, it is to impose a wide duty on the statutory distributor to ensure that any owner or occupier of premises, who wants one, has a functioning supply of electricity.

3.15 In answer to EDF's arguments that Islington's construction imposes a potentially onerous duty on it, Islington points to Section 17(1)(c) which provides an exception to the Section 16(1) duty where it is "not reasonable in all the circumstances". This adequately meets EDF's concerns if, which is not accepted, there is any substance to them. For example, if Islington was to make a request to EDF, the effect of which was to require it to renew all (or some) of the R&Ls in Sadler House, from the cut-out in the basement and the individual flat meters, it *might* (depending on circumstance) be open to EDF to decline , relying on Section 17(1)(c). It *might* be open to it to argue that the existing R&Ls are owned by Islington (although this depends on the Authority's determination on this point), run through its building, and it should be left to it to engage its own contractors to carry out the works. EDF might take a similar view if an individual tenant or lessee of Sadler House wanted a new connection; it *might* similarly refer the tenant to Islington.

3.16 Islington contends that the existence of a wide Section 16 duty, subject to the possible Section 17 exception, is far more likely a construction, than that proposed by EDF (which excludes the possibility of any duty ever arising in very many cases).

Responses to Points made by EDF in its Submissions

3.17 Islington would make the following, designedly brief, comments on particular parts of EDF's submissions (as set out later in this document), not repeating

points already made. As this determination is about Sadler House only, and the particular form of the installation in place there (and which was in place when the building was built in or about the late 1940s), other forms of installation are not relevant, and are not commented upon (for example, see Paras.4.10-4.12 of EDF's submissions). Nor are comments made on matters raised by EDF which Islington does not consider are material to this determination:

- It does not admit that the LEB always had a contracting arm (Para.4.12). Although it accepts there was a contracting arm, certainly from the mid 1980s onwards, it is doubtful whether this was the case in the decades from 1948, after nationalisation.

- It does not accept that the cable is accessible to the public where it leaves the cut-out in Sadler House (or, indeed, in its other blocks) (Para.4.15). The cut-out is located in a locked room, to which the public do not have access. This is for obvious reasons.

- It does not accept the suggestion it has contracted with the contracting arms in the past for the renewal of R&Ls (Para.4.17A). Without the provision of detail, it is unable to check this assertion further. As noted above, the assertion of the 'contracting arm' always existing (Para.4.17B) is not admitted.

- the "renewal" of the lines would most certainly fall within the obligation to "maintain" if the condition of the lines had deteriorated (for whatever reason) so as not to be capable of performing their function (Para.4.49, and the reference to Ravenseft Properties Ltd). This is trite landlord and tenant law.

Charging

3.18 Islington does not know what EDF's position will be if it accepts the requisite duty under section 16 of the Act. If EDF believes it would be entitled to charge the individual tenants or lessees or Islington, Islington is entitled to know the precise legal basis for the charging including the methodology to be applied.

3.19 Islington agrees with the paragraphs 18-32 of the original submission put forward by Westminster in relation to the determination of its dispute with EDF (as further amplified in its Front End document). It sees no purpose in repeating any of those submissions, and respectfully adopts them.

3.20 Islington reserves the right to make further submissions once EDF's formal position is articulated.

3.21

4 VIEWS OF THE COMPANY

PART 1 – EDF ENERGY FIRST SUBMISSIONS

4.1 EDF's views are set in their written submission dated 27 February 2008 in relation to the determination of EDF's disputes with Camden and Westminster and in an Addendum relating to the dispute with Islington. EDF ask for the Addendum to be read with the principal submission.

4.2 EDF points out that the principles to be applied in this case appear to be no different depending on whether the R&Ls are owned by a local authority or a private landlord or developer, or on whether they are in premises which are residential, commercial or mixed. The disputes turn on responsibility for renewing R&Ls in any multi-occupied building.

4.3 EDF states that, for some 120 years, Parliament has been engaged in devising and refining a scheme whereby everyone in the country is entitled to receive a supply of electricity and the burden of that process is fairly and transparently distributed.

4.4 EDF adds that it is not attempting to divest itself of any responsibility placed upon it, also it is not seeking to maximise profit by claiming that it can pass the costs of renewing R&Ls elsewhere. It currently makes no charge in its present pricing structure for renewing R&Ls. Therefore, if it is determined that it is responsible, EDF concludes that it must be entitled either:

- To charge individual developers/landlords or property owners for doing so; or
- To add the renewal costs to its general charging structure and accordingly charge more to all of its consumers for the general costs arising from the distribution of electricity.

4.5 EDF adds that the principal point is whether the cost of renewing the internal electrical infrastructure inside private property (i.e the R&Ls inside multi-

occupied buildings) should fall on the owner of each such building or be borne by all consumers of electricity in the London area.

4.6 According to EDF the issues to be determined by Ofgem quasi-judicially are:

- Can it be shown that EDF owns the R&Ls as part of its distribution system and/or how can Islington allege that Islington does not own them?
- Does EDF have a statutory obligation to offers terms to renew the R&Ls?
- If so, can those terms include the cost to EDF of carrying out the work?

4.7 EDF states in its submission that the answers to these issues are:

- EDF does not own the R&Ls and they are not part of its distribution system, rather they are, and have been treated by Islington as being in Islington's ownership.
- EDF does not have a statutory obligation to offer terms to renew the R&Ls but, if it does, that obligation is set out in section 16 of the Act .
- If EDF has any obligation to renew then it can include the reasonable costs of doing so in the terms it offers and it will be reasonable for Islington to pay those costs.

Separate units and the risers and laterals serving them

4.8 EDF explains that each multi-occupied building is served by a high voltage (HV) main which runs into the basement service or intake room. Such a room may house other services as well. Typically, the main electricity cut-out will be located in the basement service room but can also be on the ground floor in some buildings.

4.9 From these cut-outs the electricity serves the landlord for the common parts and any spaces in the block which are from to time used or occupied by the Landlord and also the individual units in the building. Electricity

cables, known as R&Ls, are used to reach all parts of the block (whether occupied by the freeholder or by lessees or tenants)

4.10 EDF submits that any building constructed in the last 80-90 years was built with wiring and cabling as part of the construction process carried out in all probability by the builder or main contractor, or by a specialist sub-contractor. It submits that it is very unlikely that any distinction was drawn between cabling that was intended for common parts or R&Ls, and cables intended for the exclusive use of one flat. The building would be wired when constructed. If the electrical installation was installed or renewed subsequently, then it would be commissioned by the freeholder, who might decide to combine it with other works of renovation and re-instatement. It would be possible for any such freeholder to have invited the old London Electricity Board (LEB) or its statutory predecessor to carry out those works on a contracting basis. EDF adds that it is unlikely that there would be a distinction drawn between different types of wires serving different purposes within the building.

4.11 The metering of the electricity may take place in the individual flats, or in various parts of the common parts. It is commonly the case that metering is positioned next to the multiway board on the ground or basement floors leading to wiring that feeds each unit thereafter, or that it is outside rather than inside individual units. This is particularly convenient for meter readers who do not then require access to individual units.

4.12 EDF adds that one of the arguments that has been put forward on behalf of the Councils is that EDF is responsible for everything up to the upstream side of the meter. As the decision to move a meter from the basement or another communal part to a position inside the individual flat is one made by the supplier/meter operator and the customer, it is difficult for EDF to see how its responsibility can be enlarged by that decision.

4.13 At the time of installation, as now, installation of R&Ls was not an activity over which the undertaker had any monopoly. That position has not changed with statutory changes brought about by the Act or the Utilities Act 2000.

4.14 LEB always maintained a contracting division which did not carry out statutory works but competed for business along with other electrical contractors. The R&Ls in this case could have been installed by a private electricity contractor, or by LEB (if post-1947) or by LEB's predecessor (if pre-1947). EDF is the statutory successor in title to London Electricity (LE) and LEB.

4.15 EDF submit that this position is confirmed by letter dated 5 June 1987 signed off by solicitor and secretary of LEB, Gordon Rees. Although the letter was not sent to any of the Councils, EDF produce an extract from it as, EDF submit, it makes a number of points helpful to EDF's general submission that it is not liable to replace the risers and laterals and to the particular submissions that: (i) seals on equipment is there to prevent unsafe public access and illegal abstraction and does not denote control, (ii) the cable between the cut-outs and the meters are not under EDF's control, (iii) no responsibility to replace the R&Ls is placed on EDF by the Regulations, (iv) if EDF and its successors have carried out installation of R&Ls it was not as statutory undertaker but as private contractor: These points are set out below:

- 'As will be evident from a closer inspection of the supply arrangements in an installation of such as a high rise block of flats, the supply cable terminates at a cutout unit which is invariably situated in a room to which the public have access. The mere fact that the cutout has a piece of the LEB sealing wire open upon it is irrelevant to the question of who controls the cable between cutout and meter, since the cable is accessible to the public as it leaves the cutout and makes its way through the Building to the meters. At the point where the cables enters the meters it remains accessible to the public.

- Not only does the factual situation clearly demonstrate that the cable between cutout and meter is not under the LEB's control, but the 1937 Electricity Supply Regulations make plain that the legislature does not impose responsibility upon an Electricity Board in circumstances such as apply here. Regulation 25(a) ...makes it plain that for responsibility for

electric lines and apparatus to be placed upon a Board two requirements must be satisfied:

- The lines must have been placed by the Board on the consumer's premises, and
- The lines must either belong to the Board or be under its control.

- As the wording of regulation 25(a) makes clear, it is concerned with the position where the lines are placed by the "undertakers." In the high rise installations which are material to the contents of your letter, the Board as "undertaker" has not in fact placed any of the cables between the cutouts and meters (although, in some cases, the Board has submitted Tenders in competition with other Contractors and subsequently placed the cables simply as Contractor, and not as an "undertaker").'

The ownership of blocks of flats

4.16 EDF adds that the flats would no doubt have been originally occupied by council tenants but that now the majority of flats are occupied by lessees who have purchased leases following the "right to buy" changes post-1984. Some current occupants may never have been council tenants, having purchased their flats in the open market. Other flats are subject to rental agreements and others are subject to shared ownership schemes (part buy/ part rent) or other local authority variants.

Islington's standard lease

4.17 Islington, like the other councils, has granted leases purporting to own and sell cables to the lessees. They could not have done so unless they believed they owned the cables or if they believed that EDF Energy owned the cables.

Islington's approach to R&Ls and the dispute

4.17A In the past, Islington has contracted with LE Contracting and LEB Contracting to install and renew R&Ls. As to this, EDF Energy continues to employ two men whose experience goes back to 1966 and 1972. Mr Cuddihey is an

engineer in the current position of Senior Project Manager in customer operations who started with LEB in 1966 and Mr Barratt is a supervisor within customer operations who started in 1971. Both men are clear that LEB would have carried out the installation up to the cut outs in its role as statutory undertaker.

4.17B If and only if it was asked to do so it would also have quoted for the work of installing the R&Ls, but this was always a separate quote (for what is now called contestable work) and was made by LEB Contracting (what was known from 1971 onwards as the Central Works Department). Local authorities often used LEB to carry out this work but developers, such as Barratt Homes (no relation to Mr Barratt referred to above), more usually used their own sub-contactors. This point was clearly made by Gordon Rees referred to above.

The historical position

4.18 EDF understand that Islington approached energywatch to seek their guidance as to whether Islington should be paying to renew the R&Ls. EDF understand that this was prompted by pressure from Islington's lessees who are querying service charges.

The letter from energywatch to EDF dated 24 May 2007 summarises the historic position in relation to all Islington's properties as being that, "without exception", EDF was "responsible for supply to the service head(s) of each estate (usually located on the ground floor or the basement if present)" . Islington was "responsible for design, provision, maintenance, renewal and distribution of the lateral mains and riser supply from the service head to each individual consumer unit within each individual flat." The energywatch letter goes on: "Historically, Local Authorities have been installing and replacing lateral cables and risers to their properties for many years and we are not aware of any instance where EDF or former electrical suppliers have replaced the lateral cables and risers at their own cost."

4.19 EDF submit that this accords with EDF's position. EDF set out further energywatch's conclusions:

- The DNO (distributor) is responsible for the service up to the cut out.
- If any different position existed in respect of responsibility at any given location this would have to be set out in a separate formal agreement between the two parties involved.
- If no agreement can be shown to exist, the distributor is responsible for this kind of work by default

4.20 Other than for the last passage, EDF states that energywatch's conclusions are the same as EDF's. EDF responded by letter dated 18 July 2007 direct to Islington (at energywatch's request) to the effect that EDFs responsibility ends at the cutout and EDF is not responsible for the cost of renewals of R&Ls.

4.21 EDF understands that energywatch has subsequently provided advice (though EDF does not know in what circumstances) confirming that EDF would be liable up to the cut out, but that the cut out means up to any individual consumer meter. A copy is being sought.

4.22 EDF refer to a press report in the Islington Gazette which suggests that energywatch had called for councils to stop charging for electrical repairs until the dispute is resolved. The report incorrectly refers to energywatch as the regulator.

EDF's Charging Structure

4.23 EDF explains that EDF, and its predecessors LE and LEB, have never included any sum or provision on account of the cost of renewing R&Ls in their authorised charges. There is no mention of any capital replacement of R&Ls in EDF's pricing strategy.

4.24 EDF states that Ofgem and its predecessor Offer knew that EDF was not making any provision within its charges for R&L renewals. They add that R&Ls are not calculated as part of the kilometre length of EDF's distribution system reported to Ofgem.

Regulatory and Government approach

4.25 EDF has provided past correspondence with Offer, Ofgem and the DTI that indicate views of regulators and government previously expressed on multiple occupancy situations:

4.26 Offer Correspondence 1 June 1993:

- Normally LE has responsibility up to and including the service head and for the meters to individual premises.
- In buildings where the meters are in an intake room with the service head, R&Ls would take supply to the consumer units of individual premises. Such R&Ls would be the responsibility of the owner/occupiers of the building as they form the wiring installation of the building.
- In situations where customers have the meter measuring their supply usage within their premises alongside the consumer unit, the sub main distribution system would remain the responsibility of the owner/occupier. To prevent any illegal abstraction of electricity it would be reasonable for LE to place their seals on the various connections but this does not imply ownership (as the company would be complying with Regulation 25(3)).
- LE would not be responsible unless there is a written agreement in place to the effect that LE had taken over responsibility for the sub-main system.

4.27 Offer correspondence 10 June 1998:

- To prevent any illegal abstraction of electricity (and not to protect the cables) LE may place their seals on the various connections but this does not imply or transfer ownership of the cables.

4.28 Ofgem correspondence 16 October 2000:

- There is not one rule that can be applied to all blocks of flats. Responsibility for maintaining the internal system lies with

ownership. If LE owns the cabling, it forms part of their public distribution network and becomes subject to the Electricity Supply Regulations 1988 which cover operation and maintenance. If the cables are not owned by LE then the responsibility lies with the owners and occupiers of the property.

4.29 DTI correspondence 30 July 2002:

- Regarding the cutout and sealing apparatus up to and including the meter, the seal would not itself denote either control or ownership of the item. For safety reasons, and to prevent any illegal abstraction of electricity, LE may place their seals on all possible points of isolation.

- Ownership of rising services remains a grey area and unless documented agreements can be found, it is a matter for the civil courts to decide ownership on a case-by-case basis.

4.30 EDF has provided minutes from the London Councils Forum on 6 June 2007 showing that the Forum councils believe that, prior to EDF, the LEB took responsibility for maintenance and renewal of the R&Ls.

4.31 EDF is of the view that LEB did not accept responsibility for renewing R&Ls and their position does not represent any change of policy or stance. EDF suggests the minutes display a serious lack of understanding of EDF's position and of the historic and present position on R&Ls.

4.32 EDF add that the issue of R&L renewal is unrelated to the issue of meter renewal which is the responsibility of electricity suppliers.

Ownership of the R&Ls

4.33 EDF was not involved in the procurement of the original R&Ls nor in the recent work carried out by Islington. Even if EDF's predecessor installed them, (which they did not) they would not have done so as part of their statutory function.

There is no evidence that EDF entered an agreement with Islington that EDF would own the R&Ls. In any event, whether or not they are shown to be owned by EDF they are not part of EDF's distribution system. It is clear from Islington's leases that Islington has:

- proceeded on the footing that it owned the R&Ls;
- purported to sell the cables within each demise even if upstream of the meter, which it could not do if it did not own them and would not have done unless it thought it owned them;
- granted rights over the cables outside the demise but elsewhere in the block;
- undertaken to their lessees the obligation to maintain and renew the cables and reserved the right to charge their lessees for doing so; and
- conducted itself for many years in accordance with the above.

The Sources

4.34 EDF submit there are six sources which should be considered in order to determine the dispute: property law; contract law; statute; regulations; licences; and policy.

Property law

4.35 EDF argue that: chattels fixed to the land become fixtures and fittings and will pass with the land (Melluish v BMI (no. 3) [1996] 1 AC 454); the drafting of schedule 6, paragraph 11 to the Act is only explicable on the basis that R&Ls are not necessarily always owned by the undertaker; and Islington has granted leases on the basis that it owns the R&Ls and has an unqualified obligation to renew them.

Contract law

4.36 EDF submits that contract law does not have to be considered. Although EDF and Islington as building owner could have entered into a private law agreement for EDF to carry out work on R&Ls and for Islington to pay for that, they have not done so.

Statute law

4.37 Previous legislation did not distinguish between suppliers and distributors; statutes referred to supply, which included both functions.

4.37A The 1899 Schedule, the 1989 Act and the 2000 Act all have two central features namely that work carried out to make a connection includes work to continue or maintain such a connection and that the undertaker can offer terms and charge for that work.

4.38 EDF refers to sections 16(1) and 64 of the Act. EDF questions whether section 16(1) entitles the owner of an unit in a block to make an individual demand for a connection to the distribution system or whether it only applies to connecting the whole block to the system. EDF submit that Parliament could not have

intended that a developer/ owner would build a block but that the electrical infrastructure in it would be installed as a result of many different requests each coming from an individual flat owner or occupier. It is common sense that a developer/owner would require the distributor to connect the building to the system ie take the distribution system to the cut-out in the intake room. From there the owner would install electrical infrastructure to as many units as he wished to create.

4.39 EDF submit that the word "premises" in section 16(1) is not intended to refer to individual units: premises is defined in section 64 by reference to any land building or structure. The distributor is required to make "a connection" (i.e. one connection) to the premises owned or occupied by the person making the request (or by an authorised supplier acting with the consent of that owner) for the purpose of enabling electricity to be conveyed to or from the same premises. The language of the statute assumes one connection to one owner of a building or premises.

4.40 Parliament would not have intended different regimes for making a connection under section 16(1) and maintaining it under section 16(4). Section 16(4) only makes sense if it requires the connection first made under section 16(1) to be maintained.

4.41 Section 16 is not drafted to provide for multiple requests for connections in the same building by multiple owners where none can be actioned without the consent of the freeholder/owner of the common parts. It cannot be read to permit one owner (the freeholder) to demand multiple connections.

4.42 Therefore no distributor can be required to offer terms for installation of internal electrical structure within a building under section 16(1) or to continue it under section 16(4).

4.43 Even if, in principle, section 16 meant that a distributor could be compelled to install the internal infrastructure of a building, it is not reasonable in all the

circumstances to do so under section 17(1). The work would involve removing old cables from the fabric of the building and would require wayleaves to be compulsorily obtained.

4.44 Even if sections 16 and 17 do permit freeholders or unit owners to demand connections, the distributor is required to offer terms under section 16A(1) and 16A(5) which may include charges under section 19. Section 19 clearly allows the distributor to charge the reasonable costs of renewing electrical infrastructure inside a building (especially where that will enhance or maintain the capital value of the building to the advantage of the owner(s)) unless the distributor would receive that money through some other mechanism.

4.45 EDF submit that it would still be entitled to charge for renewal of R&Ls if EDF had become the owner of them, whether or not the R&Ls had become part of the distribution system. If section 16 does apply to multi-occupied buildings, EDF must provide electric lines if that is necessary to create or maintain the connection. The notice mechanisms of sections 16A and 19 entitle EDF to charge to make and maintain the connection.

4.46 In summary, section 16(4), read with section 16A and section 19, specifically provides for EDF to offer terms and charge for providing wires to maintain the connection. It would make no sense if this was negated because the R&Ls that EDF was required to install to make the connection under section 16(1) were to fall into EDF's ownership. The ability to charge at renewal should not depend on the vagaries of ownership in the meantime (this conclusion should be the same even if, contrary to EDF's primary case, the R&Ls became part of the distribution system).

Regulations

4.47 EDF refer to the Electricity Supply Regulations 1937, stated to be "For Securing the Safety of the Public and for Insuring a Proper and Sufficient Supply of Electrical Energy". EDF submits that such subordinate legislation (as well as any subsequent subordinate legislation such as the 1988 and the 2002 Regulations) designed to deal with the safety and security of electricity could

not have been intended by Parliament to transfer ownership of privately owned assets forming part of a freehold property or to change the way in which such assets were funded or to impose significant new costs on undertakers. Regulation 25(a) provides that the undertakers would be responsible for all electric lines "placed by them on the premises of a consumer and either belonging to the undertakers or under their control". EDF submit that in the case of Spa Green Estate EDF did not place the lines originally and they were not under the control of EDF.

4.48 Sealing is done for purposes of safety and to prevent illegal abstraction of electricity and does not denote ownership or control.

4.49 EDF submit that the undertakers' responsibility extends to the lines "being installed and maintained in a safe condition and suitable for their respective purposes". It does not extend to renewal of lines as the law does not include renewal within a maintenance obligation (Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] 1 QB 12).

4.50 The Electricity Supply Regulations 1988 replaced the 1937 Regulations. By then, in the case of Spa Green Estate the R&Ls had been originally installed. In 1988 Parliament would have known that new buildings were constructed with electrical infrastructure and that council flats were being sold on the open market. Yet Parliament only introduced conventional and up-dated safety regulations.

4.51 The Electricity Safety, Quality and Continuity Regulations 2002 provide for a similar liability to maintain but based upon "operated" not controlled and they still have to be placed in situ by EDF and then owned or operated by EDF. The R&Ls were not operated by EDF.

Licences

4.52 Licences are granted to regulate the carrying out of a function. They cannot alter rights of ownership or create primary obligations inconsistent with the statutory framework. EDF submits that its licence does not impose on it an obligation to renew the R&Ls and that nothing in the public electricity licence or the distribution licence or published pursuant to EDF's licence obligations invalidates its arguments in this case.

4.53 However, EDF state it is clear from the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 that the Councils can properly own the R&Ls without requiring any licence.

Policy issues

4.54 In terms of regulatory consistency, EDF has relied on statements made by Offer about these issues in the past which have been broadly supportive of EDF's position.

4.55 There may be no difference between a multi-occupied office or commercial block and a residential block, or between a block that is publicly or privately owned.

4.56 A freeholder/ developer builds a block to make a profit. To do so he must install infrastructure that includes power cables, water pipes and possibly digital television and broadband cables. Installing these is part of the cost of the building. It could not be argued that the distributor should pay for the cost of the electrical part at the expense of all London consumers.

4.57 Each flat owner has to maintain his flat's value by keeping the building infrastructure up to date. Renewal of the electrical infrastructure is no different to maintenance of the windows, the roof, the broadband cables or the plumbing. Parliament is unlikely to have agreed to legislation that would have resulted in all electricity consumers in London paying for capital profits for wealthy mansion flat owners in Knightsbridge, for example.

4.58 The propositions of the Councils rely on implications from subordinate legislation and licences rather than on interpretation of primary legislation. The regulations are neutral about ownership and certainly did not set out to transfer ownership.

4.59 EDF query what cables it must replace if Islington's arguments are correct: If it is all the cables between the cutout and the meter, what about the case when the meters are positioned remotely from the flat? EDF presume that it would only replace cables up to the meter, but notes that the meter-owning company and the freeholder decide between them where meters are positioned. What about the case where the landlord's meter for supply of common parts is in the basement but downstream of that are R&Ls carrying power to the common parts of each floor? EDF presume it is not obliged to renew those even though they may be in the same ducts as the R&Ls feeding the flats.

4.60 EDF claim that, if Islington is correct, EDF could never be required to install the original R&Ls because it could never be required to do so by each flat owner and the freeholder would not be able to insist on 500 separate connections. Logically, EDF or its predecessors could never be required to install the R&Ls in its statutory capacity. Therefore there is no machinery by which the R&Ls could come into the ownership of EDF.

4.61 EDF's next question is why the situation at renewal is any different from when the building was constructed. EDF submits that the only possible difference is that in place of one consumer (the freeholder) when the connection was established there are now multiple consumers (freeholder plus lessees/tenants). What would happen if some of the consumers refused to demand a continued connection, as they would be entitled to do?

4.62 EDF avers that Islington's case require Islington to accept that it has imposed and collected service charges unlawfully for years and has drafted its leases incorrectly.

4.63 If EDF is not required to undertake the work under section 16, then it is entitled to charge if it agrees to carry out the work on a contractual basis. If it is required to undertake the work under section 16, section 19 specifically makes it clear that EDF is entitled to make a reasonable charge for the costs of making or continuing the connection.

4.64 EDF asserts that the legislature had in mind these circumstances when it passed the legislation:

- the undertaker is not obliged to make a connection for free.
- The work involved in making a connection is the provision of the physical R&Ls and the work involved in fitting them.
- What then is involved in continuing this connection when those R&Ls are no longer able to perform that function? The answer is identical to bullet point two plus possibly the cost of ripping out the old R&Ls.
- If the flat owner decided to move and purchase a new flat being constructed next door in the same block, he would have to pay a price for the flat that reflected the fact that a new electrical infrastructure had been provided and clearly EDF would not have had to provide it at all (and if it was required to provide it, then it would not be free as EDF would be able to charge under section 19). Not all lessees are ex-council tenants as the flats/lessees are bought and sold on the open market with buyers and sellers enjoying the benefit of full market values.
- The flat owner has paid nothing towards the cost of replacement of the R&Ls (i.e. via his charges for electricity).
- He chooses to stay in the old flat and renew the R&Ls.
- He asks EDF to do the work (the result would be the same whether he asked EDF or any other contractor).

- EDF is entitled to charge for the reasonable costs of making or continuing to make such a connection.

Conclusion

4.65 EDF concludes that it is clear EDF has no obligation to renew Islington's R&Ls and, if it does, it is entitled to charge Islington the reasonable cost of carrying out that work.

PART 2 (Responses to Islington's views dated 5 March 2008 using their sub-headings)

EDF's Contentions as to ownership

4.66 Islington misunderstands the issue that arises from the leases. They have acted as if they own the R&Ls and have purported to demise some of them. They would not have done so if EDF Energy owned them.

4.67 EDF wishes to comment on Islington's assertion in its original submissions that the R&Ls were originally installed by EDF's statutory predecessors at least from 1948 onwards. Not only is there no evidence of this, but it is wholly inconsistent with the agreed facts in respect of Spa Green Estate where it is clear that the installation was not carried out by LEB. Even if the facts were different, and it was thought that LEB had carried out the installation, then in any event what matters is the capacity in which any earlier company installed the R&Ls (i.e. whether under its statutory *obligations* or as a contractor) and it is clear on the evidence that it would have done so as contractor.

Duty

4.68 The entirety of Islington's submissions (see for example paragraph 19(a) is based on the *assertion* that all the R&Ls are part of the distribution system of EDF. However, Islington puts forward no *argument* as to why that is so and it is plainly wrong on the evidence.

Charging

4.69 Islington also raises the point that the *basis* charging is not known. That is outside the scope of this Reference which deals with the principles involved.

PART 3 (Responses to Islington's views introduced in 2009 in track change format in section 3 above)

4.70 Islington makes the following additional points in their amendments to paragraph 3.1 above: (i) EDF makes assertions and assumptions as to the historic position with no or limited evidence; (ii) the R&Ls in Sadler House were installed in or about 1950 after the coming into force of the 1947 Act; (iii) that prior to that date the Borough of Finsbury had statutory powers in relation to electricity; (iv) that different questions of ownership may arise in relation to R&Ls installed by Finsbury before 1947; and (v) that Ofgem should be cautious about making determinations of a "general" nature about blocks other than Sadler House.

4.71 As to these points EDF answers as follows:

(1) It is not accepted that there is little or no evidence. The letter of Gordon Rees for example is receivable in court as evidence and would and should be so treated. Short statements have been taken from Mr Cuddihey and Mr Barratt (confirming the matters referred to in EDF's submissions).

(2) It is agreed (see the now agreed Property Appendix) that the Sadler House R&Ls were installed in about 1950.

(3) The London Borough of Finsbury is not listed in the Second Schedule of the 1947 Act.

(4) In any event, there is no evidence to suggest that Finsbury carried out such work in any statutory capacity and it would not have owned different parts of the building pre-1947 in different capacities.

(5) While it is always possible for different facts about specific issues of ownership to throw up different results, EDF's case does not turn solely

on ownership and Ofgem should provide as much guidance as to its views as possible.

4.72 Islington makes further points in the second (unnumbered) paragraph of paragraph 3.7 above as follows: (i) they now accept that the R&Ls were *not* installed by LEB; (ii) they assert however that once installed "they would have been 'adopted' or 'taken over' by LEB which would thereafter have been responsible for them whereas Islington would not have been"; (iii) this assertion is based apparently on the recollection of one Michael Garrett employed by Homes For Islington; (iv) accordingly the R&Ls "came to be owned or under the exclusive control" of LEB.

4.73. As to these points EDF responds:

(1) It is not understood what Islington means by R&Ls being adopted or taken over. There is no evidence that they were either adopted or taken over. EDF has no record of it and Islington has not produced any..

(2) EDF did not take over responsibility for the R&Ls.

(3) Even if LEB did carry out some work on any R&Ls at Sadler House (and there is no evidence that they did) that would not transfer 'ownership' in the R&Ls and does not signify 'exclusive' or any control.

(4) Mr Garrett is not known to Mr Cuddihey or Mr Barratt.

4.74 Islington develops these points in paragraph 3.11 in a way that can be summarised as follows: (i) EDF has an obligation to make a connection (presumably, though not stated, at its own expense) based on the 'adoption' argument; (ii) even if the R&Ls were owned and controlled by Islington "EDF retains a statutory duty to make a connection between the end of the distribution system (which on this analysis would be the cut-out in the basement of Sadler House and individual consumer's supplies."

4.75 As to these Points EDF's view is:

(1) Adoption has been dealt with above – there is no evidence of adoption and no evidence of a transfer of ownership.

(2) There is no evidence that the R&Ls came under EDF's exclusive control but even if they did that would not make them part of the distribution system.

(3) EDF has no statutory duty to make a connection to the individual flats but if it does have such a duty it would be in response to a section 16 request and it would thus be plainly entitled to make a charge for that work.

4.76 Similarly, Islington asserts (through new paragraphs 3.12 to 3.16) that EDF has an obligation (subject only to section 17) to carry out all and any works required inside and throughout the building even if all the existing cables are owned by the freeholder and are not part of the distribution system. Even if that assertion is correct (which is denied) it is plain that EDF could charge for that work.

5 STATUTORY OBLIGATIONS

5.1 Under section 16(1)(a) of the Act, an electricity distributor (such as EDF) is under a duty to make a connection between a distribution system of his and any premises when required to do so by the owner or occupier of the premises for the purpose of enabling electricity to be conveyed to or from the premises.

5.2 Under section 16(4)(a) of the Act, a reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electric plant). Under section 16(4)(b), a reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electric plant). Under section 16(4)(c), a reference to the provision of any provision of electric line or plant is a reference to provision of such a line or plant either by the installation of a new one or by the modification of an existing one.

5.3 Section 17(1) provides that nothing in section 16(1) requires a distributor to make a connection if and to the extent that- (a) he is prevented from doing so by circumstances not within his control; (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or (c) it is not reasonable in all the circumstances for him to be required to do so.

5.4 Under section 64(1) of the Act, "premises includes any land, building or structure".

5.5 Section 19(1) of the Act provides that: "Where any electric line or electrical plant is provided by an electricity distributor in pursuance of section 16(1) above, the distributor may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances."

5.6 Under section 19(4) of the Act, "any reference in section 19 to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it."

Any dispute arising under sections 16 to 21 of the Act, between an electricity Distributor and a person requiring a supply of electricity may be referred to the Authority under Section 23 of the Act for determination

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING WHO IS RESPONSIBLE IN LAW FOR RENEWING RISING AND LATERAL MAINS AT THE PREMISES AND WHO SHOULD BEAR THE COST OF RENEWAL

ISLINGTON APPENDIX 1

PROPERTY IN THE LONDON BOROUGH OF ISLINGTON

Sadler House, Spa Green Estate, Islington

1. The Estate consists of 3 buildings called Sadler House, Tunbridge House and Wells House consisting respectively of 48, 48 and 33 flats making a total of 129 flats. The Estate was built between 1938 and 1950.

2. Freehold ownership: Islington is the freehold owner.

The Supply and Service Cut-Out

3. LEB would have installed the original sub-station/transformer/service heads but only if installed after 1947.

4. The supply is brought to the block on the ground floor It consists of LV supply direct from the network (i.e. there is no transformer in the property).

Internal Supply

5. The original electrical installation was installed in 1950 by Berkley Electrical Engineering Company Limited and the works were managed by the Municipality of Finsbury and the London County Council (which were not statutory electricity undertakers in respect of electricity).

6. There is no evidence of involvement by LEB in the installation and Berkley Electrical Engineering were presumably paid by Finsbury.

7. The internal supply was originally as follows: iron-clad service cut-outs were located in the ground floor intake cupboard. From there risers went up through the block to distribution boards located on various landings. The meters were in the individual flats.

8. At some stage, LE changed the iron-clad service cut-out and replaced it with a modern PVC insulated unit but did not carry out any additional work.

9. Recent work has been carried out on the instructions of Islington by Lovelock & Taylor. That work consisted of the installation (in the ground floor intake cupboard) of a new Ryefield distribution board and replacement of the risers from the ground floor.

10. The R&Ls are carried in trunking up to the landings and from there in voids.

11. A schematic is attached as Islington Appendix 2.

Procurement

12. LEB was not involved in the procurement of the R&Ls and was not involved in the recent work carried out on the R&Ls by Islington.

Meters

13. The meters are situated inside each flat.

Maintenance history

14. Before the recent work carried out by Islington, the equipment showed evidence of labels. These are however not "test" labels. They are a red label paper seal placed on the fuse carriers for revenue protection purposes. Test labels are altogether different: they were first introduced by a Mr Mike Cuddihey (currently EDF Energy's Senior Project Manager) about 12-14 years ago, were normally placed inside the lid of the board and were part of a system designed to be able to check whether any contracted work had been carried out by the engineers. A sample red label paper seal and a sample test label are attached.

15. LE did not own this equipment and it is not shown as part of LPN's distribution system. LPN carried out no maintenance of it.

Sealing

16. The Ryefield board is neither sealed nor locked. The meters in the flats are believed to be sealed.

Tenure

17. In Tunbridge House there are 39 secure tenants and 9 lessees; in Wells House there are 28 secure tenants and 20 lessees and in Sadler House there are 21 secure tenants and 12 lessees.

18. Islington's letter to Ofgem dated 28 November 2008 stated that it enclosed a copy of Islington's standard long lease. A copy has not yet been supplied to EDF Energy.

LOGO MAY BE EITHER 24/7 OR EDF

EDF ENERGY networks

Rising and Lateral Mains Inspection

Date of Visit

Examined by (Print name)

NEARING METERING SEAL LABELS

metering & data services

Metering Operations

IT IS AN OFFENCE TO INTERFERE WITH THE EQUIPMENT

EDF ENERGY

Revenue Protection Services

IT IS AN OFFENCE TO INTERFERE WITH THE EQUIPMENT

REVENUE PROTECTION SEAL LABELS.

M.S. Cassidy 19/1/09

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Determination No. RBA/TR/A/DET/

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING THE CHARGES FOR ELECTRICITY CONNECTIONS TO THE PREMISES.

WITNESS STATEMENT OF MIKE CUDDIHEY

I, MIKE CUDDIHEY, of 161 Bidder Street, London E16 4ET, STATE AS FOLLOWS:

1. I am currently employed by EDF Energy plc, Networks Branch London Region, as a Senior Project Manager, I started with work with London Electricity Board in 1966 and have been employed by it, then London Electricity, and latterly companies in the EDF Energy group continuously ever since.

2. I have considerable experience of the process by which rising and lateral mains are constructed in new buildings and of the EDF Energy distribution system.

3. When I joined LEB there already existed an LEB contracting division. So far as I know it had always been in existence in order to compete for work for which it was qualified and experienced but which was not work carried out as statutory undertaker. It was certainly of long standing when I joined in 1966. It was known originally so far as I can recall as LEB Contracting and then, from 1971 as the Central Works department.

4. When a new building was being built, whether by local authorities or private developers, LEB would be asked to carry out the work of bringing the distributing main into the cut-out normally in the basement or some other agreed in-take room. It would do this in its capacity as statutory undertaker. It would quote for this work and would be paid for it. No other party could carry out this work.

5. Some local authorities (but even then not always) and some private developers (but far from all) would additionally invite LEB to quote for installing the R&Ls in the building. Sometimes LEB would quote but would not get the job. When they quoted, it was always a separate quote, usually on RIBA terms.

6. I have looked at the amended front end document being submitted by EDF Energy, the Islington Property Appendix and a copy of Gordon Rees's letter dated 5 June 1987 and I confirm that on matters of historic facts, the EDF Energy text in section 4 and the property appendix and the content of that letter as set out in section 4 are correct to the best of my knowledge and belief.

7. I have been asked to consider some assertions made by Islington in section 3 of the front end document particularly the second unnumbered paragraph of paragraph 3.7 and 3.17. I do not know Mr Garrett and have not met him. I know of no adoption by LEB (or later companies) of the R&Ls in Sadler House and have been able to find no evidence of any transfer of ownership to LEB or subsequent company. I am not aware of any works of repair and maintenance being carried out and (though it may be a matter of law) I can see no basis for saying that any work that may have been carried out voluntarily by LEB would act to transfer ownership or exclusive control to LEB.

I believe that the facts stated in this witness statement are true

Signed.....

Mike Cuddihey

Date: 4 September 2009

Determination No. RBA/TR/A/DET/

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING THE CHARGES FOR ELECTRICITY CONNECTIONS TO THE PREMISES.

WITNESS STATEMENT OF JIM BARRATT

I, JIM BARRATT, of 161 Bidder Street, London E16 4ET, STATE AS FOLLOWS:

1. I am currently employed by EDF Energy plc, Networks Branch London Region, as Supervisor within customer operations. I started with work with London Electricity Board in 1971 and have been employed by it, then London Electricity, and latterly companies in the EDF Energy group continuously ever since.

2. I have considerable experience of the process by which rising and lateral mains are constructed in new buildings and of the EDF Energy distribution system.

3. When I joined LEB there already existed an LEB contracting division. So far as I know it had always been in existence in order to compete for work for which it was qualified and experienced but which was not work carried out as statutory undertaker. It was certainly of long standing when I joined in 1971 and it changed its name in that year to the Central Works department.

4. When a new building was being built, whether by local authorities or private developers, LEB would be asked to carry out the work of bringing the distributing main into the cut-out normally in the basement or some other agreed in-take room. It would do this in its capacity as statutory undertaker. It would quote for this work and would be paid for it. So far as I ever knew, no other party could carry out this work.

5. I was aware that some local authorities (but even then not every time) and some private developers (but far from all) would additionally invite LEB to quote for installing the R&Ls in the building. Sometimes LEB would quote but would not get the job. When they quoted, it was always a separate quote. I myself have prepared such documents.

6. I have looked at paragraphs 4.17A and 4.17B of a document apparently called the amended front end document being submitted by EDF Energy together with a copy of Gordon Rees's letter dated 5 June 1987 and I confirm that the text is correct to the best of my knowledge and belief.

7. I have been asked to consider some assertions made by Islington in section 3 of the front end document particularly the second unnumbered paragraph of paragraph 3.7 and 3.17. I do not know Mr Garrett and have not met him. I

know of no adoption by LEB (or later companies) of the R&Ls in Sadler House and am now aware of any evidence of any transfer of ownership to LEB or subsequent company. I am not aware of any works of repair and maintenance being carried out and (though it may be a matter of law) but I would have

considered that any such works would have been carried out voluntarily.

I believe that the facts stated in this witness statement are true

Signed.....

Jim Barratt

Date: 4 September 2009