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Your consultation ref 108/11

Thursday 6 October 2011

**Ofgem Consultation on ENWL Competition Test Application**

Dear Rebecca

Please find enclosed Amey LG's response to your consultation. Amey LG is a Street Lighting PFI provider to Manchester City Council (MCC) who is one of the largest Local Authorities in ENWL's area.

Having completed the initial extensive column replacement programme we are now responsible for managing and maintaining 62,000 street furniture assets across the city. We have the day to day operational interface with ENWL on all connection related issues and jointly attend the ENWL LA Steering Group with our client.

We currently obtain all our street lighting connections work from ENWL but carry out our own connection related civils work as a NER's accredited ICP.

We are an active member of the Unmetered Connections Customer Group which our representative Steve Bolland currently chairs and we have been supporting Ofgem for a number of years through the Electricity Connections Steering Group in developing frameworks for competition in connections.

Our attached detailed response to your consultation questions conveys the views and experience of our Manchester PFI teams day to day working with ENWL and of our experience of them in the various national working groups. Our comments also convey the views of our clients' street lighting PFI manager with whom we have consulted. All of our comments apply to the Unmetered Relevant Market Segments (RMS)

In summary we believe that ENWL have established themselves as a leader amongst DNO's in facilitating and extending competition, but we do not feel that the 3 Unmetered RMS are sufficiently developed and competitive in ENWL, to allow them to apply unregulated margin. We also feel that to allow ENWL to introduce this additional cost whilst their current street lighting connection service is not good, and at a time when LA's have severely constrained budgets and capital programmes, is not in the public interest.

Yours faithfully

A handwritten signature in black ink, appearing to read "S B Bolland", is written over a horizontal dotted line. Below the signature, the name "Stephen Bolland" is printed in a bold, sans-serif font.

**Stephen Bolland**

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## 2. Customer awareness of and ability to choose competitive alternatives

### **Question 1: Are customers aware of competitive alternatives available in each RMS?**

*YES - It is our view that the main unmetered customers in ENW's area such as LA's and PFI providers forming the ENW LA steering group are aware of the competitive alternative.*

*NO - we have seen little evidence that other smaller unmetered connection customers are aware of the ICP alternative.*

*As reported by ENW, LA's in the region have formed a consortium (AGMA) to enter into Framework contracts with a number of unmetered ICP's for the delivery of annual connection activity, but this appears to be borne out of frustration at ENW's continued poor performance and rising costs, not ENW's encouragement for a competitive market.*

### **Question 2: Do customers consider that they have effective choice in each RMS? Ie, are they easily able to seek alternative quotations?**

*NO - Only PFI customers with very large connection replacement programmes, currently have effective choice in the unmetered connection sector in ENW. Individual LA's and unmetered connection customer having a much lower levels of connection activity (less than 500pa) do not yet have choice on a project by project basis.*

*The AGMA Framework contract approach, may help to create a more competitive unmetered connections market in ENW, but as this has not yet commenced no conclusion can be drawn from it to support or reject ENW's competition test application.*

### **Question 3: Do customers consider that ENWL takes appropriate measures to ensure that customers, in each of the RMS, are aware of the competitive alternatives available to them?**

*No - With ENW working towards making unmetered connections to LV main fully contestable we believe they could do more to inform LA's, customer and site developers on how they intend to open up this new scope of contestable works to competition.*

*YES - For all other unmetered sector customers we believe ENW has taken a reasonable approach.*

### **Question 4: Do customers consider that quotations provided by ENWL for connections in each of the RMS are clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?**

*NO- ENW rely on schedule rate quoting for the majority of unmetered sector connections work. Whilst the schedule rates approach is well established and understood, there is insufficient breakdown for a customer to distinguish the contestable element and see that they are picking up reasonable ENW business overhead and regulated margin. We feel ENW's current schedule rates approach results in us paying a premium for what remains a poor service, and there is little scope for challenging them even through the ENW Steering Group.*

### **Question 5: For each of the RMS, in ENWL's area, do customers consider that they have benefitted from competition? Ie, have they seen improvements in ENWL's price or service quality or have they been able to source a superior service or better price from ENWL's competitors?**

*NO - At an operational delivery level we have seen little improvement in ENW service quality in both planned unmetered connection works and repairs, as a result of their introduction of competition and of GSOP's in the unmetered sector.*

*Both appear to have given ENW licence to increase charges at will and withdraw from providing services and information that were previously beneficial and helpful under voluntary agreements.*

*We hope that the AGMA ICP framework Contract will eventually give us access to improved service and prices from unmetered ICP competitors, but as this is not yet available we are unable to report any benefit from competition.*

### 3. ENWL's assessment of its market share

**Question 1: Do interested parties agree with the assertions made by ENWL in its analysis of the level of competition in its area in each of the RMSs? In particular, do interested parties consider that the data provided by ENWL gives a clear indication of the current level of competitive activity in each of the RMSs?**

*NO - ENW's data on market share in the unmetered sector is notably sparse. Despite a promising early start with live jointing trials in the unmetered sector, the number of active unmetered ICP's is still very small (not reported by ENW) and the level of ICP activity outside PFI's has fallen not increased up to 2011.*

*NO- We believe it is misleading for ENW to represent their current unmetered market share loss as 31% whilst unmetered connections to LV main are not yet fully contestable and accounted for. From ENW's figures in App 4.1 they appear to retain 42% of the total unmetered connection market in new connections alone.*

*No - The 31% is also a misleading indicator of market share loss since the majority of this is taken up by one or 2 PFI providers "self delivering" ICP connections on 1- off connection replacement programmes. It is not a reflection of general market trend which all other unmetered customers and ICP's experience.*

*YES - We agree with ENW that current CIR data does not give a fair reflection of current contestable activity and that it is important to separate out PFI sector activity from other unmetered ones. Going forward we also expect greater visibility of the share of new unmetered connections including those on new developments.*

**Question 2: Considering the market share currently retained by ENWL and the number of ICPs currently active in each of the RMSs, do interested parties consider that competition in each of the RMSs is at a level that in itself indicates that effective competition exists?**

*NO- We do not agree that competition in ENW's unmetered market sectors other than PFI's with very large connection replacement programmes has reached a level which demonstrates an effective competitive market.*

*NO - We believe an acceptable level cannot be reached until unmetered connections to LV mains are fully contestable and accounted for in the evaluation, and that there is stronger indication of lost market share in sectors other than PFI's.*

*YES - With regard to PFI's we believe there is sufficient evidence from both ENW, customers and ICP's that this sub sector of the unmetered market is now competitive. However, this only applies to PFI's or any other customer with one-off large connection programmes of over 100 activities. PFI annual maintenance programmes have the same levels of annual activity as any other LA and we do not believe there is effective competition, even in ENW.*

### 4. The potential for further competition

**Question 1: For each RMS, do existing/potential competitors agree with the statements made by ENWL regarding the number of competitors active (and the ease at which new entrants can operate) in their area?**

No - ENW have not reported on the number of unmetered ICP's currently active in their Area but we know through the UCCG this is limited to one or two who have only recently started to self deliver contestable connections work on the PFI's they are responsible for.

Yes - Of those ICP's who are active or have approached ENW to gain access that we are aware of, ENW are reportedly the most supportive, informative and easy to work with.

The AGMA ICP Framework contracts due to commence soon may give more ICP's and LA customers the opportunity to experience unmetered contestable working in ENW and for a truly competitive market to emerge. We recommend that Ofgem give this ICP Framework contract approach chance to prove or disprove the effectiveness of unmetered competition in this sector of ENW, before allowing them to apply un-regulated margin to it.

**Question 2: For each RMS, how do existing/potential competitors consider ENWL's organisational structure, procedures and policies, compare to those encountered elsewhere in the gas and electricity markets or other industries? In particular, do you consider that they reflect best practice, or are there areas where ENWL fall short of this?**

YES - We agree ENW have been very pro-active in developing policies, processes and structures to enable competition across all connection sectors, and in comparison with other DNO's have consistently led many of the changes necessary.

No - We have not yet experienced ENW's ICP processes and policies for ourselves but feedback through the UCCG's survey of all DNO's progress in facilitating competition suggest that whilst being one of the more progressive DNO's, ENW still have specific areas to improve, in particular their unmetered ICP Agreements.

**Question 3: For each RMS, do existing/potential competitors consider that barriers exist that:**

- a) prevent existing competitors from competing effectively with ENWL?
- b) obstruct or delay connection providers entering ENWL's area?
- c) obstruct or delay connection providers currently working in ENWL's area in one or more RMSs, starting to compete in another RMS in ENWL's area?

YES - Barriers still exist

ENW's continuing requirement for unmetered ICP's clients to enter into a form of agreement as well as the ICP (Tripartite) is considered a barrier to competition and has been reported as such to all DNO's and Ofgem through the UCCG.

ENW's intended approach in charging for non contestable services associated unmetered contestable activities (fixed fee per jointing activity/column) causes concern that these will not be transparent enough and will lead to ENW unfairly recovering costs from ICP's which have not been incurred or fairly apportioned.

Unmetered connections to LV mains are not yet fully contestable in ENW and the extent to which it will be is only just being established in trials. As this work still account for 42% of their total unmetered connections market activity, and full access to it is not yet certain it remains a major barrier to competition in this sector.

**Question 4: If you do consider that barriers exist, please explain: what you consider the impact of the barrier to be? Whether the issue has been addressed by ENWL or whether it is outside of their control? What you would like to see changed to allow competitors to compete on a level playing field/facilitate market entry?**

All of the above barriers are within ENW's control, and we understand are being addressed by ENW through consultation with stakeholders or through trials. It is not yet clear that these will

*result in a satisfactory outcome but we have no reason at this stage believe one cannot be agreed.*

**Question 5: For each RMS, what are existing/potential competitors' views of ENWL's efforts to extend contestability? In particular, do ENWL engage with stakeholders to develop procedures that promote competition? Do you consider that the extension of contestability is likely to stimulate further competition?**

*YES - We would support ENW's claim that they have demonstrated a commitment to facilitating and extending competition in all unmetered sectors and in consulting with ICP's and customers in the process. However we believe that in recent years this appears to be more to do with Ofgem's incentives and the potential for them to charge un-regulated margin, than it has to do with improving customer service.*

*YES- As previously stated we are in no doubt the extension of competition to include unmetered connections to existing LV mains and all associated operational activity will stimulate further competition in this unmetered sector.*

**Question 6: For each RMS in ENWL's area, do existing/potential competitors consider that they will enter new RMSs/expand in the RMSs they already compete in, within the next 5 years. What factors do they expect to influence their decision? Eg, economic conditions, ENWL's margin regulation being lifted, etc.**

*NO- Whilst individual LA's annual volumes of connection work remain low, and Govt funding cuts constrain the size of their column replacement programmes, they will not be able to attract interest from unmetered ICP's.*

*The AGMA consortium approach appears to be the only effective way for LA's to attract ICP's into delivering their annual volumes of connection work. ICP tender rates are reportedly very competitive but it is the ICP's ability to deliver a better more responsive service that will also be on test and this is greatly influenced by the processes ENW ask them to operate with.*

*We recommend Ofgem wait until this Framework has been allowed to mature before deciding on the effectiveness of competition in all unmetered market sectors in ENW, and on whether to allow ENW to charge unregulated margin.*

**Question 7: Do existing/potential competitors consider that there are any types of connections in any of the RMSs, or geographic locations in ENWL's area, that by their nature, are not attractive to competition?**

*NO - We believe that if small local ICP's businesses can become established in ENW's region on the back of competition in unmetered connections then they will have the necessary skills and flexibility to also compete in the 1-4 domestic connections market if Ofgem and ENW were prepared to open this up to competition too. This will require a much more hands off approach from ENW such that the ICP's response is not unduly constrained by DNO processes, notification requirements and non contestable charges.*

## 5. ENWLs compliance with the Legal Requirements Test

*Whilst Ofgem have not asked specific questions in this section we would expect them to at least ask customers for feedback on their experience of ENW application of the new standards of performance under Standard Licence Condition 15A (GSOP's).*

*As a customer with first hand experience of ENW's application and resulting performance under GSOP's, we are far from satisfied having seen little improvement in service, much less information from them with which we can check performance and far too many jobs being exempted or stopped.*



*In a recent consultation with them, ENW did accept that their performance is below a standard they would like to offer and their information could be improved but cited strict compliance with the RIG's in mitigation.*

*We are jointly undertaking a review of 27 jobs we believe exceeded the required standard, and this has already highlighted some policies and practices which we regard as not in the spirit of the RIG's.*

*In considering whether ENW (or any other DNO) has passed the Legal Requirements test, we ask that Ofgem undertake a more formal audit of ENW's application of the new unmetered connection standards of performance and invite wider customer feedback, rather than relying solely on the data that they have reported to Ofgem.*

## 6. Summary

**Question 1: For each RMS, do customers consider that there is currently effective choice for customers? In particular, do customers feel that levels of choice, value and service will be protected and improve if the restriction on ENWL's ability to earn a margin is removed?**

*NO - We do not believe unmetered sectors customers choice, value and service will be protected and improved if ENW's ability to earn margin is removed until their is greater market share lost in sectors other than PFI's and a greater number of ICP's actively competing in ENW's area delivering the full range of LV unmetered connection and operational activities.*

**Question 2: For each RMS, do existing/potential competitors consider that there is scope for existing competitors to grow their market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?**

*NO - ENW's prices are already very high and service poor. AGMA LA's have already sought to put in place an ICP Framework agreements for delivery of their annual contestable connection services and this has shown that ICP's can already compete on price.*

*NO - ENW still need to demonstrate that they will allow unmetered ICP's to operate efficiently through the first year of the AGMA Framework Agreements before Ofgem and customers can be satisfied that ENW have done enough.*

**Question 3: For each RMS, do existing/potential competitors consider that there is scope/appetite for new participants to enter the market? Do competitors consider that they would be able to provide similar or better services than existing participants or are there factors constraining this?**

*YES - The AGMA tendering process has demonstrated that there is scope and appetite for ICP's to compete if the right volume incentives are available. The unmetered sector is currently constrained by government funding cuts preventing individual LA's having sufficient annual volume or large programmes of work to attract ICP's. This may not change for a number of years and it would be wrong to penalise those LA's further with additional "margin" costs for DNO poor services.*

**Question 4: For each RMS, given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the circumstance that price regulation were lifted?**

*NO - Given our experience of ENW's current pricing methods, their eagerness to be first to pass the competition test and their application of the new unmetered GSOP's, we have reservations*

*that ENW would operate reasonably if price regulations were lifted in all unmetered connection sectors.*

**Question 5: For each RMS, do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in ENWL's area.**

*YES - As stated in Section 5 we believe Ofgem should consult customers and audit ENW's application and resulting performance under the new unmetered GSOP's, before being satisfied that the Legal Requirements test has been met. Application of the Clawback Direction if breaches were later found would not be a satisfactory outcome to LA's whose budgets are already severely constrained.*

*YES - Before allowing unregulated margin to be added we would expect Ofgem to state whether they were satisfied with the current level of charges ENW were applying in comparison with other DNO's and industry benchmarks. In the unmetered sector direct comparison of DNO equivalent connection activity schedule rates is already possible and Ofgem should have access to the data. ENW already have some of the highest unmetered connection activity rates and this is not matched by being one of the best performers.*