



Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

FAO Rebecca Langford

Dear Rebecca

Re – Consultation on Electricity North West Limited's Competition Notice

The following response is made on behalf of the MCCG. The MCCG is an open group made up of members from customer groups, ICP's and other interested parties. We have a number of representatives on the Electricity Connections Steering Group and our members are fully active within the Competitive Connections market and committed to developing competition and removing the monopoly of the DNO's for the overall benefit of customers within the market place.

Overview of the application

Overall the MCCG does not feel that ENW should currently be granted the opportunity to earn unregulated margin on its connection activities. Whilst the group feel that in recent years ENW has been one of the most proactive towards embracing competition, the original focus for this was due to Ofgem and other government bodies investigations on a number of DNO's who were perceived to be acting anti-competitively. Whilst ENW now have a good track record of helping to facilitate competition, we still believe there are a number of barriers present.

We would also highlight that the MCCG has identified a number of barriers to competition over numerous years and that DNO's have had the ability to unilaterally develop processes and procedures to alleviate these barriers. However until recently no DNO, including ENW, had worked outside the nationally agreed framework, where competition improvements have had to be debated and negotiated across all DNO's. This approach has led to competition being slowed to the lowest common denominator and the DNOs doing the minimum required.

The ability for individual DNO's to work at a faster pace has always been available, however DNO's have chosen not to pursue this approach until the recent introduction of the competition test and Ofgem's focus on individual attention to competition activities.

As stated, whilst we feel that over a number of years ENW has been one of the most proactive in addressing competition issues, we still believe there is a way to go before all the issues are concluded and we feel these should be addressed prior to unregulated margin being allowed. These include;

- A clear understanding of ENW individual performance against the GSOP and its comparison to other DNO's,
- Clear evidence from the CIR to back up the current levels of activity suggested by ENW,
- The full implementation and business as usual of all final connection physical and operational activity,
- Flexibility in the application of ENW's adoption agreement,
- The ability of competitors to determine their own points of connection,
- Access to all relevant records without the need for considerable charges from them,
- Consideration and movement towards allowing ICP's to complete self approval of design.

GSOP Information

We still do not have enough evidence from the GSOP information available to be able to compare and contrast ENW's performance and also to see a continuously improving trend. The MCCG originally felt that allowing regulated margin before proof of performance from all DNO's was premature. We certainly believe it would be premature of Ofgem to allow a DNO the ability to earn unregulated margin, without a clear and proven track record over a number of years of achieving the necessary standards of performance.

In early 2011, the MCCG has requested Ofgem obtain early information from a number of DNO's on both GSOP and also requested specific information on 2nd comer rule payments etc. These were not immediately forthcoming as we were told they would take significant work from the DNO's to produce such information and so it would not be collated until Sept 2011.

CIR & Market Share Information

The current available CIR does not substantiate ENW application data. It should also be noted that ENW were found in breach of meetings its obligations in a number of situations as outlined in the CIR 09/10. Whilst we understand ENW has completed a separate analysis of the most current data to produce its suggested figures, as individual organisations it is impossible for us to ratify or dispute the figures produced by ENW. We do however make a number of points on this data.

If ENW believes the information it has now produced gives a much clearer picture of competition, one could assume this should be similar across the country. So we would ask why the DNO's have not proposed the use of this methodology for the past number of years to either run alongside the current CIR information or, where applicable, replace it and as such give much greater clarity on the performance of competition.

ENW's own data has not been able to establish detailed evidence by each RMS and has only produced it at LV and 11kV for competitive activity, we feel this gives a good indication to Ofgem that it would be difficult to substantiate allowing ENW to earn unregulated margin on individual areas, when clear evidence cannot be provided to show performance in these individual areas.

ENW's own data also highlights that whilst it has highlighted the top 6 ICP's for both LV and HV connections. There are only three active in the HV market and actually five in the LV market with 4 and 5 having very limited market share. The LV market is clearly still dominated by ENW on this evidence and the HV market still has ENW with the largest share of this market. In well established truly competitive market places, the leading company's market share would be significantly below 70% and the number of competitors would be more than three. Therefore we do not feel ENW's own information highlights a truly established and competitive market place to justify their ability to earn unregulated margin.

As stated earlier the MCCG has also requested clear information on 2nd comer payments. It has also requested from DNO's the number of failures in both DNO connected activities and ICP's, the value of such failures and the number of times bonds have been called upon to rectify these failures. To date this detailed information has yet to be provided by the DNO's; including ENW. We therefore find it difficult to understand how ENW is able to collate information which appears to help its application to earn unregulated margin, yet has been unable to provide information requested by the MCCG to assess other aspects within the market place which we feel distort the overall competitive market place.

Final Connections

A number of years have been spent debating final connections, with little progress. The last nine months have seen the start of what we hope to be excellent progress to allow final connections at a variety of voltages by ICP's within the industry. Overall our members believe ENW have been one of the most forthcoming in trying to achieve this goal and their approach has probably been the most simplistic (which for clarity is a positive) i.e. they have tended to say 'how do we do it with our contractors' over the past number of years and let's try and use this model to work with ICPs.

Therefore we welcome ENW's moves towards this goal. However the number of activities undertaken are small - especially at 11kv on the physical activity. Both LV and 11kv operational activities are yet to be released into the trials. We feel these activities should be well bedded down before unregulated margin is applied.

ENW Adoption Agreement

The MCCG is aware that ENW has entered in to discussions with a couple of ICP's about developing its adoption agreement and we welcome ENW's approach to involving active ICP's. However, in competition, the DNO must be open to a number of methods of achieving its needs whilst giving flexibility to the market place, as one size does not fit all. The MCCG has long campaigned for there to be industry recognised documentation for adoption agreements which protect all parties in an equal and reciprocal manner and are also flexible to all market entrants needs. Some customers and ICP's may prefer a bilateral approach; some may prefer a tripartite approach. The choice should be with the customer. ENW have now created bi-lateral agreements but they are still tri-partite in nature.

Whilst we can not hold ENW to account for there not being a national document, we do feel they need greater flexibility and reciprocal arrangements in their individual document.

Under S16 organisations such as main contractors can accept the offer and complete the contract as a bi-lateral agreement between ENW and themselves, albeit, it would spell out certain obligations and conditions required to allow the connection to be completed. We believe this approach is not similar for the ICP, who in ENW still is required to get the customer to enter into the agreement either bilaterally or within the tripartite arrangement and so the ICP is always faced with a tripartite agreement.

Whilst the obligations are no different under S16 or CinC, this additional contractual arrangement placed on the customer if they follow the ICP route in ENW, could be seen as additional risk and so the customer follows the S16 route as they perceive it as less risky.

A number of members of the MCCG have highlighted this to ENW and requested it be incorporated into its future adoption process to give greater flexibility to the market place. To date these requests have not been incorporated and we would expect commitment to these prior to allowing ENW to obtain un-regulated margin.

Partially Funded and Point of Connection Identification

These areas are only just being worked upon by national bodies. However, significant previous work was undertaken on the partially funded activities and we

feel DNO's could have taken earlier unilateral stances to address these issues to show their true openness to removing the barriers to competition. ENW, whilst a proactive member, has not taken the fully open approach and we therefore feel that until these activities are openly competitive, DNO's should not be granted the right to obtain unregulated margin.

Access to all relevant records

Until recently ENW provided web based access to its network records and diagrams. We now understand that ENW is providing such information via a CD but charging £300 for them. This creates an additional cost to competitors which distorts competition. The DNO legally has to maintain accurate records of its network irrespective of any connection activity and as such would have this overhead in its operational business. We do not believe it is right for ENW to charge for this information, especially as it has a cost effective free solution previously available.

Design Approval

Under the current regime there are a number of areas where competitors have additional costs compared to the host DNO. Design approval is one of them. Each ICP under the NERS scheme will have to have regimented design procedures in place where not only is the design completed competently but that checks are in place to ratify the design assumptions and there are no errors within the design. This process will be similar to those of the DNO. However the competitors then have to pay significant design approval fees to the DNO to overview the design. In this situation, the ICP still holds the liabilities for any design and as such the process incurs additional costs the DNO is not subjected to.

We feel DNO's should be working towards allowing ICP's with a track record of performance the ability to forego the costs of expensive design checking services from the DNO and allow their business to self approve designs. There could still be audit processes in place via both the NERs scheme and the ability for the DNO to sample check schemes but the costly exercise of constantly checking ICP's designs would be avoided. Whilst we except this is the next step along the way, we do feel the DNO's should be working with NERs to achieve this and unilaterally commencing along this route. So we would want to see a commitment from ENW to achieve this.

Summary

In summary, overall the MCCG feel ENW has been making progress towards opening up competition in recent years. However, new entrants had to wait some 10 years from when competition was first discussed to actually having the first framework allowing competition to commence in limited parts of the industry. A number of years have then further passed as competitors campaigned for additional

areas to be opened to competition. We are still waiting for a number of final tasks to be open to competition to allow a fully competitive environment and true competition to arrive. Therefore MCCG feel it is very premature having only implemented regulated margin within the year to allow a DNO to earn unregulated margin.

If having considered this advice Ofgem is still minded to grant ENW the opportunity to earn unregulated margin, we would expect the regulator to ensure it had a clear action plan agreed with ENW to successfully address every one of the issues we have identified with satisfactory timescales to their implementation.

Yours Sincerely

Chris Bean
MCCG Chairperson