

Roger Morgan - Senior Connections Policy Manager
Electricity Distribution/Connections Policy
Office of Gas and Electricity Markets
9 Millbank
London, SW1P 3GE

19 March 2007

Dear Mr Morgan,

Ref: Review of Competition in Gas and Electricity Connections – Proposals Document

Thank you for the opportunity to comment on this very welcome and extremely important initiative, which we believe is a positive move that will assist in facilitating competition.

Laing O'Rourke Energy is an associate member of the ENA and a first generation Independent Distribution Network Operator (IDNO). A transparent, well understood regulatory policy on connections is absolutely fundamental to our business, as it will determine the relationship we have with the incumbent Distribution Network Operators (DNOs) with whom we are essentially competing.

We have a number of specific points on issues raised within the consultation document, but we also wish to highlight three key issues of principle, which we address first:

- the advantages brought to the distribution sector by IDNOs;
- the need for greater clarity the structure of regulation; and
- the need to apply similar policy principles to both contestable and non-contestable sectors.

Advantages of IDNOs

IDNOs are already bringing significant advantages to the distribution sector. Not only do we provide an important element of competition into a monopoly sector, we also bring disciplines and skills from the commercial, construction and services market which benefit consumers, be they individual householders or larger developers, and also, we believe, the DNOs themselves. However, we are usually seen as a threat by DNOs, and often our activities are frustrated by their actions, whether wilfully intended or not. Any delays and complications and subject to the severity drive the customer away from seeking competition. Competition, as well as developer confidence, remains fragile, and needs to be nurtured. We view this Ofgem initiative as a critical opportunity to remove unfair barriers to our operations after a learning period that has demonstrated a range of distortions in the market place caused by the one-sided DNO/IDNO interface.

In this context, while there are many references in the document to IDNOs, many of the specific recommendations apply specifically to DNO relationships with Independent Connection Providers (ICPs). For the avoidance of doubt all the recommendations should be applied equally to IDNOs.

Need for greater clarity

Without clear action by Ofgem to tackle these issues, the progress in contestable works evidenced in the gas sector will not be realised. Against this background Ofgem is to be applauded for the direction of its thinking set out in the proposals document.

Our experience of dealing with DNOs is that these companies will - where there is any ambiguity - consistently interpret regulation in a way to frustrate our commercial and operating activities. Typical terms of trade with our customers are based around fixed fees and defined timescales for project delivery. Any failure by DNOs to provide services to time and cost inevitably has knock-on

consequences for our own business. This situation potentially threatens both our position in an established relationship and, equally if not more importantly, our reputation in a market where there are a small number of relatively large players. Therefore we believe that the proposed service standards on DNOs should be as explicit as possible in their specification, and remove doubt regarding interpretation.

Performance targets need to be set as high as reasonably possible and at least consistent with the most recent standards achieved by an efficient DNO. The 90% performance targets proposed is not challenging and effectively leaves discretion for DNOs to prioritise connection applications. The regulatory standards should limit scope for “picking and choosing” compliance and produce consistent levels of performance and delivery both between DNOs and within a DNO. We fear the approach reflected in the proposed condition will allow DNOs scope to do so to their commercial advantage and our disadvantage.

With regard to timescales all requirements should be reflected in working days for consistency. Ofgem has previously referred to certain deadlines being back-stop dates. As a general rule DNOs should be subject to a requirement to make an offer as soon as they reasonably can.

Consistent treatment of non-contestable and contestable activities

The proposals document focuses on contestable activities. We would like to see much more transparency of DNO quotations for both contestable and non-contestable activities.

We would like to see a standard template established across both types of activity that is based on standardised unit charging rates, good industry practice and an appropriate level of detail. Not only would this be helpful for us in understanding potential costs and refining our activities accordingly, but we also believe it would be useful from a regulatory perspective as it would inject an element of comparator competition into a very opaque area of the sector. The regulated nature of these activities carried out under the distribution licence means that the DNO offer should be cost-reflective.

Over time performance indicators should be developed, and below standard performance should be subject to penalty. Any incentives of this nature should bite, reflecting the scope for consequential loss in our operations.

Responses to consultation questions

We set out our responses to the consultation questions below, and specific comments on particular points in the document are included as a separate attachment.

Chapter Three

Question 1: Do you agree with our proposals to introduce a licence condition?

Yes, we agree that a licence condition should be introduced, creating clear obligations on DNOs. It is clear that voluntary arrangements are not working and are inhibiting competition.

Question 2: Do you agree with the proposed scope, performance targets and timescales?

It is a good starting point. We believe the licence condition should address both contestable and non-contestable activities. We also believe it needs to be very unambiguous and prescriptive. This will help Ofgem if it is asked to determine whether there has been a breach of licence. Whilst it may require more effort to define, we believe there will be significant benefits from doing so when the condition is in application.

A number of specific comments and modifications on targets and timescales are included in the attachment to this letter, referenced as appropriate to the consultation document. As a general comment we think the proposed standards and targets are too lax and provide the DNO with too much flexibility to target performance to its advantage. The details can be significantly tightened.

Question 3: Is the proposed structure and drafting of the licence condition clear?

As noted above, we believe the high level intention behind the licence condition is clear but want all drafting to be as explicit as possible. If it is considered inappropriate to develop the detail on the face of the licence, supplementary guidelines could be developed but the core elements should not be discretionary.

Question 4: Does the licence condition require a supporting guidance document?

We believe a supporting guidance document is essential. Such an approach is well preceded with the RIGs and RAGs already applied by Ofgem to DNOs. A guideline will also enable Ofgem to document important aspects of its thinking behind the licence condition and to provide a much fuller specification of the intentions and desired outcomes being sought.

Chapter Four

Question 1: Do you agree with the package of best practice principles?

We agree that a package of best practice principles is essential. Again, we believe it needs to be defined to a much lower level if it is to be useful.

Question 2: Are there other areas of improvement to the connections application process that are required?

There are several areas where we suggest improvements are essential, including:

- the standardising of processes and information presentation across DNOs; and
- the tight specifications of quality and timeliness of response standards.

Further detail is contained in our responses to specific points in the document.

We would also like to see the development of performance indicators with reporting against them by DNOs. There should also be scope to apply penalties in the event of below standard performance.

Question 3: Do you agree with the reporting arrangements set out in this chapter; are specific guidelines required?

We support the general thrust of the reporting arrangements, but they need to be supported by the development of common templates. They would be enhanced by separate reporting of third party (i.e. IDNO and ICP) work and DNOs' own activities. So doing would very quickly help highlight partisan treatment by DNOs of their own businesses.

Chapter Five

Question 1: Do you agree with the proposed key performance indicators for the SLA?

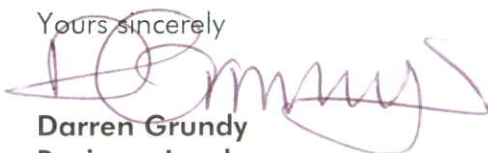
Yes, we believe the proposed key performance indicators would be helpful.

Question 2: Do you agree that the scope of contestability should be based on contractor accreditation rather than the one metre rule?

Yes.

I hope these comments are helpful. Please let me know if you require any clarification or further detail that might assist in finalising the proposals prior to implementation.

Yours sincerely



Darren Grundy
Business Leader

For Laing O'Rourke Energy

Review of Competition in Gas and Electricity Connections Proposals Document

Comments on specific points by Laing O'Rourke Energy

References are to paragraph numbers in the Ofgem document

3.1. *The provision of non-contestable services in a timely manner is crucial to enabling competition. For example, ICPs require point of connection (POC) information from DNOs to prepare quotations to customers.*

LOE comment: IDNOs as well as ICPs require this connection information, so this terminology needs to be tightened to remove scope for wilful misinterpretation by DNOs.

3.2. *There are currently voluntary standards of service in place requiring DNOs to meet performance timescales for providing POC information, approving or providing reasoned rejection of design proposals and completing final connections. Performance against these voluntary standards is reported through the annual connections industry review (CIR) and published on the Ofgem website.*

LOE comment: There needs to be a much more thorough audit than at present of data from DNOs used in performance standard reporting. This reporting in any case needs to identify contestable connections works distinct from other DNO activity and be validated by the organisations like IDNOs and ICPs with which the DNOs interact. This will bring credibility to the statistic and in so doing will facilitate transparency and continuous improvement across the sector.

Table 3.1 Summary of proposed standards of service

LOE comment: This table is key and needs to be much more tightly specified than as proposed:

- There is no reference to the initial enquiry stage which precedes the formal request to provide a quotation and POC, this can be an important period in determining the procurement route for a developer. The initial enquiry stage should also be formalised and presented in the same format for visibility and commonality.
- separate standards need to apply to the timescale provision of POC information for the purposes of design assessment and split out;
- all standards need to be a minimum of 95%, and arguably 98%, as the 10 percentage point leeway in a 90% allows discretion for DNOs and thus the potential to discriminate between parties and different types of project, which we believe they will use to IDNOs/ICPs detriment;
- there should be a distinct target for the provision of POC information prior to a formal quotation at all voltage levels; this should be applied against the background of a general timeliness requirement on DNOs; and
- references to three months should be rebased to 65 working days.

Our suggested redraft of Table 3-1 is included at the conclusion of this document.

3.7. *We intend to include a "switch off" provision within the licence condition to allow us to initially exclude IDNOs from the licence condition obligations. This is to reflect that there is currently very limited demand for IDNOs to provide these non-contestable services although we believe that it may be appropriate to "switch on" the licence condition for IDNOs once the market has developed further in this area.*

LOE comment: The criteria for "switching on" require definition.

3.12. *A further requirement has been included which would oblige licensees to provide POC information only (rather than a full quotation) within 30 working days for EHV connections. This has*

been introduced following suggestions by ICPs that they need this information earlier in order to design and issue a quotation in a timescale that allows them to compete with the licensees.

LOE comment: This should apply at all voltage levels and the timescales should be tightened, as noted in our draft Table 3-1. Standards should be reflective of good business practice; they should not be “back-stops”.

3.13. *The license proposals require DNOs to use reasonable endeavours to meet the standards in all cases, to inform the requesting party if the standard will not be met and a backstop performance target of 90% has been proposed for providing quotations within the timescales specified in Table 3.1 starting from the date of receipt of a quotation request.*

LOE comment: All standards need to be a minimum of 95%, and arguably 98%, as the 10 percentage point leeway in a 90% allows discretion for DNOs and thus the potential to discriminate between parties and different types of project, which we believe they will use to IDNOs/ICPs detriment.

3.15. *For all connections not captured within the categories outlined above, DNOs would be obliged to provide quotations within 3 months as under standard licence condition 4D (SLC 4D). This would also provide a backstop for all other requests.*

LOE comment: This target needs to be specified as 65 working days and not three months.

3.16. *DNOs will further be required to use reasonable endeavours to provide approval or reasoned rejection of connection designs within 10 working days of requests in every case, and as a minimum to do so in at least 90% of cases. The timescales and scope of this standard have not been changed but the obligation will be formalised through the licence condition.*

LOE comment: All standards need to be a minimum of 95%, and arguably 98%, as the 10 percentage point leeway in a 90% allows discretion for DNOs and thus the potential to discriminate between parties and different types of project, which we believe they will use to IDNOs/ICPs detriment.

3.18. *There are a number of caveats to these standards, which require the ICP or other competing party to undertake and complete certain aspects of work before the DNO can undertake final connections works. These include requirements for the quality and standards of works undertaken and assets installed by the competing party, in line with the Energy Network Association's (ENA's) engineering recommendations G-81, and as agreed with the DNO in the Construction and Adoption Agreement. If the competing party fails to complete works and/or provide the appropriate Streetworks and other notices before the DNO attends site to undertake final connections work then the DNO may incur abortive costs. If this occurs then the competing party will be liable for the DNO's costs and will be required to re-request a date for completion of final connections works, thus resetting the timescales for delivery.*

LOE comment: There needs to be much more clarity regarding pre-requisites these should be defined in detail and be common across all DNOs, as well as the caveats that are permitted. We also need to see a higher standard/level of published, accessible information regarding DNOs technical standards, at present published G81 information in a lot of cases is not up to date, is focused upon ICPs and does not reflect IDNO arrangements. This can result in design approval delays and worse case increased costs.

3.19. *Subject to the conditions outlined in the previous paragraph DNOs and IDNOs will be obliged to use reasonable endeavours to achieve the following in every case, and as a minimum to complete at least 90% of final connections:*

- *within 10 working days of a request for LV connections; and*
- *within 20 working days of a request for HV connections.*

3.20. *Subject to the same provisions, DNOs will be obliged to make reasonable endeavours to issue, within 20 working days of a request, dates for completing final connections work for EHV connections in every case and, as a minimum, to do so in at least 90% of cases.*

LOE comment: All standards need to be a minimum of 95%, and arguably 98%, as the 10 percentage point leeway in a 90% allows discretion for DNOs and thus the potential to discriminate between parties and different types of project, which we believe they will use to IDNOs/ICPs detriment.

4.1. *The introduction of a licence condition discussed in the previous chapter represents one component of a broader package of measures that are intended to address the issues highlighted in the responses to the August consultation. The purpose of this chapter is to set out proposals that are designed to support competition through promotion of good practice and where appropriate developing consistency across DNOs. We understand that some DNOs are already progressing some of the initiatives we have set out below. Nevertheless, we expect each DNO either to implement the proposals we have identified in this chapter or to demonstrate why they are not necessary.*

LOE comment: We welcome efforts to facilitate dispute resolution between parties and would like to see more definition in the process as we wish to avoid creating incentives for DNOs to create a dispute. It needs to be borne in mind that DNOs generally hold a strong position because of pressures on its counter parties to accept proposed terms to meet third party contractual deadlines. At the same time as a business-to-business issue, it is likely that any ombudsman scheme will not be appropriate for resolving disputes between DNOs and ICPs/IDNOs. Arrangements should ideally be common across DNOs.

4.2. *We propose to develop reporting arrangements to assess the effectiveness of our proposals, in part to consider whether further measures are required and also to take into account whether it is appropriate to develop financial incentives and/or a reward scheme at the next price control review.*

LOE comment: We do not consider it appropriate to incentivise DNOs for carrying out activities that they are obligated to do so under the distribution licence, in fact we feel it should be the opposite and penalties should be enforced for failure to implement.

4.8. *We acknowledge that it is up to each DNO to identify the most efficient and effective means of increasing customer awareness. Nevertheless, we consider that a good starting point is to standardise certain key messages across all DNOs through the development of plain English information packs, leaflets and website guidance which describe, amongst other things*

LOE comment: We strongly support this proposal and have implemented this within our business. LOE welcomes the opportunity to participate in the development through the ECSG.

4.12. *Certain customers may by their nature require more involved liaison in part to respond to frequent requests. For example, LAs and Regional Development Agencies (RDAs). We would expect DNOs to communicate their Long Term Development Statements to RDAs, for example. These relationships may be managed more effectively through regular liaison meetings. DNOs should also consider how they interface with customers that bring repeat business perhaps through appointing key account managers.*

LOE comment: DNOs should provide much more visibility of their networks. This will highlight capacity that is spare or constrained. IDNOs and ICPs can then identify own points of access which saves costs and should simplify processes with the DNO. We believe the electricity sector can learn from gas in this regard.

4.13. *In order to mitigate speculative quotes we believe that DNOs should also provide a user friendly interface for budget estimates, with appropriate caveats. We believe that this could best be achieved through web based or third party facilities.*

LOE comment: We support this proposal and wish to understand better how it would apply. As we comment further below, we would like to see DNOs encouraged to offer a range of options where appropriate and engage in a constructive dialogue.

4.14. A crucial step for customers following the submission of an application is the way that DNOs interface with requesters. A particular concern for developers is the lack of continuity in interfacing with DNOs through the lifecycle of a connection request. Establishing a single point of contact for schemes may bring about improvements in customer service and may head off complaints relating to delays or specific problems. We would expect DNOs to be proactive in their handling of connection requests and notify customers about problems as they arise rather than waiting for complaints.

LOE comment: This proposal should be developed further. For example, DNOs could identify a range of initial options which could then be refined in conjunction with the developer and the DNO. This provides a good opportunity to address potential issues like ramp up, location of assets, proximity and diversions in a constructive way. This will also assist in ensuring that designs are efficient and fully optimise the network.

4.16. Each DNO has developed separate connection application processes for statutory (section 16 of the Electricity Act 1989 (S16) customers and competition in connection (CiC) customers. The processes operated by DNOs for S16 and CiC applications are generally different, so that applicants receive different services. This can create complexities and additional costs for parties that operate on a national footing

LOE comment: There should be alignment across DNOs to minimise the scope for discriminatory behaviour and appropriate standards adopted for both. The same options that would be identified with a Section 16 design assessment should be presented as options during the preparation of the CiC quotation for review by the IDNO, there is a misconception with DNOs that IDNOs always want a single POC. On occasion it may be more appropriate particularly on developments developed over long periods to have multiple POCs, this is a commercial assessment that can only be carried out if options are presented and made available to the IDNO, in doing so this will also assist in supporting network optimisation.

We also believe that based upon what we have outlined above would enable a Section 16 and CiC quotation to be prepared by the same engineer, this will support commonality of approach, improve efficiency within DNO organisations resulting in cost savings. This would also enable the DNO to reduce their charges for design assessments and the production of formal connection offers.

Under the current arrangements we believe that the DNO should only be able to recover the incremental costs incurred in meeting a new request, and costs of a point of connection offer should be refunded in part if there is more than one applicant.

4.20. We consider that the application process can be simplified in a number of ways. The initial application can be simplified if certain sections are made mandatory to provide consistency over information that customers provide to DNOs. Mandatory sections should include applicant details and sections that apply to domestic and industrial and commercial customers only.

LOE comment: There should be a standard application process for section 16 and CiC requests with templates that cover all connections and activities, contestable and non-contestable.

4.21. DNOs should develop flexibility in the way that customers are able to progress connections applications. The development of web platforms dedicated to connection applications can also assist customers in obtaining and comparing quotations. For example, DNOs could develop on their website tools for on-line submission and tracking of connection requests, or the provision of budget quotations.

LOE comment: We support this however with regard to IDNOs providing this service and in recognition that this would present an unacceptably high overhead to a business of our scale we would request that there be a 'switch on mechanism' similar to that indicated within 3.7

4.25. *We propose that DNOs should provide a breakdown of costs for all schemes and so to all customers seeking a connection. DNOs should ensure that each quotation includes a record of the number of days taken to produce the quotation to ensure transparency in reporting and performance.*

LOE comment: We recommend that these costs should be broken down by activity, hours and rate as is done across all other sectors. This will provide visibility but also the mechanism to compare efficiency across DNOs, we would also promote the introduction of a performance measurement indicator to identify the good and the bad. We believe that this will also enable DNOs to compare performance and identify areas for improved efficiency resulting in optimisation and cost savings within their business.

4.26. *We also propose that more detailed information should be provided for certain S16 requests and that this should include point of connection (POC) information for schemes that are likely to be attractive to connection providers (generally those in excess of £20K).*

LOE comment: We agree the criteria here need to be specified. There should be a common mechanism for the cost of producing a quote. This should include a template for contestable as well as non-contestable charges. Breakdowns should be provided as a matter of course, and these should highlight the discrete elements of work, and identify costs relating to materials, labour and plant separately.

4.29. *We intend to continue to work with the DTI to include customer disputes about connections in the new consumer redress measures. A Consumer Bill was published in early 2007 and it may be necessary to re-visit the process for dealing with customer disputes once this Bill has been enacted and implemented.*

4.30. *We expect DNOs to communicate the disputes process to domestic customers, either on their websites and/or by providing details when issuing information, such as quotations, to these customers. DNOs should also ensure that they are able to manage communications with customers in a way that provides a reliable, but not overly bureaucratic, audit trail.*

LOE comment: The processes outlined here within DNOs need to be broken down, with specific responsibilities and timelines. The basis for recognising consequential losses also needs to be addressed by Ofgem.

4.31. *We are aware that a number of parties are dissatisfied with the current processes used by DNOs to deal with business to business disputes. Concerns in particular relate to delays in providing information and carrying out connections works in a timely manner. Our powers to determine disputes are provided by the Electricity Act 1989. They do not provide an effective route for resolving live issues where time is a critical factor.*

LOE comment: More needs to be done to improve the likelihood of disputes being resolved before timing issues exacerbate them. In a live contract environment the process needs to be responsive and recognise that referral to Ofgem takes too long.

4.33. *Respondents suggested that any revised internal dispute process should, as best practice, include the provision by the DNOs of a single point of contact for disputes and use an independent person within each DNO, for example a manager from outside the connections team.*

LOE comment: Independent we take to mean as 'Independent' i.e. not an employee regardless of department of the organisation that the dispute is directed at. This arbitrator should have no affiliation with the parties in dispute. On this basis consideration should be made by Ofgem as to how this could be implemented.

4.34. We support the views of the respondents and believe that a two-step dispute resolution process would address the constraints of the current mechanism for resolving business disputes, in particular those regarding delays. We expect DNOs to take these matters forward and establish and publicise effective dispute resolution processes, to include a clear process with referral to a senior manager within the DNO tasked to resolve the issue. DNOs should examine whether an alternative dispute resolution service would provide an effective next step.

4.35. As with domestic customers we expect DNOs to communicate the disputes process to business customers, either through their websites and/or by providing details when issuing information, such as quotations, to these customers. DNOs should ensure that they are able to manage communications with customers in a way that establishes a reliable, but not overly bureaucratic audit trail.

LOE comment: We support the proposal but require defined resolution timeframes for each stage. There should also be a performance indicator put in place to measure the number of disputes and if they were resolved within the agreed timescales.

4.38, 440, 441& 443. Responses to the August consultation supported the introduction of a more consistent format for providing quotations for non-contestable charges. This included a more detailed breakdown of how such charges are calculated and the specific charges made against key areas of work, such as labour and materials

LOE comment: We agree this should cover contestable and non-contestable clearly broken down for each activity identifying unit rates (labour, plant and materials). This will need to be defined in greater detail as interpretation of this could be inconsistent we suggest that standard building forms and standard methods of measurement guidelines be reviewed and adopted.

4.48. SLC4C has been in place for only one year. It appears sensible to wait for the first reporting round that will be available in order to assess its effectiveness in preventing discrimination and to consider further ways to address any issues that emerge.

4.49. In principle, we consider there may be merit in extending the SPM commitments to other DNOs. However, we acknowledge it is reasonable to consider the forthcoming reporting. In order to understand the associated issues and their magnitude, before pursuing this option further.

LOE comment: Reporting under SLC 4C should be subject to validation under the CIR. We agree the SPM commitments should be extended to other DNOs.

Table 3.1 Summary of proposed standards of service (*LOE amendments in bold italics*)

Task	Maximum voltage (including any upstream reinforcement)	Timescale for provision of POC info	Timescale	Performance target
Provide quotation (including POC information)	LV	10 working days	Within 15 working days of request	95%
	LV (generation connection)	10 working days	Within 20 working days of request	95%
	HV	10 working days	Within 20 working days of request	95%
	HV (generation connection)	20 working days	Within 50 working days of request	95%
	EHV	20 working days	Within 50 working days of request	95%
	All quotations not included in the above	20 working days	Within 65 working days of request	95%
Notify POC	EHV and HV (generation)		Within 30 working days of request	95%
Approve or provide reasoned rejection of designs	LV, HV and EHV		Within 10 working days of submission	95%
Complete final connection	LV		Within 10 working days of request	95%
	HV		Within 20 working days of request	95%
Provide customer with date for final connections works	EHV		Within 20 working days of request	95%
Carry out partial energisation*	LV		Within 5 working days of request	95%
	HV		Within 10 working days of request	95%