

**Case Closure Statement by the Gas and Electricity Markets Authority,  
following an investigation into non-compliance by EDF Energy Networks  
(LPN) plc, EDF Energy Networks (EPN) plc and EDF Energy Networks  
(SPN) plc with Standard Licence Condition 4C of their Electricity  
Distribution Licences.**

**13 July 2007**

**Summary**

1. The Gas and Electricity Markets Authority ("the Authority") grants licences for the distribution of electricity. It has a duty to keep under review activities connected with the generation, transmission and supply of electricity<sup>1</sup>. It also has a duty to issue an order to secure compliance where it is satisfied that a licence obligation is being, or is likely to be, contravened<sup>2</sup> and may impose a financial penalty in respect of a past or continuing contravention<sup>3</sup>.
2. EDF Energy Networks (LPN) PLC, EDF Energy Networks (EPN) PLC and EDF Energy Networks (SPN) PLC ("the Licensees") each hold an Electricity Distribution Licence. Ofgem has considered each Licensee separately, but has discussed them as one for the purposes of this document as the evidence is similar for all three Licensees, unless otherwise specified.
3. Standard Licence Condition ("SLC") 4C(2)(a) and (c) of the electricity distribution licence requires the licensee not to discriminate in the provision of non-contestable connection services and information relating to connections between any business of the licensee and any business of any other person providing connections to the licensee's distribution system.
4. On 15 June 2006 Ofgem received a complaint from an independent distribution network operator ("IDNO") that the Licensees were, inter alia, engaging in practices which discriminated against it, in breach of SLC 4C(2).<sup>4</sup> Specifically, it claimed that the Licensees, when providing point of connection ("POC") information delayed in providing POC information to the IDNO, refused to connect the IDNO to multiple points of connection and refused to grant the IDNO dual access to isolation equipment.
5. Following receipt of the complaint, Ofgem conducted an investigation under SLC 4C(2)(a) and (c) into potential discrimination in the provision of non-contestable information and services, in particular POC information, to IDNOs and independent connections providers ("ICPs") by the Licensees. The Authority has found that there is insufficient evidence to find a breach of SLC 4C(2)(a) but in the course of the investigation it became clear that there are low levels of competition from IDNOs and ICPs in the Licensees' areas. Ofgem has concerns about the limited penetration by ICPs and IDNOs and intends to undertake a review in order to establish the possible reasons for the lack of competition.

**Background**

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<sup>1</sup> Section 47 of the Electricity Act 1989

<sup>2</sup> Section 25 of the Electricity Act 1989

<sup>3</sup> Section 27A of the Electricity Act 1989

<sup>4</sup> SLC 4C provides: "2. The licensee, in the provision of non-contestable connection services and information relating thereto, shall not discriminate between: (a) any business of the licensee comprising the provision of connections to the licensee's distribution system ... and (c) any business of any other person comprising such provision."

6. Ofgem has worked closely with the electricity industry to facilitate competition in the provision of connections. Distribution network operators ("DNOs") such as EDF have been encouraged to allow appropriately qualified competitors to provide connections. As a result, customers (such as developers) may either request the DNO to provide the connection under section 16 of the Electricity Act 1989 or invite tenders for connections to be provided by appropriately qualified competitors to the DNO. Section 16(1) of the Electricity Act imposes a duty on DNOs to provide connections<sup>5</sup> to their distribution systems. There are two types of appropriately qualified competitors who are able to provide connections, ICPs<sup>6</sup> and IDNOs.<sup>7</sup>
7. Where an IDNO provides a connection, it has the option of retaining the network connected to the main distribution network or requesting the DNO to adopt it. ICPs, generally, only provide connections and do not own a network or possess a licence to distribute electricity. Where an ICP provides a connection, the host DNO, or an IDNO, may adopt the network and take over its ongoing operation and maintenance.
8. Central to the development of competition has been the definition of the work that appropriately qualified competitors may undertake and that which must be performed by the DNO that owns the network to which the connection is being made. There is no statutory or other definition of those services which only the DNO can provide. The DNOs distinguish between these areas of work as being contestable (work that competitors can undertake) and non-contestable (work that only the DNO can carry out). This means that, when providing a connection, the ICP or the IDNO will need to procure the non-contestable services from the DNO.
9. Ofgem's investigation focused on potential discrimination in the provision of point of connection ("POC")<sup>8</sup> information to the existing distribution system. POC information is one of the non-contestable services that only the DNO can provide. This information sets out for IDNOs and ICPs the point or points at which they may connect to the distribution network and the costs associated with that connection. When competing for tenders to provide connections, it is essential to IDNOs and ICPs that they are provided with timely and non-discriminatory POC information. Standard licence condition 4C (2)(a) and (c) specifically requires DNOs not to discriminate between any business of the licensee and any business of any other person in the provision of non-contestable connection services. A developer seeking a connection to the distribution system, for example for a new housing development, may seek a quotation for the cost of the connection from one of the Licensees, such connection to be completed by the Licensee's own business, and a quotation for the same site by a competitor of the Licensees (an ICP or an IDNO).

## The Investigation

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<sup>5</sup> A connection is a physical extension of the distribution system which is required to connect a premise to an electricity distribution system, or to connect a subsidiary system to such a system. A distribution system is "... a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system" (see section 4(4) of the Electricity Act 1989).

<sup>6</sup> Any ICP wishing to carry out connections work must be accredited under the National Registration Scheme (NERS). All the DNOs recognise this scheme and provided that ICPs hold the appropriate scope of accreditation, the ICP is able to undertake contestable connections work.

<sup>7</sup> IDNOs hold electricity distribution licences which, like those of the DNOs, require compliance with conditions relating to safety and security of supply. They also have obligations to the Health and Safety Executive. They will have been through a formal application process before receiving such licences.

<sup>8</sup> The physical connection onto the existing distribution system.

10. The investigation focused on three specific forms of discriminatory conduct which might have a prejudicial effect on the businesses of ICPs and IDNOs, as compared with the Licensees' own business.
- Delay in the provision of POC information and design approval services
  - Refusal to connect to multiple low voltage ("LV") connection points: the alternative to providing multiple LV connections is the use of a high voltage ("HV") connection point which necessitates the installation of HV boundary switchgear and a substation, increasing connection costs
  - Refusal to grant dual access to isolation equipment: this results in competitors having to fit additional isolation/protection equipment adjacent to the Licensees' existing equipment, thereby incurring extra cost
11. Formal requests for information pursuant to section 28 of the Electricity Act 1989 ("information requests") were served on the Licensees on 24 August 2006, 11 January 2007 and 29 March 2007. The period that the investigation covered was from 1 December 2005 to 1 January 2007. In order to assess whether the Licensees had discriminated against the ICPs and IDNOs, Ofgem's investigation focused on those sites where POC information was sought by one or more ICPs and IDNOs as well as by the Licensees' own connections business, or by two or more ICPs and IDNOs. The investigation did not focus on sites where requests for connection had been received from developers only.
12. In response to the information request served on 11 January 2007, Ofgem received information relating to nine sites in respect of which the Licensees had offered POC quotations both to developers requesting the Licensees for a quotation to provide a connection themselves, and to ICPs and IDNOs. However, the information showed that for some sites only a single request for a POC quotation was made and for others more than one party requested a POC quotation. Where there was only a single POC quotation in respect of a site, comparisons could not be undertaken between quotations offered to developers and quotations offered to ICPs and IDNOs to assess discrimination. In its subsequent information request, Ofgem required the Licensees to provide information relating to requests made in respect of sites where ICPs and/or IDNOs had requested POC quotations and/or indicative costs estimates<sup>9</sup> in respect of the same site or sites where the Licensees' own connections business would be competing with one of these competitors to provide a connection.
13. Overall, the responses received from the Licensees indicated low levels of competition in their areas. In the period of the investigation, from 1 December 2005 to 1 January 2007 ("the relevant period"), there have been only 38 requests for POC quotations<sup>10</sup> from competitors and developers, and 53 requests from competitors and developers for indicative cost estimates, in

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<sup>9</sup> The term "indicative cost estimate" or "indicative price" is used by the Licensees for estimates provided by them, without the need for payment of an assessment and design charge ("A&D charge"). The Licensees require upfront payment of the A&D charge for quotations. Estimates are based on the preliminary assessment of the work, which in some cases are based on recent quotations for projects that are similar to projects being considered. In almost all cases the estimates are compiled within a desk top exercise only without any site visits taking place.

<sup>10</sup> A request for a quotation is treated as being made within the relevant period, where a request is was completed and the requisite A&D charge is was paid by the requesting party, after 1 December 2005 and before 1 January 2007.

respect of all three Licensees. Ofgem is concerned about the low levels of competition in the Licensees' areas.

14. Set out below is a breakdown of the POC quotations and indicative cost estimates provided by the Licensees in the period 1 December 2005 to 1 January 2007:

| <b>POC quotations and indicative cost estimates provided to ICPs, IDNOs and developers requesting the Licensees for a quotation to provide a connection themselves</b> | <b>Number of requests</b> | <b>Number of sites</b> | <b>Sites in respect of which only one quotation or indicative cost estimate was provided</b> | <b>Sites in respect of which more than one quotation or indicative cost estimate was provided</b> |
|--|---------------------------|------------------------|--|---|
| Quotations Provided by the Licensees <sup>11</sup>   | 35                        | 29                     | 25   | 4   |
| Estimates Provided by the Licensees <sup>12</sup>  | 52                        | 32                     | 13   | 19  |

#### *Delay*

15. There appeared to be only four sites<sup>13</sup> where the Licensees had received more than one request for a POC quotation from different parties. In respect of two sites, quotations were provided more promptly to the developer than to a competitor (IDNOs and ICPs)<sup>14</sup>. In the first site, both quotations were for full connections, made under section 16 of the Electricity Act 1989. The developer requested much less capacity than the competitor and only a part of the non-contestable work. Therefore, these quotations were not directly comparable as to the time taken to produce the quotations. In the second site, which fell within LPN's area, the developer requested a full connection under section 16 while the competitor requested a competition in connections POC quotation. The Licensee in question has explained that the delay in providing the competitor's quote resulted from staff sickness.<sup>15</sup>
16. The assessment of indicative cost estimates did not indicate a pattern of behaviour which favoured the Licensees' own business as compared to the Licensees' competitors. Ofgem identified 17 sites<sup>16</sup> where the Licensees provided indicative cost estimates to more than one party. In respect of eight sites<sup>17</sup>, where the Licensees' own business was likely to provide the connection, the indicative cost estimate for connection was provided more

<sup>11</sup> There were 38 requests for quotations; three requests were withdrawn before the quotation was received by the applicant.

<sup>12</sup> There were 53 requests for indicative cost estimates; one was withdrawn before the indicative cost estimate was received by the applicant.

<sup>13</sup> EDF Energy Networks (LPN) PLC – one site, EDF Energy Networks (EPN) PLC - two sites, and EDF Energy Networks (SPN) PLC – one site

<sup>14</sup> The first of the two sites came within the area of EPN, the second within LPN. A decision on the third site is made complicated by the fact that the initial request for a quotation by the competitor was varied several times due to actions of one of the Licensees' and the requesting competitor. There appeared to be no concerns as to discrimination in relation to the fourth site.

<sup>15</sup> There was a difference of 43 days between the provision of the competition in connections POC quotation to the ICP and the section 16 quotation to the developer, which was attributed by the licensee to staff sickness.

<sup>16</sup> EDF Energy Networks (LPN) PLC – one site, EDF Energy Networks (EPN) PLC - 10 sites, and EDF Energy Networks (SPN) PLC – six sites

<sup>17</sup> EDF Energy Networks (LPN) PLC – one site, EDF Energy Networks (EPN) PLC - five sites, and EDF Energy Networks (SPN) PLC – two sites

quickly to the developer by a greater than negligible margin<sup>18</sup>. In respect of the remaining seven sites the indicative cost estimates were not provided more quickly to the developer: for three sites<sup>19</sup>, the indicative cost estimate was provided more promptly to the competitor (IDNO or ICP) than to the developer<sup>20</sup>. In three other sites, estimates were not provided to the developer by the Licensees, and in relation to the remaining one site, the outcome could not be determined due to a lack of evidence to support the date of request by the developer.

17. On the basis of the above, there is insufficient evidence to conclude that EDF has been discriminating in contravention of SLC 4C (2)(a), by providing quotations or indicative cost estimates to developers more quickly than providing them to competitors.

*Refusal to connect to multiple LV connection points*

18. The Licensees' policy in respect of the provision of multiple POCs to IDNOs is that the starting assumption for an IDNO request is normally a single HV POC. The Licensees have stated in their internal policy documents that if an IDNO signals that it wants multiple POCs, then the Licensees will respond positively. Ofgem considers that the Licensees' starting assumption may result in discrimination, if applied in a manner that results in IDNOs being offered a single HV POC in circumstances where the Licensees' own business is provided with multiple POCs.
19. Ofgem compared the quotations provided by the Licensees to IDNOs and ICPs and those provided to developers<sup>21</sup>. In order to assess whether the Licensees discriminated against IDNOs and ICPs in favour of developers, Ofgem considered sites where there had been more than one request for a POC quotation.
20. As noted above there were only four sites where quotations were provided both to IDNOs and to developers requesting the Licensees for a quotation to provide a connection themselves. In two of them<sup>22</sup>, the IDNO was offered a single HV connection while the developer was offered multiple LV connections. However, in both cases the developer appeared to have requested a quotation for one phase of the development, therefore, for a smaller load, while the IDNO had requested a quote for the entire development, for a much larger load. This difference in loads requested by the developer and the IDNO resulted in different connection designs.
21. Thus, while Ofgem has concerns about the policy as articulated, there is, at present, insufficient evidence of the policy on the provision of multiple POCs to IDNOs being applied in a manner that has resulted in IDNOs being offered a single HV POC in circumstances where the Licensees' own business is provided with multiple POCs, to show that the Licensee has acted in breach of SLC 4C (2)(a).

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<sup>18</sup> In respect of two further sites the indicative cost estimate was provided one and two days quicker to the developer.

<sup>19</sup> EDF Energy Networks (EPN) PLC - one site and EDF Energy Networks (SPN) PLC – two sites

<sup>20</sup> In one site the difference was one day.

<sup>21</sup> Indicative cost estimates were not considered in this analysis as the Licensees state that when providing indicative costs they will "provide the nearest POC that is able to sustain the load demand required". Therefore, at the indicative cost stage the Licensees do not consider multiple POCs, although they do state that once the A&D charge is paid "EDF will work with the applicant to establish whether other network arrangements could be possible".

<sup>22</sup> One site for EDF Energy Networks (SPN) PLC and one site for EDF Energy Networks (EPN) PLC

### *Refusal to grant dual access to isolation equipment*

22. The concern raised by the complainant in respect of dual access to isolation equipment was that the refusal of dual access results in competitors having to fit additional isolation/protection equipment adjacent to the Licensees' existing equipment, thereby incurring extra cost. The substance of the complaint was that, where the developer was not required to fit additional isolation equipment and so incur such additional costs, this resulted in a difference in treatment between the developer and the IDNO amounting to discrimination against the IDNO.
23. The complainant referred to one case<sup>23</sup>, within the relevant period, where it submitted that additional isolation equipment was required by one of the Licensees, to be fitted directly adjacent to that Licensee's<sup>24</sup> existing equipment. The discussion on isolation equipment about which the complainant complained appeared to have been conducted during negotiations prior to an offer of a quotation. That Licensee has submitted that dual access was subsequently granted to the complainant.

### **Conclusions**

24. Having taken full account of all relevant evidence available to it, the Authority considers that there is insufficient evidence to show that the Licensees were acting in breach of their obligations under SLC 4C (2)(a) during the relevant period. Accordingly, no final or provisional order will be issued at this time. However, the investigation has highlighted certain concerns regarding ongoing issues.
25. As noted above, the investigation has raised concern about the level of competition in the Licensees' areas. In order to understand the reason for the low levels of competition, Ofgem intends to write to those that may request connections from the Licensees, including ICPs, IDNOs and developers, seeking their views on the provision of non-contestable connections services by the Licensees in their area, pursuant to the Authority's duty to keep under review activities connected with the generation, transmission and supply of electricity under section 47 of the Electricity Act 1989. This review will go beyond the recent "Review of Competition in Gas and Electricity Connections"<sup>25</sup> undertaken by Ofgem and involve specific examination into the reason for the low levels of competition, within the Licensees' areas, which were identified in the course of the investigation. Depending on the outcome of the review, Ofgem may take enforcement action if it is satisfied that the Licensees may be contravening any of their licence obligations, or may consider other action as appropriate.

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<sup>23</sup> The complainant complained about one other site, in respect of which it claimed dual access to isolation equipment was not granted. Ofgem could not consider this site as part of the investigation, as the request for the POC quotation was made prior to 1 December 2005, when the licence condition was amended, to its current wording.

<sup>24</sup> EDF Energy Networks (SPN) PLC

<sup>25</sup> Proposal and Impact Assessment, 16 February 2007.