

Statement by the Gas and Electricity Markets Authority, following an investigation into compliance by Central Networks East plc and Central Networks West plc with their distribution licences

11 December 2007

Ref: 296/07

1. Summary

- 1.1 This statement relates to the investigation of two licensed distribution network operators, Central Networks East plc ("CNE") and Central Networks West plc ("CNW"), both of which are owned by Central Networks plc ("CN")¹, regarding possible non-compliance with standard licence condition ("SLC") 4C(2)(a) and (c)² of their Electricity Distribution Licences. CNE and CNW hold electricity distribution licences pursuant to section 6(1) of the Electricity Act 1989 ("the Act").
- 1.2 This statement sets out the outcome of the investigation and the decision reached by the Gas and Electricity Markets Authority ("the Authority") following that investigation.
- 1.3 Ofgem received a complaint in June 2006 alleging discrimination by CNE and CNW in the provision of a non-contestable service, namely the provision of point of connection ("POC") information. POC information sets out the point at which connections may be made to the distribution network operated by a distribution network operator ("DNO") (in this case, by CNE and CNW) and the costs associated with making that connection.
- 1.4 The complainant made two allegations. Firstly, it alleged that there were unjustified delays in the provision of POC information to independent connections businesses in competition with CN ("competitors"). It alleged that such delays were not experienced by CNE or CNW in obtaining POC information. Following the investigation, the case team concluded that there was insufficient evidence to suggest that CNE or CNW had discriminated between their own connections business and that of their competitors by delaying the provision of POC. This element of the investigation was therefore closed and the Authority was not asked to consider this matter.
- 1.5 Secondly, the complainant alleged that CNE and CNW would only supply independent distribution network operators ("IDNOs") with POC information concerning single points of connection, while allowing their own business to connect at multiple points. Where a single point of connection on high voltage ("HV") cable is offered instead of multiple connection points on low voltage ("LV") cables, IDNOs are likely to receive a higher-priced quote from the DNO to make the connection. CN accepts that its policy was to provide a single HV POC to IDNOs. However, its position is that the policy was justified on safety grounds and therefore did

¹ CN is a subsidiary of E.ON UK plc.

² SLC 4C provides: "(2) The licensee, in providing 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;

(b) any business of any affiliate or related undertaking of the licensee comprising such provision; and

(c) any business of any other person comprising such provision".

not amount to discrimination against IDNOs. It is this issue which is the subject of the Authority's decision.

- 1.6 The Authority considered that CNE and CNW were in breach of SLC 4(C)(2)(a) and (c) in that they discriminated, in the provision of non-contestable connection services and information relating thereto, against IDNOs providing connection services. The Authority considers that these breaches arise out of the companies' failure to provide multiple connection points on LV networks to IDNOs. This was in accordance with their stated policy at that time ("the former policy"). During this period CNW and CNE were providing such connection points to their own businesses. In the view of the Authority this difference in treatment was not justified by safety considerations.
- 1.7 In the Authority's view the breach commenced on 1 December 2005 when SLC 4C of the electricity distribution licences was modified, and SLC4C(2) was inserted in its current form. The Authority accepted that CN altered its policy in January 2007 and that CNE and CNW now provide multiple connection points at LV to IDNOs on a non-discriminatory basis. Accordingly, the breach of SLC 4C(2)(a) and (c) is no longer ongoing.
- 1.8 The Authority may impose a financial penalty where it is satisfied that a licensee has contravened or is contravening any relevant licence condition³. Having regard to all the circumstances of this case, the Authority does not intend to impose a financial penalty.

2. Regulatory background

- 2.1 CNE and CNW are licensed by the Authority pursuant to section 6 of the Electricity Act 1989 ("the Act") to distribute electricity on behalf of suppliers and generators throughout Great Britain and have specific obligations within their Distribution Service Areas.
- 2.2 Section 16 of the Act and SLC4D of the distribution licence imposes a duty on DNOs to provide connections⁴ to their distribution systems⁵. These are known as 'statutory connections'. As an alternative to requesting that the relevant DNO provide a statutory connection, customers (often developers) may invite tenders for connections to be provided by appropriately qualified competitors. There are currently two types of appropriately qualified competitors who are able to provide connections, independent connections providers ("ICPs") and IDNOs.
- 2.3 Where an IDNO provides a connection, it generally retains ownership of the network connected to the main distribution network (known as an "embedded network") and is responsible for its ongoing operation and maintenance. ICPs only provide connections and do not own a network or possess a licence to distribute electricity. Where an ICP provides a connection, the network is usually adopted by the host DNO which takes

³ Pursuant to section 27A, Electricity Act 1989.

⁴ A connection is a physical extension of an electricity distribution system which is required to connect a premise to that 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).

⁵ 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).

over its ongoing operation and maintenance (although an IDNO may do so).

- 2.4 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. There is no statutory or other definition of these services. The DNOs distinguish between these areas of work as being contestable (i.e. work that competitors undertake) and non-contestable (i.e. 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 that owns the network.
- 2.5 Determination of the relevant POC and provision of POC information are non-contestable services and involve the confirmation of the design of the connection, specification and method of installation of any network extension which is to be adopted, and the inspection, monitoring and testing of contestable works prior to connection.

Point of Connection and Point of Supply information

- 2.6 The term "POC" generally refers to the point at which a site (such as a new housing development) connects onto the main distribution network. The point of supply ("POS") is the point at which any metering equipment is stored. It is the actual boundary between the main distribution network and the IDNO's embedded network. In some cases the POC and the POS are effectively one and the same and are located together. However, in some cases a site may be sub-divided into several smaller units, with electricity supplied to them via several different points of supply, which are connected to the main distribution network at one or more points. The exact layout of the POC and POS is part of the information that the DNO provides to competing IDNOs and ICPs. Throughout the remainder of this document, these are referred to collectively as "POC information".
- 2.7 POC information is important to the calculation of the cost of providing a connection. This cost forms the basis upon which an ICP or IDNO will provide a quote to a potential customer. The information will identify if there are reinforcement works and other important design inputs which need to be considered, for example whether the connection is at LV or HV. This can have a material impact on costs and hence competitors will want this information before they provide a quote.

3 Ofgem's investigation

- 3.1 The case team considered the obligations imposed on CNE and CNW by SLC 4C(2)(a) and (c) of their licences and evidence submitted in support of the complaint. It reached the view that CNE and CNW might be in breach of their licence obligations. Accordingly, Ofgem issued information notices to CNE and CNW under section 28 of the Act⁶, requesting the following information:
 - policies and procedures relating to the handling of requests for non-contestable services for ICPs and DNOs, and for statutory connections;

⁶ Issued to CN on 24 August 2006 and 5 April 2007.

- basic details of all applications made to CN for POC and statutory connection requests between 1 December 2005 and 25 September 2006;
 - details of those sites for which CN received multiple applications for POC during that period (including those made by CN or its affiliates) and explanations of any differences in the terms and quotations issued in response to those applications; and
 - specific details relating to sites mentioned by the complainants in their correspondence with Ofgem.
- 3.2 CN provided the information requested in the notices, on behalf of CNE and CNW, in separate responses dated 25 September and 9 October 2006, and 2 May 2007. All policy information and procedural material is common to both CNE and CNW.
- 3.3 A meeting was held at CN's offices on 18 October 2006 to discuss the first two responses and to clarify points arising out of the documents submitted. In particular, company structures and general procedures for processing applications for POC were discussed, as well as a particular site which had been raised by the complainant.
- 3.4 The case team analysed the information submitted by the complainant and by CN in its responses to the information requests in order to assess whether CNE and CNW had acted in a discriminatory manner, contrary to SLC 4C(2)(a) and (c) in the provision of POC information.

4 Delay in the provision of POC

- 4.1 Having considered the evidence provided by CN and the complainant, the case team found that CN's performance under the timescales set out in the Voluntary Standards⁷ was broadly consistent for all competitors requesting POC information. It is apparent that CN had failed to comply with the voluntary standards in providing POC information to competitors in some cases, but was also found to have done so in providing POC information for its own businesses.
- 4.2 If these standards had been mandatory rather than voluntary, Ofgem would have expected full compliance with the mandatory standard. However, the case team considered that there was insufficient evidence to suggest that this amounted to discrimination by CN. The evidence does not suggest that CN has been systematically delaying in providing competitors with POC information. In any event, in the majority of cases, CN appears to have provided POC to competitors within appropriate timescales.

Decision on delay

- 4.3 The case team therefore concluded that there was insufficient evidence to suggest that CNE or CNW had discriminated against IDNOs by delaying the provision of POC and that, therefore, no breach of SLC 4C(2)(a) and (c) on this basis was made out. Accordingly, Ofgem's investigation into delay by CN in the provision of POC was closed.

⁷ The Voluntary Standards are timescales adopted by industry by the majority of DNOs following publication by Ofgem of '*Competition in Connections to Electricity Distribution Systems – Final Proposals*' in August 2002 in relation to the provision of services to ICPs. They were adopted by the case team as reasonable timescales against which to measure performance.

- 4.4 A new licence condition⁸ was introduced on 1 October 2007 which imposes timescales on licensees for the provision of POC information. Ofgem will take very seriously any future complaint or other indication that DNOs are failing to comply with this licence condition.

5 Provision of single POC and POS to IDNOs

- 5.1 A copy of CN's former policy on the provision of connections to IDNOs was provided in its response to the information requests. The policy assumed that IDNOs would only be provided with a single POS and POC. Although that policy appeared to make an exception where the IDNO made a specific request⁹, the form on which applications are made does not make provision for the IDNO to specify the number of POS or POC that it requires. Furthermore, CNE and CNW did not require their own businesses or ICPs (whose networks CNE and CNW generally adopt) to make a specific request for multiple POS or POC but would provide such a connection if it was the most cost-effective option.
- 5.2 Having reviewed the policy and the evidence relating to its application, the case team concluded that this gave rise to a difference in CN's treatment of IDNOs which might be discriminatory, contrary to SLC 4C(2)(a) and (c). In July 2007, a Statement of Case was sent to CN setting out the case team's view of the nature and extent of the potential breach. The case team's view was that there was no justification for the difference between CN's treatment of IDNOs on the one hand and its own connections business on the other and that the application by CN of its former policy amounts to discrimination in favour of its connections business, in breach of SLC 4(2)(a) and (c).

6 Ofgem's case on discrimination

- 6.1 CN's starting point for responding to requests for POC from IDNOs was set out at paragraphs 2.2 and 2.3 of its draft policy document, entitled "*CN Embedded Networks Connections and Operational Interface Policy*". This document was provided to Ofgem by CN in draft as it was in the process of being formulated. It provided as follows:

"2.2 There are a number of options for connection to CN's distribution system, a LV connection, a HV connection or an EHV (extra high voltage) connection. The option chosen by the CN Design Engineer will be influenced by a number of factors, primarily the...Authorized Supply Capacity requested by the IDNO for their embedded network. Generally if the load is in excess of 275kVA the connection onto the existing DNO network will be at HV, whereas below this load (CN) will endeavour to connect at LV. However, this may not always be possible and in such cases a number of options will be explored and the best approach will be adopted dependent on cost, safety and operational issues, and network integrity.

2.3 Unless the applicant requests otherwise at the time of the application, the Embedded Network will be designed and treated as a single Point of Supply onto the CN Distribution System... if the IDNO

⁸ Standard Licence Condition 4F (standards for the provision of non-contestable connection services)

⁹ See paragraph 6.1 and 6.2, below

wishes to follow the (Competition in Connections) option then they will need to complete the CN Embedded Networks application form.”

- 6.2 In the covering letter sent with this information to Ofgem on 9 October, CN stated:

“IDNO enquiries normally request a dedicated load, without detailing connection types or providing detailed site layouts... In the absence of any agreed national industry standards for embedded networks, Central Networks has considered the issues raised by embedded networks against its own operational integrity and safety standards and, in conjunction with the IDNOs has been developing draft requirements for embedded networks...”

The inclusion of measures to ensure the safety and integrity of the network can lead to differences in the connection strategy of boundary configuration for this type of request as against those for a network to be adopted and hence remain under the control and operation of Central Networks. In particular, Central Networks’ policy is that: for LV connected IDNO networks, a single point of connection only is provided due to operational concerns over the control of interconnection between our distribution system and a “private” network, i.e. parallels etc...”

- 6.3 The greater the load of electricity that is required to be connected, the more expensive the connection is likely to be if only provided with a single POC. Any POC for 1MW of electricity or more requires the installation of an additional circuit, to allow the swift restoration of supply in the event of a fault¹⁰. The additional reinforcement works which are likely to be required to provide such an additional circuit add further to the cost of connection. Also, a connection at HV requires the installation of boundary switch gear and a substation, which also adds to the costs. It was Ofgem’s case that a substation typically adds between £10,000 and £27,000 to the cost of providing a network for a new development depending on the size and location of the substation¹¹.
- 6.4 With regard to the practical application of CN’s former policy, the case team found that, on the evidence, CNE and CNW had not provided multiple POC or POS to any IDNOs’ embedded networks during the period of the investigation (between 1 December 2005 to 25 September 2006).
- 6.5 The case team also identified instances where CNE and CNW had applied the former policy by providing only single POC to IDNOs even at sites where its own business or an ICP was bidding on the basis of a quote that provided multiple POCs during the period of the investigation. The case team identified four sites¹² where CNE and CNW had provided a single POC to IDNOs while providing a quote to its own business on the basis of multiple POCs. Where this occurred, CN indicated that the reason for the difference was that this was ‘in line with CN policy’.

¹⁰ This requirement is pursuant to SLC 5 of the distribution licence which requires a licensee to plan and develop its distribution system in accordance with a standard not less than that set out in Engineering Recommendation P2/6 of the Energy Network Association in so far as applicable to it.

¹¹ See www.central-networks.co.uk/Pdfs/CN-connection-methodology-statement-East-final-Dec-07-2.pdf

¹² Initially the case team identified seven sites but revised this figure, having regard to CN’s response to the Statement of Case.

- 6.6 In a letter dated 26 April 2007, CN informed Ofgem that it had amended its former policy in January 2007 and would provide multiple POS at LV for embedded networks¹³, subject to IDNOs making specific operational commitments. CN stated that the decision to change its policy had been taken at a meeting on 12 January 2007 and subsequently notified to the IDNOs. The case team took the view that the breach of SLC 4(2)(a) and (c) came to an end in April 2007, when CN provided multiple LV POCs to an IDNO in accordance with its amended policy.

Safety issue

- 6.7 It was the case team's view that the safety risk identified by CN was overplayed. Although the case team accepted that there was a risk with any multiple LV connection of 'paralleling' i.e. the interconnection of two LV sources of electricity such that multiple flows of electricity are created from one or more transforming points, it was the case team's view that the likelihood of a parallel network being created was low. Most new sites served by more than one LV connection will not be equipped with a 'link box', which means that interconnection is not possible. Once work on the site is complete it is unlikely such a link box facility will be added at a later date. Where such a link box is installed it will generally be used infrequently for maintenance work. Therefore, the risk that multiple flows of electricity being inadvertently be created or mistakenly left on is small, although it is a risk that IDNOs and DNOs alike have to manage.
- 6.8 In any event, the case team's view was that, if paralleling were to occur on a LV network, it might damage CN's network but is, in fact, more likely to damage network cables owned by the IDNO. Hence, the IDNO has a strong interest in avoiding inadvertent paralleling and to operate sound practices when using parallel networks.
- 6.9 The case team recognised that risks to the safety of staff working on the network may arise from the existence of a parallel network.
- 6.10 However, the case team's view was that there are alternative means of addressing the risks, which would allow CN to provide IDNOs with multiple LV connection points. For example, CN could have entered into agreements with IDNOs to manage the risks associated with inadvertent paralleling and to agree processes for operational safety.

7 CN's response to Ofgem's case

- 7.1 CN provided a written response to the Statement of Case on 9 August 2007. An oral hearing took place on 28 August 2007.
- 7.2 In its response, both written and oral, CN refuted the suggestion that CNE and CNW had breached SLC 4C(2)(a) and (c), contending that there had been no discrimination in CN's treatment of the IDNOs.
- 7.3 CN argued that IDNOs networks are independent and that their design, construction, maintenance and operation are therefore outside CN's control. CN's case is that IDNOs and their embedded networks are therefore "relevantly different" to CN's own businesses or to ICPs as they are not adopted by CN. It argued that CNE and CNW were accordingly

¹³ In June 2007, CN confirmed by email that this change of policy related to the provision of POC as well as to POS.

justified on valid grounds of safety of plant and personnel in offering only a single point of connection to IDNOs rather than multiple LV points of connection.

- 7.4 CN's safety concerns arise from the possibility of paralleling by an IDNO. The provision of a single POC ensures that the safety risks associated with paralleling do not arise and CN argues that its former policy was a proportionate response to a known safety risk. In response to Ofgem's case, CN contended that IDNOs are likely to install link boxes in new housing developments and use them during maintenance to maintain supplies to consumers.
- 7.5 At the oral hearing, CN submitted that the aim of its former policy was only to remove the hazard presented by paralleling and was not intended to create an economic advantage. It pointed to the fact that it did not apply that policy to ICPs (where there is no equivalent safety risk) as evidence of this. It stated that providing only a single point of supply to an IDNO was practicable and immediately removed the hazard of paralleling and the associated risk of injury to the public as well as to those working for, or on behalf of, CN or the IDNO. It removes the physical risk of injury to the public and those working on the network. By allowing paralleling, the risk of injury to people and damage to equipment is introduced which has then to be managed over the whole life of that equipment which incurs a cost to both parties for a long period.
- 7.6 CN also submitted that, to mitigate against the risk of injury from LV parallels, working safety rules and procedures are required between all those involved. This introduces complexity and that itself introduces risk that has to be managed and requires trust and good communication between all the parties.
- 7.7 CN contended, further, that, following the introduction of competition in the connections market in 2004¹⁴, it had initially believed that nothing less than a structural solution to the issue of paralleling could be justified. It stated that, at that time, IDNOs were an unknown quantity of which they had little information or experience and where there was no national forum in which DNOs and IDNOs could discuss issues such as safety. In view of the immaturity of its relationship with IDNOs and a number of negative experiences with IDNOs, it had initially believed that a structural solution to the issue of paralleling was justified. As its knowledge of IDNOs operational practices increased and its experience of working with IDNOs grew, CN stated that it revised its policy and moved from a structural safeguard to a contractual agreement. Its position was that this remained proportionate to the situation in managing those risks.
- 7.8 In summary, therefore, CN's case was that its former policy was a justifiable response to a real safety risk and that it remained proportionate in order to manage that risk until it was revised in January 2007, by which time CN had increased knowledge of the IDNOs' operation.
- 7.9 With regard to its change in policy, CN argued that it has applied its revised policy to all applications received thereafter where applicable.

¹⁴ The first IDNO licence was issued in August 2004

Therefore, any breach should be found to have been brought to an end on 12 January 2007. It stated, further, that it was inappropriate for Ofgem to pursue the case as CN had already changed its policy and had therefore taken the steps by which the Authority would be looking to remedy any breach.

- 7.10 In response to the case team's findings in respect of the application by CN of its policy, CN stated that it had provided a single point to an IDNO whilst offering multiple LV connection points to its own business in respect of only three IDNO POC requests.
- 7.11 CN submitted that, if it were found to be in breach of SLC 4C, it had already taken appropriate steps to address the breach and there was nothing in terms of conduct that it should be required to do. On penalty, CN submitted that it would be inappropriate to impose a penalty, since (i) health and safety is a difficult and highly sensitive area where views will always vary as to the correct level of precaution to be taken; (ii) CN's policy was driven by its view of what was proportionate to manage the risk it perceived to exist and not by commercial considerations; and (iii) it had voluntarily changed its policy.
- 7.12 CN emphasised in its written and oral submissions that it has continually allocated significant resource to developing competition in connections with both ICPs and IDNOs, and now hosts 22 embedded networks with a further ten in progress. This compares favourably with the progress made by other DNOs in developing competition and is described by CN as inconsistent with a company seeking to distort a competitive market.

8 The Authority's decision on provision of single POC and POS to IDNOs

- 8.1 The legal test to be applied by the Authority is, firstly, whether there was a difference between CN's treatment of IDNOs on the one hand and its own businesses on the other and, secondly, whether there was an objective justification for that difference in treatment. In considering whether there is objective justification the Authority has to consider whether there was in fact a difference between IDNOs and CN's own businesses and whether the difference in treatment is a proportionate and necessary response to that factual difference.
- 8.2 It is apparent from the evidence provided by CN that its former policy provided for the different treatment of IDNOs as compared with its own connections business. CN's policy specified that IDNOs would be offered a single POC on the CN distribution system in the absence of a specific request for multiple POCs at LV. CN's own connections business and ICPs would be offered multiple POCs if it was the cheapest design regardless of whether they had requested it.
- 8.3 The Authority accepts CN's case that there are three occasions when IDNOs were offered a single HV POC when multiple LV POCs were provided to its own businesses. The Authority also noted that, during the period of the investigation, CN did not provide any multiple POCs to IDNOs.
- 8.4 In respect of the second limb of the test, the Authority accepts that there is a difference between IDNOs and CN's own businesses. This difference is that IDNOs build, in the main, embedded networks, which the CN has little or no control over. This gives rise to safety risks not

apparent when the network is not embedded. However, the Authority is of the view that this does not justify the difference in CN's treatment of IDNOs, whether on safety grounds, as argued by CN, or on any other grounds.

- 8.5 Concerns over safety could justify some differences in the treatment of IDNOs, for example the approach currently taken by CN (see paragraph 8.7). However, the Authority does not consider that the difference in the approach taken, in the period in question, between IDNOs on the one hand and CN's own businesses or ICPs on the other was a proportionate and necessary response to those safety concerns.
- 8.6 The Authority recognises that safety concerns are a serious matter for CN and would be reluctant to substitute its own assessment of a safety risk for that of a network operator. However, in this case, it is the Authority's view that the safety risk identified by CN could have been addressed more appropriately and more proportionately without failing to provide multiple POCs to IDNOs. CN itself stated in its written response to the Statement of Case that, following the change to its policy in January 2007 it was "prepared to configure a connections strategy for an IDNO involving more than one LV point of connection so long as the IDNO agrees to provisions in the Connection Agreements that will control the risk of paralleling." By entering into agreements with IDNOs, the risks associated with inadvertent paralleling can be managed and processes to ensure operational safety agreed.
- 8.7 On the evidence before the Authority, it does not appear that other methods of dealing with the safety issue were adequately considered by CN following the amendment of SLC 4C on 1 December 2005. At the oral hearing, CN stated that, following the introduction of competition in the connections market in 2004, its policy provided a proportionate structural safeguard to the perceived safety risk at a time when its experience of working with IDNOs was limited. It went on to explain that it revised its policy as its knowledge of IDNOs' working practices increased. It is the Authority's view that, when SLC 4C was modified in December 2005, CN could have taken steps to become more familiar with the working practices of the IDNOs and to avoid introducing a difference in the POC solutions offered to its own connections businesses and those offered to IDNOs.
- 8.8 Had CN attempted to discuss alternative approaches with the IDNOs but been unable to agree satisfactory arrangements, this may have been taken into account by the Authority; however, the Authority has received no evidence that CN entered into such discussions with the IDNOs. Having regard to the fact that an alternative approach was subsequently adopted with the change in policy in January 2007, it is the Authority's view that, from 1 December 2005, the application by CN of its former policy was not a proportionate response to the perceived safety risk presented by only offering multiple POCs to IDNOs as the contractual solution CN later adopted would have addressed its concerns at that date. The Authority was not persuaded that CN's limited experience of IDNOs justified the failure to adopt that approach.
- 8.9 The fact that IDNOs were a relatively new phenomenon did not in itself justify a policy which discriminated against IDNOs and had the effect of increasing IDNOs' costs. Although there may be cases where IDNOs prefer a single HV connection to a multiple LV connection, it appears

from the complaint received by Ofgem in June 2006, which gave rise to the investigation, that this cannot always be said to be the case.

- 8.10 Although the Authority is aware that CN has changed its policy so as to remedy the breach, it does not agree that it would have been appropriate to drop the case against CN. The Authority takes seriously the development of competition within the connections market and is encouraged by the efforts which CN has made towards this end; nevertheless, past breaches of licence still need to be addressed.
- 8.11 The Authority therefore considers that CNE and CNW have breached SLC 4C(2)(a) and (c) by failing to provide IDNOs with multiple LV POCs where they did so for connections being provided by their own businesses during the period from 1 December 2005. The Authority accepts the evidence of CN that it revised its policy on 12 January 2007 and accordingly finds that the breach of 4C(2)(a) and (c) ended at that date.

Penalty

- 8.12 In deciding whether it is appropriate to impose a penalty, the Authority is required to take full account of the particular facts and circumstances of the contravention under consideration together with its published guidelines¹⁵.
- 8.13 A penalty is more likely to be imposed in cases where damage to the interests of consumers or others in the market can be clearly identified or where the imposition of a penalty would have deterrent effect. Although the Authority recognises the potential impact of CN's former policy on the business interests of IDNOs, it is difficult to demonstrate commercial damage as a result of the policy.
- 8.14 Further, Ofgem's investigation identified only three sites where CNE and CNW applied the former policy of providing only single POC to IDNOs where its own business was provided with multiple POC quotation.
- 8.15 Although the Authority does not accept that CN's former policy was a proportionate response to its safety concerns, the Authority has no grounds on which to believe that CN developed its policy for any reason other than to address those concerns. The Authority also notes that CNE and CNW co-operated fully in the investigation and that CN acted reasonably quickly in changing its policy to bring the contravention of the licence condition to an end, and that accordingly the breach is no longer ongoing.
- 8.16 The Authority does take the discriminatory treatment of new entrants very seriously. The Authority is aware that the DNOs have been discussing the most appropriate way forward in this area through the Electricity Networks Association. This decision should provide clarity on the Authority's position and hence secure compliance across the industry. Any future cases of non-compliance may therefore be expected to attract a significant penalty.

¹⁵ See "The Authority's statement of policy with respect to financial penalties", <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

8.17 Given the particular circumstances of this case, however, the Authority considers that it would not be appropriate to impose a penalty.