

**Case Closure Statement by the Gas and Electricity Markets Authority,  
following an investigation into alleged non-compliance by SP Distribution  
Limited with Standard Licence Condition 4C of their Electricity  
Distribution Licence**

**15 February 2008**

**Summary**

1. The Gas and Electricity Markets Authority ("the Authority") grants licences for the distribution of electricity. It 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>1</sup> and may impose a financial penalty in respect of a past or continuing contravention<sup>2</sup>.
2. SP Distribution Limited ("the Licensee") operates as a distribution network operator ("DNO") and holds an electricity distribution licence. Standard Licence Condition ("SLC") 4C(2)(a) and (c)<sup>3</sup> of the electricity distribution licence, which took effect in its current form on 1 December 2005, requires the Licensee not to discriminate in the provision of non-contestable connection services and information relating to non-contestable connections between any business of the Licensee and any business of any other person providing connections to the Licensee's distribution system.
3. On 15 June 2006, Ofgem received a complaint from an independent distribution network operator ("IDNO") ("the complainant") that the Licensee was engaging in practices which discriminated against it in relation to the provision of non-contestable connections information and services. Specifically, the complainant claimed that, in contrast with the Licensee's treatment of its affiliated connections business, Core Utility Solutions Limited ("Core"), it had: (i) delayed in providing to the complainant information relating to points of connection<sup>4</sup> ("POC"); (ii) failed to provide cost-reflective quotations for POC; (iii) refused to connect the complainant to multiple low voltage POC, and (iv) delayed in completing works.
4. Following receipt of that complaint, Ofgem commenced an investigation 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 Licensee in breach of SLC 4C(2)(a) and (c).
5. There is no evidence which would support a finding that the Licensee had infringed SLC 4C(2)(a) and (c) during the period of the investigation. Accordingly, Ofgem has decided to close its investigation into potential non-compliance of this condition by the Licensee.

**Background**

6. Ofgem has worked closely with the electricity industry to facilitate competition in the provision of connections. DNOs have been encouraged to

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<sup>1</sup> Section 25 of the Electricity Act 1989

<sup>2</sup> Section 27A of the Electricity Act 1989

<sup>3</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."

<sup>4</sup> The physical connection onto the existing distribution system.

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 1989 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 will retain the network connected to the main distribution network or may request the host DNO to adopt it. ICPs provide connections only 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 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 host DNO.
9. Ofgem's investigation focused on potential discrimination in the provision of non-contestable connections to an existing distribution system. The provision of 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. 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 the host DNO, such connection to be completed by the host DNO's own business, and a quotation for the same site by a competitor (an ICP or an IDNO).

## The Investigation

10. The investigation covered sites in respect of which the Licensee had received, and responded to, requests for POC information within the period from 1 December 2005<sup>8</sup> to 29 August 2006 ("the period of the investigation"). A further six sites were also considered in respect of which quotations were

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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> This is the date at which SLC 4C(2)(a) and (c) took effect in its present form.

requested outside the period, as they had been the subject of particular reference by the complainant. In order to assess whether the Licensee had discriminated against either ICPs and/or IDNOs, Ofgem's investigation focused only on those sites where POC information and services were sought by one or more ICPs and IDNOs as well as by Core.

11. The investigation focused on the issues which were raised by the complainant, namely:
  - the time taken to provide POC information to ICPs and IDNOs, as compared with the time taken to supply such information to Core;
  - the types of connection provided to ICPs and IDNOs as compared with the connection designs offered to Core (in particular, whether single high voltage ("HV") connections were provided to ICPs/IDNOs in respect of sites where multiple low voltage ("LV") connection points were provided to Core<sup>9</sup>);
  - the value of the quotations for POC provided to ICPs and IDNOs, as compared with those supplied to Core, and whether the quotations provided to ICPs and IDNOs appeared to be cost-reflective quotations; and
  - the time taken to complete connection works.
12. Formal requests for information pursuant to section 28 of the Electricity Act 1989 ("information requests") were served on the Licensee on 29 August 2006, 20 April 2007 and 20 June 2007.
13. In response to the information requests, the Licensee submitted evidence relating to 114 sites where it had received, and responded to, requests for POC quotations from one or more ICPs and IDNOs, as well as receiving a request from Core, during the period of the investigation. Given that requests for POC were submitted throughout the period of the investigation, different levels of progress had been made in relation to each development by the close of the period of the investigation<sup>10</sup>.

#### *Time taken to provide POC information*

14. The Licensee submitted evidence relating to 114 sites where it had received requests for POC quotations from one or more ICPs and IDNOs as well as receiving a request from Core. POC quotations were issued both to Core and to at least one ICP or IDNO in 104 of those 114 sites<sup>11</sup>.
15. In respect of most of those sites, POC information was provided either more promptly to IDNOs and ICPs submitting requests than to Core<sup>12</sup>, or later than a quotation was issued to Core but by a negligible margin<sup>13</sup>.

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<sup>9</sup> 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.

<sup>10</sup> For example, where requests for quotations were submitted to the Licensee on 1 July 2006, no information was available on the completion of works, as quotations were likely to have been issued by the Licensee very close to the end of the period of the investigation (29 August 2006).

<sup>11</sup> In respect of the remaining ten sites, the requests submitted by Core were rejected or otherwise failed to elicit a quotation from SPD.

<sup>12</sup> There were 32 sites where quotations were provided more quickly to IDNOs and ICPs than to Core.

<sup>13</sup> i.e. by three or fewer working days.

16. In respect of 9 of the 104 sites, POC quotations were provided more quickly to Core than to IDNOs and ICPs by a margin of more than three working days<sup>14</sup>. Having regard to the small number of sites where this occurred, in particular as compared with number where POC quotations were provided in a shorter time period to IDNOs and ICPs than to Core, it does not appear that the Licensee consistently discriminates in favour of Core by delaying in providing POC information.
17. There is therefore no evidence from which it could be concluded that the Licensee infringed SLC 4C (2)(a) and (c) in relation to the time taken to provide POC information to either IDNOs or ICPs during the period of the investigation.

#### *Type of connection provided*

18. The Licensee's policy on the provision of POCs to IDNOs during the period of the investigation stated that it would provide only one point of connection to an IDNO's network<sup>15</sup>. The Licensee has however confirmed<sup>16</sup> that it provides more than one connection providing such connections are adjacent (regarded as a single connection), or provides a single POC to several discrete (not interconnected) networks within one development. By offering two or more LV connections in these ways within one development, the Licensee avoids the provision of a more expensive, single HV POC.
19. Therefore, although the Licensee's policy during the period of the investigation provided for a specific approach to the connection of IDNO networks which differed from its approach to connecting networks which it intended to adopt as an asset, the policy was not discriminatory in effect.
20. The case team also compared the design of the quotations provided by the Licensee to IDNOs (and ICPs) and those provided to Core, in respect of the 66 sites for which requests for POC were received both from IDNOs and ICPs and from Core by the Licensee within the period of the investigation. The object of the comparison was to ascertain whether the Licensee discriminated in practice in the provision of POCs to ICPs and/or IDNOs, in favour of its own connections business. For each of the 66 sites, the type of POC offered to IDNOs and ICPs was consistent with the POC provided to Core where the loads requested were the same or very similar.
21. On this basis, there is no evidence from which it could be concluded that the Licensee has acted in breach of SLC 4C (2)(a) and (c) by providing POCs to IDNOs in a manner that has resulted in IDNOs being offered a more expensive, and therefore less favourable, POC solution than that provided to Core in respect of the same site.

#### *Value of POC quotations*

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<sup>14</sup> This does not include sites where a quotation was issued to Core in response to a request received after a quotation had already been provided to an IDNO or ICP for the same work. Such quotations would obviously be expected to be issued within a shorter time than the initial quote was provided to the IDNO/ICP, due to the preparation work having already been carried out. However, in those circumstances, the IDNO and/or ICP would not be disadvantaged by the shorter time taken by the Licensee to supply a quotation to Core as the IDNO and/or ICP would already have received a quotation.

<sup>15</sup> *Policy and Specification for the Interface with Independent Distribution Network Operators Installations*, SUB-02-013, Issue No.1 (September 2006), published by Scottish Power Energy Networks.

<sup>16</sup> Letter from SP Distribution Limited to Ofgem, 3 November 2006.

22. The complainant alleged that, in a number of cases, the value of the quotations for POC provided to IDNOs were not cost-reflective and were, as such, indicative of discrimination by the Licensee as compared with its treatment of Core.
23. The statutory quotations for connections, which were issued to IDNOs, were significantly higher than the POC quotations provided to Core. This is to be expected as the statutory quotations cover both contestable and non-contestable elements. Therefore, comparing statutory quotations issued to IDNOs and the POC quotations issued to Core does not amount to comparing 'like with like' and it would not be possible to conclude from such comparison whether discrepancies between the two types of quotation were attributable to discrimination by the Licensee or to other factors.
24. One matter on charging which the Authority considered appropriate to investigate related to high inspection fees imposed on a particular ICP; those fees could readily be compared with charges imposed on other ICPs or Core. On investigation, the higher fees were found to be attributable to the effect of the Licensee's regime for auditing and inspection of third party networks. This involves the application of a sliding scale for the number of inspections to which work carried out by third party is subject, dependent on the length of time that a third party has been operating in that area. The charges levied by the Licensee reflect its approved methodology and the regime reflects Ofgem's guidance on best practice. Accordingly, the higher charges imposed on the ICP were justified and were therefore not discriminatory.

#### *Time taken to complete works*

25. The case team also concluded that it is not possible in this case to ascertain whether the Licensee had discriminated against ICPs or IDNOs, in breach of SLC 4C(2)(a) and (c), by delaying in the completion of works, as alleged by the complainant. In the absence of a comparator for the period taken to reach completion in relation to a particular site (given that only one connections provider or IDNO will have contracted to carry out the works), it would not be possible to determine whether delay in the completion of works is an indicator of discrimination, as no comparison with the Licensee's treatment of Core in relation to the same site can be drawn.
26. As there can be many obstacles to completion which are site-specific, it is not possible to compare the time taken for works to be completed on two different sites. Moreover, delay in the completion of works may be attributable to omissions and failures on the part of the developer, ICP or IDNO, such as a failure to obtain the necessary permissions, rather than the DNO.
27. Even if comparison of two different sites were possible, the available evidence of the time taken by the Licensee to complete works on different projects was very limited, due to the small number of schemes which were initiated and reached completion during the period of the investigation.
28. Therefore, the question of whether the Licensee had discriminated against ICPs or IDNOs in favour of Core could not be addressed under SLC 4(2)(a) and (c) and, accordingly, this aspect of the investigation was not pursued.

#### **Conclusions**

29. Having taken full account of all of the evidence provided, there are no grounds on which it could be concluded that the Licensee had infringed SLC 4C(2)(a) and (c) during the period of the investigation. Accordingly, Ofgem has decided to close its investigation.
30. As stated, the Licensee submitted evidence in response to information requests issued by Ofgem, relating to 114 sites where it had responded to requests for POC quotations from one or more ICPs and IDNOs, as well as receiving a request from Core, during the nine month period of the investigation. Given the general level of activity in the Licensee's area, Ofgem is satisfied that there is no need to conduct a general review of competition in this area.