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Dear Lia

Consultation on cost recovery approaches for determinations

Thank you for the opportunity to respond to the above consultation. I am writing on behalf of our four distribution licence holding companies: Eastern Power Networks plc, London Power Networks plc, South Eastern Power Networks plc, and UK Power Networks (IDNO) Ltd.

We support the position that Ofgem can charge for determinations but only in specific cases (for example, where a party has frustrated the process). Further details in relation to your specific questions are provided in the accompanying appendix.

If you have any other questions, please do not hesitate to contact me on 01293 657853.

Yours sincerely

Paul Measday
Regulation Manager

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Appendix

CHAPTER: Two

Question 1: Should the circumstances listed below constitute the basis for recovering costs from a party?

Question 2: Are there other circumstances in which cost recovery should be considered?

Question 3: Is it appropriate for us to recover costs in the circumstances detailed in this chapter?

We believe that the circumstances listed in chapter 2 are broadly an appropriate basis for recovering costs, subject to the points documented below.

In respect of the need to seek a second round of external advice, we believe it is important to be precise about whose actions resulted in the need for this advice so that costs are recovered from the correct party. For example, during the review of the customer's submission the DNO identifies a point which needs explanation to Ofgem. In reviewing the DNO's explanation, Ofgem requires additional external advice. In this case the second round of advice is required due to the evidence being provided by the customer and not the DNO.

With regards to parties having not followed an appropriate process to resolve the complaint before it is referred to Ofgem, it is unclear how the following situation would be handled: the DNO is working to resolve the customer's complaint but the customer decides to escalate to Ofgem before the process has run its course and then "wins" the determination. Can costs for the determination then fall on the DNO? We do not believe this is an appropriate situation in which to recover costs from the DNO. In fact, it may be more appropriate to recover them from the party who raised the determination without following the correct escalation process.

Furthermore, we consider that it is not appropriate to recover costs that are already recovered in the year in question (or any later year), through Ofgem's charging of licensees. Such charging should be set out explicitly in Ofgem's annual report, so that anyone who has had to pay for a determination can be clear that it has not been charged for twice.

Question 4: Do you think the cost recovery approaches are appropriate given the circumstances set out in this chapter?

We are concerned that the flat rate per day for the late submission of information under the determination process is a penalty and not a cost recovery measure. We understand how the £200 per day (the average cost for a member of Ofgem staff for a day) was arrived at but cannot see how this is then cost reflective, as the staff are not working on the determination and incurring these costs if the submission is late. We believe that cost recovery should be restricted to actual additional costs incurred only.

In respect of costs for external advice, we do not understand the justification for the uncapped cost recovery on large businesses, larger industry participants and network licensees. The "depth of the pocket" of the party should not be a bearing on the scale of the costs that party should be liable for.

In the recent determination regarding rising and lateral mains, the provision of such advice was arguably for the benefit of the industry as a whole and accordingly such costs should be recovered through the licence fee paid to Ofgem.

We support the concept of a flat fee for cost recovery in determinations which should have been resolved by the parties before referral to Ofgem. However, our point in respect of the process that was followed before seeking a determination (see our feedback on questions 1 to 3 above) needs to be considered. Furthermore, in respect of flat fee recovery of costs, we are unclear how the quoted costs have been arrived at – they do not correlate back to those in Section 1 as stated in the footnote.

Finally, it is unclear if parties can be charged a combination of flat rate, standard rate and extra external advice rate or whether these categories are mutually exclusive.

CHAPTER: Three

Question 1: Do the factors set out in this chapter fairly assess when we should recover costs?

Question 2: Are there any additional factors that should be taken into account?

We believe that the factors set out are fair but are concerned about the lack of clarity over a definition of a vulnerable customer and the potential for claims from customers that Ofgem is not fairly applying the term to them. When defining this term, care should be taken over the use of the word “vulnerable” so as to avoid confusion in respect of the terminology in SLC 10 and the priority services register.

Question 3: Are the implementation procedures comprehensive?

Our only concern regarding the procedures you outlined is in respect of paragraph 3.19 where it is unclear whether a party who did not raise the determination could be liable for costs even if they had followed the correct processes to resolve the complaint (see our feedback on chapter 2).

Question 4: We welcome views regarding additional procedures that would facilitate the determination process.

We believe that the following points regarding a cost recovery process for determinations also need to be taken into account:

- Ofgem should pre-warn parties that they are likely to be incurring costs to give them an opportunity to recover the situation before costs are incurred.
- There should be a maximum time after the determination is closed where a cost recovery claim can be started by Ofgem.

UK Power Networks
31 January 2011