

## **Details of Respondents**

Energy Power Resources Limited (“EPRL”) is a renewable energy generator which owns and operates five biomass power stations (113MWs in total) in the UK, commissioned between 1992 and 2001.

CLP Envirogas Limited (“CLP”) is a related entity, generating renewable energy from landfill gas, operating from 25 sites across the UK with around 65MWs of installed capacity. CLP’s sites have been developed between 1998 and 2011.

Between EPRL and CLP there are over 30 Connection and/or Use of System Agreements and close to £10m has been paid to DNOs in respect of capital connections. The five EPRL sites will be charged under EDCM arrangements from 1<sup>st</sup> April 2012 (generally receiving GDUoS credits based upon the latest illustrative charges) and the vast majority of CLP’s sites have received GDUoS credits under CDCM arrangements since 1<sup>st</sup> April 2010.

## **Response**

### ***Principles and circumstances for refunding pre-2005 DGs***

1. Is our description and interpretation of historical charging arrangements (including connection and use of system agreements, charging statements, determinations, regulatory precedents) complete and accurate? If not, please provide supporting evidence setting out any issues that you identify.

Having reviewed Connection (and Use of System) Agreements in respect of close to 30 projects, which agreements were entered into between 1998 and 2005 across a variety of DNO regions, we agree with Ofgem’s description and interpretation of historical charging arrangements.

2. Do you agree with our rationale for only allowing refunds for instances of double payment to be funded through the price control?

Yes.

3. Are there any other instances (beyond that of double payment) where refunds should be funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.

In circumstances where a pre-2005 DG paid for capitalised O&M within an overall connection cost and that DG is to be awarded a GDUoS credit (pursuant to either the CDCM or the EDCM regime), we believe that the full capitalised O&M payment should be refunded to the DG, and not just the element relating to the unexpired O&M period. This is on the basis that the GDUoS credit indicates that the DG is in overall terms supporting the network and facilitating the deferral of expenditure to the benefit of all customers and this is likely to have been the case since the date of the original connection.

On this basis the original capitalised O&M element was inappropriate, and whilst this is a matter for the DNO and DG to resolve, it is likely that the DG has been over-charged and other customers under charged throughout this period. Accordingly we believe it appropriate for the full amount to be refunded (at April 2012 value) and recovered through the price control.

Such a refund is not attempting to apply the CDCM and EDCM charging methodologies retrospectively (to do so would require a refund greater, rather than equivalent to, the original payment); it is merely a reflection of inappropriate historic charging for capital connections and cross-subsidy of customers by DGs.

Further, under these proposals, those DGs entitled to GDUoS credits under EDCM have been penalised by the delayed implementation, equivalent to two years' capitalised O&M charges as the unexpired period of previously paid capitalised O&M charges has reduced between April 2010 and April 2012 plus the value of GDUoS credits withheld in this period. Refunding the full value of capitalised O&M charges in these circumstances is not only justified, it also removes this further penalty and will stop DNOs benefiting from further delays.

4. Are there any other circumstances beyond capitalised O&M payments that may give rise to instances of double payment that should be reimbursed and funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.

No further instances of double payments of which we are aware.

However, pre-2005 connection costs may have included full payments for reinforcement beyond sole-use assets. Under the post-2005 "shallow connection" regime connection costs only included pro-rata payments for non-sole-user assets where there was shared benefit with other network users. From this perspective, there is an argument for a refund as pre-2005 connections paid in full for assets which provided a shared benefit. Whilst this is not a double payment, the point being it should not have been paid once in its entirety. In 3.50 Ofgem states: ".....there is no real case of disadvantage for pre-2005 generators, and no double payment...." The second point is right, the first point is wrong.

5. Do you agree with our proposed approach to calculating refunds for unexpired capitalised O&M payments? Please suggest any improvements to the approach outlined.

On the basis that the information is available, the proposed approach is sensible, although please note the response to question 3 above. However, we believe that the worked example set out in paragraph 3.36 understates the resulting refund.

We believe that a £100,000 upfront capitalised O&M charge at a 5% discount rate is equivalent to the following annual charges:

Year	Annual Charge
1	10,500
2	11,025
3	11,576
4	12,155
5	12,763
6	13,401
7	14,071
8	14,775
9	15,513
10	16,289

At the end of year 5, the unexpired amount in respect of the remaining five years equates to £74,049, not £56,069 as set out in paragraph 3.36. Assuming a refund is paid at the end of year 5, this should amount to £67,005 (5 x £13,401), the current un-indexed value of the remaining charges.

We believe that the unexpired term should be calculated at 31<sup>st</sup> March 2010 for all DGs (EDCM and CDCM) but inflated to reflect payment at 1<sup>st</sup> April 2012 (see below).

6. Where DNOs have entered into agreements that are/were inconsistent with regulatory practice (eg giving indefinite rights to use of system without further charge or entering into contracts that cannot be freely modified) do you agree that any compensation required by virtue of these contracts should not be funded through the price control?

We agree, although this is more a matter for the DNOs to comment.

### ***Implementation arrangements***

1. In general are our proposals for implementing the refund arrangements considered by this consultation appropriate? Is the level of detail we have provided sufficient to make our proposals clear and workable? Please outline any areas where you think more clarity/detail is required.

We believe that the implementation proposals are appropriate and in sufficient detail given that they are intended to provide guidelines and principles.

One potential area of concern is delays caused by the requirement to ensure a consistent application of the principles. Given the intention for refunds to be paid by 1<sup>st</sup> April 2012, it would be inappropriate for commercial discussions and agreements between DGs and DNOs to be delayed on the basis that all agreements need to be concluded together. Clarification should be provided on this within the guidance.

2. In the section on “Consistent application of principles”, have we appropriately identified who is eligible for a refund? Do we need to provide any further areas of clarification? Which of the two options outlined for mixed sites (demand and generation) are appropriate?

The consultation adequately covers who is eligible and when a refund would be appropriate.

Without understanding the detail, we are unable to comment on the appropriate option for demand customers with on-site generation, although at a high level we would assume option 1 is most appropriate. We further assume that O&M costs for the (predominant) demand elements of such sites would have been covered by ongoing DNO use of system charges, so any capitalised element in the original capital connection cost would by default be related to the generation component. If this is not the case, there has been an element of double charging between the original capitalised O&M amount and the ongoing import UoS charges.

3. Are the evidence requirements set out in the chapter as necessary to support a case for refunding appropriate? Are they sufficiently robust to prevent ineligible claims for compensation being recovered through the price control? Are there additional or alternative assumptions that could be used to for supporting a case for a refund?

It is unlikely that actual bills or receipts will be available given the age of most of these agreements. We believe that a signed Connection Agreement (which often required payment in advance of any works) and the fact that a site is connected and exporting should be sufficient evidence to support the amount of the original payment.

The amount and term of capitalised O&M should be based upon one or a combination of:

- (i) The relevant provisions of the Connection Agreement;
- (ii) Connection Offer;
- (iii) Custom and practice at that time based upon equivalent contemporaneous Connection Agreements; and
- (iv) DNO records.

**4. Is our approach to due process appropriate? Are there additional or alternative steps that should be incorporated?**

The suggested approach is appropriate although based upon the process to date, the approximate six month window between Ofgem guidance being issued (summer 2011) and 1<sup>st</sup> April 2012 looks challenging. DNOs will need to focus and be encouraged to engage with customers. We would suggest that engaging now, before the guidance is issued would be appropriate, particularly given CDCM DGs are already being charged GDUoS.

In this respect it is imperative that DNOs start collating data immediately and do not wait for the Ofgem guidance to be agreed and issued. To do otherwise will likely cause a significant and unnecessary delay before meaningful discussions can start once the guidance is issued.

**5. We welcome views on how refunds should be paid and the details of implementation. In particular, should it be a one-off payment, a phased payment or a hybrid of the two? If a refund is not a one-off payment, over what period should it be paid? Do you agree with our proposals for refunds that are not agreed by 1 April 2012?**

Refunds should be paid in full on 1<sup>st</sup> April 2012. Capital connection costs were usually paid up-front (funded by equity and/or debt providers) and we see little reason to delay payment of agreed refunds.

As stated above, in respect DGs which will receive negative GDUoS credits under the EDCM methodology, we believe that refunds should be calculated as at 1<sup>st</sup> April 2010, to prevent those DGs being penalised for the late implementation. This also prevents cross-subsidy issues between April 2010 and March 2012. Notwithstanding this, in such circumstances we believe there is a strong case for refunding the full capitalised O&M payment incorporated in the connection cost.

For DGs which will receive positive GDUoS charges under EDCM, refunds should be calculated as at 1<sup>st</sup> April 2012, as there is no equivalent penalty for the delay and the original capitalised O&M cost is relevant for this period.

**6. Do you agree with the mechanics for allowing DNOs to recover refunds through the price control?**

We agree.

7. Do you agree with our proposals for dispute resolution where DNOs and DGs cannot reach a settlement by 1 April 2012? How can we encourage DNOs and DGs to reach a timely settlement? In particular, should use of system charges in respect of the DGs be logged up and back-billed once a refund has been settled on? If these DGs do not have these charges back-billed, how should these charges be recovered by the DNO from other customers?

A determination by Ofgem for dispute resolution is a sensible approach.

We are concerned that GDUoS credits may be withheld from April 2012 due to refunds not being agreed, this would penalise DGs twice in cash terms, potentially for the failure of a DNO to positively engage, with little incentive to resolve. This would clearly be unfair and should be avoided.