Charges for pre-2005 distributed generators' use of DNOs' distribution systems – proposed guidance (58/11)
Response by SP Energy Networks

Introduction

SP Energy Networks (SPEN) welcomes the opportunity to comment on the issues set out in this paper.

Our detailed comments on the individual questions are set out below.

CHAPTER: Three

Question 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.*

In general terms we agree with the description and interpretation of the historical charging arrangements set out in the proposed guidance paper. Whilst the contractual relationship which SPD and SPM have with their respective pre 2005 DG customers is generally reflective of these arrangements we would ask Ofgem to note the small number of circumstances in which parties (contracted prior to 2000) were provided with use of system rights without explicit reference to export charges. To the best of our understanding these contractual rights were granted, in some cases before the Second World War, in a way that was consistent with industry practice at the time. This point has been raised by us in previous correspondence. The guidance should therefore take this into account.

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

For the reasons set out elsewhere in this response we do not agree with the rationale that refunds should only be paid in those instances where DGs would otherwise be paying twice for the provision of operation and maintenance services.

Question 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.*

The DNO should also be refunded in circumstances where there is no evidence to prove use of system rights granted were inconsistent with industry practice at the time of the original connection. We do not consider it appropriate to penalise DNOs for rights granted to connected customers in good faith in accordance with industry practice at the time.

Question 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.*

In addition to our response to Question 3 above, our letter of 1st September 2010 highlighted our concern that refunds to EHV demand customers have not been considered. We believe there are eligible EHV demand customers who have also paid capitalised O&M. The proposals appear to discriminate against this group of customers.

Question 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 and reasons for these.*

We are comfortable with the proposed approach to calculating refunds for unexpired capitalised O&M payments. We consider, however, that the average Bank of England base rate for the period is an appropriate substitute where information regarding the discount rate upon which the original capitalised payment was based is unavailable.

Question 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 believe there to be no instances where we have entered into agreements that were inconsistent with the regulatory practice in force at the time. Accordingly we consider that all refunds which may require to be provided by SPD/SPM should be funded through the price control.

CHAPTER: Four

Question 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 further detail is necessary, particularly in the following areas:

- the treatment of DG where it is believed that a refund payment may be due, but we consider there to be insufficient supporting evidence available from either party to support the claim; and
- the minimum criteria upon which evidence will be assessed to ensure funding is approved.

We would welcome further clarity on such circumstances, should they occur.

We would also ask that Ofgem note the potential complexities associated with this process. We believe similarities exist with the difficulties experienced in managing the run off arrangements for BETTA.

Question 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?*

Whilst the proposals recognise pre 2005 demand customers with on-site generation, we would reiterate our concerns that refunds to EHV demand only customers are not considered (see response to Question 4 above). We believe the EDCM will result in double charging for this category of customers and would welcome Ofgem's views on how potential allegations of discrimination can be avoided when DNOs are seen to be applying a policy of providing refunds to one category of customers and none to others. We do not believe either Option caters for EHV demand only customers.

Question 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 for supporting a case for a refund*?

We agree that the DNO must record clear evidence for each instance its pays a refund for which recovery will be sought through the price control. Whilst we are broadly in agreement with the forms of evidence identified, we are unclear as to the minimum criteria upon which evidence will be assessed to ensure funding is approved, e.g. where, for a given connection, evidence of DNO policy/arrangements are known but details of the actual charges paid are unclear. In addition, it is unclear how a DNO should progress a given claim where a DG is believed to be eligible for a refund, but neither party is able to provide supporting evidence.

We consider, therefore, that greater detail regarding the minimum evidence requirements for managing the refund process is necessary to ensure that refund cases are supported. Without this clarity DNOs are exposed to claims not recoverable through the price control.

We would welcome further clarity from Ofgem on the points raised.

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

We agree the process must ensure that DGs are treated consistently and believe the proposed process as set out in the paper will deliver this. We do not believe there are any

additional or alternative steps that should be incorporated other than those already stated in our responses to the above questions.

Question 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 time period should it be paid? Do you agree with our proposals for refunds that are not agreed by 1 April 2012?*

We consider it appropriate that refunds be made as one-off payments. Where refunds are not paid until after 1 April 2012, any interest accrued on the refund should be calculated using the Bank of England base rate rather than the DNO's allowed cost of capital. We consider this to be more appropriate and representative of the time value of money for a temporary cashflow.

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

We agree that DNOs should be able to recover refunds through the price control, however it remains unclear as to how any eligible DG party that does not meet the minimum evidence requirements set out in the guidelines will be treated.

We believe further clarity needs to be provided by Ofgem as to what constitutes a 'robust case' for refunding DGs. We do not consider it appropriate that refunds are made without certainty that funding will be provided through the price control.

We also believe that additional costs incurred by DNOs as part of the due process should be funded through the price control, including costs associated with disputes.

Question 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 DG 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?*

We do not agree with the view that the implementation of EDCM charges for pre-2005 DGs should be delayed until such times as disputes are resolved. As the majority of pre-2005 DGs will be SVA registered, the more common contractual arrangements in place for the recovery of use of system charges will be with suppliers through DCUSA and not via a direct arrangement with the DG party. We consider, therefore, there to be little basis for DNOs delaying the billing of use of system charges and consider charges should be levied, regardless of the status of disputes, in line with the introduction of EDCM on 1st April 2012.

We do not believe CVA registered DG parties should be treated any differently.