

Competition Notice	Electricity North West Limited (ENWL) – 22 July 2011
Date of Determination	21 November 2011

Background

1. Under the terms of its Electricity Distribution Licence (Licence) Standard Licence Condition 14.16 (SLC 14.16) ENWL must set its Connection Charges at a level that will enable it to recover:
 - the appropriate proportion of the costs directly or indirectly incurred in carrying out works for the extension or reinforcement of its Distribution System, or for the provision and installation, maintenance, repair and replacement, or (as the case may be) removal following disconnection, of any electric lines or electrical plant.
 - such a margin as it is allowed to charge under Charge Restriction Condition 12 (CRC 12).
2. In accordance with the requirements of CRC 12 ENWL gave the Authority a Regulated Margin Notice on 28 July 2010. This notice was accepted by the Authority and entitled ENWL to charge a Regulated Margin at four per cent in relation to all of its Connection Activities in the Local Connections Market when it makes an offer of connection terms within each of the Relevant Market Segments (RMSs).¹
3. On 22 July 2011, in accordance with the requirements of CRC 12, ENWL gave the Authority a Competition Notice relating to all of the RMSs. The Competition Notice stated that ENWL considered both the Legal Requirements Test and the Competition Test (the Tests) to be satisfied in respect of all of the RMSs, and it sought Determinations from the Authority that ENWL be entitled to charge an Unregulated Margin in relation to each of the RMSs.
4. Upon receipt of the Competition Notice and before making this Determination, the Authority undertook a consultation exercise with ENWL and other persons and has considered their views.
5. The Authority is required to determine whether an Unregulated Margin should be allowed by way of separate Determinations in respect of each RMS. The Authority is required, in each Determination, to state whether the Legal Requirements Test and the Competition Test have been satisfied.² The Authority is also required, if it finds that one or both of the Tests have not been satisfied, to include reasons for its conclusion in the Determination.
6. This is a regulatory decision and does not amount to or imply, and should not be interpreted as implying any particular view as to the application or interpretation of the Competition Act 1998 and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union, or any other law, either prior to this regulatory decision or once this regulatory decision is in place.

¹ Connection Activities as defined in CRC 12 – means any and all of such activities comprising or associated with the provision, modification, or retention of a connection to ENWL's distribution system as may, in accordance with the ENWL's Connection Charging Statement, be undertaken by persons other than the ENWL, where those activities are fully funded by the Customer. Note that, for the avoidance of doubt, the delineation of an RMS for these purposes is without prejudice to any assessment of a relevant market which may separately be undertaken for competition law or other purposes.

² As set out in CRC 12.

The Authority's Determinations

RMS where both the Competition Test and the Legal Requirements Test have been satisfied

7. In respect of the RMS listed below, the Authority considers that both the Legal Requirements Test and the Competition Test have been satisfied.
 - metered demand Extra high voltage connections
 - metered distributed generation high voltage / extra high voltage connections
 - unmetered private finance initiatives work
8. ***In regards to those RMSs***, the Authority accordingly further Determines that from the date of this Determination ENWL shall be entitled (but not obliged) to charge an Unregulated Margin in Connection Charges in relation to its Connection Activities.
9. In accordance with CRC 12, Part J, by 30 June 2012 and 30 June in each subsequent Regulatory Year, ENWL shall submit to the Authority reports relating to each of the above RMS explaining:
 - the extent to which the evidence relied upon by ENWL to establish that the Tests were satisfied is still accurate, and
 - where appropriate, any change that has occurred in the RMS since the date of this Determination or since its last report in this regard.
10. The Authority's reasons for concluding that both of the Tests have been met in these RMSs are set out in the Authority's 'The reasons for the Authority's decision on ENWL's 22 July 2011 application to charge an unregulated margin on certain contestable connections services' document which can be found on the Ofgem website.

RMS where only the Legal Requirements Test has been satisfied

11. ***In respect of the RMSs listed below***, in accordance with the provisions of CRC 12, the Authority hereby Determines that whilst the requirements of the Legal Requirements Test have been satisfied, those of the Competition Test have not.
 - metered demand low voltage
 - metered demand high voltage
 - metered demand high voltage and extra high voltage
 - metered distributed generation low voltage
 - unmetered Local Authority
 - unmetered other
12. The Authority's reasons for concluding that the requirements of the Competition Test have not been met in relation to the above RMSs are set out in the Authority's

'The reasons for the Authority's decision on ENWL's 22 July 2011 application to charge an unregulated margin on certain contestable connections services' document which can be found on the Ofgem website.

13. In respect of the above RMSs, accordingly and as provided for by CRC 12, given that ENWL has already given the Authority a Regulated Margin Notice (referred to at paragraph 2 above), the Authority further Determines that from the date of this Determination ENWL may continue to charge the Regulated Margin of four per cent (but no more than that Margin) in its Connection Charges in relation to its Connection Activities.
14. Further, in accordance with the provisions of CRC 12, at any time after four months from the date of this Determination ENWL may give the Authority a Notice stating that it considers that the Competition Test has come to be satisfied in respect of any of the above RMSs. Any such Notice must state the reasons for ENWL believing that that Competition Test is now satisfied and the provisions of CRC 12 in relation to such further Notice shall apply.
15. This Determination and the Decision Document constitute publication of the Notices required of the Authority by section 49A of the Act of the reasons for the Authority's Determination.



Rachel Fletcher
Acting, Senior Partner, Smarter Grids and Governance: Distribution
Duly authorised on behalf of the Gas and Electricity Markets Authority
21 November 2011