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Dear Mr Veaney

Response to consultation on WPD's competition notice

We write in response to your Consultation Document regarding WPD's competition notice.

Power On Connections Ltd is one of the most active ICP's in the Country. We engage in no other commercial activity but that of Competition in Connections. We therefore feel our feedback can be specific to our experience within the WPD area.

We believe WPD are one of the most progressive in terms of competition in connections. However there are still a number of areas that need to be addressed before we feel the market is truly open to competition.

Yours Faithfully

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"the people behind the power"

Electricity Distribution Price Control Review

Initial Proposals – Incentives and Obligations

Ref:93/09

Chapter Ten Responses

Question 1: Do you agree with the scope, timeframes and level of penalties proposed for the guaranteed standards regime?

The scope and timeframes associated with the proposed guaranteed standards regime, would appear on the whole to cover the main aspects associated with each type of project and the timescales would appear realistic and in all cases achievable by the DNO's.

What customers actually want is the actual relevant work completed, within a timescale which appears acceptable and achievable. If customers obtain this, then on the whole satisfaction will be achieved. The level of proposed penalty payments against each individual activity will not necessarily fully compensate customers for the loss in time, effort and more importantly the consequential delay if a quote/work is not forthcoming.

Therefore the penalties should not be reduced from those proposed. Realistically these penalty payments recompense the customer for poor service from the DNO and help to focus the DNO on achieving the timescale.

There are currently no penalties applied to failures by the DNO's and therefore this proposal is certainly a step in the right direction. On balance the penalties would appear fair and reasonable in comparison to the work involved from the DNO's and impact on the customer from poor performance.

We would also draw your attention to the requirement for the DNO to implement similar standards for CinC activities under S15 activities and this is commented upon further in response to Question 7.

Question 2: Should we develop a mechanism to ramp up the level of the proposed penalty payments?

The proposed penalty payments have no cut off point and therefore one would expect the DNO's to be focused on resolving a failure against a standard at the earliest opportunity to mitigate their exposure to penalty payments. As such there should be no need to develop a mechanism to ramp up the level of penalty payments.

However, one would also need to consider the DNO decision making process on resource allocation with the proposed penalties scheme. For example, if a DNO was already failing on a particular scheme and needed one man day of work to resolve the issue but also had another scheme that was just within limits if it committed the same resource to it for the same day. Which scheme would the DNO prioritise. The penalties would be the same whichever one it decided but only one scheme would be seen to be failing rather than two and as such this could influence their decision to the detriment of the original customer.

On balance it is our belief, these nuances will be present in all types of schemes and devising a ramp up mechanism might confuse the situation further. Probably more importantly would be for the DNO's to report on not only the number of failures but also the Maximum and average length of such failures and associated values of payments.

Question 3: Should we cap the penalties that apply to each of the proposed standards?

No, for the reasons outlined in our response to question 2, it would not be appropriate to cap such penalties.

Also the DNO has it within its power to avoid such penalties and thus should constantly have the pressure applied to resolve the failure. Capping a penalty will remove this pressure.

Question 4: Should we apply in aggregate a 90 per cent performance target to apply to the standards and measure this on a quarterly basis?

Ofgem has often sought to apply a 90% per cent performance target against the DNO's and whilst this may be beneficial in benchmarking DNO's performances and ensure the DNO does not consistently fail this measure. It is worth noting that this gives DNO's the opportunity to legitimately fail 10% of all of its activities. A company that's product failed 1 in every 10 would not be in business for very long.

Therefore whilst we accept this as a bench mark to be utilized on a quarterly basis to determine if Ofgem will continue to allow the DNO to make margin, we do feel this performance figure should rise over time.

Question 5: Do you agree with our market segmentation strategy for metered and unmetered connections? Are there any segments other than those identified that should be exempt from earning a margin?

On the whole the market segmentation would appear appropriate. However section 10.40 reflects on allowing unregulated margin for particular segments. To avoid DNO's focusing on particular areas, we do not believe it would be appropriate for a DNO to be able to make unregulated margin in one particular segment that has deemed to be classed as a potential competitive segment if it is failing to achieve all aspects of the competition tests in another market segment that is deemed to be a potential competitive segment.

Question 6: What are your views on the proposed level of regulated margin and is there any further evidence we should take into account in setting the level of regulated margin?

We believe that it is always difficult to establish what is an acceptable level of margin to be applied and in fact the easiest way, would be for full competition to be available and let customers determine the value of such margin against the added benefits of service and delivery for all competitors.

Therefore it is very important that Ofgem drives the DNO's actions and motives to allow full competition to occur before taking the next step and allowing unregulated margin.

Question 7: Do you have any comments on the scope of the proposed competition tests?

We believe this area to be one of the fundamental parts to the proposals and how Ofgem uses this to judge competition is vital to the success of the proposals.

In the past the ICP's have faced an uphill struggle to get the DNO's to consider ways of improving competition. Even those who have allowed competition to occur within their areas, have only done so, once Ofgem/Industry representative have spent years discussing, persuading and slowly obtaining consensus from all DNO's on particular areas and a national framework developed. Individual DNO's have never been incentivised to show their commitment to CinC.

For DNO's to show a true desire for competition to succeed they need to demonstrate they have taken every step they could possibly to allow competition.

An example of this is partially funded schemes, most DNO's refuse to allow this to occur as there is no national agreement on the area. Yet there is evidence that shows when it has suited the DNO this activity has been permitted to be competitive. Therefore individual DNO's will now be able to make the case for how they are breaking the barriers of competition without the shackles of consensus from all DNO's.

Ofgem need to ensure there is adequate weighting on this commitment and that DNO's who have resisted change and competitive activity at every stage must not be allowed the benefit of margin without first changing their complete outlook on competition. These changes will be dynamic as further barriers are broken down by proactive DNO's and Ofgem must always monitor against the "Best in Class".

As it has been determined that Section 15 CinC performance can not have the same penalties applied to them on a mandatory basis. It is imperative that

Ofgem views a DNO's commitment to voluntarily apply the same criteria to CinC activities as a fundamental requirement to the DNO's commitment to competition.

We would also draw Ofgem's attention to the problems with 2nd comer issues under CinC and again for Ofgem to judge a DNO's commitment to competition through the voluntary individual commitment to apply the 2nd comer rule to CinC projects.

Question 8: We invite views on the relative weighting of market share compared to the price and service tests? What level of lost market share would appropriate to deem the market competitive?

When considering, the percentage of lost market share that would be appropriate to deem the market competitive, it is worth considering the Competition Commission's position on this matter and we would think it is entirely appropriate to have this position published.

From an ICP perspective we believe there should be a diminishing position on market share and to gain our understanding of this we would refer to the three main focus points of the Competition Commission;

- In mergers - when larger companies will gain more than 25% market share and where a merger appears likely to lead to a substantial lessening of competition in one or more markets in the UK.
- In markets - when it appears that competition may be being prevented, distorted or restricted in a particular market.
- In regulated sectors where aspects of the regulatory system may not be operating effectively.

Currently even in "competitive" DNO areas, the DNO still appears to maintain vast percentages of the market. Yet where companies, in a truly competitive market have a larger share of say 30- 35%, the Competition Commission would seek to assess this position and in mergers anything above 25% would be reviewed.

In the initial work within the ECSG figures of 70% market share were suggested, our view is that this figure is far too high and leaves the DNO with still a monopolistic position in terms of market share. It should also be noted that the DNO has the ability to determine technical requirements for its network at the same time as deciding who procurement contract will be let to. This presents the DNO with all the purchasing power and the Independent's with little scope for obtaining prices of a similar nature for manufacturer's plant and equipment as to that of the DNO.

These factors need to be considered in determining a % loss of market share the DNO would have incurred to be able to show a competitive market place is available.

Ofgem should consider a starting % loss of market share to allow the DNO to show competition has begun and then this % of lost market share should increase over time to a level where competition is truly established and therefore allow DNO's to obtain an unregulated margin. It is our view that a DNO should not be allowed to make an unregulated margin where they have more than 50% of a particular market.

Whilst there may be certain geographical aspects in the remote areas of the UK where it will be difficult for competition to be truly established, Ofgem should be careful not to allow DNO's within the mainstream of the UK to associate their position with this situation.

Where DNO's show that their market share is high due to a lack of competition and geographical location, then customers should not be subjected to increased prices from what is clearly a monopoly DNO, even if the segment in general is determined as competitive.

Ofgem must be very careful, if DNO's were to suggest that competition is not flourishing due to the performance of the DNO. This clearly would be at odds with the information and data that Ofgem has obtained through the past decades and in the number of complaints associated with connection activities.

Each of the questions asked by this consultation is set out in the template below. **Note that an editable version of this response template is available on our website as an associated document to this consultation.** If you do not wish to use our response template, please ensure that you indicate the RMS and DSA to which your experiences relate.

When considering your responses to these questions, please consider your experiences, the actions that WPD has undertaken and the actions that you consider it could reasonably undertake.

Please check the RMS and DSAs that are relevant to you in the table below.

Relevant Market Segment (RMS)	WPD Competition Notice/DSA			
	South West	South Wales	East Midlands	West Midlands
1. Metered low voltage work (LV)	☒	☒	☒	☒
2. Metered high voltage work (HV)	☒	☒	☒	☒
3. Metered HV and Extra High Voltage (EHV) work	☒	☒	☒	☒
4. Metered EHV work and above	☒	☒	☒	☒
5. Distributed Generation (DG) LV work	☒	☒	☒	☒
6. DG HV and EHV work	☒	☒	☒	☒
7. Unmetered Local Authority (LA) work	☐	☐	☐	☐
8. Unmetered Private Finance Initiative (PFI) work	☐	☐	☐	☐
9. Unmetered Other work	☐	☐	☐	☐

When answering the questions below, please check the RMS(s) and DSA(s) that are relevant to your response.

Chapter Two

Question	RMS(s)	DSA(s)	Response
One: Are customers aware that competitive alternatives exist?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☒ West ☒ Mids ☐	SW & SW: Prior to us making contact with customers they are not really aware of competition and so we feel the majority of cases it is left to us as an ICP to promote CinC. However WPD have taken steps to improve their website and guidance notes on the CinC process. Mids East & West: As we have been present in this area for 10 years now on the whole customers who are likely to undertake more than one connection are now aware of CinC. One offs are still unaware but as above the website does at least now guide people through the process.
Two: Do customers have effective choice (i.e. are customers easily able to seek alternative quotations)?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☒ West ☒ Mids ☐	Whilst WPD website does highlight the process to find alternatives the website has a link to the Lloyds NERS website. However one issue here (but exists for all DNO's in a similar vein) is when the customer searches NERS list they are faced with contact details for contractors who have NERS for accreditation for working with the DNO as well as true ICP's and so customers may not be able to easily identify true ICP's who are active in the particular area. One suggestion would be that seeing WPD's application for each area they have listed anotised groups of ICP's who have accepted connections in their areas for different RMS's and maybe this list could specifically list those who are active in WPD without give market share information. So when a customer wanted to go for alternatives they would know of all ICP's who are active in the area and as such not waste time trawling through lists that are not relevant to the works etc.
Three: Does WPD take appropriate measures to ensure that customers are	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒	S West ☒ S Wales ☒	The website is a good link now but we still think the idea above would help.

aware of the competitive alternatives available to them?	☐ Metered EHV+ ☒ DG LV ☒ DG HV/EHV ☐ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other	☐ East Mids ☒ West Mids	
Four: Are quotations provided by WPD clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?	☒ Metered LV ☒ Metered HV ☒ Metered HV/EHV ☐ Metered EHV+ ☒ DG LV ☒ DG HV/EHV ☐ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other	☒ S West ☒ S Wales ☒ East Mids ☒ West Mids	Now WPD are beginning to breakdown the quotations further then both types of customers i.e. end customers and also ICP's/IDNO's have greater information to be able to understand the costs clear. However an ICP we believe there are marked differences between the overall technical information provided on non-contestable (NC) quotes between the various WPD DNO areas. S Wales provides the least amount of technical information and we find there is a lot of backward and forward discussion between ourselves and WPD to fully understand the offer. S West provides slightly more information and so the clarification is less but still required on a number of schemes. The Midlands areas traditionally provided greater information and so the number of times clarification is required is limited. We would therefore urge WPD to implement the same level of information across all of its areas. A separate issue is that we are still not able to have a S16 offer just accepted on the NC's only either by the client or passed to their preferred ICP for acceptance. WPD have stated they are working towards this and we are pleased with this approach as we believe it will speed up the process once we can accept the NC's only. WPD have also stated that the same designers now deal with both and so a delay should not be incurred when we want to accept the NC part as a straight NC offer should be sent out without delay. Our current experience of these cases is we still end up waiting close to the GSOP timescale. This is natural

			instinct as when under pressure with two conflicting obligations the one with the closest GSOP timescale is likely to be dealt with first and so the suggested quick turnaround of these offers is theoretically possible in practice it does not occur. The way to resolve this is the implementation of S16 offers being able to be accepted in part or whole.
Five: Have customers benefitted from competition? Have they seen improvements in WPD's price or service quality or have they been able to source a superior service or better price from WPD's competitors?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☒ West ☒ Mids ☒	Customers have begun to see the benefits of competition however as WPD's own stats show they maintain the vast majority of the market share. We cannot see how customers or Ofgem would be able to believe a market is truly open to competition when a previous monopoly still now holds 99% market share. Even where this market share has reduced in certain areas it is not at a figure when Ofgem with complete certainty could perceive that full competition exists especially with the points we have highlighted in the consultation are still not implemented. A further area of concern is the cost reflective nature of the NC costs. WPD have used their stats to suggest the reason certain works are not completed by ICP's is that ICP's target the larger works and are selective. Whilst this may have an element of fact to it, the rationale is not that ICP's are selective due to the size of the scheme but the value of the NC charges. On the smaller schemes the NC charges are such a large proportion of the project; it makes it impossible for an ICP to compete with the DNO.

Chapter Three

Question	RMS(S)	DSA(S)	Response
One: Does the level of competitive activity in the RMSs show that there is the	Metered LV ☒	S West ☒	S West/S Wales the levels of competitive activity clearly show there is limited competition in these areas. We have also highlighted in this document
	Metered HV ☒	S Wales ☒	
	Metered HV/EHV ☒		

potential for further competition to develop?	Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	East ☒ Mids ☐ West ☒ Mids ☐	where the processes in WPD SW are not as good as those in the midlands region and so this area has further to go to prove competition is truly active. Otherwise we believe Ofgem will be allowing a monopoly to make unlimited margin without having the confidence that market forces will produce true price control and as such local customers will suffer with increased prices. In WPD Midlands we feel the area is starting to show signs of competition emerging but we have identified a number of areas we feel still need implementing to allow competition to flourish fully. NC charges are definitely high and impact on the value of work we can undertake.
Two: Consider the organisational structure of WPD's business and its procedures and processes – (a) how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice? (b) do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by WPD? Or do they offer WPD any inherent	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☐ West ☒ Mids ☐	WPD have now adopted a decentralised approach with CinC dealt with by the same teams doing S16 work. We feel this has partial benefits as regionalised teams certainly help on the flexibility on the construction delivery and relationships. Also where previous centralised teams operate in the decentralised model their awareness of CinC and associated standards really helps to make the business work effectively. Where this experience is not present (this is the case in a number of regional areas) then information flow and a lack of understanding of CinC causes conflict and additional work required by the ICP to educate them on the requirements. As outlined in C2 qu 4 we still cannot accept S16 NC costs and we would benefit from this being implemented by WPD. On the design approval side average timescales over the previous 6 months on 25 schemes there has been 6 days from submission to approval on

advantage over its competitors or prevent existing competitors from competing with them effectively? (c) do they assist, obstruct or delay connections providers entering the RMSs?			standard HV schemes and where there has been further information required or clarification the average is 10.2 days so overall we have been happy with WPD's performance in this area. Final connections works well with the regionalised approach and we are pleased that WPD is now entering into both LV and HV final self-connections. As the ICP that raised the issue with WPD's unlimited liabilities on their agreements we are pleased that they have reflected on this issue and altered both agreements for this reasonable request. However we also raised the point that the agreements stated we are liable for all costs for WPD where we fail under our obligations but that where WPD fail their obligations they are not liable for our costs. We feel this is totally unacceptable but WPD have refused to adjust this point to a fair and equitable clause for both sides and until this is undertaken we feel there is still a barrier to openly competing on a level playing field.
Three: Are the non-contestable charges levied by WPD for statutory connections in the RMSs consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☐ West ☒ Mids ☐	We still feel the NC charges are not truly reflective of the costs involved and whilst WPD have highlighted they operate the ratchet mechanism there are still areas where we feel ICP's incur costs that S16 are not subjected to. For example under the ratchet mechanism witness testing on substations is as follows; Level 1 100% of substations Level 2 20% of substations (min 1 s/s) Level 3 5% of substations (min 1s/s) As the majority of jobs have one substation even on the lowest ratchet we still pay for a separate witness test from WPD. We have now installed approximately

		500 s/s in WPD and due to the high calibre of commissioning we undertake we have even had WPD engineers in training taken to our sites to show them how commissioning should be undertaken, whilst we are happy to work with WPD on this basis we do not see why we should pay for so many witness tests and believe that due to the large amount of work we undertake the 5% should be applied across all our NC offers without a min 1 per scheme. The same can be said for a number of other areas such as installation of the substation and the construction of the substation base. So realistically we pay for 3 site visits for each s/s we install yet S16 will not incur any of these charges and so have a competitive advantage.
Four: What factors are key influences on development of competition in the RMSs? In particular, if you are an existing/potential competitor (a) what is the potential for you to enter new RMSs, or grow your share of an RMS you already operate in?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East Mids ☒ West Mids ☒
		Mainly as per the notes above for NC charges and also the size of schemes due to the non contestable charges. Other areas that need to be addressed are; ICP able to assess own POC. Final connections fully undertaken by ICP Partially funded reinforcement and site diversions undertaken by ICP This is now limited due to the scale of NC charges and the smaller schemes being cost prohibitive for an ICP. We also still have a large reliance on the DNO with items deemed as non contestable that if WPD wanted to allow the work to be contestable they could. Previously Central Networks allowed us to undertake some partially funded reinforcement schemes where it was in the interest of all parties. Yet WPD now only allow works that are now deemed to be competitive by Ofgem or are areas that Ofgem has started to oversee the implementation of i.e. final connections. However we feel WPD should

(b) are there any types of connection in any of the RMSs, or geographic locations in WPD's DSAs, that by their nature, are not attractive to competition? Please explain your response.			always be looking at schemes and saying is there a true practical reason why an ICP could not undertake this work and if not then irrespective of what is currently deemed competitive WPD should allow the ICP to complete the works. Apart from points above main geographical constraints are on smaller schemes especially in SW and Wales due to the size of NC charges and so getting a core volume of work is difficult to then be able to establish a permanent base in the area.
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Chapter Four

Question	RMS(S)	DSA(S)	Response
One: Do you agree with the methods used by WPD to analyse the level of competition in each of the RMSs covered by its application? In particular, do you consider that WPD gives a clear indication of the current level of competitive activity?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐ Unmetered Other ☐	S West ☒ S Wales ☒ East ☒ Mids ☐ West ☒ Mids ☐	From the information provided it is impossible for an individual ICP to challenge the validity of the data provided as we do not have access to the data. The information is reasonably clear and it is useful to have split by number of schemes and NC charges. However we would challenge WPD's view that this shows ICP's only target the larger schemes. We believe it is because the NC charges are too high to allow us to compete.
Two: Do you consider that competitive activity is at a level that in itself indicates that effective competition exists?	Metered LV ☒ Metered HV ☒ Metered HV/EHV ☒ Metered EHV+ ☐ DG LV ☒ DG HV/EHV ☒ Unmetered LA ☐ Unmetered PFI ☐	S West ☒ S Wales ☒ East ☒ Mids ☐ West ☒	The level of competitive activity in WPD SWest and Wales is in no way indicative of effective competition. WPD as a previous monopoly still currently hold up to 99% market share and we feel this can in no way be deemed as an open and competitive market place.