

Competition Notice	Western Power Distribution (WPD) – 26 October 2012
Date of Determinations	25 February 2013

Background

- Under the terms of its Electricity Distribution Licence (Licence) Standard Licence Condition 14.16 (SLC 14.16) Western Power Distribution (WPD) 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 any 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; and
 - such a margin as it is allowed to charge under Charge Restriction Condition 12 (CRC 12).
- In accordance with the requirements of CRC 12 WPD¹ gave us a Regulated Margin Notice on 13 August 2010. In addition, also in accordance with CRC 12 Central Networks² gave us a Regulated Margin Notice on 15 November 2010. We accepted these Notices which entitled WPD and Central Networks to charge a Regulated Margin at four per cent in relation to all of their Connection Activities in the Local Connections Market³ when it makes an offer of connection terms within each of the Relevant Market Segments (RMSs).⁴
- On 26 October 2012, in accordance with the requirements of CRC 12, WPD gave us Competition Notices, on behalf of its four licensees: Western Power Distribution (East Midlands) plc, Western Power Distribution (West Midlands) plc, Western Power Distribution (South Wales) plc and Western Power Distribution (South West) plc (herein referred to as WPD's four Distribution Service Areas (DSAs)).
- The Competition Notices related to all nine Relevant Market Segments⁵ set out in Charge Restriction 12 of their Electricity Distribution Licence.
- The Competition Notices stated that WPD considered both the Legal Requirements Test and the Competition Test (the Tests) to be satisfied in respect of the nine RMSs in WPD's four DSAs. It sought determinations from us that WPD be entitled to charge an Unregulated Margin in relation to these nine RMSs in each of WPD's four DSAs.
- Upon receipt of the Competition Notices and before making these determinations, we undertook a consultation exercise with WPD and other persons and we have considered responses received.

¹ On behalf of Western Power Distribution (South West) plc and Western Power Distribution (South Wales) plc.

² On behalf of Central Networks West plc and Central Networks East plc. These licenses are now owned and operated by WPD and are called Western Power Distribution (West Midlands) plc and Western Power Distribution (East Midlands) plc.

³ As defined in CRC 12: means the market that exists for the procurement and provision of Connections Activities within the Licensee's Distribution Services Area.

⁴ 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 Western Power Distribution's distribution system as may, in accordance with Western Power Distribution's Connection Charging Statement, be undertaken by persons other than Western Power Distribution, where those activities are fully funded by the Customer. Note that, for the avoidance of doubt, the delineation of a 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.

⁵ The market segments covered by WPD's Competition Notice are: (i) metered demand Low Voltage (LV) work, (ii) metered demand High Voltage (HV) work, (iii) metered demand HV and Extra High Voltage (EHV) work, (iv) metered Extra High Voltage (EHV) and above work, (v) distributed generation (DG) LV work; (vi) distributed generation HV and EHV work, (vii) unmetered connections Local Authority (LA) work, (viii) unmetered connections Private Finance Initiative (PFI) work and (ix) unmetered connections other work.

7. We are required to determine whether an Unregulated Margin should be allowed in the RMSs by way of separate determinations in respect of WPD's four DSAs. We are required, in each Determination, to state whether the Legal Requirements Test and the Competition Test have been satisfied.⁶ We are also required, if we find that one or both of the Tests have not been satisfied, to include reasons for our conclusions in our determinations.
8. 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.

The Authority's Determinations

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

9. We consider that the following RMSs have satisfied both the Legal Requirements Test and the Competition Test in each of WPD's four DSAs -
 - (i) Unmetered connections Local Authority (LA) work; and
 - (ii) Unmetered connections Private Finance Initiative (PFI) work.
10. Further, we consider that the following RMSs have satisfied both the Legal Requirements and the Competition Test in the Western Power Distribution (East Midlands) plc and Western Power Distribution (West Midlands) plc DSAs-
 - (i) Metered demand High Voltage (HV) and Extra High Voltage (EHV) work; and
 - (ii) Metered demand EHV work and above.
11. In regards to the RMSs referred to in paragraphs 9 and 10 above, we accordingly further Determine that from the date of these Determinations, WPD shall be entitled (but not obliged) to charge an Unregulated Margin in its Connection Charges in relation to its Connection Activities.
12. In accordance with CRC 12, Part J, by 30 June 2013 and 30 June in each subsequent Regulatory Year, WPD shall submit to us reports, relating to these RMSs explaining:
 - the extent to which the evidence relied upon by WPD to establish that the Tests were satisfied is still accurate; and
 - where appropriate, any change that has occurred in the RMSs since the date of these Determinations or since its last report in this regard.
13. Our reasons for concluding that both of the Tests have been met are set out in our document - 'The reasons for our decision on Western Power Distribution's 26 October 2012 application to charge an unregulated margin on certain contestable connections services'. This document can be found on the Ofgem website.

RMSs where only the Legal Requirements Test has been satisfied

⁶ As set out in CRC 12.

14. In respect of the RMSs listed below, in accordance with the provisions of CRC 12, we hereby determine that whilst the requirements of the Legal Requirements Test have been satisfied, those of the Competition Test have not:
- (i) Metered demand Low Voltage (LV) work (in respect of WPD's four DSAs);
 - (ii) Metered demand HV work (in respect of WPD's four DSAs);
 - (iii) Metered demand HV and EHV work (in respect of WPD's South Wales and South West DSAs);
 - (iv) Metered demand EHV work and above (in respect of WPD's South Wales and South West DSAs); and
 - (v) Unmetered connections other work (in respect of WPD's four DSAs).
15. Our reasons for concluding that the requirements of the Competition Test have not been met in relation to the RMSs referred to in paragraph 14 above are set out in our document - 'The reasons for our decision on Western Power Distribution's 26 October 2012 application to charge an unregulated margin on certain contestable connections services'. This document can be found on the Ofgem website.
16. In respect of the above RMSs, accordingly and as provided for by CRC 12, WPD 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.
17. Further, in accordance with the provisions of CRC 12, at any time after four months from the date of these determinations WPD may give us Notices stating that it considers that the Competition Test has come to be satisfied in respect of any of the above RMSs. Any such Notices must be submitted in accordance with the provisions set out in CRC 12.
18. These determinations and our decision document constitute publication of the Notices required of us by section 49A of the Electricity Act 1989.



Andrew Burgess,
Associate Partner, Transmission and Distribution Policy
Signed on behalf of the Authority and authorised for that purpose
25 February 2013