

**22 June 2016**

**Notice under paragraph 2 of schedule 6A of the Competition Act 1998 of the Gas and Electricity Markets Authority's proposal to accept commitments pursuant to section 31A(2) of the Competition Act 1998<sup>1</sup>**

**1. Introduction**

- 1.1. The Gas and Electricity Markets Authority (the "**Authority**") has concurrent powers with the Competition and Markets Authority (the "**CMA**") to investigate potential infringements of the prohibition contained in Chapter II of the Competition Act 1998 (the "**CA98**") and/or Article 102 of the Treaty on the Functioning of the European Union (the "**TFEU**").
- 1.2. The abuse of a dominant position is prohibited by Chapter II of the CA98 and Article 102 of the TFEU.
- 1.3. Where the Authority has begun an investigation under the CA98, section 31A of the CA98 gives it the power to accept commitments from any person (or persons) concerned to take any action (or refrain from taking any action) as the Authority considers appropriate for the purposes of addressing the competition concerns it has identified.
- 1.4. The Authority is proposing to accept the commitments offered by SSE plc to address competition concerns identified by the Office of Gas and Electricity Markets ("**Ofgem**") during the course of an investigation into an alleged abuse of a dominant position by SSE plc. As required by paragraph 2 of Schedule 6A of the CA98, the Authority invites representations from interested parties on this proposed course of action.
- 1.5. The draft text of the commitments offered is set out in annex 1 of this document.
- 1.6. Formal acceptance of the commitments by the Authority would result in the investigation being discontinued with no decision made as to whether Chapter II of the CA98 or Article 102 of the TFEU has been infringed by SSE plc. If accepted, the proposed commitments will be binding and enforceable under section 31E of the CA98.
- 1.7. This document:
  - Describes the parties involved, the industry concerned and the relevant regulatory framework;

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<sup>1</sup> Relevant terms that are not defined in this document shall have the same meaning as those terms insofar as they are defined in the "Competition in Connections Code of Practice", which is available at [http://c3705.paas1.ams.modxcloud.com/assets/files/15014\\_CiCCoP\\_final.pdf](http://c3705.paas1.ams.modxcloud.com/assets/files/15014_CiCCoP_final.pdf).

- Outlines Ofgem’s investigation to date;
  - Sets out the Authority’s competition concerns;
  - Explains why it is appropriate to accept commitments in this case;
  - Summarises the commitments offered by SSE plc; and
  - Explains why the Authority provisionally considers that the proposed commitments address the competition concerns.
- 1.8. The Authority now invites interested parties to make representations on the proposed commitments. The Authority will consider such representations before making its final decision on whether to accept the commitments.
- 1.9. Details of how to submit representations are set out in section 11 of this document. The closing date for representations is 3 August 2016.

## 2. The parties

- 2.1. SSE plc (company number: SC117119) ("**SSE plc**") is a company incorporated in the United Kingdom whose registered address is Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ.
- 2.2. Scottish and Southern Energy Power Distribution Limited (company number: SC213459) ("**SSEPD**") is also a company incorporated in the United Kingdom with the same registered address as SSE plc. It is wholly owned by SSE plc.
- 2.3. Southern Electric Power Distribution plc (company number: 04094290) ("**SEPD**") is a company incorporated in the United Kingdom whose registered address is 55 Vastern Road, Reading, Berkshire, RG1 8BU. SEPD is the holder of a licence, granted by the Authority under section 6 of the Electricity Act 1989 (the "**Electricity Act**"), which permits it to distribute electricity in the area described in that licence. That area is in central southern England and incorporates the counties of Berkshire, Buckinghamshire, Hampshire, Oxfordshire and Wiltshire.
- 2.4. Scottish Hydro Electric Power Distribution plc (company number: SC213460) ("**SHEPD**") is a company incorporated in the United Kingdom whose registered address is Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ. It also holds a distribution licence under section 6 of the Electricity Act. It is responsible for electricity distribution in the north of Scotland.
- 2.5. SEPD and SHEPD are both wholly owned by SSEPD.
- 2.6. For the purposes of this Notice, SSE plc, SSEPD, SEPD and SHEPD are collectively referred to as "**SSE**".

### 3. Industry background

#### *The provision of new connections*

- 3.1. Electricity distribution networks carry electricity from the high voltage transmission grid to industrial, commercial and domestic users.<sup>2</sup> There are 14 licensed distribution network operators (“**DNO**”s) in Britain and each is responsible for a regional distribution services area (a “**DSA**”).
- 3.2. New connections<sup>3</sup> are made to a distribution network either when new customers want to take electricity off the network - for example, a housing developer or supermarket - or when a generator wishes to put electricity onto the network.
- 3.3. An end customer (such as a housing developer or an agent working on its behalf) requiring an electricity connection to the distribution network has two options:
  - it can ask the DNO to provide the connection. The DNO will provide an ‘all-works’ quotation which includes the ‘contestable’ and ‘non-contestable’ aspects of a quotation;<sup>4</sup> or
  - it can ask a licensed independent distribution network operator (an “**IDNO**”)<sup>5</sup> or an independent connections provider (an “**ICP**”)<sup>6</sup> included on the Lloyds Register<sup>7</sup>, to provide the connection. In that case, the IDNO or the ICP will need to procure certain connection services from the DNO; these services are termed ‘non-contestable’. The IDNO or the ICP will then provide its own quote for ‘contestable’ charges to complete the overall quote.
- 3.4. In this way, IDNOs/ICPs and DNOs compete to win business from end users (e.g. building developers or agents acting on their behalf) to connect the end user’s (usually new) premises to the local electricity distribution network.

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<sup>2</sup> A distribution system or network is defined in section 4(4) of the Electricity Act as “... a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system”. Further information on the distribution of electricity in the UK is available on Ofgem’s website, here: <https://www.ofgem.gov.uk/electricity/distribution-networks/gb-electricity-distribution-network>.

<sup>3</sup> A connection is a physical extension of the distribution network which is required to connect premises to an electricity distribution network at a point of connection.

<sup>4</sup> Non-Contestable Work is work necessary for the provision of a connection that can only be carried out by the relevant DNO, as outlined in its Connection Charging Methodology. Contestable Work is work necessary to provide a connection that can be carried out by the DNO, a licensed IDNO or an accredited ICP, as outlined in the DNO’s Connection Charging Methodology.

<sup>5</sup> IDNOs develop, operate and maintain local electricity distribution networks.

<sup>6</sup> ICPs develop local electricity distribution networks and then an IDNO or DNO will operate and maintain them.

<sup>7</sup> The Lloyd’s Register is the body that operates the National Electricity Registration Scheme on behalf of the DNOs. Under the scheme, the Lloyd’s Register performs technical assessments of the service providers who elect to be assessed for accreditation for contestable works associated with the installation of electrical connections.

3.5. Some of the most common non-contestable services are described below.<sup>8</sup>

*Point of Connection ("POC") information*

3.6. The POC is the point at which an extension for a new load or generation connection can be connected to the DNO's existing electricity distribution network. POC information is any information that describes the POC in terms of its technical and physical characteristics, parameters and geographic location.

3.7. Determining POC information involves:

- assessing the location, type and size of the new load to be connected to the network; and
- assessing the available capacity on the existing distribution network to identify the most appropriate POC.

3.8. POC information is an important input into the calculation of the cost of providing a connection and forms the basis upon which a connection provider will provide a quote to a potential customer. This is because POC information allows the parties to identify further costs associated with the connection, such as the voltage level, whether reinforcement costs are required and the civil engineering works needed to connect the premises to the POC.

*Design approval*

3.9. During the period of the investigation in order to ensure compliance with Section 9(1)(a) of the Electricity Act,<sup>9</sup> DNOs required that all designs for new connections by ICPs were submitted to the DNO, so that the latter could verify that the design was appropriate. Once the DNO had done this, it would notify the ICP of whether the design was approved so that the ICP could proceed with the proposed connection.<sup>10</sup> There was no specific separate requirement for SSE to approve the connection design of SSE's own connections business.

*Wayleaves and easements*

3.10. Where an ICP installs a new connection, the DNO will adopt the new equipment and it becomes part of the DNO's electricity distribution network. When the new equipment is installed on private land, the DNO needs to secure legal rights to allow them to operate, maintain and install this equipment.

3.11. The cost of securing those land rights (e.g. wayleaves and easements) is passed onto the ICP as a non-contestable cost.

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<sup>8</sup> They are also outlined in SEPD's Connection Charging Methodology: <https://www.ssepd.co.uk/WorkArea/DownloadAsset.aspx?id=6737>

<sup>9</sup> Section 9(1)(a) of the Electricity Act requires a DNO to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. Therefore the DNO must be satisfied as to the suitability of new connections to its network.

<sup>10</sup> The Code of Practice introduced a new clear, common process for self-design approval by ICPs.

#### 4. The regulatory framework

- 4.1. Section 4 of the Electricity Act prohibits the distribution of electricity by a person unless they are authorised to do so by a licence or are exempt from the requirement to have a licence. SEPD and SHEPD (both of whom have SSE plc as ultimate parent) are licensed by the Authority to distribute electricity on behalf of suppliers and generators throughout Great Britain and they have specific obligations within their DSAs.
- 4.2. The Electricity Act imposes a duty on each DNO to provide a connection between its distribution network and any premises within its DSA whose owner or occupier, or a supplier acting with their consent, requests that connection to be made.<sup>11</sup>
- 4.3. In 2014, in response to continued concerns about whether competition in electricity connections markets was effective, the Authority conducted a review into those markets. In January 2015, the Authority published its findings,<sup>12</sup> highlighting problems that combined to limit the development of competition in electricity connections markets. Many of those problems related to the role of DNOs in the connection process.
- 4.4. As a result, the Authority introduced Standard Licence Condition 52 into the electricity distribution licence, which requires DNOs to have, maintain and comply with a Competition in Connections Code of Practice (the "**Code of Practice**") and to facilitate competition in their local connections market. The Code of Practice sets out the processes and practices that DNOs will follow to facilitate competition in the provision of connections to distribution networks by third-party connection providers, such as licensed IDNOs and accredited ICPs. The Code of Practice is expected to evolve in line with and in response to changes in the connections market.
- 4.5. The events falling within the scope of the Authority's current investigation pre-date the introduction of Standard Licence Condition 52 and the Code of Practice.

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<sup>11</sup> Section 16(1) of the Electricity Act.

<sup>12</sup> Those findings are available here: <https://www.ofgem.gov.uk/publications-and-updates/findings-our-review-electricity-connections-market>.

## 5. Ofgem's investigation

### *Decision to open an investigation*

- 5.1. Evidence considered during the Authority's 2014 review into competition in the electricity connections markets raised concerns that SSE may have engaged in anti-competitive behaviour when providing non-contestable electricity connection services in relation to SEPD's distribution network.
- 5.2. In December 2014, the Authority decided that there were reasonable grounds for suspecting an infringement of the Chapter II prohibition of the CA98 and/or Article 102 of the TFEU. As a consequence, Ofgem, on behalf of the Authority, opened an investigation into SEPD's conduct.
- 5.3. On 20 January 2015, Ofgem notified SSE that the investigation had been opened and outlined the Authority's concerns in relation to SEPD's conduct. Ofgem also served a formal notice on SSE requiring the production of documents and information under section 26 of the CA98 (a "**s26 notice**"). Ofgem sent a second s26 notice on 4 August 2015. SSE has also provided information and documents on a voluntary basis during the investigation.
- 5.4. During the current investigation, Ofgem has also engaged with IDNOs, ICPs and end customers. These parties have provided further evidence to the investigation.

### *Offer of binding commitments*

- 5.5. In September 2015, SSE wrote to Ofgem offering to provide commitments to alter its conduct in order to address the Authority's competition concerns. Following that offer, Ofgem undertook considerable further investigatory steps in relation to SSE and certain IDNOs, ICPs and end customers with a view to assessing the appropriateness of accepting commitments in this case.
- 5.6. In April 2016, the Authority informed SSE of its willingness to explore any formally binding commitments that SSE wished to offer. In order to facilitate discussions, the Authority sent to SSE a written statement of its competition concerns (the contents of that document are mirrored in the information contained in section 6 below).
- 5.7. Following discussions between Ofgem and SSE, SSE sent a set of proposed commitments to the Authority on 21 June 2016 in the form set out in Annex 1.
- 5.8. Having considered the commitments offered by SSE, the Authority has reached a preliminary view that those commitments address its competition concerns, for the reasons set out in this Notice. The Authority is therefore proposing to exercise its discretion to discontinue its investigation by way of a formal decision accepting commitments under section 31A of the CA98.

## 6. The Authority's competition concerns

- 6.1. The Authority's preliminary view, for the reasons outlined in this section, is that SSE is likely to hold a dominant position in the markets for non-contestable connection services for connections to its own distribution networks. As such, by providing non-contestable connection services to IDNOs and ICPs on a different basis to the provision of those services to its own connections business, in the absence of an objective justification, it risks placing those IDNOs and ICPs at a competitive disadvantage.
- 6.2. **Market definition:** Ofgem's investigation relates specifically to the behaviour of SEPD, as the DNO of the geographical area described in its licence. During the period covered by the Authority's investigation, SEPD, as a DNO, was the only provider of non-contestable connection services required for new connections to SEPD's network.<sup>13</sup> As explained above, those non-contestable connection services are required for IDNOs and ICPs to be able to provide new electricity connections to SEPD's electricity distribution network. For example, without specific POC information, an IDNO or ICP is unable to provide an accurate quote for the civil engineering works required for a new connection and without the DNO's design approval an ICP cannot commence on-site work to enable the customer to be connected to the DNO's network. During the period covered by the Authority's investigation, the non-contestable connection services provided by SEPD could not be replaced with equivalent services provided by other DNOs. This remains the case for many non-contestable connection services.
- 6.3. Since, during the period covered by the investigation, non-contestable connection services from other DNOs were not substitutable for those provided by the DNO in the relevant area (either on the demand side or on the supply side), it is the Authority's preliminary view that the relevant geographical scope of the market is, at its broadest, the area covered by SEPD's network.
- 6.4. As, during the period covered by the Authority's investigation, SEPD was the only supplier of non-contestable connection services required for new connections to its network and no other undertaking could offer those services, it is the Authority's preliminary view that SEPD was likely to have been dominant in the market for the provision of non-contestable connection services to its own connections business, IDNOs and ICPs for connections to SEPD's network. The Authority provisionally considers that the introduction of the Code of Practice is unlikely to have altered that analysis. The Authority is concerned that SEPD's conduct in this market has the potential to materially affect the related and closely associated market for the provision of new electricity connections to its network.

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<sup>13</sup> The Competition in Connections Code of Practice (that went live in October 2015) pushes the DNOs to reduce the number of non-contestable connection services that are only available from them. In April 2016, the DNOs introduced new processes to allow ICPs to determine their own POC and approve their own connection designs, in certain circumstances.

- 6.5. The Authority will assess the relevant market on a case-by-case basis and therefore may reach a different view when assessing allegations of anti-competitive conduct by DNOs in future cases.
- 6.6. **Key determining factors:** Some of the key determining factors which may affect the cost of connecting end customers to the network are:
- (i) the **amount of capacity** required by the customer. Generally, the more capacity required by the customer, the more work is required to facilitate the connection (e.g. reinforcing the wider network to accommodate the new capacity).
  - (ii) the **level of voltage** of the POC required to connect the customer. Typically, the amount of capacity required and available on the network will dictate whether the customer needs to connect at low voltage ('LV'), high voltage ('HV') or extra high voltage ('EHV'). The type of connection may have an impact on the contestable charges to connect the site to the DNO's distribution network because of the different costs involved. For example, the cost of HV connections and cables is, generally, higher than for the equivalent LV options. Additionally, if a HV option is used, the connector (whether that is the DNO or an ICP/IDNO) is likely to – for obvious reasons – need to transform the supply down to LV before it is fed into any premises. This could mean building an additional sub-substation.
  - (iii) the **geographical location** of the POC required to connect the customer. This may have an impact on the non-contestable costs of connecting the customer to the network. For example, providing a POC in one location may incur significant costs in reinforcing the distribution network that could be avoided if the DNO chose an alternative location. It may also have an impact on the contestable costs required to connect the site to the distribution network (e.g. the civil engineering works). The location of the POC also determines whether legal permissions or consents (e.g. wayleaves) are needed from landowners in order to place equipment on or under land.
- 6.7. **Practices giving rise to competition concern:** The Authority identified the following practices which, if engaged in without objective justification, give rise to competition concerns relating to SEPD's alleged conduct in providing non-contestable connection services:
- (i) SEPD applied additional and/or higher non-contestable costs in its quotes to IDNOs/ICPs compared with non-contestable costs charged to its own connections business for transactions which appear to be equivalent;

- (ii) SEPD provided quotes to IDNOs/ICPs and to its own connections business, for transactions which appear to be equivalent, based on different geographical POC locations which, as described above, can have an impact on the non-contestable and contestable costs as well as customer costs; and
- (iii) SEPD applied higher connection voltages to comparable works in its quotes to IDNOs/ICPs compared with connection voltages applied to its own connections business for transactions which appear to be equivalent.

6.8. The Authority provisionally considers that the alleged practices described in paragraph 6.7 above (if engaged in without objective justification) are capable of having the effect, either individually or cumulatively, of favouring SSE's own connections business to the detriment of the connections businesses of IDNOs and ICPs when operating in the area covered by SSE's distribution networks. As such, the alleged practices have the potential to infringe Chapter II of the CA98 or Article 102 of the TFEU.

6.9. The Authority has not, however, reached any conclusions regarding whether the alleged conduct outlined above infringes UK or EU competition law. The offer of commitments by SSE does not constitute an admission of wrongdoing.

## 7. The appropriateness of accepting commitments

- 7.1. The decision on whether to accept commitments is at the discretion of the Authority. The Authority's preliminary view is that it is appropriate to accept the commitments offered by SSE for the reasons set out below. In coming to this view, the Authority has given careful consideration to the CMA's published guidance on the circumstances in which it may be appropriate to accept commitments, as required by section 31D of the CA98<sup>14</sup>. The Authority considers that its competition concerns are readily identifiable, will be fully addressed by the commitments offered, and the proposed commitments can be implemented effectively and, if necessary, within a short period of time. The Authority does not consider that compliance with or the effectiveness of the commitments would be difficult to discern or that not to complete its investigation and make a decision would undermine deterrence.
- 7.2. **The competition concerns are readily identifiable:** In this case, the Authority has identified the specific competition concerns in relation to SSE's conduct set out in section 6 above. Specifically, the Authority has identified particular concerns relating to inconsistencies in the provision of non-contestable connection services by SSE to IDNOs/ICPs, on one hand, and to its own connections business, on the other hand, thereby risking that the IDNOs/ICPs were placed at a competitive disadvantage. Those concerns are readily identifiable from the Authority's analysis.
- 7.3. **The proposed commitments address the competition concerns identified:** As explained above, whilst the Authority's investigation has been open, the Authority has implemented the following changes to industry regulations:
- a new licence condition – which places a duty on DNOs to have in place and comply with an enforceable Code of Practice; and
  - a detailed Code of Practice – which specifies how DNOs must provide services to its competitors in the connections market.
- 7.4. Having taken these developments into account, the Authority has provisionally concluded that the acceptance of the proposed commitments, which are in addition to the conditions of the Code of Practice, would fully address the competition concerns identified in this case and would be a timely and efficient use of resources. The Authority's preliminary assessment of this issue is contained in section 9 of this document.
- 7.5. **The proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time:** The Authority is also provisionally satisfied that these commitments can be implemented effectively and within an appropriate timescale. It is

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<sup>14</sup> The guidance approved by the Secretary of State on 21 December 2004 "The OFT's guidance as to the circumstances in which it may be appropriate to accept commitments" contained in the annex of the competition law guideline "Enforcement" (OFT407) 21 December 2004, adopted by the CMA board. See also paragraphs 10.15 to 10.17 of CMA's guidance entitled "Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases" (CMA8) published on 12 March 2014.

proposed that the commitments will be fully implemented within six months of the Authority's formal acceptance of the commitments. Some of the elements of the commitments will be in place earlier than the full implementation date set out in the commitments. As part of its commitments, SSE has also agreed to report on a regular basis to the Authority, to provide the Authority with any supporting information or documents that the Authority reasonably requests, to provide third party assurance of its compliance with the commitments and to appoint a member of its senior management team as a commitments compliance officer. In light of this, the Authority does not envisage there will be any difficulties in monitoring SSE's compliance with, or the effectiveness of, the binding commitments being offered. In addition, IDNO/ICPs are well placed to monitor SSE's future conduct and compliance with the proposed commitments.

- 7.6. **Acceptance of the proposed commitments would not undermine deterrence:** The Authority considers that the acceptance of commitments in this case would not undermine deterrence in this market. In fact, it is the Authority's preliminary view that the investigation itself has served to create a deterrent effect across the industry and its acceptance of the proposed commitments is likely to send a signal to the connections industry on appropriate standards for the provision of non-contestable connection services. In this way, the acceptance of binding commitments may lead to wider awareness of competition and compliance issues and deter anti-competitive conduct in the energy sector.
- 7.7. The Authority also considers that a commitment decision will promote the importance of competition law in all types of markets. The breadth and relatively quick implementation of the commitments also mean that they are likely to have a greater and earlier benefit for IDNOs, ICPs, developers and, ultimately, energy consumers, than might otherwise be achieved by pursuing a full investigation.
- 7.8. Accordingly, the Authority considers that this is an appropriate investigation in which to accept commitments.
- 7.9. The Authority has assessed the appropriateness of accepting the commitments offered by SSE in the specific context of the present regulatory environment and on the specific facts of this case.

## **8. The proposed commitments**

- 8.1. The full details of the commitments offered by SSE are contained in Annex 1 of this document. In summary, the commitments offered by SSE are intended to ensure that:
- There is a broad equivalence of quotations and charges between POC and all-works quotations issued by SSE for the same site.
  - All SSE quotations are clear and transparent; this will be facilitated by the functional separation of SSE's connections team into a Non-Contestable Connections team and a Contestable Connections team.
  - Any discrepancy in comparable quotes will be recorded by SSE along with an explanation of the reasons for the discrepancy which will be available to an independent auditor, the Authority and, as appropriate, the IDNO/ICP who had sought the quote.
  - There will be competition law training for any person involved in providing quotes.
  - An independent, external auditor will monitor SSE's compliance with the commitments by way of spot checks and independent audit reports to be provided to the Authority.
- 8.2. The commitments have been offered by SSE plc and relate to each part of its corporate group that is involved with providing quotations for non-contestable connection services in Great Britain, including SEPD and SHEPD.

## **9. How the proposed commitments address the competition concerns**

- 9.1. The Authority's preliminary view, for the reasons explained above, is that SSE is likely to hold a dominant position in the markets for non-contestable connection services for connections to its own distribution networks.
- 9.2. As such, by providing non-contestable connection services to IDNOs and ICPs on a different basis to the provision of those services to its own connections business, if engaged in without objective justification, it risks placing those IDNOs and ICPs at a competitive disadvantage.
- 9.3. To address these competition concerns, SSE has proposed the following commitments:

*Broad equivalence of quotations with respect to non-contestable charges, POC location and/or connection voltage and transparency*

- 9.4. The Authority provisionally considers that by committing to ensure broad equivalence of quotations in respect of non-contestable connection services, SSE would facilitate competition between its own connection business and ICPs/IDNOs. Functional separation and the enhanced automation of the costing system would help to remove and/or explain any differences in relation to POC location, connection voltage and non-contestable charges.

*Functional separation*

- 9.5. SSE has offered to separate its current connections quotations team into two independent teams (a Non-Contestable Connections team and a Contestable Connections team). The Non-Contestable Connections team would be responsible for providing all non-contestable works quotations.<sup>15</sup>
- 9.6. The Contestable Connections team would interface with the Non-Contestable Connections team on the same basis as all other connections service providers.

*Operating processes and working practices*

- 9.7. As part of the functional separation of SSE's connection businesses, SSE has offered to re-design its operating model. Central to this would be the enhanced automation of its quotation system for non-contestable connection services. The Authority provisionally considers that SSE's revised operating model would facilitate equivalence of designs for comparable works, thus reducing the likelihood of differences in non-contestable costs for comparable works.
- 9.8. The enhanced automation of the quotation system would allow the auditability of decision making regarding design and costing, by

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<sup>15</sup> Smaller scale connections (i.e. simple, low voltage connections to a development requiring more than one but fewer than five single-phase connections at domestic premises or simple, low voltage connections to a single premises) will be subject to a simplified version of this commitment to reflect the existing regulatory context in relation to such connections.

recording reasons for differences between comparable works. This information would be available to SSE's customer, the independent auditor and to the Authority on request.

- 9.9. As part of the proposed commitments, SSE proposes to appoint an independent, external auditor to review its compliance with the commitments.
- 9.10. In addition, third party providers would be able to query any differences in non-contestable costs for any quotes provided to them by SSE. In response, SSE would explain the reasons for any differences in cost for non-contestable and all-works quotes for comparable requests.
- 9.11. The Authority provisionally considers that these measures will increase the transparency of SSE's provision of non-contestable connection services and remove and/or explain differences in costing between comparable works as much as practicably possible.

## **10. Proposal to accept commitments**

- 10.1. In light of the above assessment, the Authority provisionally considers that the commitments offered by SSE (as set out in Annex 1) address its competition concerns and place additional requirements on SSE to ensure compliance with their obligations under the Code of Practice. It therefore proposes to accept the commitments by means of a formal decision taken pursuant to Section 31A of the CA98.
- 10.2. The Authority now invites interested third parties to make written representations on the proposal to accept commitments and the contents of the commitments contained in Annex 1. The Authority will take such representations into account before making its final decision whether to accept the commitments.

## **11. Invitation to comment**

- 11.1. Any person wishing to comment on the commitments offered by SSE should submit written representations to reach the Authority by midnight on 3 August 2016. Representations should be submitted to:

Nick Wilkins  
Enforcement and Compliance  
Ofgem  
9 Millbank  
London  
SW1P 3GE  
Email: [Nicholas.Wilkins@ofgem.gov.uk](mailto:Nicholas.Wilkins@ofgem.gov.uk)

- 11.2. Any confidential material contained in such representations should be clearly identified. Supporting reasons for its confidentiality should be provided.

## Annex 1

### PROPOSED COMMITMENTS GIVEN BY SSE PLC PURSUANT TO SECTION 31A OF THE COMPETITION ACT 1998

SSE plc gives to the Gas and Electricity Markets Authority (**GEMA**), without in any way acknowledging or accepting that it has infringed applicable competition law, the following commitments (the **Commitments**) under section 31A(2) of the Competition Act 1998 in order to meet GEMA's concerns as set out *inter alia* in GEMA's Statement of Competition Concerns dated 25 April 2016 and in its notice of its intention to accept binding commitments dated 22 June 2016.

#### INTERPRETATION

The Interpretation Act 1978 shall apply to these Commitments as it does to Acts of Parliament.

In these Commitments the word "***including***" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "***include***" and its derivatives shall be construed accordingly.

For the purpose of these Commitments, the following terms shall have the meaning ascribed to them below.

- (a) **All Works Quotation** means a Quotation provided to a Developer which encompasses both Contestable Connection Services and Non-Contestable Connection Services.
- (b) **Broad Equivalence** or **Broadly Equivalent** means equivalence to the maximum extent possible when taking into account all relevant circumstances including timing, connection type and technical specifications.
- (c) **Charging Methodology** means the Statement of Methodology and Charges for Connection to SEPD's and SHEPD's Distribution Networks (last amended on 26 April 2016).
- (d) **Code of Practice** means the Competition in Connections Code of Practice produced in accordance with condition 52 of the Licence.
- (e) **Connection** means a physical connection to SEPD's or SHEPD's Distribution Network.
- (f) **Connection Services** means Contestable Connection Services and Non-Contestable Connection Services.
- (g) **Connection Voltage** means level of voltage of the POC required to connect the development, i.e., either low voltage (LV), high voltage (HV) or extra high voltage (EHV).
- (h) **Contestable Connection Services** means those services which are necessary for the provision of a Connection and, in accordance with the Licence, can be provided by the licensee or by an ICP or an IDNO.

- (i) **Contestable Connections Team** means those staff responsible for undertaking the Contestable Connection Services component of Quotations, as further described in Commitment 2.
- (j) **Developer** means the person or company responsible for the construction development which requires connection to the relevant Distribution Network, including its agents.
- (k) **Distribution Network** means an electricity distribution system (within the meaning of section 4(4) of the Electricity Act 1989).
- (l) **DNO** means Distribution Network Operator (within the meaning of sections 6(1)(c) and (9) of the Electricity Act 1989).
- (m) **Holding Company** shall be understood as defined in section 1159 of the Companies Act 2006.
- (n) **ICP** means an accredited independent connections provider registered with the Lloyd's Register, including its agents.
- (o) **IDNO** means an Independent Distribution Network Operator licensed by GEMA, including its agents.
- (p) **Implementation Date** means 6 months after acceptance of the Commitments by GEMA.
- (q) **Licence** means the electricity distribution licences issued by GEMA to SEPD and/or SHEPD under section 6(1)(c) of the Electricity Act 1989, in particular the standard conditions of the electricity distribution licence last amended on 30 October 2015.
- (r) **Minor Connections** means single LV service demand connections and small project demand connections as defined in Regulation 2 of the Electricity (Connection Standards of Performance) Regulations 2015.
- (s) **Non-Contestable Connection Services** means those services which are necessary for the provision of a Connection and, in accordance with the Licence, cannot be provided by a person other than the licensee, as listed in paragraph 15.2 of Condition 15 of the standard conditions of the Licence.
- (t) **Non-Contestable Connections Team** means those staff responsible for undertaking the Non-Contestable Connection Services component of Quotations, as further described in Commitment 2.
- (u) **Non-Contestable Costs** means charges for Non-Contestable Connection Services in All Works Quotations or POC Quotations as identified in Appendix 1.
- (v) **POC** means a point of connection to SEPD's or SHEPD's Distribution Network.
- (w) **POC Location** means the physical location of the POC to SEPD's or SHEPD's Distribution Network.
- (x) **POC Quotation** means a Quotation provided to a Developer, an ICP or an IDNO which only encompasses Non-Contestable Connection Services.

- (y) **Provisional Request** means a request for Connection Services which does not meet the requirements of section 16A of the Electricity Act 1989 (as detailed by standard conditions 15 and 15A of the Licence), or a request for a budget estimate or a feasibility study.
- (z) **Quotation** means information provided by SEPD and/or SHEPD in writing, following a Request for Quotation, and includes information relating to the POC, a statement of the charges that will apply in accordance with the Licence and the Charging Methodology, and any other information reasonably requested by the applicant. For the avoidance of doubt, the term Quotation includes All Works Quotations and POC Quotations.
- (aa) **Relevant Legislation** includes the Competition Act 1998 and the Electricity Act 1989.
- (bb) **Relevant Subsidiary** means any Subsidiary of SSE that is active in the provision of Quotations.
- (cc) **Request for Quotation** means an enquiry from a Developer, an ICP or an IDNO addressed to SEPD and/or SHEPD which meets the requirements of section 16A of the Electricity Act 1989 (as detailed by Conditions 15 and 15A of the standard conditions of the Licence). For the avoidance of doubt, this does not include Provisional Requests.
- (dd) **Review** means GEMA considering whether there are changes of circumstances relevant to these Commitments such that they should be released or varied to remove aspects of the Commitments that GEMA no longer considers necessary or appropriate.
- (ee) **SEPD** means Southern Electric Power Distribution plc and any Subsidiary of SSE which succeeds Southern Electric Power Distribution plc as the Licence holder.
- (ff) **SHEPD** means Scottish Hydro Electric Power Distribution plc and any Subsidiary of SSE which succeeds Scottish Hydro Electric Power Distribution plc as the Licence holder.
- (gg) **Spot Check** means a visit by the external independent auditor provided for in these Commitments to an SEPD or SHEPD site where Connection Services are provided for the purpose specified in Commitment 4, paragraph (d) of these Commitments. To conduct the Spot Check, the auditor will:
- with the exception of Minor Connections, request and review a report prepared by SSEPD which lists Quotations which have been given where differences in Non-Contestable Costs, POC Location and/or Connection Voltage have been identified between the Non-Contestable Connection Services element of any All Works Quotations and any POC Quotations for the same development. The report should include all such Quotations issued since the date of the last Spot Check or annual report of the auditor (whichever is more recent);

- with the exception of Minor Connections, review a sample, but no less than 1% of such Quotations in order to (i) determine whether the reasons for those differences have been recorded properly and in such a way that the auditor understands the basis for them; and (ii) assess whether the differences are justified; and
  - in respect of Minor Connections, request and review a report prepared by SSEPD, in order to determine SSE's compliance with the Commitments as detailed in Commitment 2, paragraph (c).
- (hh) **SSE** means SSE plc. For the avoidance of doubt, all obligations incumbent upon SSE in these Commitments are deemed to also bind SSEPD, SEPD and SHEPD. SSE shall procure that each Relevant Subsidiary shall comply, at all times, with the Commitments.
- (ii) **SSEPD** means Scottish and Southern Energy Power Distribution Limited, the Holding Company of SEPD and SHEPD and any Subsidiary of SSE as successor Holding Company of SEPD and/or SHEPD.
- (jj) **Subsidiary** shall be understood as defined in section 1159 of the Companies Act 2006.

#### **COMMENCEMENT AND DURATION**

Having been signed by SSE, these Commitments shall take effect from the Implementation Date and will be subject to Review following a period of 5 years after the Implementation Date.

Nothing in this provision will prevent SSE from requesting an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time in light of, for example, changed market circumstances or legislative requirements.

Both GEMA and SSE recognise that changes planned or under way within the electricity connections sector may have relevance to the Commitments, in particular with regards to the implementation of the Code of Practice for DNOs. As and when appropriate, SSE and GEMA will meet to discuss whether the Commitments should be amended, terminated or replaced by new commitments in light of such sector changes.

#### **RELATIONSHIP BETWEEN THE LICENCE AND THE COMMITMENTS**

The specific actions contained within the Commitments supplement and are in addition to the obligations contained within the Licence and the Electricity Act 1989 and are intended to address the competition concerns raised.

**COMMITMENT 1: BROAD EQUIVALENCE OF QUOTATIONS WITH RESPECT TO NON-CONTESTABLE COSTS, POC LOCATION AND/OR CONNECTION VOLTAGE**

***Principle***

Without prejudice to its obligations under the Licence and Electricity Act 1989, SSE will take the following actions to ensure a broad equivalence of Quotations with respect to Non-Contestable Costs, POC Location and Connection Voltage.

***Specific actions***

In particular, and in order to facilitate that broad equivalence of Quotations, SSE will:

- (a) ensure that All Works Quotations and POC Quotations provided in response to equivalent Requests for Quotation for the same development are broadly equivalent in respect of each of:
  - i. Non-Contestable Costs;
  - ii. POC Location; and
  - iii. Connection Voltage,to the maximum extent possible taking into account all relevant circumstances including timing, connection type and technical specifications concerned; and
- (b) fully implement the provisions of Commitments 2, 3 and 4.

**COMMITMENT 2: SSE'S INTERNAL STRUCTURE AND PROCESSES TO FACILITATE FUNCTIONAL SEPARATION**

***Principle***

Without prejudice to its obligations under the Licence and Electricity Act 1989, SSE will implement a new operating model based on functional separation and the introduction of policies and processes to support this. These are designed to further ensure that the provision of Non-Contestable Connection Services is not structured in such a way that causes undue preference to, or unduly discriminates against, ICPs or IDNOs, with respect to Non-Contestable Costs, POC Location and Connection Voltage.

***Specific actions***

In particular and in order to facilitate the implementation of a new operating model based on functional separation, SSE will:

- (a) adopt a new internal operational structure (diagram included in Appendix 2 for illustrative purposes only), which provides for two distinct and separately staffed functions, namely the Non-Contestable Connections Team and the Contestable Connections Team. These functions will have the following roles and responsibilities:
  - i. the Contestable Connections Team will operate as the main interface with Developers and/or their agents in relation to All Works Quotations;

- ii. the Contestable Connections Team will respond to Requests for Quotation from Developers in accordance with the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments;
  - iii. in order to respond to Requests for Quotation, the Contestable Connections Team will engage with the Non-Contestable Connections Team in relation to Non-Contestable Connection Services;
  - iv. the Non-Contestable Connections Team will operate as the main interface with the Contestable Connections Team and with ICPs or IDNOs in relation to Non-Contestable Connection Services;
  - v. the Non-Contestable Connections Team will be responsible for assessing the capacity of the network, identifying the infrastructure requirements for the proposed development, calculating the Non-Contestable Costs to be charged, selecting the POC Location to be proposed and deciding on the appropriate Connection Voltage to be offered in circumstances where these services are being delivered by SEPD or SHEPD;
  - vi. where necessary, the Non-Contestable Connections Team will interact with, and request services and obtain information from, other departments within SSE;
  - vii. the Non-Contestable Connections Team will respond to Requests for Quotation in respect of Non-Contestable Connection Services, regardless of whether those requests come from the Contestable Connections Team or from ICPs or IDNOs, in accordance with the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments; and
  - viii. the internal procedures relating to the activities of the Non-Contestable Connections Team and the Contestable Connections Team will reflect the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments.
- (b) amend and update its external and internal policies, procedures and associated documents and forms to reflect the revised structure and in a way which is consistent with the principles set out in (a) above.

This new operating model based on functional separation (together with the processes outlined in Commitment 3 below) will not apply to Minor Connections. However, for the avoidance of doubt, SSE will:-

- (c) adopt specific policies and procedures for Minor Connections to ensure that the Contestable Connections Team providing any Minor Connection Quotation will have no more relevant information regarding SEPD's or SHEPD's Distribution Network than the information made available to any ICP or IDNO. These policies and procedures will provide for the following process (diagram included in Appendix 3 for illustrative purposes only):
  - (i) the Contestable Connections Team will not have access to any relevant network information in addition to that which is publicly available to all ICPs and IDNOs to determine the POC and Non-Contestable

Connection Services;

- (ii) any network information required that is not in the public domain, will be provided by the Non-Contestable Connections Team to the Contestable Connections Teams, ICPs and IDNOs on a broadly equivalent basis;
- (iii) the Contestable Connections Team will undertake Non-Contestable Connection Services and Contestable Connection Services and issue the Quotation to the customer; and
- (iv) for the avoidance of doubt, in relation to Minor Connections, the obligations set out in Commitment 4 shall apply to the process as detailed in sub-paragraphs (i), (ii) and (iii) of this paragraph (c).

**COMMITMENT 3: SYSTEMS, PROCESSES AND TRAINING TO FACILITATE THE DELIVERY OF A TRANSPARENT COST MODEL, AUTOMATED QUOTATION SYSTEM AND COMPLIANCE WITH COMPETITION LAW**

***Principle***

SSE will revise its external and internal policies and procedures in the context of Connection Services to ensure that they reflect the Commitments, in particular the obligation not to cause undue preference to or undue discrimination against ICPs or IDNOs in respect of Non-Contestable Costs, POC Location and/or Connection Voltage, and are compliant with the obligations contained in Relevant Legislation and the Licence.

***Specific actions***

In particular, SSE will:

- (a) amend and update its external and internal policy documents and relevant forms to reflect the Commitments;
- (b) review the existing external and internal policy documents relating to the provision of Non-Contestable Connection Services in order to produce materials and procedures which are designed to:
  - i. ensure equivalent treatment of broadly equivalent Requests for Quotation with respect to Non-Contestable Costs, POC Location and/or Connection Voltage;
  - ii. ensure that there is no undue preference to or undue discrimination against ICPs or IDNOs with respect to Non-Contestable Costs, POC Location and/or Connection Voltage; and
  - iii. remain compliant with Relevant Legislation and the Licence.
- (c) record any differences between the Non-Contestable Connection Services element of All Works Quotations and POC Quotations for the same development, in relation to Non-Contestable Costs, POC Location and/or Connection Voltage, and the reasons for such differences in such a way that the external audit firm provided

for in Commitment 4 is satisfied that it is able to understand those reasons;

- (d) ensure that the cost information provided by SSE allows Developers to compare the Non-Contestable Connection Services element of any All Works Quotations and the POC Quotations for the same development. To achieve this, SSE will:
  - i. ensure that Quotation documents are clear and easily understood and allow the Non-Contestable Connection Services element of the All Works Quotations and POC Quotations for the same development to be compared through the provision of equivalent information in each one; and
  - ii. within 10 working days of any request, provide sufficient information to Developers, ICPs or IDNOs to explain any differences between the cost of the Non-Contestable Connection Services element of any Quotations for the same development, to the extent this does not include information confidential to SSE or third parties.
- (e) create a quotation system for Connection Services with enhanced automation, to ensure each Quotation is designed with the following features:
  - i. Improved IT system which will identify any differences and will prevent the issuing of a Quotation until such time as the designer in the Non-Contestable Connections Team records the reasons for the differences between Quotations for the same development;
  - ii. Improved auditability and clear processes for the capture and retention of information;
  - iii. Increased accuracy and automation of site matching within a geographical area;
  - iv. Ensuring separation of design and cost elements between designs for Contestable Connection Services and Non-Contestable Connection Services to drive consistency; and
  - v. Automated quote archiving, access/reporting and document templates.
- (f) create and deliver competition law training of an appropriate quality and standard. That training will be specifically targeted at compliance with competition rules applicable to Connection Services and will specifically outline and explain Ofgem's competition concerns and the content of these Commitments. The training will be mandatory for all staff (including senior managers) directly involved in the provision of Connection Services. In particular, SSE will deliver:
  - i. mandatory training through the SSE group e-learning platform on competition law, the content of these Commitments, and compliance with them, for new joiners to teams involved in the provision of Connection Services within 4 weeks from the start of employment and mandatory training specifically targeted at competition rules applicable to Connection Services within six months of start of employment;
  - ii. notwithstanding the Implementation Date, mandatory training of staff currently involved in the provision of Connection Services within two months of acceptance of Commitments by GEMA; and

- iii. mandatory annual refresher training for staff involved in the provision of Connection Services.

SSE will ensure that such training is kept up-to-date.

#### **COMMITMENT 4: REPORTING AND PROVISION OF INFORMATION**

On SSE's behalf, SSEPD shall:

- (a) provide written monitoring reports to GEMA:
  - i. demonstrating the steps it has taken in complying with the Commitments; and
  - ii. providing assurance of its ongoing compliance with the Commitments;

The first of these monitoring reports will be provided on the day after the Implementation Date (confirming that all measures necessary to comply with the Commitments are fully in place). The second report will be provided 6 months after the Implementation Date with a subsequent report provided one year following the Implementation Date and then on an annual basis until such a time as GEMA agrees this reporting frequency can be reduced or the reporting requirements contained in these Commitments removed;

- (b) provide GEMA with any supporting information and documents which GEMA reasonably requests in relation to, or in connection with, the Commitments (including, for example, the implementation of and/or compliance with these Commitments). Such requests for information and documents will include a reasonable time limit for production and SSE will take all reasonable steps to meet those deadlines;
- (c) ensure independent, third party assurance and audit of SSE's compliance with the Commitments by an external audit firm approved by GEMA and appointed by SSE prior to the Implementation Date. That assurance will be reported to the Board of SSEPD and those reports will also be annexed to the reports provided to GEMA;
- (d) the external audit firm will, subject to providing SSE with at least two weeks' notice in writing, undertake Spot Check procedures to satisfy itself that SSE is complying with the Commitments and, if required, make recommendations to SSE. These Spot Checks will be undertaken on two occasions annually following the first anniversary of the Implementation Date until such time as GEMA agrees the reporting frequency under (a) above can be reduced or the reporting requirements contained in these Commitments removed; and
- (e) designate a member of its Senior Management Team, who is an employee of SSE and is a member of the Board of Directors of SSEPD, as the commitments compliance officer, who will have general responsibility for: ensuring compliance with the Commitments; preparing the monitoring reports; and reporting the monitoring reports to the Board of SSE such that the reports have the Board's assurance before their submission to GEMA.

## APPENDIX 1

### NON-CONTESTABLE COSTS

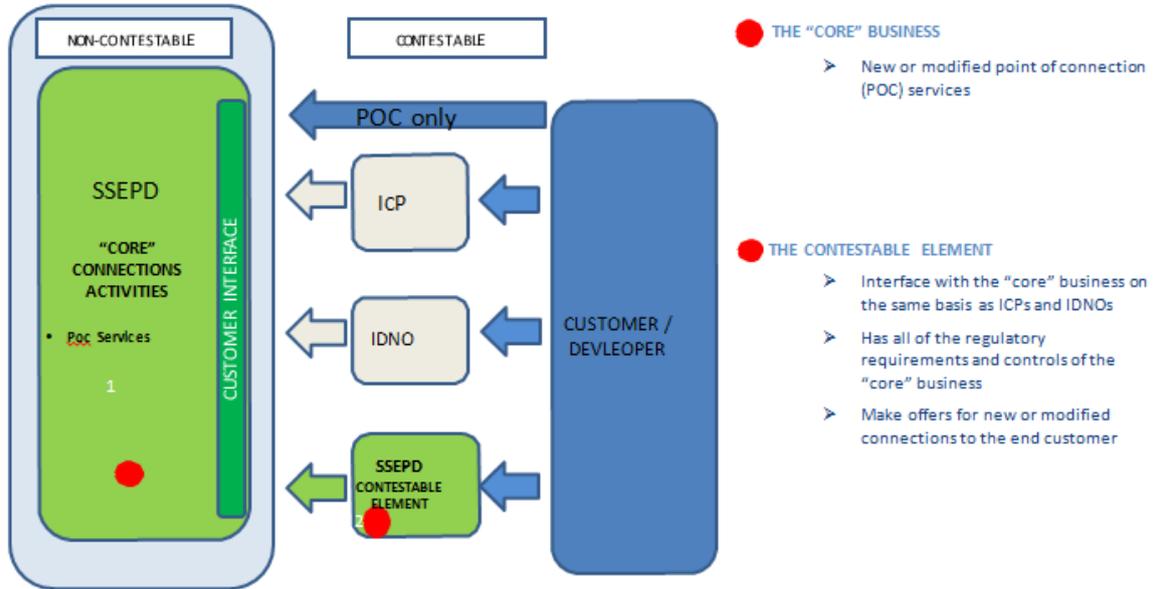
The Non-Contestable Costs are those identified in the table below:

<b>Name of charge</b>	<b>Brief explanation</b>
Assessment and design	Charges associated with the identification of the most appropriate point on the existing distribution system for connection and the design of any extension assets and/or reinforcement.
Final connection to the network	Charges associated with carrying out the final connection on to the existing distribution system.
Design approval	Charges associated with the approval of an extension asset design produced by an ICP or IDNO.
Inspection/monitoring	Charges associated with inspecting and monitoring the construction of the extension asset by an ICP or IDNO.
Wayleaves/easement	Charges associated with the administration of wayleave documentation.
Reinforcement costs	Costs associated with assets installed that add capacity to the existing shared use distribution system
Costs under Electricity Connection Charges Regulations	Costs due as required under the Electricity (Connection Charges) Regulations 2002 (SI 2002/93) as amended from time to time.
Operation and maintenance charges	Charges associated with the operation, repair, maintenance and replacement of assets.

The names used herein are accurate at the time that these Commitments were entered into. The names of the Non-Contestable Costs, and the explanatory comments, may change from time to time.

## APPENDIX 2

### NEW OPERATIONAL STRUCTURE FOR SEPD'S CONNECTIONS SERVICES FUNCTIONS



### APPENDIX 3

#### POLICIES AND PROCEDURES FOR MINOR CONNECTIONS

