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Dear David,

Independent Distribution Network Operators – licence applications from affiliates of existing licensees

Thank you for the opportunity to provide some comments on the issue of DNO affiliated IDNOs.

It is our strong belief that, under the current regulatory framework, there are robust protection mechanisms under the DNO and IDNO licences and the Competition Act to make it possible for an IDNO that is affiliated to a DNO to operate independently and compete in the DNO's Distribution Service Area(s) without any risk of cross subsidy, sharing of confidential information or distortion of competition in the market place.

Forbury Assets Ltd, a wholly owned subsidiary of SSE Plc, applied for a distribution licence to operate across the whole of Great Britain on 31 January 2018.

Our business plan has been developed with open recognition of the need to maintain complete business separation from other SSE licensees such as SSE Generation, SSE Energy Supply and both Southern Electric Power Distribution and Scottish Hydro Electric Power Distribution.

Forbury Assets Ltd plans to operate in a distinct market place, under quite a different operating model with a different cost base to DNOs. Forbury Assets Ltd will be independent of the other SSE network companies having a separate board, separate management structure and will be ring fenced. We have ongoing engagement with companies who will provide all the network systems required to allow safe operation of our networks and accurate billing of suppliers, thus further ensuring the complete separation of the IDNO from the DNO companies

Having applied for the licence at the start of the year we are disappointed by some of the issues raised and the suggestions put forward at this late stage. The consultation document seems to imply the current regulatory framework may not provide adequate protection for consumers. We do not agree with this concern given specific obligations in the DNO and IDNO licences. We are concerned the additional measures proposed by Ofgem could

prevent competition emerging and could place an affiliate IDNO at severe competitive disadvantage relative to DNOs and other IDNOs. As they stand, the proposals would introduce an inconsistent regulatory framework for network operators.

We believe it is pertinent to also point out the slight inaccuracy in the consultation document which suggests Ofgem was approached by a DNO; Ofgem was approached by an SSE group company to progress an IDNO licence but was not approached by an SSE DNO. We have concerns that this will have skewed interpretations of the consultation and of our intentions and ask that this is taken into account when assessing the responses.

Please find our answers to the consultation questions in the attached appendix.

If I can clarify any of the points in this response or provide more information, please do not hesitate to contact me

Yours sincerely

Ross Bibby
Regulation - Senior Analyst

Appendix 1

What are your views on the potential impacts on competition in connections and or consumers that we have identified?

It is crucial that any affiliate IDNO entering the market place does not have an undue advantage over its competitors while offering greater choice and better outcomes for consumers. We do, however, feel that any potential concerns have already been addressed by the licence conditions by which each licensee is bound (in particular SLC 4 – No abuse of the licensee’s special position and SLCs 31B and 42 - Independence of the distribution business and restricted use of confidential information). However, we appreciate the DNO and affiliate IDNO would need to be able to demonstrate that they have controls in place to ensure adherence to the conditions of the licence. We believe this could be achieved under current arrangements.

On the subject of the IDNO and its related DNO putting pressure on the market and reducing competition, we are unclear as to how this would be achieved in practice. Any issues such as sharing of confidential information, changing charging methodologies or market sharing are already prohibited under the existing legal and regulatory framework and any attempt to prohibit competition would be a serious matter and could be addressed under the Competition Act.

The fact that IDNOs are not required to participate in the Incentive on Connections Engagement does not inherently imply a lack of engagement with customers just as participation in ICE does not inherently mean good customer service. There are now 14 IDNOs operating in Great Britain, as well as 14 DNOs. For a company wishing to win work in the current distribution marketplace it is not enough to simply compete on price, there has to be an excellent level of customer service. This is an area in which Forbury Assets Ltd intends to become a market leader because, we believe, that satisfied customers are intrinsic to the success of the business. This concern could be extrapolated to include all IDNOs and we do not believe there is any evidence of poor customer service being an issue in this area and certainly none that can be attributed to the lack of an incentive on connections engagement.

It is our understanding that when approached for new connections by a customer DNOs are obliged to advise their customers that services can be provided by other parties including IDNOs and ICPs, in accordance with the provisions of the Competition in Connections Code of Practice (CiCCOP). We understand adherence to the CiCCOP is a licence condition for the DNOs and it also requires that the DNOs do ‘not distort prevent or restrict competition in the local connections market’. It is therefore difficult to see how a DNO could promote its affiliate IDNO ahead of other service providers without falling foul of the licence requirements and the Competition Act.

On the issue of fairness of service provision to IDNOs by the DNO, the consultation states that it is for the IDNO and DNO to ensure that sufficient processes are in place to ensure equal treatment. This is incorrect. It is up to the DNO to ensure that its services are provided fairly. The affiliated IDNO should not be privy to the arrangements in place with other industry participants. We note that this was a matter that was addressed specifically

by SSEN under explicit legally binding commitments consulted on and implemented by Ofgem. We understand they are required to report on compliance with these commitments on an ongoing basis. We believe this gives further assurance to Ofgem.

Furthermore, while we agree that any misallocation of costs or regulated revenue would be inappropriate and the businesses must be set up in such a way that this cannot be done, it would seem that any such behaviours could clearly be identified through the annual regulatory returns submitted by the DNO or the annual accounts of the IDNO. With regard to economies of scale that arise from an IDNO being part of larger group or companies we would contend this is already the case with a number of entrants in the IDNO market and is unrelated to the issue of advantages conferred to IDNOs by being affiliated with DNOs. As set out above, our business model is based on services being procured from external contractors, not the DNO. Economies of scale are also only likely to emerge to the extent corporate functions such as legal, finance or HR are shared across all SSE group companies. Again, methodologies for allocating costs are clearly documented and costs allocated are transparent and reported.

Are you aware of any other potential impacts on competition?

We think that an IDNO may be able to offer something strategically, commercially or technologically distinct from the affiliated DNO (and other DNOs and IDNOs) and given the particular market focus, is likely to have a different operating and cost model. This increases and enhances competition and brings benefits to customers through improved service.

Do these change whether the IDNO is operating in or outside of the affiliated DNO's DSA(s)? If so, how?

We believe this issue is likely to be one of perception rather than reality. We have already set out above our thoughts on how the current licence conditions provide protection from any theoretical collusion between the incumbent DNO and its affiliated IDNO to distort or restrict competition. The effect is that operating in an affiliate DNO's DSA is the same as working out with it.

Do you agree with our conclusion that granting a licence to an affiliate of an existing licensee does not raise any new issues with DUoS charges?

We agree with Ofgem's conclusion that the licensing of a DNO affiliated IDNO will not cause any issue with DUoS charges. IDNOs have always had the option to charge domestic customers less than the host DNO or to negotiate bespoke terms with commercial customers. We cannot see how these provisions will be affected by the licensing of an affiliate IDNO.

What other impacts on existing consumers, if any, do you anticipate from granting such a licence?

With regard to impacts on existing end users of electricity we cannot see how they would be impacted by the entry of a new IDNO. However, developers looking for a connection would have increased choice in the provider of services and improved competition is likely to drive wider benefits in price and service.

Do you think that the current IDNO licence conditions are sufficient to address the concerns raised in this letter?

We strongly agree with this statement. Furthermore, we would contend that the DNO licence conditions also offer substantial protection from the perceived concerns in this consultation. We also note wider protection provided through the Competition in Connections Code of Practice and importantly the Competition Act. We are concerned that the need for additional regulation has not been demonstrated and is in danger of having an adverse effect on competition and affiliated IDOs, effectively creating different tiers of regulation for DNOs, IDNOs and affiliated IDNOs.

What additional measures do you think would be required?

We do not think that any additional measures are required.

Do you think prohibiting an IDNO from operating within specified areas (for example the affiliated DNO's DSA(s)) would sufficiently address the concerns we have raised?

As we see it the question is not whether an IDNO should operate only out of its related DNO Distribution Services Area but whether there are any barriers to it operating on an unrestricted basis across the whole of Great Britain. In this regard, as we have already stated, the existing framework provides for the IDNO to demonstrate it is sufficiently independent of the related DNO and the correct controls are in place to ensure compliance with the existing licence conditions. This requirement already applies to DNOs, particularly with regard to relationships with related generation or supply businesses. As such we do not believe any additional measures are required. There are no benefits to customers in preventing an IDNO from operating in its affiliate DNO's DSA.