

23 October 2000

**London Electricity's acquisition of
Powergen's Cottam power station**

A consultation paper

1. Introduction

Purpose of this document

1.1 This document:

- ◆ gives details of the proposed acquisition of Cottam power station by London Electricity;
- ◆ explains the merger control process for this transaction; and
- ◆ requests comments on the regulatory issues arising from the proposed transaction.

1.2 Ofgem will make recommendations to the Director General of Fair Trading in relation to the merger. In order to allow comments to be considered Ofgem needs to receive these not later than Monday 30 October 2000.

2. Details of the proposed acquisition

- 2.1 Powergen plc owns and operates a coal-fired electricity generating station in Nottinghamshire, Cottam power station. The purchase of Cottam power station is subject to the consent of the European Commission.
- 2.2 Jade Power Generation Ltd (Jade) operates Cottam power station with Powergen having all of the shares in Jade and owning the station. The acquisition will entail London Electricity Group (LEG) buying Jade and taking over the generation licence held by Jade. It will also have to acquire title to the power station.

3. Merger Control Process

- 3.1 Under the European Community Merger Regulation (Council Regulation 4064/89 as amended by Council Regulation 1310/97) ("the Regulation"), a merger having a Community dimension should be appraised by the Commission of the European Union ("the Commission") with a view to establishing whether or not it is compatible with the common market. Because of the parties' combined world-wide and EC turnover, the proposed acquisition of Cottam power station by an affiliate of London Electricity appears to meet the relevant criteria for a merger having a Community dimension. The Commission has one month from the date of receipt of a complete notification to decide whether the merger raises serious doubts as to the acquisition's compatibility with the common market and whether to initiate an in-depth investigation under Phase II of the Regulation.
- 3.2 Article 9 of the Regulation provides for the Commission to refer a merger to the competent authorities of a Member State where on application of that Member State:
- ◆ a concentration threatens to create or to strengthen a dominant position as a result of which effective competition would be significantly impeded in a market within that Member State, which presents all the characteristics of a distinct market; or
 - ◆ a concentration affects competition in a market within that Member State which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.
- 3.3 If a merger is referred back to the Member State under Article 9, the Member State may take only measures strictly necessary to safeguard or restore effective competition in the market concerned. Unless the Commission decides to refer the merger to the UK, the UK will be precluded from applying its national legislation on competition to the merger. The EU Commission then has exclusive jurisdiction to determine whether the proposed acquisition, with or

without conditions, does or does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it and accordingly whether it is, or is not compatible with the common market.

- 3.4 Article 21 of the Regulation provides for a Member State to take appropriate measures to protect legitimate interests other than those taken into consideration by the Regulation.

4. Details of the Parties

Powergen plc

- 4.1 Powergen established a company called Jade to hold a generation licence and operate Cottam on its behalf. Jade is owned by Powergen UK plc, which is a wholly owned subsidiary of Powergen plc (Powergen). Powergen is the holding company for the Powergen group of companies and is traded on the London Stock Exchange. It is a vertically integrated company with generation, supply and distribution interests in the UK. It also has interests in Europe, India and Asia Pacific. It is presently in the process of acquiring the LG&E Energy Corp, in the USA.
- 4.2 In 1999 Powergen disposed of a significant amount of generation capacity in England and Wales - selling 4,000MW of coal-fired capacity (Fiddler's Ferry and Ferrybridge power stations) to Edison Mission Energy. Powergen has recently acquired a 50% share in Corby power station, with ESBI holding the other 50%. Following the disposals and acquisitions, Powergen now has a generation market share of around 14.3% percent of output and 17.2% of total generating capacity in England and Wales.
- 4.3 Powergen purchased East Midland Electricity (EME) distribution and supply businesses in July 1998 and has responsibility for compliance with EME's PES licence. It has both electricity supply and distribution interests in England and Wales and currently has around 7.7% of the retail electricity supply market.

EdF

- 4.4 Cottam Power Limited (CPL) is a wholly owned subsidiary of The London Power Company, set up to acquire the power station. The London Power Company is an affiliate of LEG. LEG is in turn wholly owned by EdF International, which is itself a wholly owned subsidiary of EdF. EdF is the wholly French owned state monopoly supplier of electricity in France.
- 4.5 In the UK, LEG has a variety of interests spread across all sections of the energy sector. This includes generation in Sutton Bridge power station, distribution and supply in the London area under London Electricity's Public Electricity Supply

(PES) licence, supply in the South West following the acquisition of South Western Electricity plc (Sweb) in 1999 and supply elsewhere in Great Britain under a second tier supply licence. LEG also has partial interests in Virgin Energy Limited (25%), which is an internet electricity supplier; a 1,000MW combined cycle gas turbine plant in Barking, Essex (13.5%); and the 24Seven, joint venture with TXU (50%), which manages and operates distribution networks in the London Electricity and Eastern Electricity areas.

- 4.6 The LEG supplies electricity to 2,770,000 residential customers, 7,000 large energy users and 320,000 small businesses. It has both electricity supply and distribution interests in England and Wales, and currently has 11.4% of the retail electricity supply market.

Cottam power station

- 4.7 The Cottam power station is registered with the National Grid Company as a 2,008 MW coal-fired plant in North Nottinghamshire. The station was developed and commissioned between 1969 and 1970.

5. Issues arising from the proposed acquisition

Concentration of generation interest

- 5.1 Ofgem will need to consider whether the acquisition of Cottam power station represents an unacceptable concentration of generation interests in LEG. The EdF group has at present 6.88% output and 4.31% of total generating capacity in England and Wales (including the Interconnector). With the acquisition of Cottam power station this will increase to 9.18% and 7.28% respectively.

Restriction on own generation capacity

- 5.2 London Electricity's PES licence sets a limit on London's own generation capacity. This limit will be breached by the acquisition of Cottam power station. Ofgem will need to consider whether it is appropriate to consent to raise this limit and, if so, on what terms. As in previous acquisitions, restrictions on electricity sale contracts between supply and associated generation will need to be considered.

Vertical Integration

- 5.3 Consideration will need to be given to whether, in the light of the already vertically integrated nature of the LEG's business, the acquisition of Cottam power station will have any material effect on competition.

Information ring-fencing

- 5.4 At the time of the acquisition of the Sweb supply business by EdF, Ofgem sought an assurance in relation to ring-fencing information arising from EdF Group's generation business so that EdF could not use information relating to the power purchase agreements for the benefit of the Sweb business. Ofgem needs to consider whether, in the light of the New Electricity Trading Arrangements (NETA) this assurance is still relevant and necessary, and whether it needs to be extended to cover Cottam power station.

Market abuse licence condition

- 5.5 The process of modification or introduction of the market abuse licence condition is designed to reflect changing market circumstances. In assessing whether this licence condition should be included in a generator's licence, Ofgem considers all centrally despatched generation assets in which the company holds a controlling interest. LEG already has this condition in its licence for Sutton Bridge and the condition is already included in the generation licence held by Jade, which London Electricity will continue to use in respect of Cottam power station.

6. Conclusion

- 6.1 Ofgem is seeking the views of interested parties on the acquisition of Cottam power station by LEG, so that the Director General of Electricity Supply may make recommendations to the Director General of Fair Trading.
- 6.2 Responses will normally be available in the Ofgem library unless there are good reasons why they must remain confidential. Consultees should mark the part of their response (or whole response) which is to remain confidential, if this is the case, and where possible should consign any confidential material to appendices.
- 6.3 Comments on the proposed acquisition should be sent, by **Monday 30 October 2000** to:

Rachel Graham
Ofgem
16 Palace street
Victoria
London
SW1E 5JD

Fax: 020 7932 5197
E-mail: rachel.graham@ofgem.gov.uk