

Competition in connections - Consultation on ENWL's Competition Notice

Consultation

Reference: 92/13
Publication date: 6 June 2013
Response deadline: 18 July 2013

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Overview

This consultation seeks views on the development of competition in Electricity North West Limited's (ENWL) Distribution Service Area (DSA). It follows the submission to us by ENWL of a 'Competition Notice' on [24 May 2013] in relation to one Relevant Market Segment, 'Metered Distributed Generation – Low Voltage work'.

We currently protect the interests of consumers by regulating the margins that Distribution Network Operators can earn from their connections business.

We propose to lift price regulation for connection services where ENWL has demonstrated that effective competition exists by satisfying both the Legal Requirements Test and a Competition Test. We intend to make determinations on whether ENWL has satisfied these tests in the 'Metered Distributed Generation – Low Voltage work' segment by September 2013.

In this document we highlight the information we are looking for to help us assess whether effective competition exists in the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's DSA. ENWL's Competition Notice is available on our website as an associated document to this consultation.

Context

Our principal objective is to protect the interests of existing and future consumers. We consider that where competition is viable and effective it can protect customer interests better than regulation. Effective regulation in the connection market should allow customers to benefit from lower prices, innovation and better service.

In recent years, we have worked closely with the industry to remove barriers and limitations on the scope for competition in connections. In 2010, we introduced a package of measures to remove regulatory barriers to competition and to provide strong incentives for Distribution Network Operators (DNOs) to facilitate competition. These measures include –

- providing headroom to new entrants by introducing a four per cent regulated margin that DNOs must charge on contestable connection services in market segments where we consider competition to be viable;
- providing DNOs with the opportunity to have this price control lifted in segments of the market where they can demonstrate that competition can be relied upon to protect consumer interests (by way of submitting a Competition Notice and passing the Legal Requirements Test); and
- an assurance that we will continue to monitor competition in the connections market (we will review the position and consider what action to take if, by 31 December 2013, a DNO fails to demonstrate effective competition).

To date we have issued decisions on six previous Competition Notices — Northern Powergrid on 26 October 2012, UK Power Networks on 29 October 2012, Western Power Distribution on 25 February 2013, Scottish and Southern Energy Power Distribution on 29 April 2013, and two from Electricity North West Limited (21 November 2011 and 10 May 2013). Other than the Competition Notice submitted by ENWL to which this consultation relates, we are currently considering one other Competition Notice which was submitted by UK Power Networks. Details of our previous determinations and the Competition Notices we are currently considering can be found on our website (see associated documents below).¹

In our previous determinations we have emphasised that we will not lift price regulation until we have sufficient evidence that customers' interests will be protected in its absence. If a DNO does not consider that it can provide evidence of effective competition in the whole of a Relevant Market Segment (RMS) it can propose an alternative market segment.

We have recently received an application from ENWL. This consultation seeks views on ENWL's application which relates to the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's Distribution Service Area (DSA).

As was the case with all previous applications, our determinations will be based on the evidence presented in the Competition Notice and the responses to this consultation.

¹ <http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnctns.aspx>

Associated documents

ENWL's Competition Notice and decisions on previous Competition Notices

<http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnctns.aspx>

DPCR5 Final Proposals - Incentives and Obligations

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=Networks/ElecDist/PriceCtrls/DPCR5>.

Special conditions of the Electricity Distribution Licence

<http://www.ofgem.gov.uk/Networks/ElecDist/PriceCtrls/DPCR5/Documents1/CRCs%20master%20merged.pdf>

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Executive Summary

We are seeking views and evidence by 18 July 2013 on whether we can have confidence in ENWL being constrained by pressures from actual or potential competitors if price regulation is lifted in the 'Metered Distribution Generation – Low Voltage work' RMS.

Background

We have been working to facilitate competition in electricity connections since 2000. Unlike the replacement, reinforcement and maintenance of the existing network, connection services are contestable. This means that new entrants to the market can compete with Distribution Network Operators (DNOs) to give customers a real choice over their connection provider and an opportunity to shop around to get a good service and value for money. We would expect competition to deliver benefits that are more difficult to achieve through regulation, such as innovation in the type of services on offer, a focus from providers on meeting customer needs, and a choice for customers.

In general, however, we have been disappointed with the pace at which competition in the electricity connections market has developed. For this reason, at the last electricity distribution price control review (DPCR5), we revised regulatory arrangements to further facilitate competition. Previously, DNOs were prevented from earning a margin on connection activities. DNOs must now earn a margin of four per cent on contestable connection services in those relevant market segments where competition is considered viable. This is intended to create headroom to allow new entrants to compete against the DNO.

In addition, since the start of DPCR5 (April 2010), DNOs have been able to submit Competition Notices to request that price regulation be lifted in the RMSs where they can show that effective competition exists.²

ENWL is applying for price regulation to be lifted in one RMS: 'Metered Distributed Generation – Low Voltage work'. We have four months from the date ENWL submitted its application, [24 May 2013], to determine whether to lift price regulation.

Considerations in determining whether to lift price regulation

In determining whether to lift price regulation, we will consider whether we can rely on actual competition or the threat of competition, rather than price regulation, to protect consumer interests. We will only lift regulation where we determine that effective competition exists. Our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have sufficient evidence that customers' interests, in the whole of an RMS, will be protected in its absence.

² As DNOs have an important role to play in removing barriers to entry, any DNO that fails to demonstrate effective competition by December 2013 will be reviewed by Ofgem and may subsequently be referred to the Competition Commission.

One important indicator of whether competition is effective is ENWL's share of work carried out. Another is the number of alternative providers active in the 'Metered Distributed Generation – Low Voltage work' segment.

While we will take into account ENWL's share of work in the segment when assessing whether effective competition exists, we do not think that it should be considered in isolation as it can be an imperfect indicator of the effectiveness of competition. For example, a DNO may retain a high share by providing a competitive price or a high quality of service. In that case, the threat from competitors may be effective in limiting the prices that the DNO charges and/or encouraging it to innovate and improve service.

Equally, continued regulation in contestable services can have unintended consequences and stifle the scope for customers to realise the benefits, such as innovation, that competition can bring. For this reason, an approach that looks narrowly at market shares and retains price regulation until predefined thresholds have been met may not be in customers' best interests. We will continue to monitor the way the market works and customers will continue to be protected by competition law.

Respondents' views

For the reasons outlined above, we will consider a range of criteria in assessing whether effective competition exists. We will make our decision having considered the evidence in ENWL's Competition Notice and that provided by interested parties.

We would like to hear in particular from parties (or their representatives) who purchase contestable connection services in the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area. We would like to understand whether customers have effective choice between connections providers, whether they have the information they need to decide between alternative offerings and whether this has been, or is likely to be, successful in delivering improved service levels or more competitive prices (either from ENWL or from its competitors).

We also seek the views of those companies competing with ENWL or those who have done so, or who have considered doing so in the past. We would like to understand whether there are barriers to them entering or growing their business in providing contestable connection services in the 'Metered Distributed Generation – Low Voltage work' segment. In particular, we would like to understand whether ENWL responds appropriately to the needs of its competitors when it provides them with non-contestable services.

Overall, we invite views and evidence on whether we can have confidence in ENWL being constrained by pressures from actual or potential competitors if price regulation is lifted. Responses to this consultation should be sent to us by 18 July 2013 at the latest. Appendix 1 provides a template to assist interested parties in providing responses.

1. ENWL's Competition Notice

Chapter Summary

This chapter describes ENWL's Competition Notice, the process we will follow in considering whether the Legal Requirements Test and the Competition Test have been met and the structure of this consultation.

- 1.1. ENWL's Competition Notice serves as an application to have price regulation lifted on competitive connection activities in one of the RMSs set out in CRC 12 of the Electricity Distribution Licence. It relates to the 'Metered Distributed Generation – Low Voltage work' segment.³
- 1.2. CRC 12 and our DPCR5 Final Proposals set out the process we must follow in assessing the Competition Notice submitted by ENWL. We must determine whether the Legal Requirements Test and the Competition Test (set out in CRC 12) have been met for the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area.⁴ We must make this determination within four months of receiving ENWL's Competition Notice. CRC 12 requires us to consult with parties that we believe have an interest prior to making our determination.
- 1.3. Our DPCR5 Final Proposals set out key issues that DNOs should consider in making their case. In addition, our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have seen sufficient evidence that customers' interests will be protected in its absence. The key issues set out in DPCR5 form the basis for ENWL's Competition Notice. These are –
 - actual and potential competition: the current level of competition the DNO faces in each market segment and the scope for this competition to grow.
 - price and transparency of pricing: the steps the DNO takes to ensure that customers have the information they need to make decisions between taking a service from the DNO or a new entrant provider; and what the DNO is doing to ensure they do not discriminate between their own customers and new entrant providers when they price their services.
 - promoting awareness of competitive alternatives amongst connections customers: the steps the DNO takes to ensure that customers are aware that they can go to other providers for the service they are requesting.
 - competition in connections procedures and processes: the actions the DNO has taken to ensure that the procedures and processes they have in place for non-contestable services meet the needs of new entrants and are provided in a non-discriminatory manner.

³ Appendix 4 sets out the details of all nine RMSs.

⁴ The Legal Requirement Test and the Competition Test are set out in Appendix 3.

- efforts to open up non-contestable activities to competition: what action the DNO has taken to extend contestability.
 - barriers to competition: other actions the DNO is taking to remove barriers to new entrants competing in their area.
- 1.4. We intend to publish our decision on the Competition Notice submitted by ENWL, with details of our determination by September 2013.

Consultation responses

- 1.5. In making our determination we will, amongst other relevant information, consider responses to this consultation.
- 1.6. **We ask respondents to this consultation, wherever possible, to submit their responses using the template at appendix one of this document.**
- 1.7. Unless consultation responses are marked confidential they will be posted on our website. Please note that it could prove difficult for us to use confidential information as evidence in coming to a determination. **If you consider your response to be confidential, in whole or in part, please contact us using the details on the front of this document.**
- 1.8. Under the terms of the licence, we are required to make a determination within four months of receiving a Competition Notice from the licensee. To ensure that we fulfil these obligations the deadline by which consultation responses must be submitted to us is 18 July 2013. We consider that a six week consultation gives stakeholders sufficient time to consider documents and prepare responses

Structure of this document

- 1.9. While interested parties are invited to respond to all of the questions posed in this consultation, we would particularly like to invite:
- **Customers** to consider the issues discussed in Chapter two (Customer awareness and ability to choose competitive alternatives) and the document summary Chapter six
 - **Existing/potential competitors** to consider the issues discussed in Chapter 3 (The potential for further competition) and the document summary at Chapter 6.
- 1.10. Chapter 4 presents a summary of ENWL's assessment of competitive activity and we seek views on the data provided in ENWL's Competition Notice.
- 1.11. Chapter 5 describes ENWL's current position against the Legal Requirements Test.
- 1.12. Appendix 1 provides a template to assist you in providing responses to the consultation document.
- 1.13. Appendix 2 gives an overview of the electricity connections market, our decision to introduce a regulated margin and the potential for price regulation

to be lifted. It also discusses what we will consider in determining whether the Competition Test has been passed.

- 1.14. Appendix 3 outlines the Legal Requirements and Competition Test
- 1.15. Appendix 4 defines each of the nine Relevant Market Segments.
- 1.16. Appendix 5 contains a glossary.
- 1.17. Appendix 6 contains a feedback questionnaire about this consultation.
- 1.18. We encourage all interested parties to read the document containing ENWL's Competition Notice which is available on our website as an associated document to this consultation.
- 1.19. We intend to publish our decision on the Competition Notice submitted by ENWL (with details of our determination) by September 2013.

2. Customers' awareness of and ability to choose competitive alternatives

Chapter Summary

This chapter seeks customers' views on their awareness of competitive alternatives. In particular, it asks whether customers are able to make informed decisions in choosing a connections provider and whether the competitive alternatives available to them provide the service and price they expect to receive.

Question box

When considering your responses to these questions, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake. Please only consider the segment relating to 'Metered Distributed Generation – Low Voltage work'.⁵

Question 1: Are customers aware that competitive alternatives exist?

Question 2: Do customers have effective choice, ie are they easily able to seek quotations from competitive alternatives?

Question 3: Does ENWL take appropriate measures to ensure that customers are aware of competitive alternatives?

Question 4: Are quotations provided by ENWL clear and transparent? Do they enable customers to make informed decisions of whether to accept or reject a quote?

Question 5: Have customers benefitted from competition? Have they seen improvements in ENWL price or service quality, or have they been able to source a supplier service or better price from ENWL's competitors?

2.1. We consider that, for effective competition to exist, customers must have a real choice of connections providers. In determining whether this choice exists, in addition to the number of competitors active in the RMS, we will consider:

- customers' awareness of alternative providers;
- the ability of customers to make informed decisions; and
- whether competitive alternatives to ENWL offer customers an effective choice of connections provider and the quality of service and/or value for money that they expect to receive.

⁵ Wherever possible please provide your response using the template at appendix 1 of this document.

Number of competitive alternatives

- 2.2. ENWL describes the work it carries out in the 'Metered Distributed Generation – Low Voltage work' segment to be "predominately associated with retro fitting distributed generation to existing premises. There is already an existing connection and the application from the customer is therefore to identify what, if any, costs are involved in allowing the generating equipment to be connected". In line with this, ENWL reports that the majority of connection offers to final customers are for nil value and/or only contain non-contestable work.
- 2.3. Some connection offers do contain contestable elements and some offers are issued to ICPs. Of these, ENWL reports the number of different parties that have received and accepted Point of Connection (POC) quotes: three different parties were issued POC quotes in 2010-11 and in 2011-12, and one party in 2012-13 (data only available up to September 2012).
- 2.4. Some of these POC quotes were issued to final customers rather than to ICPs. The figure below paragraph 8.20 of ENWL's Competition Notice suggests that of the seven different parties that received a POC over the period from April 2010 to September 2012, two were ICPs and the remaining ones were final customers. ENWL states that final customers receiving POC quotes can then provide these quotes to ICPs and receive competitive tenders from them for contestable works. ENWL suggests that this points to the "level of ICP quoting activity [being] actually higher" than might be inferred from the fact that two ICPs have received POC quotes from ENWL directly.
- 2.5. ENWL did not include in its submission evidence on what tendering activity final customers that have received a POC have done with respect to the contestable elements of a project. ENWL has told us that the two final customers that accepted ENWL's POC quote subsequently decided to commission ENWL to carry out contestable elements of the work as well.
- 2.6. We would like to understand whether customers feel they have an effective choice of competitive providers to carry out the contestable elements of the work in this RMS.

Promoting awareness of competition

- 2.7. ENWL describes a number of ways in which it makes potential customers aware of the possibility of procuring alternative providers to carry out the contestable elements of a project.
- 2.8. These include providing information on ENWL's website that explains the concept of contestable and non-contestable work. ENWL's website includes a page with a heading "Competition in connections" that describes the importance of competition in connections and the need for ENWL to provide quotes showing the split between contestable and non-contestable work. There is no direct link or reference to that web page from the introductory page for connection services to Distributed Generation customers.⁶ ENWL's

⁶ <http://www.enwl.co.uk/our-services/connection-services/distributed-generation>, accessed on 28 April 2013.

website provides a link to the Lloyd's Register page listing accredited alternative providers.

- 2.9. ENWL describes in its Competition Notice various initiatives (eg seminars and meetings) that it has carried out to engage with customers to explain competition in connections.
- 2.10. We seek customers' views on whether they consider that ENWL takes appropriate measures to make customers aware of the competitive alternatives available to them — for example, in the information they make available to customers at the time of seeking a quote. When responding, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake.

Transparency of pricing and giving customers the ability to choose

- 2.11. To be able to make an effective choice, we consider that customers should be able to compare the prices that will be charged by the incumbent DNO with those that may be charged by an alternative provider.
- 2.12. ENWL states that it provides a split between contestable and non-contestable charges on all its quotes. It also states that for both contestable and non-contestable charges, it gives a detailed breakdown of costs on all quotes that are above £10,000.
- 2.13. The figures reported in Section 8 of the Competition Notice suggest that the average value of the POC quotes issued is below £10,000. ENWL has shown us, as examples, two quotes for work that are under £10,000. In those two quotes, contestable and non-contestable work are identified separately, and, under each heading, charges are broken down to a similar level of detail as in the quote shown on page 21 of the Competition Notice. We are interested in understanding whether this level of detail is sufficient to help customers choose amongst alternative providers.
- 2.14. ENWL states that it includes in its all works quotes a statement informing the customer that if the quote includes contestable work then the customer can appoint their own contractor to carry this work out.
- 2.15. ENWL states that, from July 2012, it extended the validity period of its quotes from 90 to 180 days in response to customer requests. ENWL believes that the 180 day period allows customers time to choose how to proceed in a connection process. This length of time applies to all quotes, irrespective of whether they are quotes for POC or all works. The validity period of an outstanding quotation may be shorter if a new quotation subsequently issued by ENWL interacts with the outstanding quotation.⁷ Where such interactivity is identified by ENWL, the acceptance of the new quotation will trigger the withdrawal by ENWL of all unaccepted quotations that interact with the accepted quotation.

⁷ See pages 15 and 22 of ENWL's June 2013 'Statement of Methodology and Charges for Connection'.

- 2.16. ENWL states that it intends to allow customers in the 'Metered Distributed Generation – Low Voltage work' segment that have received an all works quote to accept just the non-contestable elements of that quote by the end of the second quarter of 2013.
- 2.17. ENWL has told us that distributed generation customers can use a single form to apply for an all works and for a POC quote, by ticking two separate boxes. ENWL told us that the request to "select only one of these options" in the relevant application form is not enforced.⁸
- 2.18. We seek the views of customers and competitors on points relating to the transparency of pricing and to customers' ability to choose. In particular:
- Are quotes provided by ENWL for connections clear and transparent?
 - Do ENWL's quotes enable customers to make an informed decision to accept or reject a quote?
 - Does the 180-day validity period on ENWL quotes allow customers to consider competitive alternatives?
 - Do ENWL's quotes enable customers to seek alternative providers to carry out the contestable parts of a connection project, and accept only the non-contestable elements of a quote if they do choose an alternative provider?

Benefits

- 2.19. In addition, we are interested in whether customers consider that they have benefitted from competition. Such a benefit could be seen, for example, either in improvements in ENWL's services or charges in the face of competition or by new entrants providing a superior level of service and/or a better price.

⁸ See <http://www.enwl.co.uk/docs/connections/application-for-generation-quotation.pdf>

3. The potential for further competition

Chapter Summary

This chapter seeks the views of existing and potential competitors on the potential for future competitive activity in the 'Metered Distributed Generation – Low Voltage work' RMS. It considers the number of competitors already in the market, potential barriers to the further growth of competition and what factors influence competitors' decisions to enter the RMS.

Question box

When considering your responses to these questions, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake. Please only consider the 'Metered Distributed Generation – Low Voltage work' RMS covered by ENWL application.⁹

Question 1: Does the level of competitive activity in the RMS show that there is the potential for further competition to develop?

Question 2: Consider the organisational structure of ENWL's business and its procedures and processes –

- **How do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice?**
- **Do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by ENWL? Or do they offer ENWL any inherent advantage over its competitors or prevent existing competitors from competing with them effectively?**
- **Do they assist, obstruct or delay connections providers entering the 'Metered Distributed Generation – Low Voltage work' segment?**

Question 3: Are the non-contestable charges levied by ENWL for statutory connections in the 'Metered Distributed Generation – Low Voltage work' segment consistent with those levied for competitive quotations?

- **Are they easily comparable with competitive quotations?**
- **Do the differences in charges between a POC quote and the non-contestable elements of an all works quote act as a barrier to competition?**

Question 4: What factors are key influences on the development of competition in the 'Metered Distributed Generation – Low Voltage work' segment? In particular, if you are an existing/potential competitor –

- **What is the potential for competitors to enter this segment, or grow their share in it if they already operate in the RMS?**
- **Are there any types of connection in the 'Metered Distributed Generation – Low Voltage work' segment, or geographic locations in ENWL's DSA, that by their nature, are not attractive to competition? Please explain your response.**

⁹ Wherever possible please provide your response using the template at appendix 1 of this document.

- 3.1. While we will consider current levels of competition when determining whether to lift price regulation they will only be considered alongside the potential for further competition to develop.
- 3.2. In this chapter we ask for competitors' views on the potential for further competition to develop in the 'Metered Distributed Generation – Low Voltage work' RMS in ENWL's area. In particular, we ask for views on the ease with which competitors can enter and compete, whether there are barriers to competition and ask about ENWL's efforts to open up non-contestable activities to competition. We also invite views on how competition might develop in the future.

Ease of entering and competing in the market

The number of competitors active in the market

- 3.3. We consider that the ease with which competitors can enter the market and the number of competitors leaving the market are indicators of the potential for further competition to develop.
- 3.4. We reported earlier that ENWL states in the Competition Notice that in the period from 2010-11 to September 2012, two different ICPs requested and accepted quotes from ENWL.
- 3.5. ENWL states that, over that same period, it has also provided POC quotes to five final customers. These customers may then pass on and receive competitive tenders from "a selection of ICPs". Two of these five final customers eventually asked ENWL to complete the contestable works in relation to these POC quotes.
- 3.6. We ask existing and potential competitors whether they consider that the level of competitive activity in itself shows that there is the potential for further competition to develop.
- 3.7. We would like to understand the extent to which ICPs that carry out work in other RMSs in ENWL's area are in a position to also compete for work in the 'Metered Distributed Generation – Low Voltage work' segment.

Barriers to effective competition

- 3.8. We consider that it is important to look at whether barriers to competition exist in the market that:
 - Prevent competitors from competing effectively (for example, barriers that may make it difficult for competitors to compete with ENWL in terms of service or price); or
 - Prevent further competition in the RMS (for example, barriers that may make entering the segment unattractive, or barriers that obstruct or delay entry).
- 3.9. We are not only considering potential barriers that are within ENWL's control to remove, but also natural or regulatory barriers that may obstruct competition from developing further.

- 3.10. ENWL's Competition Notice sets out the actions that it has taken to address potential barriers to competition that had been raised by respondents to our consultation on ENWL's first Competition Notice submitted on 22 July 2011, and that we had raised in our "reasons behind our decision" document of 21 November 2011, also relating to that first ENWL first Competition Notice. ENWL also goes through a set of potential barriers that have been identified in work developed by the Competitive Networks Association (CNA).
- 3.11. In our recent determinations on ENWL's Competition Notices submitted on 11 January 2013 we reviewed evidence on barriers to competition in ENWL's area in a number of RMSs. In this consultation, we are especially interested to hear views on potential barriers to competition that may have a particular impact on the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area. We invite views too on the effectiveness of the measures taken by ENWL to address some of the potential barriers, as described in its Competition Notice.

Availability of guidance and information for ICPs/IDNOs

- 3.12. As identified by the CNA, an alternative provider may be impeded from competing with a DNO if the DNO makes it difficult for the provider to access information that it requires to develop and deliver its own offer. This information can refer for example to the DNO's design policy documents, to its codes of practices, method statements or to material specifications.
- 3.13. ENWL describes in its Competition Notice the information available to alternative providers from ENWL's website or from its electronic public library. This includes information on whom to contact to discuss a new job or to submit a new application; information on relevant codes of practice; and information on design policy for industrial supplies.
- 3.14. ENWL's electronic library is password protected. ENWL grants access to ICPs accredited with the National Electricity Registration Scheme (NERS). In response to a request from a consultant, the information will also be made available to other interested parties. The library has a notification screen alerting users to policy changes. ENWL provides Compact Discs of their asset data records free of charge.

Service and response times

- 3.15. Both the ECSG and the CNA have identified the time taken by DNOs in general as a potential barrier to competition. More specifically, they raised the concern that DNOs may not take the same level of care in dealing with activities that lie outside the scope of their licence obligations on guaranteed service standards (SLC15).
- 3.16. We recognise that unduly long timeframes to handle requests by alternative providers might hamper the ability of alternative providers to compete with ENWL. And uncertainty about these timeframes might increase the risk — in the eyes of the final customer — of using an alternative provider.
- 3.17. In the context of monitoring activities falling within the guaranteed service standards (SLC15), ENWL states that, as part of its compliance assurance approach, it carries out "quarterly management control checks to ensure that

there is no undue discrimination in the provision of non-contestable services to ICPs”.

- 3.18. ENWL does not provide information on its service and response times that relate specifically to work in the ‘Metered Distributed Generation – Low Voltage work’ segment. The figure charting the average time to respond to quotes that is presented below paragraph 4.29 refers to demand as well as to distributed generation – low voltage POC requests.

Contractual arrangements for the adoption of assets built by ICPs

- 3.19. The ESCG has identified that the arrangements put in place by DNOs in relation to the adoption of assets built by ICPs is a potential barrier to competition. In particular, the ESCG raised the issue of security arrangements (bonds) to protect the DNO against any liability in case there is a fault in the adopted network. This is not specific to ENWL.
- 3.20. In our 21 November 2011 determinations on ENWL’s first Competition Notice we raised the point made by some respondents concerning the tripartite agreements required by ENWL and the potential impact these might have on a customer’s willingness to use competitive alternatives. In its Competition Notice, ENWL states that it has now developed bilateral adoption agreements and that these have been used on a small number of occasions in 2012.

Inspection and monitoring of assets built by ICPs

- 3.21. The ECSG has raised the issue of inspection and monitoring of assets built by ICPs as a potential barrier to competition. In particular, it questioned the proportionality of the cost and time taken by DNOs to inspect these assets. This is not specific to ENWL.
- 3.22. ENWL describes in its Competition Notice its approach to inspection and monitoring. Its regime has three levels of inspection and “all the main third parties who are active in the [ENWL] area are on the third and lowest level of inspection”.
- 3.23. ENWL states that it applies the same inspection and monitoring policy consistently to connections work carried out by ICPs and to connections work carried out by ENWL’s staff or by its contractors.
- 3.24. ENWL has developed an IT system to allow ICPs online access to audit results, giving ICPs real time information of audit defects so that rectification can take place without putting energisation dates at risk.
- 3.25. In its Competition Notice, ENWL reports that it received feedback during 2012 from stakeholders that whilst they supported the three levels of inspection, they considered some of ENWL’s thresholds remained onerous. ENWL highlights the comment from stakeholders that there were certain activities that had 100 per cent inspection levels, something they thought ought not to be done if they had demonstrated a high quality track record. Following this feedback, ENWL states that it has changed its audit and inspection regime

and that this has received favourable feedback from ICPs. ENWL states it will complete implementation of this revised regime by the end of the second quarter of 2013.

Arrangements for obtaining land rights

- 3.26. The CNA has identified the process of obtaining land rights when an ICP or IDNO carries out the contestable work as a potential barrier to competition. According to the CNA, DNOs can be slow to initiate the process for securing leases, easements etc, slow in progressing them once begun and can insist upon all the legal agreements being in place before they will energise the new connection.
- 3.27. ENWL states that it uses standard agreements for easements and land transfers "to speed the process and minimise costs." ENWL also states that it developed alternative agreements for the securing of easements and wayleaves with one IDNO, GTC, following requests from that IDNO to consider an approach it had developed with another DNO.

Consistency of charges

- 3.28. A potential barrier to competition will arise if there are differences between POC quotes and all works quotes in the charges set by the DNO for the same non-contestable work. This may place an alternative provider at an undue disadvantage when competing with the DNO for work. This is particularly relevant in the 'Metered Distributed Generation – Low Voltage work' segment where the average value of contestable works in the ENWL area has been below £5,000 in the period 2010-11 to September 2012.
- 3.29. ENWL states that it is consistent in its pricing between all works quotes and POC quotes. For a given project, the non-contestable charges would be identical in both. ENWL states that this consistency applies in particular to its "inspection and monitoring charges" where it applies the same charges irrespective of whether these charges are in the context of an all works quote – and therefore where it is ENWL's work which is being inspected – or in the context of POC quotes where the work is carried out by an alternative provider. This arrangement requires the relevant ICP to be at the same (lowest) level of inspection regime that applies to ENWL's own work. ENWL states that most ICPs are at that level.
- 3.30. There will be differences in the charges set out in a POC quote and in the non-contestable elements of an all works quote to reflect differences in the two processes. ENWL describes these as "transactional charges associated with Competition in Connections such as design approval and issuing adoption agreements". We seek respondents' views on the extent to which they consider the differences in charges between a POC quote and the non-contestable elements of an all works quote acts as a barrier to competition in the 'Metered Distributed Generation – Low Voltage work' segment.

Other potential barriers

- 3.31. The potential barriers highlighted by the CNA and the ECSG include others that we have not discussed above, including –

- Developing ongoing relationships (DNOs are often seen to be poor at “soft skills”, eg communication, cooperation and building relationships with customers)
 - Dispute resolution (competitors raised concerns that the length of time taken to resolve disputes can leave them unable to compete effectively).
- 3.32. We seek respondents’ views on the extent to which they consider the procedures and processes ENWL has put in place and identified in its Competition Notice are sufficient to enable competitors to compete effectively. In particular, we seek competitors’ views on –
- Does ENWL enable alternative connections providers to compete with its own connections timescales (from quote to energisation)? Or does ENWL have any inherent advantage or prevent existing competitors from competing effectively?
 - How does ENWL assist, obstruct or delay connections providers from competing in providing connection services in the ‘Metered Distributed Generation – Low Voltage work’ segment?
 - Do any of the perceived barriers to the development of competition that have previously been identified still exist in the ‘Metered Distributed Generation – Low Voltage work’ segment?

The future growth of competition

- 3.33. We are interested in whether existing or potential competitors intend to expand or start their business in the ‘Metered Distributed Generation – Low Voltage work’ segment in ENWL’s DSA. We are also interested in the factors that competitors take into consideration in deciding whether to compete with ENWL in that segment.
- 3.34. We note that you may consider this information to be confidential. If you do, please provide it in a separate annex to your response and clearly mark it as confidential.

The potential for competition to develop

- 3.35. Further to the potential barriers to competition discussed earlier in this chapter, we note that the potential for competition to develop in the ‘Metered Distributed Generation – Low Voltage work’ segment may be influenced by a number of factors, for example the level of contestable service offered by ENWL to its customers, economic conditions, the level of margin charged by ENWL, and the nature of work needed to connect LV generation.
- 3.36. We seek the views of existing and potential competitors on what factors they consider are key influences on the development of competition in that segment in ENWL’s area.
- 3.37. We seek the views of existing and potential competitors in ENWL’s area intending to grow their business in, or enter, the ‘Metered Distributed Generation – Low Voltage work’ segment, within the next five years.

- 3.38. We also seek the views of existing and potential competitors as to whether there are any types of connection in that segment, or geographic locations in ENWL's DSA, that, by their nature, is not attractive to competition. If you consider some connections/locations are not attractive to competition, why is that the case?

Efforts to open up non-contestable activities to competition

- 3.39. Connections works are split between works that are contestable (competitive) and those that are non-contestable (can only be completed by the DNO).
- 3.40. In our December 2011 consultation on expanding the scope of contestable activities we stated our belief that opening up non-contestable activities to competitors may provide further opportunities and incentives for competition to develop in the connections market. This is because it reduces competitors' reliance on DNOs to provide essential services and it increases the scope of works for which competitors can compete.
- 3.41. We consider that DNOs should engage with the industry to consider where it is possible to further extend contestability.
- 3.42. ENWL reports on its efforts to expand the scope of contestable work –
- ENWL states that since 2012 it allows "suitably accredited third parties to make live low voltage connections to [ENWL's] existing network and carry out the high voltage jointing work associated with connections."
 - Determining the POC is currently a non-contestable activity. ENWL states that it has completed trials with three ICPs on determining their own POC with mixed success. ENWL is due to start a new trial where the ICP will determine the POC, build it to a standard design and self connect.
- 3.43. We ask existing and potential competitors whether the steps taken by ENWL to extend contestability is likely to stimulate further competition in connection services in the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area.

4. ENWL's assessment of existing competitive activity

Chapter Summary

This chapter presents a summary of the information provided by ENWL to support its assessment of existing competitive activity in the 'Metered Distributed Generation – Low Voltage work' segment and seeks views from interested parties.

Question box

Question 1: Do you agree with the methods used by ENWL to assess the level of competition in the 'Metered Distributed Generation – Low Voltage work' segment? In particular, do you consider that the data provided gives a clear indication of the current level of competitive activity in that segment?

Question 2: In this RMS, do you consider that competitive activity is at a level that in itself indicates that effective competition exists? Do you consider that the coverage of existing competitive activity extends across the segment?

- 4.1. In this chapter, we provide a summary of the information provided by ENWL in its Competition Notice. We are seeking views on this information and on the level of competitive activity in the 'Metered Distributed Generation – Low Voltage work' segment.
- 4.2. In Chapter two we reported ENWL's description that the majority of connection offers to final customers in this segment are for nil value and/or only contain non-contestable work.
- 4.3. Some connection quotes do contain contestable elements and some quotes are issued to ICPs. The data reported in this chapter relates to these types of quotes. Connection offers that did not include any contestable work are excluded from this analysis.
- 4.4. ENWL's Competition Notice contains data on the value of quotes issued and accepted. In the case of POC quotes, ENWL has told us that the values cover both contestable and non-contestable work, and have been estimated by ENWL using average £/kVA values based on ENWL quotes.
- 4.5. ENWL reports data for 2010-11, 2011-12 and for the first six months of 2012-13.
- 4.6. The tables below refer to two types of quotes:
 - POC quotes. These are Point of Connection quotes issued by ENWL, covering only non contestable elements of work.
 - ENWL quotes. These are all works quotes issued by ENWL, covering contestable and non-contestable elements of work.

Table 1 Existing competitive activity – Metered Distributed Generation - Low Voltage work

Number of competitive alternatives in the RMS	2010-11	2011-12	2012-13 (part)
Number of parties receiving POC quotes	3	3	1
Number of parties that accepted POC quotes	2	2	0
Quotes issued (projects with contestable work)			
Number and average value of POC quotes issued	5 (£9,500)	3 (£9,800)	1 (£6,400)
Number and average value of ENWL quotes issued	8 (£51,000)	13 (£12,800)	18 (£10,400)
Quotes accepted (projects with contestable work)			
Number and average value of POC quotes accepted*	2 (£9,100)	2 (£9,700)	0 (N.A)
Number and average value of ENWL quotes accepted	1 (£10,100)	4 (£23,500)	5 (£4,700)

* Includes accepted POC quotes where the customer eventually asked ENWL to carry out the contestable works.

Source: ENWL Competition Notice April 2013 and data provided by ENWL in response to clarification questions.

4.7. ENWL states that two of the four accepted POC quotes over the two and a half years were later converted into ENWL quotes because the customers subsequently commissioned ENWL to carry out the contestable works involved.

4.8. Our analysis of the data in ENWL’s notice suggests that these two projects relate to:

- one project in 2010-11 with a total value of £16,913; and
- one project in 2011-12 with a total value of £11,596.

4.9. Table 2 recasts the last two rows of Table 1 to reflect this analysis.

Table 2 Analysis of accepted POC quotes based on the final provider of contestable works – Metered Distributed Generation - Low Voltage work

Quotes accepted (projects with contestable work)	2010-11	2011-12	2012-13 (part)
Number and average value of POC quotes accepted*	1 (£1,300)	1 (£7,800)	0 (N.A)
Number of POC quotes subsequently converted into ENWL quotes	1 (£16,900)	1 (£11,600)	
Total number and average value of ENWL quotes accepted (including converted POC quotes)	2 (£13,500)	5 (£21,100)	5 (£4,700)

* Excludes accepted POC quotes where the customer eventually asked ENWL to carry out the contestable works.

5. ENWL's compliance with the Legal Requirements Test

Chapter Summary

This chapter contains our assessment of the position of ENWL against the Legal Requirements Test.

- 5.1. CRC 12 and the DPCR5 Final Proposals Document set out a Legal Requirements Test that must be considered in conjunction with the Competition Test when we determine whether to lift price regulation in any RMS.

The Legal Requirements Test

- 5.2. Compliance with the Legal Requirements Test is a necessary pre-condition for passing the Competition Test. The legal requirements set out in the test are for the DNO to have no enforced breaches in the given regulatory year of any of the five strands detailed below.
- Standard Licence Condition (SLC) 12.6(c) (Requirement to offer terms for use of system and connection.)
 - SLC 15 (Standards for the provision of Non-Contestable Connection Services.)
 - SLC 15A (Connections policy and connection performance.)
 - SLC 19 (Prohibition of discrimination under Chapters 4 and 5)
 - The Competition Act 1998.

ENWL's current position

- 5.3. For the purposes of this assessment of ENWL's Competition Notice, submitted on [24 May 2013], the relevant regulatory year is 2013-14 which runs from 1 April 2013 to 31 March 2014.
- 5.4. Whilst the 2013-14 regulatory year is yet to run its course, there are currently no enforced breaches against ENWL against any of the five strands of the Legal Requirements Test in this regulatory year.

Future compliance with the Legal Requirements Test

- 5.5. If ENWL no longer meets the Legal Requirements Test after price regulation has been lifted, we could issue a clawback direction under CRC 12.40. The clawback direction would require ENWL to make a repayment of some or all of the margin that it had charged in its connection charges in relation to its connection activities in the RMS during a specified period of time.

6. Summary

Chapter Summary

This chapter summarises the issues discussed in this consultation. It seeks views from customers and existing and potential competitors on whether, taking all of the issues discussed into consideration, price regulation should be lifted in the 'Metered Distributed Generation – Low Voltage work' segment.

Question box

When considering your responses to these questions please only consider the 'Metered Distributed Generation – Low Voltage work' segment.¹⁰

Question 1: Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL's ability to earn a margin is removed?

Question 2: Do you consider that there is scope for competitors to grow their market share, for example if ENWL put up its prices or if its quality dropped, or are there factors constraining this?

Question 3: Do you consider that there is scope and/or appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?

Question 4: Given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?

Question 5: Do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted?

- 6.1. As discussed throughout this document, we consider that effective competition should not be determined by looking at market share data alone.
- 6.2. We note that ENWL carries out a large proportion of the connections work in the 'Metered Distributed Generation – Low Voltage work' segment for which it seeks price regulation to be lifted. However, we also recognise that price regulation may limit the attractiveness of a market to new entrants and that the current level of regulated margin may be set too low and may not enable third parties to compete effectively.
- 6.3. We reiterate that the intention of our assessment is to assess whether, in the event that price regulation was removed, competition could be relied upon to

¹⁰ Wherever possible please provide your response using the template at appendix 1 of this document.

protect customers' interests by delivering choice, quality and value for customers. We ask respondents to consider whether, on balance, consumer interests are better protected by regulation than they would be by competition. We also remind respondents that if price regulation is lifted we will continue to monitor ENWL's compliance with competition law and we will take seriously any evidence of anti-competitive behaviour.

6.4. We seek interested parties' responses to the questions posed throughout this document. In particular we seek customers' and existing and potential competitors' views on the following –

- Is there currently effective choice for customers in the 'Metered Distributed Generation – Low Voltage work' segment covered by ENWL's Competition Notice? In particular, do customers feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL's ability to earn a margin is removed?
- Is there scope and/or appetite for competitors to grow their market share in the segment covered by ENWL's application (for example, if ENWL put up its prices or if its quality of service dropped) or are there factors constraining this?
- Is there scope and/or appetite for new participants to enter the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area? Would they be able to provide similar or better services than existing participants or are there factors constraining this?
- Given your overall view of ENWL, can we have confidence in it to operate appropriately in the circumstance that price regulation were lifted?

6.5. We also seek interested parties' views as to whether there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in the 'Metered Distributed Generation – Low Voltage work' segment in ENWL's area.

6.6. In conclusion, we encourage all interested parties to read ENWL's Competition Notice which is available on our website and listed as an associated document to this consultation.

6.7. We ask that wherever possible, interested parties provide evidence to verify their claims set out in the responses to this consultation.

Appendices

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Appendix 1 - Consultation Responses and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. If you have any questions on this document please contact:

Olivia Powis
Senior Manager, Distribution Policy
Ofgem, 9 Millbank, London, SW1P 3GE
0207 901 3879
connections@ofgem.gov.uk

1.4. Responses should be sent, preferably by e-mail by 18 July 2013 to the address above.

1.5. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.6. Respondents who wish to have their responses kept confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

1.7. Next steps: Having considered the responses to this consultation, we intend to publish our decision in relation to ENWL's Competition Notice by September 2013.

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 ENWL has undertaken and the actions that you consider it could reasonably undertake.

Chapter Two

Question	Response
One: Are customers aware that competitive alternatives exist?	
Two: Do customers have effective choice (ie are customers easily able to seek alternative quotations)?	
Three: Does ENWL take appropriate measures to ensure that customers are aware of the competitive alternatives available to them?	
Four: Are quotations provided by ENWL clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?	
Five: Have customers benefitted from competition? Have they seen improvements in ENWL's price or service quality or have they been able to source a superior service or better price from ENWL's competitors?	

Chapter Three

Question	Response
One: Does the level of competitive activity in	

<p>the RMS show that there is the potential for further competition to develop?</p>	
<p>Two: Consider the organisational structure of ENWL's business and its procedures and processes –</p> <p>(a) how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice?</p> <p>(b) do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by ENWL? Or do they offer ENWL any inherent advantage over its competitors or prevent existing competitors from competing with them effectively?</p> <p>(c) do they assist, obstruct or delay connections providers entering the RMSs?</p>	
<p>Three: Are the non-contestable charges levied by ENWL for statutory connections in the RMS consistent with those levied for competitive quotations?</p> <p>(a) Are they easily comparable with competitive quotations?</p> <p>(b) Do the differences in charges between a POC quote and the non-contestable elements of an all works quote act as a barrier to competition?</p>	

<p>Four: What factors are key influences on the development of competition in the RMS? In particular, if you are an existing/potential competitor</p> <p>(a) what is the potential for you to enter this RMS, or grow your share in this RMS if you already operate in it?</p> <p>(b) are there are any types of connection or geographic locations in ENWL's area, that by their nature, are not attractive to competition? Please explain your response.</p>	
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Chapter Four

Question	Response
<p>One: Do you agree with the methods used by ENWL to analyse the level of competition? In particular, do you consider that ENWL gives a clear indication of the current level of competitive activity?</p>	
<p>Two: Do you consider that competitive activity is at a level that in itself indicates that effective competition exists? Do you consider that the coverage of existing competitive activity extends across the segment?</p>	

Chapter Six

Question	Response
<p>One: Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL’s ability to earn a margin is removed?</p>	
<p>Two: Do you consider that there is scope for competitors to grow their market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?</p>	
<p>Three: Do you consider that there is scope/appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?</p>	
<p>Four: Given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?</p>	
<p>Five: Do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted?</p>	

Appendix 2 -Background

Chapter Summary

This chapter provides some background to our decision to introduce regulated margins and the potential for DNOs to have price regulation lifted where they meet both a Legal Requirements Test and a Competition Test.

Competition in Connections

Overview of competition in connections

1.8. Many of the activities of electricity network companies have the characteristics of a natural monopoly and are regulated by Ofgem. Some network activities are not natural monopolies such as the construction of new assets required to extend the network or connect to the existing network. Independent Connections Providers (ICPs) compete with network operators to construct connections (including constructing any network extension required for new developments), but only licensed companies can own and operate the assets once they have been installed.

1.9. Where effective competition is possible, it can be a much better way to protect consumers' interests than regulation. This is because it provides customers with choice and competition between service providers and is likely to be more effective than regulation at promoting lower prices, innovation and better service standards. We have sought to promote competition in both the installation of connections to gas and electricity distribution networks, and in the subsequent ownership and operation of those assets.

Role of the host distributor in supporting competition

1.10. Each DNO sets out in its charging methodology the scope of connection services that ICPs are permitted to compete with the incumbent to provide. Activities that ICPs can carry out are described as 'contestable' and those that can only be carried out by the host distributor (DNO) are referred to as 'non-contestable'. Some services may be considered non-contestable by the DNO due to technical or safety reasons. Other services may be considered non-contestable where current legislative or regulatory arrangements make it difficult for competition to develop.

1.11. Current examples of contestable works include construction of assets and jointing of dead cables. Examples of non-contestable works include determination of Point of Connection (POC) and design approval. Ofgem is currently working with industry to extend contestability. Further details can be found in Chapter 3 of this document.

1.12. Since ICPs rely on the DNO to provide non-contestable services it is important for competition in connections that the incumbent does not abuse its position as the monopoly provider of these services. The Competition Act and the Electricity Distribution Licence include measures to prohibit the incumbents from discriminating unduly against competitors in the provision of non-contestable services.

Growth of competition in connections

1.13. Since the introduction of competition¹¹ we have seen competition grow rapidly in gas connections, to the extent that more than half of all connections are now installed by new entrants. Competition in the electricity connections market has developed much less rapidly.

1.14. In the metered electricity connections market (across all DNOs), market penetration by new entrants¹² stood at only 13 per cent in 2009-10. Although this was a marginal increase in new entrants' market share since 2008-09, the overall level remained low and the rate of growth remained slow. In the unmetered market (across all DNOs), market penetration by new entrants rose to nine per cent in 2009-10, compared to less than two per cent in 2008-09.¹³

DPCR5 Final Proposals – Introduction of regulated margins and the potential for Ofgem to lift price regulation

1.15. The 2008-09 and 2009-10 Connections Industry Reviews highlighted concerns about the development of competition in the electricity connections market. We set out to address these concerns as part of the last price control review (DPCR5), which came into effect in April 2010, by introducing a new approach to facilitating competition in connections to electricity distribution networks. Developments were inserted into the Electricity Distribution Licences of the various DNOs as Charge Restriction Condition 12 (CRC 12).¹⁴

1.16. We recognised that there are some market segments where competition may not currently be viable, for example the provision of one-off Low Voltage (LV) connections. These market segments are described as Excluded Market Segments for the purposes of CRC12 and they are set out at Appendix 4 of this document. One factor that may make jobs in these market segments unattractive to ICPs is their general low value. In these market segments where competition is not currently considered viable, DNOs are not allowed to earn a margin on any of the connections services they provide.

1.17. The arrangements introduced at DPCR5 have however enabled DNOs to earn a regulated margin (set at four per cent above cost)¹⁵ on contestable connection services in those market segments where competition is considered viable. These market segments are described as Relevant Market Segments (RMSs) in CRC12 and are set out in Appendix 4 of this document. They include metered demand and generation connections at all voltages but exclude certain metered demand connections (one off industrial and commercial work at low voltage and domestic LV work relating to no more than four domestic premises) where competition is not considered currently viable. They also include unmetered connections activities. The purpose of the regulated margin is to create headroom to encourage new entrants and to remove the stifling impact on competition that may have existed when the DNOs were not allowed to earn a margin over their costs on contestable services.

¹¹ Competition was introduced in gas connections in 1998 and electricity connections in 2000.

¹² ICPs and Independent Distribution Network Operators (IDNOs).

¹³ Note that market penetration by new entrants (metered connections) rose to 23 per cent in 2010-11.

¹⁴ Charge Restriction Condition 12 - <http://epr.ofgem.gov.uk/index.php?pk=folder575248>

¹⁵ Previously under DNO approved connection charging methodologies their connection charge were limited to recovery of reasonable costs.

1.18. In addition to this regulated margin, we also made provision for DNOs to apply to have price regulation lifted in market segments where competition can be relied upon to protect customer interests.

1.19. The Competition Test is designed to enable DNOs to demonstrate that effective competition exists in each RMS. The key overall consideration in our assessment is whether competition can be relied upon to protect the interests of customers. By this we mean that competition will deliver good levels of service and innovation in the connections market at prices which represent value for customers. We would expect that service, innovation and value should reflect customers experience in similar competitive markets such as the provision of other utility services/infrastructure. Further, we would expect that competition would deliver improvements in these areas over time, again to an extent that should be comparable with similar industries. For effective competition to exist, customers must have a real choice between alternative connections providers and/or, if the existing market participants do not deliver, there must be a credible threat of new providers entering the market.

1.20. If customers are to be able to choose between alternative connections providers, ENWL, as the owner of the local distribution network, and provider of non-competitive connections services,¹⁶ has an important role to play. If actual and potential alternative providers are going to be able to put genuine competitive pressure on ENWL then they will need to be able to receive timely and reliable non-contestable connections services. Further, for competition to work effectively the alternative providers must not be significantly disadvantaged in comparison to ENWL's own connection business. In considering whether an alternative provider is at a disadvantage to ENWL, we note that it is irrelevant whether any disadvantage is due to the actions of ENWL or an inherent feature of the connections market (for example, limited access to ENWL's network for safety reasons).

1.21. To further encourage DNOs to facilitate competition we also set out that any DNO that failed to demonstrate competition, by December 2013, would be reviewed by Ofgem and could subsequently be referred to the Competition Commission.

1.22. In DPCR5 Final Proposals we set out the information that DNOs should provide in making their evidence case. These issues form the structure of ENWL's Competition Notice. They are -

- actual and potential competition (the current level of competition the DNO faces in each market segment and the scope for this competition to grow.)
- price and transparency of pricing to customers (the steps the DNO takes to ensure that customers have the information they need to make decisions between taking a service from the DNO or a new entrant provider, and what they are doing to ensure they do not discriminate between their own customers and new entrant providers when they price their services)
- promoting awareness of competitive alternatives amongst connections customers (the steps the DNO takes to ensure that customers are aware that they can go to other providers for the service they are requesting.)

¹⁶ Some aspects of the connection activity are deemed non-contestable and a can (currently) only be provided by the owner of the distribution network to which a connection is being made.

- competition in connections procedures and processes (the actions the DNO has taken to ensure that the procedures and processes they have in place for non-contestable services meet the needs of new entrants and are provided in a non-discriminatory manner.)
- efforts to open up non-contestable activities to competition (what action the DNO has taken to extend contestability.)
- barriers to competition (other actions the DNO is taking to remove barriers to new entrants competing in their area.)

Appendix 3 – The Legal Requirements and Competition Tests

1.23. Both the Legal Requirements Test and the Competition Test are set out in DPCR5 Final Proposals and referenced in CRC 12. Both Tests are reproduced below.

1.24. The overriding objective of the Competition Test is to enable a DNO to demonstrate that the market is working effectively for their customers. The DNO's evidence should enable Ofgem to take a holistic view of the effectiveness of the market and prescribe an appropriate course of action (i.e. allow regulated or unregulated margins, or further work to remove barriers). Accepting that all markets are different, there will be a flexible approach to the format and scope of the DNO's evidence case subject to the legal requirements being met.

The Legal Requirements Test

1.25. Compliance with the Legal Requirements Test is essential for passing the Competition Test. The legal requirements are for the DNO to have no enforced breaches in the given regulatory year of -

- standard licence condition 12.6(c): Requirement to offer terms for use of system and connection
- amended standard licence condition 15: Standards for the provision of Non-Contestable Connections Services
- new standard licence condition 15A: Connections policy and connection performance
- standard licence condition 19: Prohibition of discrimination under Chapters 4 and 5
- the Competition Act 1998.

The Competition Test

1.26. Overall, we will be looking to see whether we can rely on real competition or the threat of competition to protect consumer interests rather than regulation of the margin earned by the DNO. There are a number of key issues that DNOs should consider in making their evidence case. This is not intended to be an exhaustive list of requirements but provides guidance on aspects of the market that we will look at -

- barriers to competition (including parts of the market where competition is not feasible and the reasons why).
- actual and potential competition (this is intended to capture views on levels of competitive activity).

- price and transparency of pricing to customers
- promoting awareness of competitive alternatives amongst connection customers
- competition in connections procedures and processes
- efforts to open up non-contestable activities to competition.

Appendix 4 – The Relevant Market Segments

1.27. This section reproduces all of the Relevant Market Segments (RMSs) set out in CRC 12 of the Electricity Distribution Licence.

1.28. Metered Demand Connections

- **Low Voltage (LV) Work** (LV connection activities involving only LV work, other than in respect of the Excluded Market Segments (see paragraph 1.31 below).)
- **High Voltage (HV) Work** (LV or HV connection activities involving HV work (including where that work is required in respect of connection activities within an Excluded Market Segment)).
- **HV and Extra High Voltage (EHV) Work** (LV or HV connection activities involving EHV work.)
- **EHV work and above** (EHV and 132kV connection activities.)

1.29. Metered Distributed Generation (DG)

- **LV work** (LV connection activities involving only LV work.)
- **HV and EHV work** (Any connection activities involving work at HV or above.)

1.30. Unmetered Connections

- **Local Authority (LA) work** (New connection activities in respect of LA premises.)
- **Private finance initiatives (PFI) Work** (New connection activities under PFIs.)
- **Other work** (All other non-LA and non-PFI unmetered connections work.)

1.31. The Excluded Market Segments are as follows:

- LV connection activities relating to no more than four domestic premises or one-off industrial and commercial work
- connection activities in respect of a connection involving three-phase whole current metering at premises other than Domestic Premises.

Appendix 5 - Glossary

C

Competition Test

The Competition Test is set out in Distribution Price Control Review 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 2 to this document.

CIR Connections Industry Review

An annual Ofgem publication that sets out how the gas and electricity connections market has developed in the given year. It also details how licensed companies have complied with their connections related obligations and standards.

CRC Charge Restriction Condition

A special condition of the Electricity Distribution Licence.

D

DG Distributed Generation

Distributed generation is also known as embedded or dispersed generation. It is an electricity generating plant connected to a distribution network rather than the transmission network. There are many types and sizes of distributed generation facilities. These include Combined Heat and Power (CHP), wind farms, hydro electric power or one of the new smaller generation technologies.

DNO Distribution Network Operator

There are 14 Electricity Distribution Network Operators who carry electricity from the transmission system and some distributed generators to industrial, commercial and domestic end users. They have distribution services areas which correspond to those of the former public electricity suppliers (before privatisation in 1990). They are owned by seven different corporate groups.

DPCR Distribution Price Control Review

The price review applicable to electricity distribution network operators. The fifth Distribution Price Control Review (DPCR5) was launched in April 2010.

DSA Distribution Services Area

Electricity DNOs each have a distribution services area. With the exception of embedded independent networks they are monopoly operators within that area and are subject to particular licence requirements accordingly.

E

ECSG Electricity Connections Steering Group

Advises Ofgem on the measures that are required to support the development of competition in the electricity connections market.

EHV Extra High Voltage

Over 22 kV but less than or equal to 72 kV

EMS Excluded Market Segments

As set out in CRC 12. In DPCR5 Final Proposals Ofgem considered that that competition was not viable in these market segments at that time or in the foreseeable future. DNOs are not able to earn a regulated margin in these market segments.

HV High Voltage

Exceeds 1 kV but does not exceed 22 kV

I

ICP Independent Connections Provider

An independent connections provider not affiliated to a distribution network operator.

IDNO Independent Distribution Network Operator

In 2007-08 there were four independent electricity distribution network operators. IDNOs own and operate various small networks embedded within DNO networks. IDNOs do not have DSAs.

L

Legal Requirements Test

The Legal Requirements Test is set out in Distribution Price Control 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 2 to this document.

LV Low Voltage

Does not exceed one kV

P

POC Point of Connection

The point at which new works are connected to the existing distribution network.

R

Regulatory Year

From 1 April - 31 March.

RMS **Relevant Market Segment**

As set out in CRC 12. In DPCR5 Final Proposals Ofgem considered that that competition is viable in these market segments. DNOs currently charge a four per cent margin on contestable services provided in these market segments.

S

SLC **Standard Licence Condition**

A Condition of the Electricity Distribution licence.

Appendix 6 - Feedback Questionnaire

1.32. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.33. Please send your comments to:

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