

Competition Notice	<b>Scottish Power Energy Networks (SPEN) – 16 August 2013</b>
Date of determinations	<b>12 December 2013</b>

## 1 Background

- 1.1 This document sets out the Authority’s decision on Scottish Power Energy Networks’ 16 August 2013 application to charge an unregulated margin on certain contestable connections services. It is accompanied by a separate document which can be found on the Ofgem website<sup>1</sup> setting out the reasons for the determination.
- 1.2 Under the terms of its Electricity Distribution Licence (Licence) Standard Licence Condition 14.16 (SLC 14.16) Scottish Power Energy Networks (SPEN) must set its Connection Charges at a level that will enable it to recover –
- the appropriate proportion of the costs directly or indirectly incurred in carrying out any works for the extension or reinforcement of its Distribution System, or for the provision and installation, maintenance, repair and replacement, or (as the case may be) removal following disconnection, of any electric lines or electrical plant; and
  - such a margin as it is allowed to charge under Charge Restriction Condition 12 (CRC 12).
- 1.3 In accordance with the requirements of CRC 12 SPEN gave us a Regulated Margin Notice on 10 September 2010. We accepted this Notice which entitled SPEN to charge a Regulated Margin at four per cent in relation to all of their Connection Activities in the Local Connections Market<sup>2</sup> when it makes an offer of connection terms within each of the Relevant Market Segments (RMSs).<sup>3</sup>
- 1.4 On 16 August 2013, in accordance with the requirements of CRC 12, SPEN gave us Competition Notices on behalf of its two licensees: SP Distribution Ltd (SPD) and SP Manweb plc (SPM) (herein referred to as SPEN’s two Distribution Service Areas (DSAs)).
- 1.5 The Competition Notices related to nine RMSs set out in CRC 12 of its Electricity Distribution Licence: Metered demand Low Voltage (LV) work; Metered demand High Voltage (HV) work; Metered demand HV and Extra High Voltage (EHV) work; Metered demand EHV work and above; Metered Distributed Generation – Low Voltage work; Metered Distributed Generation – HV and EHV work; Unmetered connections Local Authority (LA) work; Unmetered connections Private Finance Initiative (PFI) work; and Unmetered connections Other work.

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

<sup>2</sup> As defined in CRC 12: means the market that exists for the procurement and provision of Connections Activities within the Licensee’s Distribution Services Area.

<sup>3</sup> Connection Activities as defined in CRC 12 – means any and all of such activities comprising or associated with the provision, modification, or retention of a connection to a DNO’s distribution system as may, in accordance with the Connection Charging Statement of that DNO, be undertaken by persons other than the DNO, where those activities are fully funded by the Customer. Note that, for the avoidance of doubt, the delineation of a RMS for these purposes is without prejudice to any assessment of a relevant market which may separately be undertaken for competition law or other purposes.

- 1.6 The Competition Notice stated that SPEN considered both the Legal Requirements Test and the Competition Test (the Tests) to be satisfied in respect of the nine RMSs in SPEN's two DSAs. It sought a determination from us that SPEN be entitled to charge an Unregulated Margin in relation to the nine RMSs in its two DSAs.
- 1.7 Upon receipt of the Competition Notice and before making these determinations, we undertook a consultation exercise with SPEN and other persons and we have considered the responses received.
- 1.8 We are required to determine whether an Unregulated Margin should be allowed in each of the RMSs by way of separate determinations in respect of SPEN's two DSAs. We are required, in each Determination, to state whether the Legal Requirements Test and the Competition Test have been satisfied.<sup>4</sup> We are also required, if we find that one or both of the Tests have not been satisfied, to include reasons for our conclusions in our determinations.
- 1.9 This is a regulatory decision and does not amount to or imply, and should not be interpreted as implying, any particular view as to the application or interpretation of the Competition Act 1998 and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union, or any other law, either prior to this regulatory decision or once this regulatory decision is in place.

## **2 The Authority's Determinations**

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

- 2.1 We consider that SPEN have satisfied both the Legal Requirements Test and the Competition Test in the following RMSs –
  - (i) Metered demand connections – LV work in the SPD DSA only,
  - (ii) Metered demand connections – HV work in the SPD DSA only,
  - (iii) Unmetered connections – LA work in the SPM DSA only, and
  - (iv) Unmetered connections – PFI work in the SPM DSA only.
- 2.2 In regards to the RMSs referred to in paragraph 2.1 above, we accordingly further Determine that, from the date of these Determinations, SPEN shall be entitled (but not obliged) to charge an Unregulated Margin in its Connection Charges in relation to its Connection Activities.
- 2.3 In accordance with CRC 12, Part J, by 30 June 2014 and 30 June in each subsequent Regulatory Year, SPEN shall submit to us reports relating to these RMSs, explaining:
  - the extent to which the evidence relied upon by SPEN to establish that the Tests were satisfied is still accurate; and
  - where appropriate, any change that has occurred in the RMS since the date of these Determinations or since its last report in this regard.
- 2.4 Our reasons for concluding that both of the Tests have been met are set out in our document - 'The reasons for our decision on Scottish Power Energy Networks' 16 August 2013 application to charge an unregulated margin on certain contestable connections services'. This document can be found on the Ofgem website.

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<sup>4</sup> As set out in CRC 12.

## RMSs where only Legal Requirements Test have been satisfied

- 2.5 In respect of the RMSs listed below, in accordance with the provisions of CRC 12, we hereby determine that whilst the requirements of the Legal Requirements Test have been satisfied, those of the Competition Test have not:
- (i) Metered demand connections – LV work in the SPM DSA only,
  - (ii) Metered demand connections – HV work in the SPM DSA only,
  - (iii) Metered demand connections – HV and EHV work in both DSAs,
  - (iv) Metered demand connections – EHV and above work in both DSAs,
  - (v) Metered Distributed Generation – LV work in both DSAs,
  - (vi) Metered Distributed Generation – HV and EHV work in both DSAs,
  - (vii) Unmetered connections – LA work in the SPD DSA only,
  - (viii) Unmetered connections – PFI work in the SPD DSA only, and
  - (ix) Unmetered connections – Other work in both DSAs.
- 2.6 Our reasons for concluding that the requirements of the Competition Test have not been met are set out in our document "The reasons for our decision on Scottish Power Energy Networks' 16 August 2013 application to charge an unregulated margin on certain contestable connections services". This document can be found on the Ofgem website.
- 2.7 In respect of the RMSs referred to in paragraph 2.5, as provided for by CRC 12, SPEN must continue to charge the Regulated Margin of four per cent in its Connection Charges in relation to its Connection Activities.
- 2.8 This determination and our decision document constitute publication of the Notices required of us by section 49A of the Electricity Act 1989.