

The reasons for our determination on Electricity North West Limited's 24 December 2013 application to charge an unregulated margin on certain contestable connections services

1 Summary

- 1.1 This document contains the reasons for the determination made by the Gas and Electricity Markets Authority¹ on 23 April 2014, under Part E of CRC 12², on whether Electricity North West Limited (ENWL), a Distribution Network Operator³ (DNO), should be allowed to earn an unregulated margin on certain connections work.
- 1.2 On 24 December 2013 ENWL submitted Competition Notices in relation to the following Relevant Market Segments (RMSs)
 - Metered Demand – Low Voltage (LV) work,
 - Distributed Generation – Low Voltage (LV) work, and
 - Unmetered – Other work.
- 1.3 We issued a consultation on ENWL's Competition Notices on 7 February 2014.⁴ Having considered the Competition Notice and the responses to our consultation, we have allowed an unregulated margin in the Metered Demand – Low Voltage (LV) RMS. We have not allowed an unregulated margin in the other RMSs because we have not seen sufficient evidence at this stage that customers' interests would be protected if we removed price regulation.
- 1.4 Our determination can be found on our website.⁵ This document provides reasons for our determination. Appendix 1 of this document summarises the responses received to our consultation.

2 Background

- 2.1 We have been working to facilitate competition in electricity connections since 2000. New entrants can compete with DNOs to give customers a choice over their connections provider and an opportunity to shop around to get good service and value for money. We consider that competition can deliver customer benefits that are difficult to achieve through regulation, such as innovation in the type of services on offer and a focus from providers on meeting customer needs.
- 2.2 In 2009-10 we explained that we had been disappointed with the pace at which competition had developed in the electricity connections market. This was against a backdrop of 87 per cent of metered electricity connections (across Great Britain) being completed by the incumbent DNO, compared to 41 per cent in the gas connections market.⁶

¹ The terms 'the Authority', Ofgem and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets.

² CRC 12 Licensee's Connection Activities: Margins and the development of competition

³ As defined in condition 1 of Standard conditions of the Electricity Distribution Licence

⁴ Available from

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=453&refer=NETWORKS/CONNECTNS/COMPINCONN>

⁵ <http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnctns.aspx>

⁶ See "Gas and Electricity Connections Industry Review, 2009-10", available from

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=55&refer=Networks/Connectns/ConnIndRev>

- 2.3 To encourage further competition to develop, we introduced an incentive on DNOs to do all that is within their control to facilitate competition in connection services.⁷ For the purpose of this incentive we defined nine RMSs in which we considered competition to be viable.⁸ DNOs are able to apply to have price regulation lifted in an RMS where they can demonstrate that competition is effective. We have made it clear to DNOs that where effective competition has not developed by 31 December 2013, we will review the market and consider taking action, including making a referral to the Competition and Markets Authority, formerly the Competition Commission.⁹
- 2.4 This is ENWL's fourth application. We have already issued our determinations on ten applications made by DNOs - Electricity North West Limited (on 21 November 2011, 10 May 2013 and 23 August 2013), Northern Powergrid (on 26 October 2012 and 17 April 2014), UK Power Networks (on 29 October 2012 and 15 August 2013), Western Power Distribution (on 25 February 2013, and 25 February 2014), Scottish and Southern Energy Power Distribution (on 29 April 2013) and Scottish Power Energy Networks (on 13 December 2013). These can be found on our website. We are currently considering two other applications submitted in December 2013. Decisions on those application have been made in parallel to this one.

3 Our assessment

- 3.1 Our determinations on whether to lift price regulation are based on a consideration of our statutory duties and our view on whether ENWL has met two tests: a Legal Requirements Test and a Competition Test.
- 3.2 Our assessment of the Competition Test is a regulatory decision. It does not amount to or imply 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.

Legal Requirements Test

- 3.3 ENWL has satisfied the Legal Requirements Test as it currently has no enforced breaches of the Competition Act 1998 or of the relevant connections related licence conditions in the 2013-2014 regulatory year.

Competition Test

- 3.4 We have assessed whether the Competition Test is met after considering a number of factors, including -
- actual and potential levels of competition
 - procedures and processes in place to facilitate competition
 - barriers to competition

⁷ Introduced at Distribution Price Control Review 5 (DPCR5) - further information can be found in our document DPCR5 Final Proposals Incentives and Obligations (REF: 145/09) which is available on the Ofgem website at: <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=NETWORKS/ELECDIST/PRICECNTRLS/DPCR5>

⁸ A policy decision was made at DPCR5 to establish the RMSs after consideration was given to the different types of connection (ie by size, type and customer base) for the purposes of this test. While we consider that they are relevant in that context, any definition of the "relevant market" for the purposes of competition law would not necessarily segment the market in the same way.

⁹ On 1 April 2014, the new Competition and Markets Authority brought together the Competition Commission with the competition and certain consumer functions of the Office of Fair Trading.

- customer awareness of competition, and
- ENWL's efforts to open up non-contestable activities to competition.

- 3.5 In making our assessment we considered the nature of the RMSs, the analysis provided by ENWL on the current level of competitive activity in each of its RMSs, as well as information about the processes it has in place to support competition. We also considered responses to our consultation, which provided us with further insight into the competitive environment in ENWL's Distribution Service Area (DSA).¹⁰
- 3.6 Our assessment is based on all of the factors listed above. The actual level of competition in the RMSs is discussed under the heading 'existing competitive activity'. Customer awareness of competition is discussed under the heading 'customer awareness of and ability to choose competitive alternatives'. Potential levels of competition, procedures and processes in place to facilitate competition, barriers to competition and efforts to open up non-contestable activities to competition are discussed under the heading 'the potential for further competition'.

Existing competitive activity

- 3.7 ENWL's Competition Notices contains data on the number of quotes and on the estimated value of the contestable work in the projects related to those quotes. The Competition Notice provides this information for quotes issued as well for quotes accepted.
- 3.8 ENWL reports data for 2010-11, 2011-12, 2012-13 and for the first six months of 2013-14 (until September 2013).
- 3.9 In its Notices, ENWL distinguishes between three types of quotes: ENWL quotes, quotes issued to Independent Connection Providers (ICPs) and quotes issued to Independent Network Operators (IDNOs). In this document we refer to ICP quotes and IDNO quotes jointly as Point of Connection (POC) quotes. ENWL also reports information on quotes issued to and accepted by parties that are not accredited by the National Electricity Registration Scheme (NERS) in its competition notices. These refer to instances where the recipient of an ENWL POC quote is a party who is not an accredited ICP and who may seek competitive quotes from a selection of ICPs to carry out the contestable elements of the work. In the tables below, and for the cases where ENWL provides the data, we identify separately the number and value of quotes issued to and accepted by NERS accredited parties, and by non-NERS accredited parties.
- 3.10 We first present a summary of the data put forward by ENWL, taking each RMS in turn.

Metered Demand – Low Voltage Work RMS

- 3.11 Table 2 sets out the data on the level of competitive activity in the 'Metered Demand – Low Voltage Work' RMS.

¹⁰ A summary of consultation responses can be found at Appendix 1 and the responses are available on our website.

Table 1 Existing competitive activity – Metered Demand – Low Voltage Work

	2010-11	2011-12	2012-13	2013-14 (part)
Number of parties receiving POC quotes				
NERS accredited	44	43	52	42
Non- NERS accredited	22	10	11	9
Number of parties accepting POC quotes				
NERS accredited	27	27	33	23
Non- NERS accredited	6	3	5	3
Quotes issued				
Number and avg. value of POC quotes issued	812 (£12,205)	825 (£11,270)	1,013 (£13,236)	579 (£8,698)
Number and avg. value of ENWL quotes issued	1,099 (£12,141)	1,001 (£12,480)	885 (£15,781)	515 (£11,395)
Quotes accepted				
Number and avg. value of POC quotes accepted	150 (£11,739)	164 (£11,665)	234 (£12,596)	94 (£9,274)
Number and avg. value of ENWL quotes accepted	470 (£8,435)	419 (£8,760)	328 (£8,194)	188 (£7,328)
ENWL's share of RMS				
By number of accepted quotes	76%	72%	58%	67%
By value of accepted quotes	69%	66%	48%	61%

Source: ENWL Competition Notices 24 December 2013 and accompanying data files.

- 3.12 Data submitted by ENWL show that, in 2012-13, two parties accounted for around 40 per cent of the value of the ICP and IDNO quotes issued, and for around 50 per cent of the value of those that were accepted.
- 3.13 ENWL also provide data on the number and value of quotes issued and accepted, broken down by load ranges. This is shown in the table below for 2012-13.

Table 2 Existing competitive activity – Metered Demand – Low Voltage Work, 2012-13

	<20kVA	<60kVA	<100kVA	<500kVA	>500kVA
Quotes issued					
Number and avg. value of POC quotes issued	317 (£15,394)	352 (£14,517)	169 (£5,803)	171 (£7,669)	4 (£281,523)
Number and avg. value of ENWL quotes issued	266 (£14,120)	108 (£27,399)	186 (£16,859)	310 (£10,000)	15 (£67,718)
Quotes accepted					
Number and avg. value of POC quotes accepted	93 (£13,656)	87 (£14,929)	30 (£5,724)	25 (£8,446)	0 (-)
Number and avg. value of ENWL quotes accepted	97 (£9,869)	28 (£11,197)	69 (£6,310)	133 (£7,347)	0 (-)
ENWL's share of RMS					
By number of accepted quotes	51%	24%	70%	84%	-
By value of accepted quotes	43%	19%	72%	82%	-

Source: ENWL Competition Notice 24 December 2013 and accompanying data files.

Distributed Generation – Low Voltage Work RMS

3.14 ENWL states that the majority of connection offers to final customers in the Distributed Generation – Low Voltage Work RMS are for nil value or only contain non-contestable work. Some connection quotes do contain contestable elements and some quotes are issued to ICPs. The data reported here for this RMS relate to this type of quote. Connection offers that did not include any contestable work are excluded from the analysis.

Table 3 Existing competitive activity – Distributed Generation – Low Voltage work

	2010-11	2011-12	2012-13	2013-14 (part)
Active competitors				
NERS accredited parties receiving POC quotes	1	2	0	4
NERS accredited parties accepting POC quotes	0	1	0	1
Quotes issued				
Number and avg. value of POC quotes issued	6 (£3,776)	3 (£12,066)	0 N/A	12 £15,798)
Number and avg. value of ENWL quotes issued	5 (£28,174)	13 (£4,759)	35 (£9,666)	11 (£41,095)
Quotes accepted				
Number and avg. value of POC quotes accepted	1 (£2,448)	1 (£1,755)	0 N/A	3 (£5,060)
Number and avg. value of ENWL quotes accepted	2 (£2,704)	5 (£9,477)	13 (£4,551)	5 (£8,017)
ENWL's share of RMS				
By number of accepted quotes	67%	83%	100%	63%
By value of accepted quotes	69%	96%	100%	73%

Source: ENWL Competition Notice 24 December 2013 and accompanying data files.

3.15 For the Distributed Generation LV RMS, ENWL's Notice did not break down the figures for the number of parties receiving or accepting POC quotes between those

that are NERS accredited and those that are not. However, ENWL does state in the Competition Notice that, over the whole period covered by the data, "in three cases, non-NERS accredited customers accepted ICP quotes but later decided not to progress the work with an ICP and Electricity North West carried out the work". The figures shown in the table above relating to the number of quotes accepted are based on the final provider of the work.

Unmetered Other

- 3.16 ENWL states that there are five active participants in the Unmetered Other segment, based on the responses of ICPs at a seminar held in November 2013.
- 3.17 In its Notice, ENWL reports the number of connections carried out by ICPs and by ENWL in this RMS. ENWL states that it excludes from this, unmetered connections that have been carried out by ICPs as part of a metered connections development, and all unmetered activity carried out on IDNO sites. ENWL presents data for 2011-12 and for 2012-13.

Table 4 Existing competitive activity – Unmetered Other

	2011-12	2012-13
Number of connections		
ICPs	26	81
ENWL	1,548	1,301
RMS share by number of connections		
ICP	2%	6%
ENWL	98%	94%

Source: ENWL Competition Notice 24 December 2013.

- 3.18 ENWL also reports the number of connections across all unmetered segments for 2012-13; this covers three RMS: 'Unmetered Local Authority', 'Unmetered PFI' and 'Unmetered Other'. Across all unmetered segments, ENWL completed 81 per cent of the connections in 2012-13. ENWL states that "as our processes and procedures for unmetered apply equally to [the Unmetered Other RMS] as to the other unmetered segments (Local Authority and PFI which have passed the Competition test) we do not believe there are any barriers to competition".
- 3.19 ENWL includes in its Notices data on the relative size of customers in the 'Unmetered Other' segment. It reports that "in 2012-13 the top six customers accounted for 60 per cent of the market and all had programmes of work greater than 50 units. The top 14 customers account for 80 per cent of the market. Only around 10 per cent of the market is made up of customers with less than 10 units". ENWL also notes that three quarters of the customers receiving a quote in the 'Unmetered Other' segment also received a quote relating to another market segment.
- 3.20 We make the following observations on the levels of competitive activity in this RMS based on the data in the tables above.
- 3.21 In the 'Metered Demand – Low voltage' RMS, the data reported by ENWL show significant activity by competitors -
- In each of the years covered, there were over 50 parties requesting POC quotes and over 25 parties accepting POC quotes from ENWL. For 2012-13, two parties accounted for around 40 per cent of the value of the POC quotes issued, and for around 50 per cent of the value of those that were accepted.

- Competitors carried out a significant share of the work in this segment. In 2012-13, they carried out 42 per cent of the work in terms of numbers of accepted quotes. In terms of the value of the work carried out, their share in that same period was 52 per cent.
- Competitors have been successful in winning work across the RMS. In terms of value of work carried out in 2012-13, ENWL's share of projects below 20 kVA was 43 per cent; between 20 and 60 kVA it was 19 per cent; between 60 and 100kVA was 72 per cent; and between 100 kVA and 500 kVA it was 82 per cent.

3.22 In the 'Distributed Generation – Low voltage' RMS, the data reported by ENWL show limited activity -

- In the first six months of 2013-14, four NERS accredited parties received POC quotes. In earlier years, fewer parties had done so: none had received POC quotes in 2010-11 and only one party had in 2011-12.
- Three POC quotes were accepted in 2013-14. No POC quote was accepted in 2012-13, and only one POC quote was accepted in each of the two years before that.
- ENWL's share of the RMS in terms of number of quotes accepted was 63 per cent in the first half of 2013-14, which is lower than in the two prior years (83 per cent in 2011-12, and 100 per cent in 2012-13). In terms of value of accepted quotes, ENWL's share in the first half of 2013-14 was 73 per cent, also lower than the share in the two years prior to that.

3.23 In the 'Unmetered Other' RMS, the data reported by ENWL shows that ENWL carries out a very high share of the work in this RMS, as measured in terms of the number of connections: 98 per cent in 2010-11 and 94 per cent in 2011-12.

Customer awareness of and ability to choose competitive alternatives

3.24 We consider that customers being aware of their choice between competing providers and being able to make informed decisions on which provider to use, are important factors for effective competition.

Promoting awareness of competitive alternatives

3.25 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.

3.26 ENWL's website includes a page with a heading "Competition in connections". This provides information on the distinction between contestable and non-contestable work — listing examples of work falling under each heading — and describes the importance of competition in connections and the need for ENWL to provide quotes showing the split between contestable and non-contestable work.¹¹ The webpage also provides a link to the Lloyd's Register page listing accredited alternative providers, and to an Ofgem web page that lists the IDNOs.

3.27 ENWL state that, in the quotes issued, it makes clear that customers may choose an independent contractor to carry out any contestable elements of the work.

3.28 ENWL describes in its Competition Notice various initiatives (eg seminars, meetings and working groups) that it has carried out to engage with customers to explain

¹¹ <http://www.enwl.co.uk/our-services/connection-help-documentation/competition-in-connections>, accessed on 2 April 2014.

competition in connections. It reports that at a seminar held in November 2013, 11 of the 12 attendees agreed with the statement that "customers are aware that competitive alternatives exist", and that all 12 agreed with the statement that "ENWL takes appropriate measures to ensure that customers are aware of the competitive alternatives available to them".

- 3.29 Four of the five respondents to our consultation commented on customers' awareness of competitive alternatives, and on ENWL's efforts to promote this. Three of those respondents comment, in broad terms, that customers are aware of the alternatives, and all note ENWL's efforts to engage with customers to make them aware of the alternatives. One respondent told us that "all the major players are aware of the competitive alternatives. Some small builders do not know". That same respondent, who was commenting on all three RMSs, added that customers "usually obtain several quotations".

Transparency of pricing and giving customers the ability to choose

- 3.30 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.
- 3.31 ENWL has a standard application form for all demand customers, allowing customers to use a single form to apply for an all works and for a POC quote.
- 3.32 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, and says that even smaller quotes "receive a good level of breakdown".
- 3.33 As mentioned earlier, ENWL states that in the quotes it issues where it is carrying out all of the work (all works quotes) it includes a statement informing the customer that if the quote includes contestable work then the customer can appoint their own contractor to carry out that part of the work.
- 3.34 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 with a connection request. This length of time applies to all quotes, irrespective of whether they are POC quotes or all works quotes. The validity period of an outstanding quotation may be shorter if a new quotation subsequently issued by ENWL interacts with the outstanding quotation. 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.
- 3.35 For both metered demand RMSs covered by its Notice, ENWL allows customers that have received an all works quote to accept just the non-contestable elements of that quote. This gives customers the opportunity to seek alternative prices from ICPs for the contestable work without the customers or the ICP having to re-apply separately. ENWL first developed this approach in the HV segment, and extended it to the Distributed Generation — Low Voltage Work RMS in June 2013, and to the Demand Low Voltage RMS in October 2013.
- 3.36 Four of the five respondents to our consultation commented on the transparency of ENWL's quotes. All four were positive about ENWL in this regard, saying that they found the quotes to be clear and transparent. Three commented that ENWL's team were available to clarify any issues that might require further clarification.

- 3.37 One of the respondents commented that ENWL are the only DNO “to allow a customer to accept the non-contestable and POC parts of a Section 16 quote”. That response relates to the ‘Metered Demand Low Voltage’ and to the ‘Unmetered Other’ RMSs.

The potential for further competition

- 3.38 In this section we consider the potential for further competition to develop, the procedures and processes in place to facilitate competition, whether there are barriers to competition and ENWL’s efforts to open up non-contestable activities to competition.
- 3.39 In the discussion below we refer at times to potential barriers to competition — generic to GB electricity distribution networks and not specific to ENWL — that have previously been identified by the Electricity Connections Steering Group (ECSG) and by the Competitive Networks Association (CNA).

Availability of guidance and information for ICPs/IDNOs

- 3.40 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, codes of practice, method statements or to material specifications.
- 3.41 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.
- 3.42 ENWL’s electronic library is password protected. ENWL grants access to NERS accredited ICPs. In response to a request from a consultant, ENWL reviewed its policy and now makes this information available to other interested parties without NERS accreditation. The library has a notification screen alerting users to policy changes. ENWL provides CDs of their asset data records free of charge. It states that it is progressively making this information available online.
- 3.43 ENWL reports in its Notice that all twelve delegates at a November 2013 seminar held by ENWL on competition in connections, said they agreed with the statement that “ENWL’s process and procedures allow competitors to compete effectively including access to network data and policy documents. Of the 12 delegates all but one operated in the Metered Demand – Low Voltage Work RMS, and most operated in multiple RMSs.
- 3.44 The respondents to our consultation did not raise comments on the guidance and information provided to ICPs and IDNOs by ENWL.

Service and response times

- 3.45 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).
- 3.46 We recognise that unduly long timeframes to handle requests by alternative providers might hamper the ability of alternative providers to compete with ENWL.

Uncertainty about these possible delays might increase the risk — in the eyes of the final customer — of using an alternative provider.

- 3.47 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”.
- 3.48 ENWL states that the average time it took in “quarter 2 of 2013–14” to issue quotations in the Demand LV and Generation LV RMSs was “less than 11 working days compared to the SLC15 target of 15 working days”. ENWL also reports on how it performed against several SLC15 standards in 2012-13 -
- Provision of LV Demand quotations: 99.6 per cent
 - Provision of LV Generation quotations: 100 per cent
 - Response to design approval for LV and HV submissions: 98.6 per cent
 - Final connections at LV: 99.0 per cent
- 3.49 Only one of the five respondents to our consultation commented explicitly on the service and response times of ENWL. It stated that “ENWL is very co-operative and usually enables timescales for connections to be made”.

Contractual arrangements for the adoption of assets built by ICPs

- 3.50 The ECSG 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 ECSG 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 concern is not specific to ENWL.
- 3.51 ENWL states that its approach to adoption agreements includes provision for ENWL to “request a guarantee or other form of security if [it is] not satisfied with the credit rating of an ICP”. ENWL adds that it has “only used this provision once and a Parent Company Guarantee was used. [It has] never required a bond from an ICP”.
- 3.52 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.
- 3.53 Respondents to our consultation did not comment on this issue.

Inspection and monitoring of assets built by ICPs

- 3.54 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 another area which is not specific to ENWL.
- 3.55 In its Competition Notice, ENWL describes 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”.

- 3.56 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.
- 3.57 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.
- 3.58 In its Competition Notice, ENWL reports that it received feedback from stakeholders during 2012 that "whilst they supported the three levels of inspection they considered some of our thresholds were still onerous". ENWL highlights the comment that there were certain activities that had 100 per cent inspection levels, something its stakeholders thought unnecessary if they had demonstrated a high quality track record.
- 3.59 Following this feedback, ENWL states that it has reviewed its audit and inspection regime and reduced the audit frequency for ICPs who have consistently performed well in ENWL's audits, and that this has received favourable feedback from ICPs and from an industry working group on Inspection and Monitoring.
- 3.60 ENWL is also proposing to change its policy so that it will charge for audits in arrears rather than up front as is currently the case.
- 3.61 Respondents to our consultation did not comment on this issue.

Arrangements for obtaining land rights

- 3.62 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 and easements etc, slow in progressing them once begun and the DNOs require all the legal agreements to be in place before they will energise the new connection.
- 3.63 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. ENWL subsequently told us that this approach is available to all IDNOs in its area.
- 3.64 Two respondents commented on this issue:
- One respondent told us that ICPs have to obtain "Section 50" licences in order to carry out works on public roads and streets, instead of being able to rely on DNO's statutory powers. The respondent told us that this represented an added cost for ICPs and is a "financial barrier for smaller projects", though it adds that it does "not see any connection activity in the ENWL's RSM that is not attractive".¹²
 - One other respondent commented that the only exception to ENWL's generally good service is in the area of obtaining land rights where "ENWL can be slow". That same respondent also raised the point regarding Section 50: it told us that "one off connections are not attractive" because where street works are required,

¹² Section 50 of the New Roads and Street Works Act 1991 allows any person to carry out street works providing they hold a licence issued by the competent authority (eg the Local Authority). The DNO has the power to carry out these works on most streets without a Section 50 Licence.

ENWL can take advantage of its statutory powers “whereas an ICP has to issue a Section 50 works notice”.

Consistency of charges

- 3.65 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.
- 3.66 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 notes in particular 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 is provided that the relevant ICP is at the same (lowest) level of inspection regime that is applied to ENWL’s own work. ENWL states that most ICPs are at that level.
- 3.67 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”. ENWL subsequently informed us that these transactional charges only apply to the two metered demand RMSs covered by its Notice. In the case of the Unmetered Other RMS, “if an ICP is carrying out the work there is a £5 per column charge instead”.
- 3.68 Respondents to our consultation were positive about the consistency in the charges quoted by ENWL -
- Two respondents said that the charges levied by ENWL are comparable with competitive quotes.
 - One respondent said it had never encountered problems with the consistency of charges.
 - As noted earlier, one respondent commented that ENWL is the only DNO “to allow a customer to accept the non-contestable and POC parts of a Section 16 quote.”

Scope of contestable work

- 3.69 Connections works are split between works that are contestable (competitive) and those that are non-contestable (can only be completed by the DNO).
- 3.70 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.
- 3.71 We consider that DNOs should engage with the industry to consider where it is possible to further extend contestability.

- 3.72 In its Competition Notice, 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 point of connection is currently a non-contestable activity. ENWL states that it has completed trials with three ICPs on determining their own point of connection with mixed success. ENWL has started a new trial where an ICP is also to determine the POC, build it to a standard design and self-connect. ENWL states that this covers “250 applications per month for demand connections of up to 5kW”. In respect of that trial, ENWL states that it carries out “a design verification post energisation rather than add any delay to the ICP’s process”.
 - With regard to unmetered work in ENWL’s area, all underground unmetered work is contestable, and non-contestable work is limited to new overhead connections to existing network. ENWL states it “would be happy to consider extending contestability to overhead connections if there is sufficient market appetite”.
 - ENWL report that its processes and procedures have allowed a consortium of Local Authorities to establish a framework contract for one or more ICPs to provide street lighting services to them.
- 3.73 Respondents to our consultation made the following points:
- A respondent said that “the self-assessment of points of connection and unfettered access to the network to programme work to suit [...] customers” was an area for improvement.
 - One other respondent said that it has a “good experience of seeking to get [its] jointers authorised for working on ENWL’s LV network, receiving a timely and flexible response”.

Our conclusions

- 3.74 In making our determinations we have taken account of the evidence provided by ENWL and the views expressed in responses to our consultation.
- 3.75 We note the steps that ENWL has taken to address concerns about barriers to competition. In particular, we note that ENWL has taken steps to –
- promote awareness of competition amongst prospective customers.
 - provide transparent quotes, giving a detailed breakdown of costs and distinguishing between contestable and non-contestable charges.
 - extend the validity period of quotes from 90 to 180 days, in response to customer requests.
 - allow customers that have received an all works quote to accept just the non-contestable elements of the quote; this applies to both of the metered RMS covered by its Notices.
 - develop bilateral agreements for adopting assets built by ICPs, as an alternative to requiring tripartite agreements.
 - develop, together with one IDNO, an approach for securing easements and wayleaves, and to make this available to all other IDNOs.
 - expand the scope of activities that are contestable, and therefore provide more opportunities for alternative providers. This includes the running of trials with three ICPs to determine their own point of connection.

- 3.76 We note too that respondents to our consultation were supportive of ENWL's submission -
- A respondent said that ENWL "has outperformed the other DNOs in terms of their approach to Competition in Connections".
 - One respondent said that it had "every confidence that ENWL will operate appropriately if price regulation is lifted".
 - One other respondent told us it believed that "ENWL has made excellent improvement in their business strategy towards customer consultation/ customer's requirements and competitive connections. However we still have reservations (as with all of the DNOs) to situations whereby price regulation may be lifted but no [competition] exist[s] or is likely to exist for the immediate future". The respondent provides "full support" to ENWL's application.
- 3.77 We are satisfied that the steps taken by ENWL have generally addressed previously identified barriers to competition. However, we note that respondents to our consultation have raised a small number of areas for improvement about ENWL's systems and processes -
- One respondent identified the self-assessment of points of connection and access to the network as areas for improvement.
 - One respondent commented that the only exception to ENWL's good service is in the area of land rights and other permissions where it considers that ENWL can be slow.
- 3.78 In the 'Metered Demand LV' RMS, the data provided by ENWL show significant activity by competitors. In 2012-13, ENWL's share of the RMS in terms of accepted quotes was 58 per cent, and in terms of value of work it was 48 per cent. ENWL's share is higher in the first six months of 2013-14: 67 per cent in terms of accepted quotes, and 61 per cent in terms of value. A significant number of parties requested and accepted POC quotes in both periods. We also note that alternative providers have been successful in small and medium sized projects in this RMS (by capacity).
- 3.79 Taking account of the evidence on competitive activity and the steps taken by ENWL to remove barriers to competition, we are satisfied that ENWL's prices in the 'Metered Demand LV' RMS would be effectively constrained by competition and customers would be protected by competition in the absence of price regulation.
- 3.80 In the 'Distributed Generation LV' RMS, the data show limited activity by competitors - there are few parties requesting POC quotes (four in the first half of 2013-14, none in 2012-13), and accepting them (one in the first half of 2013-14, none in 2012-13). ENWL's share of the RMS in terms of number of quotes accepted was 63 per cent in the first half of 2013-14, 100 per cent in 2012-13 and 83 per cent in 2011-12.
- 3.81 In the 'Unmetered Other' RMS, ENWL carries out a very high share of the work. It carried out 98 per cent of connection in 2012-13 and 94 per cent in 2011-12.
- 3.82 Although we acknowledge the steps taken by ENWL to remove barriers to competition across all RMSs, we do not think the evidence provided by ENWL demonstrates that effective competition has developed in the 'Distributed Generation LV' and 'Unmetered Other' RMSs to an extent that would constrain ENWL's prices in the absence of price regulation.

4 Next steps

Where the Competition Test has been satisfied

- 4.1 From the date of our determination 23 April 2014, we will no longer regulate the prices ENWL may charge in respect of any contestable connection services (fully funded by the customer)¹³ in the 'Metered Demand LV' RMS'.
- 4.2 In respect of this RMS, ENWL will submit to us annually a report explaining any changes that have occurred in the RMS since the date of the determination.
- 4.3 We reiterate that, as part of our ongoing work, we have a general duty to keep the electricity market under review and we will take seriously any breach of competition law and/or licence obligations.

Where the Competition Test has not been satisfied

- 4.4 We will continue to regulate the price ENWL charges in respect of all of the connections services it provides in the 'Distributed Generation LV' and 'Unmetered Other' RMSs. In respect of contestable connections services (fully funded by the customer), this means that ENWL may continue to charge the regulated margin (fixed at four per cent) allowed by Charge Restriction Condition (CRC) 12.

¹³ Under the DNOs connection charging methodologies, connections work that is defined as 'reinforcement' or is over and above the minimum scheme may be part funded by the customer and the company.

Appendix 1 – Responses to our consultation on Electricity North West Limited’s 24 December 2013 Competition Notices

4.5 On 7 February 2014 we issued a consultation seeking views from interested parties on ENWL’s Competition Notices. We received 5 responses. Our consultation and the responses we received have been published on our website.

4.6 We received responses from:

- Aptus Utilities
- Gas Transportation Company Limited (GTC)
- Linbrooke Services
- Metered Connections Customer Group (MCCG)
- PowerCon (UK) Limited

4.7 In reaching our decision, we considered all of the stakeholder responses and we have set out our views in the main body of this document. This appendix is our summary of the main issues raised by stakeholders. We consider each stakeholder’s response in turn

Aptus Utilities

4.8 Aptus Utilities is an ICP operating in the ENWL area and its response covered all three RMSs in ENWL’s application.

4.9 In relation to the extent of competition in all RMSs in the ENWL area, the respondent says that “street lighting is all competitive”, though there is scope for “further builders to embrace the ICP approach”. The response adds that “there are sufficient ICPs” operating in the ENWL area “to give developers an effective choice of provider”.

4.10 The response makes the following points:

- In relation to customer awareness of competitive alternatives, the response says that “All the major players are aware of the competitive alternatives. Some small builders do not know”. The response adds that customers “usually obtain several quotations”.
- The response says that ENWL’s POC quotations “are clear”. Non-contestable charges are “consistent and are easily compared”.
- In relation to ENWL’s business processes, the respondent believes that it represents “best practice compared to other DNOs”. The respondent adds that “ENWL is very co-operative and usually enables timescales for connections to be made”. The only exception to generally good service is in the area of land rights and other permissions, where the respondent says that “ENWL can be slow”.
- The respondent notes that “one-off connections are not attractive” because where street works are required, ENWL can take advantage of its statutory powers “whereas an ICP has to issue a section 50 notice”.

4.11 The respondent concludes that “I have every confidence that ENWL will operate appropriately if price regulation is lifted”.

Linbrooke Services Limited

- 4.12 Linbrooke Services Limited (Linbrooke) is an ICP operating across the UK. The response from Linbrooke relates to the Unmetered Other and Metered Demand LV RMSs.
- 4.13 Although Linbrooke has "limited experience of operating as an ICP in ENWL", their contact with ENWL has been positive. The response says that they have had a "good experience of seeking to get our jointers authorised for working on ENWL's LV network, receiving a timely and flexible response".
- 4.14 The response points out that "[ENWL] do not require a design approval stage for unmetered connection schemes, and are the only DNO that allows a customer to accept the non-contestable and PoC parts of a Section 16 quote".
- 4.15 In conclusion, the response from Linbrooke provides "full support" to ENWL's application.

Metered Connections Customer Group (MCCG)

- 4.16 The response is submitted on behalf of the MCCG, which represents customers and ICPs, and presents a "collective view" of its members. The response relates to the Metered Demand LV Work RMS only.
- 4.17 The MCCG is "willing to support ENW's submission in the metered demand market segments for low voltage work". The response adds that ENWL has "outperformed the other DNOs in terms of their approach to Competition in Connections", and that ENWL has "worked to improve the services they offer".
- 4.18 The response goes on to make the following specific points:
- Customers are aware of competitive alternatives to ENWL, and they have effective choice. The response adds that "ENWL provide information in various ways to customers to ensure that they are aware of competition".
 - In relation to transparency of pricing and quotations, the response states that "the quotations that MCCG members receive are clear and transparent. If there are any areas that require clarity this is provided by ENWL's team".
 - In relation to ENWL's processes and practices, MCCG members "see [ENWL] as the role model for the other DNOs". However, the response identifies a small number of areas for improvement; "the self-assessment of points of connection and unfettered access to the network to programme work to suit our customers".
 - In relation to the consistency of non-contestable charges, the MCCG response states that "the charges levied by ENWL are comparable".
 - The response identifies two issues that affect their members' ability to compete with ENWL (and other DNOs) on smaller projects. One is to with the requirement to install a "LV Link Box" funded by the IDNO (for IDNO projects) and the other to do with permissions to carry out works on public roads and streets. According to the response, ICPs have to obtain "Section 50" licences to carry out these works, instead of being able to rely on DNOs' statutory powers. This is an added cost for ICPs, and "is a financial barrier for smaller projects". The response says that "this is an area that MCCG members will continue to talk to ENWL about to see if we can come up with an arrangement that will make this redundant". However, the response adds that "we do not see any connection activity in the ENWL's RSM that is not attractive".

- 4.19 The response goes on to say that the Demand LV RMS in the ENWL area is “one of the most competitive in the electricity market”, and that “customers will be protected by competition” in this RMS.

Gas Transportation Company (GTC)

- 4.20 GTC operates the two licensed independent distribution networks of Electricity Network Company Limited (ENC) and the Independent Power Networks Limited (IPNL). GTC’s response relates to the metered demand LV RMS in all three DSAs.
- 4.21 GTC’s response is almost identical to the response from MCCG, set out above. The only substantial difference is that the GTC response does not raise the issue of “Section 50” licences as being a barrier to their ability to compete for smaller projects.

PowerCon (UK) Limited

- 4.22 Powercon’s response relates to the Distributed Generation (DG) LV RMS.
- 4.23 The response makes the following points -
- In relation to customer awareness of competitive alternatives, the response says that “ENW have always been very proactive in making customers aware of competitive connection alternative arrangements”. The response adds that “ENW are fully engaged with customers and ICP’s through the DG Technical Workshops etc to resolve outstanding [technical] issues”.
 - In relation to the transparency of quotations, the response states that “we have never encountered problems with the quality and constancy of the quotations provided. Likewise we have not encountered any problems when we have subsequently reverted to ENW with requests for assistance or further information”.
 - The response notes that ICPs may be less interested in competing for work where installing new overhead cables is a “major constituent”. It adds that “potentially cheaper [overhead] connections may, by necessity, require a more expensive [underground] connection if the work is to be undertaken / performed by an ICP”.
 - In relation to ENWL’s business processes, the response notes that “ENW has been better than most of the other DNOs in managing the overall process”.
 - In relation to the consistency of charges for non-contestable works, the response states that “there is not considered to be a discrepancy between competitive and statutory connections quotations such that this would be a barrier to competition”.
- 4.24 In conclusion, the response states that “in general we believe that ENW has made excellent improvements in their business strategy towards customer consultation / customer’s requirements and competitive connections. However we still have reservations (as with all of the DNO’s) to situations whereby price regulation may be lifted but no competition exists or is likely to exist for the immediate future”.