

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING VALIDITY PERIODS PAYMENT REGIMES AND COST BREAKDOWNS OF ELECTRICITY CONNECTION OFFERS

1 Introduction

1 1 [REDACTED] (the Customer) has referred for determination by the Gas and Electricity Markets Authority (the Authority)¹, a dispute between the Customer and [REDACTED] (the Company). The dispute concerns the reasonableness of terms in respect of electricity connection offers at [REDACTED] (together the Sites)

1 2 The dispute was referred to us for determination on 2 November 2011 under section 23 of the Electricity Act 1989 (the Act). Pursuant to section 23(1A)(b) of the Act the Authority is required to determine the dispute

2 Summary of determination

2 1 In summary of the discussion and conclusions which follow and the full determination at Section 8 the Authority finds that in the context of this dispute

it is reasonable for the Company to have set a 30 day validity period
it is unreasonable of the Company not to have considered the opportunity for an extension of the validity period
it is reasonable for the Company to have sought full payment of the fees upfront and
it is unreasonable that costs were not broken down in more detail

2 2 In summary of the discussion and conclusions which follow and the full determination at Section 8 the Authority also finds more broadly that

it is unreasonable for companies to maintain standard validity periods of 30 days where there is no interactivity and where extension (not re validation) of the connection offer is also subsequently refused and
the terms of payment regimes particularly in respect of staged payments should not be exclusively determined through standard terms or policies. There may be circumstances where following open dialogue between companies and customers an alternate approach is mutually acceptable

3 Statutory obligations

3 1 Under section 16(1) of the Act an electricity distributor has a duty to make a connection between a distribution system of his and any premises when required to do so by the owner or occupier of the premises for the purpose of enabling electricity to be conveyed to or from the premises (section 16(1)(a)(i))

3 2 Under section 16A(1) of the Act where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1) he shall give the distributor a notice requiring him to offer terms for making the connection. Under section 16A(5) as soon as practicable after receiving the notice the distributor shall give to the person requiring the connection a notice

¹In this document the terms the Authority and we are used interchangeably

- (a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him
- (b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2)
- (c) specifying any security which that person will be required to give under section 20 and
- (d) stating any other terms which that person will be required to accept under section 21

3 3 Under section 16A(2) of the Act that notice required under section 16A(1) must specify—

- (a) the premises or distribution system to which a connection to the distributor's system is required
- (b) the date on or by which the connection is to be made and
- (c) the maximum power at which electricity may be required to be conveyed through the connection

3 4 Under section 21(b) an electricity distributor may require any person who requires a connection to accept in respect of the making of the connection any terms which it is reasonable in all the circumstances for that person to be required to accept

3 5 Any dispute arising under sections 16 to 21 of the Act between an electricity distributor and a person requiring a supply of electricity may be referred to the Authority under section 23 of the Act for determination

4 Facts of the case

4 1 On 13 April 2011 the Customer a developer of distributed generation projects in the wind sector requested the connection of two single wind turbine projects to the distribution network of the Company [REDACTED]. The requests for connection sought target dates for provision of connection to the power station of July 2011 (although TBC was included alongside these dates) The Company provided an offer for connection to an 11kV metering circuit breaker at each site on 2 August 2011 with a take up date of 1 September 2012. The costs of the connections offers, which are not in dispute are for [REDACTED], £75 596 and for [REDACTED] £120 809

4 2 Shortly before the expiry of the connection offers the Customer contacted the Company about a number of issues some of which are now the subject of this determination. The Customer made a formal complaint under the Company's complaints procedure on 5 September 2011 and following a number of exchanges was advised on 25 October 2011 that the complaint could not be resolved

4 3 Both requests for connection were re submitted by the Customer on 31 August 2011. Connection offers were issued on 25 November 2011 [REDACTED] (86 days (or 62 working days) after the request was made) and 29 November 2011 for [REDACTED] (90 days (or 64 working days) after the request was made). The validation period for both connection offers again expired without being accepted. A further request for connection was made in respect of [REDACTED] on 16 January 2012 none has yet been submitted for [REDACTED]

4 4 The dispute concerns the reasonableness of the following terms within the connection offers provided to the Customer on 2 August 2011

Validity period of connection offers

The validity period allowed by the Company for acceptance of connection offers is 30 days. The Customer contends that this is an unreasonably short period of time within which to undertake the necessary work required to accept the offer.

Extension of validity periods/Re validation of connection offers

The Customer questions why each project's connection offer could not be re-validated or extended following expiry of the 30 day validity period. This relates particularly to section 4.2 of the Company's Statement of Methodology and Charges for Connection (CCMS)² which states that the Company will consider any request to extend the validity period of a Connection Offer³

Ability to pay connection charges using staged payment regimes

With respect to [REDACTED], the Customer disputes the reasonableness of not allowing staged payment of connection charges. The Company's CCMS states that the connection charge is normally payable in full in advance but in some circumstances and where connection costs are in excess of £100,000 staged payments may be offered upon request.

Detail of cost breakdowns

The Customer contends that the original quotes of 2 August 2011 were not provided with a sufficiently detailed breakdown of costs.

4.5 We have considered carefully all of the information provided by the Customer and the Company and the representations made at the oral hearing on 23 March 2012.

5 Validity period of connection offers and extension or re validation of offers

Consideration of evidence

5.1 The first two issues relate to the same broad issue and are dealt with together.

5.2 The Customer recognises that the 30 day validity period is set out clearly in the Company's CCMS and connection offer but considers that this is unreasonably short. The Customer believes there are too many things to do in order to accept the offer within this time and references the fact that the Company allows itself 65 working days to produce the offer in the first place. The Customer considers that the following steps are involved in accepting an offer:

- quote received
- technical appraisal (by an engineer)
- financial appraisal (by an accountant)
- review of site considerations (by a land agent)
- terms and conditions legally appraised (by solicitor)

² Each Distribution Network Operator publishes a 'connection charging document'. The Company's connection charging document is titled "[REDACTED] of methodology and charges for connection" and is referred to throughout this document as the Company's CCMS. The Company's CCMS includes their Connection Charging Methodology, Connection Charging Statement and other information relevant to connecting customers. The methodology and statement comprise sections 5-7 of the document and is subject to approval by the Authority under standard conditions 13 and 14 of the Electricity Distribution Licence (although the Authority does not approve the indicative charges in section 7). The other information is contained within sections 1-4 and is not subject to approval by the Authority.

incidence of quotes being active at the same time. Neither of the Sites in dispute is interactive, as confirmed by the Company, and the Customer received no Notice of Interactivity. Across all of the grids for which evidence is provided, there is a very clear trend of increasing numbers of request for connections, particularly in 2011.

- 5.8 In addition to concerns about the length of the validity period, the Customer states that it is not unreasonable to request re-validation of an ongoing project. Such a request was made to the Company shortly before the expiry of the validity period. The Customer notes section 4.2 of the Company's CCMS, which states that any request to extend the validity period of a connection offer will be considered.
- 5.9 The Company states that its process is to extend the validity of a connection offer by issuing a revised offer, which in effect is a completely new offer. They suggest that this process ensures that as the capacity of the network becomes full, any other applicants retain their position in the queue with a date before that of any project receiving an extension. It states that this also helps ensure that each quote has reference to the Guaranteed Standards of Performance (GSoPs)⁴. This is because by re-issuing the quote (referred to by the Company as "re-validating") the customer is given the protection of the GSoPs, whereas if it extended the quote (even at the customer's instigation) it would be exempted from the GSoPs.
- 5.10 The Company contends that distributed generation (DG) projects are susceptible to variation and cancellation after acceptance, during construction and post-connection. It suggests this may be because of uncertainty around financial returns, planning permission and generator availability, and that extending validation periods would increase the effect of this type of interactivity. This would in turn affect the costs and timescales of other projects, including the many planned and ongoing reinforcement projects.
- 5.11 The time taken to process a re-validation is 3 working days, assuming that nothing has changed, particularly network and cost elements. The Company makes it clear that once underway, the time taken to issue a revised quote is less than half the time required for new applications, however, due to the interactive nature of generation connections and the volume of work, the maximum time it will take to issue a revalidated offer is 65 working days (the same as for new quotes).
- 5.12 Notwithstanding the Company's views on GSoPs as at paragraph 5.9, the Company suggests in its submission that it will process an offer beyond its validity period if the network and costs remain the same. We understand however that this is not a formal policy which the Company promotes and it is commonly only adopted for smaller projects.

Discussion and conclusions

- 5.13 We recognise that the connections system needs to operate effectively and to have sufficient capacity to accommodate the increasing number of projects coming forward. We therefore support action which seeks to minimise interactivity, but companies must also have regard to the reasonable needs of their customers.
- 5.14 In the context of this dispute, it is clear that the 30-day validity period is offered as standard to all projects, regardless of type. An argument put forward by the Company is that an increase in interactive projects would increase the risk of

⁴ The GSoPs set out service levels that must be met by each distribution company. These standards have been set to guarantee a level of service that is reasonable to expect companies to deliver in all cases. The standards are prescribed by the Electricity (Standards of Performance) Regulations 2010.

marginal projects being varied or cancelled post acceptance. We understand this argument but we are also concerned that requiring customers to rush to accept offers within short time periods can have an adverse effect on the customer's ability to progress their connection effectively.

5.15 While we recognise that some of the stages the Customer has to go through could be undertaken before the offer is made or during the validity period, we consider that there remains a great deal to be done before the customer can accept the quote. Issues such as securing planning consent may to an extent be outside the Customer's control, whereas others such as financing can not only take time but may not be completely resolved beforehand because a connection offer is needed to secure an acceptable financing package.

5.16 As far as this particular dispute is concerned, we have examined the information the Customer is required to provide in its notice under section 16A(2)(b) of the Act and in particular the need to specify the date on or by which connection is required. For both Sites, the Customer has specified connection dates of July 2011 TBC. No additional information was provided in covering letters or supporting documentation. We consider that in this case, as a result of the Customer creating an expectation that he was ready for connection, and in the light of the absence of information to the contrary, it was reasonable for the Company to set a validity period as short as 30 days.⁵ A key factor in our view on this point is that the notice under section 16A enables the Customer to set out any constraints on its readiness to connect. This is the point from which the Company might be reasonably required to offer connection terms which are more flexible or at least more in line with what the Customer, in this case, was looking for.

5.17 We recognise however that this does not address the wider question of whether a 30 day validity period is too short and we are keen to avoid further disputes on the same issue where customers have provided more information about connection dates.

5.18 On this issue, we are concerned about the interpretation of section 4.2 of the Company's CCMS and the expectation that it creates. We consider that re-validating offers (as per the Company's definition)⁶ can have benefits for customers in terms of realignment with GSoPs. However, to follow the meaning of extension in section 4.2, such re-validation would need to be done immediately at the end of the validity period. This means that in our view, in accordance with section 4.2, the Company should not treat the project as a new connection request, nor should it take up to 65 working days to reconsider the offer before re-issuing it. Accordingly, the Customer should be able to continue working on meeting the terms of the offer as if it had not expired.

5.19 This does not mean necessarily that the Company should be required to adopt a policy of routinely extending validity periods. However, in this case, the Company's actions are not consistent with the wording of its CCMS. We have therefore concluded, based specifically on what is set out in section 4.2 of the Company's CCMS, that it is unreasonable not to have considered an extension of the validity period.

⁵ We accept that it may have been the Customer's intention to imply commitment to the project or desire to progress by proposing an early date (then suggesting a need for dialogue by including TBC) but believe that transparency at this point is a better basis from which to begin discussions. A connection date of July 2011 would never have been possible given that the planning process had not even been initiated. The term revalidate is used here to be consistent with the wording of the Company's CCMS.

5 20 Overall in considering the validity periods associated with this dispute we consider that there is a need for flexibility and transparency from both the Company and the Customer. Different connections will require different terms and the needs of demand projects in particular are likely to be different to other connections. This means that in deciding how to develop their network companies should consider how the terms of a connection offer affect different types of project in different ways.

5 21 Taking the characteristics of this dispute as an example therefore we have concluded that it is unreasonable to maintain standard validity periods of 30 days where there is no interactivity and where extension (not re validation) of the connection offer is also subsequently refused.

5 22 In coming to a decision on how to set the terms of connection offers and in how to respond to the different needs or requests of different projects (such as extension of validity periods) companies should consider issues such as the level of the customer's commitment to the project and any constraints they have been made aware of. This means customers need to be transparent about constraints when requesting connections and realistic about dates for connection although we recognise that companies will have a range of wider considerations influencing their ability to accept such requests. However offers to make non refundable payments as is the case in this dispute (as discussed further below) should be seen as good examples of a customer's commitment to a project and would be good justification for consideration of flexible connection terms such as longer validity periods extension of validity periods. There will be other such examples of commitment.

6 Negotiated and staged payment regimes

Consideration of evidence

6 1 The Customer also disputes the reasonableness of not being allowed use of a negotiated or staged payment regime. The Company did offer a staged payment regime for [REDACTED] hence this element of the determination applies only to [REDACTED].

6 2 In providing evidence the Customer explains that full Local Planning Authority (LPA) consent can only be sought when greater detail is known about the potential costs of the connection as this may have a bearing on the turbine selection. However the Customer maintains that because the Company refuses to engage in discussions which might allow the Customer to begin the LPA consents process ahead of the connection offer it is unreasonable to require full payment of fees.

6 3 The Customer also makes it clear that they would be prepared to make payment of the Assessment and Design (A&D) and wayleave fees⁷ in advance of the connection and that such fees could be considered non refundable by the Company. The Customer states in his submission of 16 January 2012 that this payment could be equal to the lesser of the A&D fees or £15 000 when the level of fees becomes clear. This would equate to c 20% of the full connection fees.

6 4 The Customer suggests that requiring full payment in advance of the works will not assist with bringing projects to a conclusion will not prevent spurious applications for ill conceived projects and will not stop capacity blocking where funding is not an issue to the customer.

⁷ Wayleave fees are the rents paid by any party seeking the right to install inspect maintain alter or repair equipment or apparatus located on private land.

- 6 5 The Company points out that its policy is to offer staged payment for connection offers in excess of £100 000. Staged payment is also available where the project is linked to other works such as transmission reinforcement. This reflects the fact that large projects commonly require longer lead times whereas smaller projects can normally be completed within 6-12 months. In the case of the latter, the Company states that payment is required to progress the project in respect of route proving, wayleaving and placing of orders for metering Ring Main Units (RMUs) which represent a large portion of the costs and require 25-30 weeks for delivery.
- 6 6 As far as [REDACTED] is concerned, the Company contends that the Customer was looking to accept their connection offer without being clear on the timetable for progressing it and was just seeking to secure capacity at minimum cost. The Company considers that accepting such offers would prevent them from developing the network in an efficient and economic manner.
- 6 7 Letters sent by the Company during the complaints procedure also demonstrate that — a Customer can terminate their construction contract and recover any sums that are unspent or uncommitted up to that point.

Discussion and conclusions

- 6 8 As discussed above, companies should have the flexibility to develop and operate their networks in a way which best meets their obligations. We would expect DNOs to ensure there is the necessary capacity for new generation projects to connect. We therefore consider that there is a justifiable need generally to guard against the negative effects of ill-conceived projects or from developers seeking to block or reserve capacity in the system. This means that customers seeking connection should, where possible, be ready to progress within a timeframe that is consistent with the company's need to develop the network efficiently and economically (provided that the period is reasonable). This also means that companies should have access to the funding they reasonably require to progress accepted offers.
- 6 9 In the context of this dispute, by suggesting a date of July 2011, the Customer has not been clear about when connection was required, what timeframes would be acceptable or what constraints existed, for example as a result of planning or financing. This is contrary to the requirements of section 16A(2)(b) of the Act. In view of this information, we consider that it is reasonable for the Company to have assumed that the Customer was ready to progress and to have set connection terms accordingly. It is also reasonable, therefore, for it to have sought full payment of the fees upfront.
- 6 10 However, we are mindful of the need to address the underlying principles in this dispute to avoid further determinations on the same basis.
- 6 11 The Company has emphasised the need to guard against speculative projects or capacity blocking and to protect the sector from developers who are not committed to progressing projects through to completion. We agree with this, but recognise that the development of certain projects, which might include small-scale distributed generation projects, is not straightforward and often requires detailed or technical information before the project can be finalised. Such projects necessitate a different approach to other connections and DNOs need to consider what flexibility they can provide in their connection terms.
- 6 12 In this case, the Customer could have requested a feasibility study ahead of submitting the formal request under section 16A of the Act. We consider that such an approach may have been appropriate given that the Customer was seeking

information with which to finalise the project and undertake the planning process. However, we also accept that the cost of feasibility studies for smaller projects can be comparatively high – in this case, around £8,000. We do not believe it would be right, therefore, to suggest that all projects should be required to fund feasibility studies simply so they can be ready to progress on a time frame that is consistent with the needs of the company. This does not mean that customers should be able to use the procedure for requiring a connection under section 16A as a low cost method of assessing feasibility. Nor does it mean that companies should be required to respond to unreasonable requests for specific information ahead of section 16A requests. However, in this case, especially, it demonstrates the need for flexibility and dialogue between the company and the customer.

6.13 The Company also refers to its policy of refunding any fees not already committed or spent (in situations where projects change or are withdrawn) as one reason why it is justified in requiring full payment upfront. We recognise the logic of such a policy, but are concerned about whether it provides sufficient protection or certainty for customers in all cases. We do not believe that it is the Company's responsibility to mitigate the Customer's planning risk, nor do we consider that the wider industry should bear the cost of projects where customers pull out part way through construction (for whatever reason). However, we are conscious of the impact that payment upfront for the full cost of connection can have on some customers. This again points to the need for greater flexibility by companies in either setting connection terms or responding to subsequent requests for variation.

6.14 Companies have a responsibility to new customers as well as to existing customers. This means striking a balance between the needs of the customer wishing to be connected and the approach they take in developing the network, and listening and responding fairly to requests – in essence, providing good customer service. In the context of this dispute, we consider that the Customer's offer to pay non-refundable A&D and wayleave fees (effectively taking a portion of the project risk) should be seen as a strong commitment to the completion of the project and a fair and reasonable basis upon which to at least consider a negotiated or staged payment regime.

6.15 We have considered whether the Customer or the Company should direct or influence the terms of that payment regime, given the argument in paragraph 6.13 that such an approach would be of little help to the Customer if the Company requires all of the money before the customer has completed other steps such as the LPA process. In our view, these issues, particularly where they relate to small distributed generation projects, cannot be resolved through standard terms or policies and require open dialogue. Such discussions should include, for example, the amount of information a customer might have had in making its initial connection request and the level of the customer's commitment to the project, as well as the company's need to develop its network within set time frames.

7 Cost breakdowns with connection offers

Consideration of evidence

7.1 The Customer claims that the Company made no attempt to break down costs in its original connection offers other than in a number of limited places. The Customer also refers to an industry-wide agreement that non-contestable elements would be broken down into

assessment and design
design approval
wayleaves and legal

reinforcement and up rating etc and final connection

- 7 2 The Customer suggests that the contestable elements should provide a description of the works and sufficient breakdown of those works such that the Customer can quantify and validate the components of the works and its associated costs
- 7 3 The Customer also refers to the Company s CCMS In particular paragraph 2 18 which states

For Connection Offers that include Contestable Work and a Connection Charge in excess of £20 000 we will provide a breakdown of costs that are referable to the tables in section 7 which will include as a minimum

- a description of the works involved including whether it is an Enhanced Scheme
- the length of underground cable/ overhead line required
- the number of substations required
- information on any Reinforcement works required
- legal and professional charges associated with the securing of Land Rights

- 7 4 The Customer is particularly concerned that the cost breakdown should be able to be referenced to the tables in section 7 of the CCMS
- 7 5 The Company states that costs and descriptions are routinely broken down to the level outlined in paragraph 2 18 of its CCMS In this case the original connection offers included a breakdown of the works required for each Site However costs were only broken down as either non contestable works or the full project cost In response to a complaint by the Customer a more detailed breakdown of costs was provided The Company states that its response did provide the level of detail requested by the Customer in Question 9 of the submissions dated 3 January 2012 at Appendix A
- 7 6 At the oral hearing held on 23 March 2012 the Company conceded that a number of elements of detail that are specific to DG projects were not included in the quote The Company acknowledged that this was an area where improvements could be made

Discussion and conclusions

- 7 7 We have concluded that there is a need to ensure that customers have clear and transparent information to assess the connection offers they receive and that as companies will already have costed the work to provide the quote it is reasonable that such costs are made available and broken down appropriately
- 7 8 We are concerned that in this case detailed cost breakdowns were not provided from the outset and that even high level cost breakdowns were only provided on request In this context we question the value of providing a detailed breakdown of works (as per Appendix 1 of each connection offer) but not setting out the cost of each element of the works We accept however that paragraph 2 18 of the Company s CCMS does not explicitly state that the *breakdown of works* will be able to be referenced to the tables in section 7 But paragraph 2 18 does say that the *cost breakdown* will be able to be referenced to the tables in section 7
- 7 9 Section 7 of the Company s CCMS provides a significant amount of detail about the costs of various works and we consider that it is unreasonable to suggest that total figures (i e for the full project or non contestable works) can be referenced to section 7 in the same way To this end the Company s actions are not consistent

with the wording of its CCMS though this may have been caused by the fact that the wording itself is not clear about what the Customer should expect

7 10 However we do not consider that there should be a prescriptive approach to the level of detail that a Company should be required to provide in breaking down costs as the appropriate breakdown may depend on the type of connection. As a starting point we welcome the simplicity of the list at paragraph 7 1 of this determination although we recognise there will be instances where more detail is warranted costs which are specific to DG projects as noted at the oral hearing. In this case are examples of these. As discussed above we would expect companies to understand a customer's requirements as a result of information provided in a request for connection and to take steps to accommodate these. We will take into account DNOs performance in this regard and in particular the effect on a customer's ability to make an informed choice between a DNO and an alternative connection provider in assessing Competition Test applications⁸

8 Determination

8 1 In respect of the Customer's challenge on the length of validity period the Authority finds that as a result of requesting a connection date of 30 July 2011 it was reasonable for the Company to set a validity period as short as 30 days

8 2 In the context of the Customer's challenge on whether the validity period should have been extended based specifically on what is set out in section 4 2 of the Company's CCMS the Authority finds that it is unreasonable of the Company not to have considered the opportunity for an extension of the validity period

8 3 The Authority is keen to avoid similar disputes around validity periods and has consequently considered the overall issue of validity periods more broadly. The Authority considers that there is a need for flexibility and transparency from both the Company and the Customer. This means that in deciding how to develop their network and in responding to requests for connection companies should consider and understand how the terms of a connection offer affect projects differently. Taking the characteristics of this dispute as an example the Authority finds that it is unreasonable to maintain standard validity periods of 30 days where there is no interactivity and where extension (not re validation) of the connection offer is also subsequently refused

8 4 In considering the approach to resolving this matter the Company is advised to bear in mind its obligations under section 16A(5) of the Act which requires that the distributor shall give a notice as soon as practicable after receiving the notice under subsection (1). If the Company's approach is that re validation is delivered by issuing a new offer the requirements of section 16A of the Act will apply. Whether it is reasonable for the Company to take up to 65 working days to issue a new connection offer in situations where nothing has changed was not specifically brought to the Authority for determination although was raised by the Customer in discussion and was also considered at the oral hearing. The Company's evidence states that re validation requires around three working days. The Authority accepts that the work required will have to be processed alongside other applications for connections and should not be unduly prioritised to the detriment of other applicants. However the Authority would be concerned about situations where re validation took up to or near to 65 working days as it has already for the Sites

Further information on the Competition Test can be found in our DPCR5 Final Proposals Incentives and Obligations document
www.ofoem.gov.uk/Pages/MoreInformation.aspx?docId=348&refer=Networks/ElecDist/PriceCtris/DPCR5

Involved in this dispute given the requirement to make offers as soon as practicable

- 8.5 As far as the Customer's challenge in respect of staged payment regimes is concerned, the Authority considers that, based on the Customer's request for a connection date of July 2011, it is reasonable in this instance for the Company to have sought full payment of the fees upfront. This recognises that companies should have funding to progress projects.
- 8.6 However, in order to avoid further determinations on the same basis, the Authority has additionally considered the general thrust of the dispute around staged payment regimes. The Authority agrees with the need to guard against speculative projects or capacity blocking, but recognises that the development of small scale distributed generation projects is not straightforward and often requires detailed or technical information before the project can be finalised. The Authority considers that, although the Customer could have carried out a feasibility study, the cost can be comparatively high for some projects, and considers that it would be unreasonable for all projects to be required to go through feasibility studies simply so they can be ready to progress on a time frame that is consistent with what the company wants.
- 8.7 The Authority recognises the value of policies to refund fees not already committed or spent, but is mindful of whether they provide sufficient protection for customers in all cases. The Authority considers that companies have a responsibility to new as well as existing customers and should seek to strike a balance between the needs of the customer requesting connection and the approach it takes to developing the system. In this context, the Authority has concluded that the Customer's offer to pay non-refundable A&D and wayleave fees was a fair and reasonable basis upon which to seek a negotiated or staged payment regime. However, the Authority considers that the terms of such payment regimes (especially in respect of the date for connection) cannot be resolved through standard terms or policies and requires open dialogue.
- 8.8 As far as cost breakdowns are concerned, the Authority considers that there is a clear need to ensure that customers have clear and transparent information to assess the connection offers they receive, and is concerned that detailed cost breakdowns were not provided from the outset. Having examined paragraph 2.18 of the Company's CCMS, the Authority finds that it is unreasonable to suggest that total figures (i.e. for the full project or non-contestable works) can be able to be referenced to section 7.
- 8.9 The Authority does not consider that it would be appropriate to adopt a prescriptive approach to the level of detail that the Company should provide in breaking down costs. However, the Authority expects companies to understand a customer's requirements as a result of information provided in a request for connection and take steps to accommodate these. The Authority would not expect DNOs to provide cost breakdowns with such limited information in future. To reiterate the point made at 7.10, we will take into account the pricing and transparency of pricing in assessing Competition Test applications from DNOs.
- 8.10 This document constitutes a notice stating the reasons for the Authority's decision for the purposes of section 49A of the Act.

Andy Burgess

Associate Partner Transmission and Distribution Policy

Duly authorised on behalf of the Gas and Electricity Markets Authority

1 June 2012

Appendix 1A Supplementary information requested from the customer

Note

Please ensure that each question below is answered as completely as possible
Please ensure that you provide all the information you consider is relevant to assist us in understanding being specific wherever possible
Where you do not consider a question is relevant to your case please indicate this in your response
Please provide copies of any documentation evidence and paperwork you consider is relevant to your case cross referencing the documentation in your responses to the questions where appropriate Please note that such documentation may be used to support your arguments but will not be treated as a substitute for your reasoned arguments which should be set out below
If you wish to provide information in addition to that requested in this template please do so at the end of your submission

Questions

- A With reference to your answer to Question 1 of the original questionnaire please clarify precisely whether the dispute is with reference to the length of the validation period (as per your original submission of 2 November 2011) or the refusal to extend the validation period If it is both please make the case for each as clearly as possible with reference to the dispute in question and supported by relevant evidence
This dispute relates to both the length of the validity period and because the offers became time expired the necessity to re validate the original offers In the case of the projects in question the request for re validation was refused (Please see the e mail trail attached as Appendix 1 and specifically e mail from [REDACTED] dated 31st August)
The case for extending the validity period relates to the unreasonably short timeframe for the client to complete their acceptance processes
The case for re validation should not necessitate justification It is a pre requisite under the existing CCMS
- B With reference to your answer to Question 3 of the original questionnaire please provide details for example agreed agendas minutes actions or outcomes of the meeting of 29 April You may wish to include similar information from any other meetings you feel are relevant please bear in mind that Ofgem is only able to determine this dispute based on the information that is provided

Validation Periods and re validations

The agreed minutes of the meeting with [REDACTED] on 29th April is attached (Appendix 2) Please note the track changes have been made by [REDACTED] We would refer you specifically to point 28 relating to both validity and re validation
We would also refer you to comments made by a number of delegates at the recent DG Foro relating to this issue and noting that [REDACTED]
[REDACTED] were all present
We would also refer you to the e mail to [REDACTED] on 1st February 2011 regarding the suggested DG Workshop Agenda items [App 3]
We would also refer you to the fact that both validity periods and re validation were discussed with the DG ECSR forum prior to the Ofgem Fora Notes are attached and we would specifically refer to items 6 & 7)
It is of note that despite all of the above [REDACTED] have remained intransigent to both our requests and the requests of the DG community
We have also suggested to [REDACTED] that they are the only DNO that consider that 30 days is sufficient for the client to undertake all of the works necessary in order to accept any DG grid quotation

Breakdown of Costs

We would refer you once again to the requirements under the CCMS and in particular

2.18 For Connection Offers that include Contestable Work with a Connection Charge in excess of [REDACTED], we will provide a breakdown of costs that are referable to the tables in Section 7

It is of note that the tables in Section 7 of the CCMS provide a breakdown with regards to £/m for U/G and £/span for O/H lines substation costs etc

- C With reference to your answer to Question 4 of the original questionnaire please indicate how long you believe each of the bulleted activities is likely to take. Please ensure this is done with specific reference to the dispute in question though you may also wish to provide additional time frames for e.g. more complex types of project if you feel it is relevant.

The timeframe for gaining a competitive quotation from ICPs would be in the order of 20 working days (turnaround). The other bulleted activities relate to activities undertaken by the Client, their agents, professionals, legal team and multiple contractors and subcontractors all working at multiple locations.

Sign off for the project is likely to occur at designated Board Meetings which may be held on an ad hoc basis.

Whilst it is difficult to be specific as to the timing for individual tasks, some of which could/may be undertaken concurrently, we have previously stated that the whole process would/should be undertaken in about 60-90 days.

The next issue of relevance is that should the client be unable to complete their internal process for acceptances within the 30-day time frame, the project will fall out of validity. As a consequence, because re-validations are not accepted by [REDACTED], a complete and new application will be required (possibly taking a further 65 working days). Should the new grid offer vary in any respect from the original, the client's internal acceptance process would also have to start again!

- D We are also interested in the internal process for accepting an offer itself, for example, do all of the activities listed need to run in sequence or can they be run in parallel? You may wish to consider a simple flow diagram with timings if helpful? As part of this explanation, we would like to understand more specifically, and with reference to the time each one takes, what is required for each activity (in the context of the dispute in question). As per Question 4 of the original questionnaire, please make clear which elements of the activity can only happen once the connection offer has been received. Some of the activities listed previously can run in parallel, other need to run in series. All of the activities can only happen once the Section 16 (and, if applicable, the CinC quotes) are available. In short, you cannot review, appraise and sanction an offer that has not been presented.

A major obstacle to any project remains its financial viability. Should the grid connection be overly expensive or, for whatever reason, the potential connection date be unacceptably delayed, this would have a major impact on the project. Clearly, under the above circumstances, both the project and the associated grid connection may well be aborted, and this being despite the fact that there will have been a considerable financial outlay prior to the submission of the grid application request.

- E Also in respect of Question 4 of the original questionnaire, please explain specifically and with reference to costs and timeframes, what impact the 30-day validation period has on your sending the connection offers to ICPs. We have a choice as to whether to request Section 16 quotations and CinC (competitive) quotations at the same time or staggered. We understand however that the grid assessment and design and financial cost and appraisal are actioned within different departments within each DNO. The timeframe for delivery of CinC quotations is 50 days and the Section 16 quotations 65 days and each quotation will start its own 30-day validity period.

On receipt of the quotations each will start the client's internal acceptance process as described and bulleted previously

With regard to requesting competitive connection offers from ICP's it will be seen from the above that the 30 day frame is difficult to manage for a standard Section 16 offer. To attempt to undertake the work and seek competitive offers prior to falling out of validity is both demanding and in our view totally unnecessary

Timeframes

We have elaborated on the timeframes previously

Costs

The costs for the original application(s) will be the costs associated with putting together the applications. In advance of placing the applications there will be works associated with reviewing the site in preparation for the submission of the LPA which will of course have a direct bearing on the site and site suitability?

Clearly if the client is not in a position to accept the offer(s) within the 30 day validity period then the whole scheme will be placed on hold until the new application is made and a revised offer becomes available. During this period there is also the potential for the connection to become interactive and/or the costs to change to an extent the scheme then becomes non viable

- F With reference to your answer to Question 5 of the original questionnaire please be specific in terms of the actual additional cost and time that is incurred (in the context of this dispute) supporting any statements with evidence where possible

As has been stated previously the impact of losing any connection offer (and then having to re apply) is tangible in terms of both cost and process time

There are costs associated with making any grid connection application and in the case of the [REDACTED] the applications are not of a frivolous or speculative nature

Having formulated and constructed the original application any subsequent application is only a matter of revalidating and re sending the same information and updating the relevant internal databases. This could be one half day of additional work

The main problem is that the second and subsequent applications will probably take a further 65 days for [REDACTED] to process during which time the LPA applications will by necessity be on hold. The time delay will also produce uncertainty in the grid connection process and delays in procuring plant and equipment, balance of plant equipment and possible (significant) delays in defining and achieving preferred project start dates

It is of note that one relatively easy remedy to this problem would be to remove the grid connection assessment and design monopoly from the DNO's such that this part of the grid connection process was open to competition?

Multiple applications take time and money are of no benefit to either the client or DNO and will by necessity delay the Local Authority Planning Application process

- G With reference to your answer to Question 6 of the original questionnaire please explain with reference to specific timeframes and costs why your client is not able to have completed the full local authority planning process prior to applying for connection

- 1 It is of relevance that there is no legal requirement for completing the LPA planning consent prior to applying for a grid connection
- 2 The LPA consent will require the inclusion of turbine type, size and position. Of necessity (and submitted within the LPA application pack) will be details relating to the size, positioning and details of the associated DNO and customers substations
- 3 Clearly the electrical sizing of the turbine (which to some extent dictates the physical sizing of the turbine) is also somewhat dependant upon establishing the network parameters and this only comes with any certainty within the grid connection offer
- 4 It is also of note that we attempted to engage with [REDACTED] at an early stage with regard to other DG projects and under the auspices of Section 5.4.7 of the Distribution Code. Having taken advice from Ofgem (See e mail dated 11th April)

it was asserted that Section 5 4 7 only applied during the full application phase and did not apply prior to this [Appendix 4]

- 5 As a consequence and at the request of [REDACTED], we withdrew the (7) requests for information that were requested under this clause
- 6 Therefore and to be succinct the terms and conditions and response detailed within the grid application does in part influence the scheme financial viability and the detail of the LPA submission

- H Additionally and with reference to the connections offers in dispute please explain (providing evidence where possible) how you could be reasonably certain that you would secure local planning authority consent and additionally how long you expected the remainder of the planning process to take for the sites in dispute
There is no certainty with regard to securing any wind turbine LPA Consents However the methodology used by the Client means that considerable time effort and finance has been expended on LPA issues prior to submission of the grid application

Because it is not possible to gain LPA consent in advance of the receipt of a grid connection offer it is policy to cover off all eventualities such that the LPA consent can be submitted as soon as the grid offer is received
Typically the client would expect to apply for the LPA consent following receipt of a favourable grid connection offer and obtain LPA consent within 9 months of that application or know why the LPA consent was being delayed

- I With reference to your answer to Question 6 of the original questionnaire and acknowledging your point about interest on capital retained is there any other reason why obtaining a refund for any connection fees paid is not acceptable Please ensure your response is focussed on the dispute in question
We have already suggested that the Client would be amenable to both accepting (reasonable) terms associated with a grid connection offer and paying for immediate disbursements that are both appropriate and timely

The Client would not be amenable to funding unreasonable or unnecessary work that was not immediately required (on potentially multiple and numerous projects) prior to the completion of their respective LPA consents
As stated previously we see no benefit or requirement for depositing capital contributions with the DNO whilst there is actually no reason to do so

- J With reference to your answer to Question 7 of the original questionnaire please quantify for each site in dispute the value of wayleaves and A&D fees versus the remaining amount that you have said you would be willing to pay upfront
Since [REDACTED] is not prepared to provide a breakdown of cost we are unable to provide a definitive response to this question
However having discussed this issue with both the client and with other DNOs we understand that the client is prepared to fund a fee equal to the lesser of [REDACTED] or the actual A&D fees and wayleave fees (once the costs are defined and substantiated within an acceptable cost breakdown format)
For our part we still remain unclear as to what security or certainty [REDACTED] would derive from holding an excessive up front grid connection payment We are also concerned in that [REDACTED] are not prepared to negotiate the financial terms and conditions but are seemingly utilising their monopoly powers to gain financial advantage

Appendix 1 Further information requested from the customer

Note

Please ensure that each question below is answered as completely as possible
Please ensure that you provide all the information you consider is relevant to assist us in understanding being specific wherever possible
Where you do not consider a question is relevant to your case please indicate this in your response
Please provide copies of any documentation evidence and paperwork you consider is relevant to your case cross referencing the documentation in your responses to the questions where appropriate Please note that such documentation may be used to support your arguments but will not be treated as a substitute for your reasoned arguments which should be set out below
If you wish to provide information in addition to that requested in this template please do so at the end of your submission

Questions

- 1 Please explain exactly what is in dispute in this case attaching any relevant paperwork to back up your argument

Please see original request and submission dated 2^d November 2011 and also note that all relevant submissions and attachments were enclosed with this document

To précis

- 1) Refusal by [REDACTED] to extend validity period for acceptances of grid connection offers
- 2) Refusal by [REDACTED] to re validate time offers that were about to be time expired
- 3) Refusal of [REDACTED] to enter into a revised T&C contract with particular respect to payments and staged payment regimes
- 4) Refusal of [REDACTED] to provide a breakdown of cost for grid connection offers

At the request of Ofgem we have retracted that part of our dispute and concerns regarding the [REDACTED] Disputes Resolubon Process and potential mis information relating to NG charging We will however write separately to The Distribution Manager at Ofgem and insist upon a meeting to either resolve these 2 issues or alternatively take them forward to the Minister for reconciliation

- 2 Where applicable please provide a description of the works this dispute relates to attaching any relevant paperwork

The works relate to the electrical connections to 2 separate single turbine wind farm sites The works are described within the grid connection offers made by [REDACTED] A copy of the [REDACTED] grid connection offers has been included within the original submission

- 3 Please give details of the complaints procedure you have gone through including with reference to the specific issues that you have raised with [REDACTED]

With regard to the formal complaints procedure it is relevant that on behalf of the client we have completed the [REDACTED] formal Complaints Procedure and have obtained a formal close out letter It is also of relevance that we have attended meebngs and engaged with all of the DNO s at an early stage in our works to describe our procedures and attempt at that early stage, to resolve issues that were likely to require clarification or be contentious The meeting with [REDACTED] was on 29th April 2011

We have available the notes that were made and agreed at that meeting should Ofgem require copies

We have also been party to the recent Ofgem DG Fora

We have also provided representation on the ECSG and MCCG where a number of these issues have been formally discussed and we believed agreed

- 4 Please explain both in general terms and separately with specific reference to the connections offers in dispute why you believe that an offer validity penod of 30 days is unreasonable We

would also like to understand what actions activities or processes must be undertaken within the 30 day period this should include explanation as to why they must occur within that 30 day period and e.g. not before or after

Validity Periods for Acceptance See our original submission Part 1

It is of note that of all of the DNOs it is only [REDACTED] that insists on a 30 day validity period for the acceptance of grid connection offers. It is also of note that at the recent Ofgem DG Fora the 30 day period for grid acceptance was stated as an unreasonable constraint this being the common consensus by industry participants involved with DG projects

Following receipt of an offer made under Section 16 of The Act that offer must be

- received (Agent)
- technically appraised (Engineering)
- financially appraised (Accountant)
- review site considerations (Land Agent)
- the terms and conditions legally appraised (Solicitors)
- passed to the site developers for consideration (Client /Developers)
- passed to the site owners / finance House for agreement to provide funding (Client/ Finance House)
- funding arranged (Accountant/ Finance House)
- Quote signed off and accepted (Client)

Where a separate quotation is made for the same connection but under the terms of a competitive connection, in addition to the above the PoC offer must be forward to (a number of) ICPs for them to undertake their own site appraisal and form their own competitive quotation. These offers would then need to be scrutinised prior to returning to the Agent for validation and acceptance. In addition to this the audit trail as described above would then be completed / undertaken

Whilst [REDACTED] could be considered to be obstructive in relation to their connection policy with regard to the competitive connections applications they could in our opinion also be considered to be anti competitive

What is also particularly infuriating and will be pursued outside of this Determination is that whilst [REDACTED] (and other DNOs) are insisting that they require 65 working days to produce a quotation they are happy to insist that Developers must respond within 30 calendar days!

With response to the last points raised by Ofgem we would point out that clearly the above actions cannot proceed in advance of receipt of the quotation (for obvious reasons) and once the quotation becomes invalid any revised quotation is likely to change and therefore the client is unable to review until such time as the new quotation is made available

5 Please explain the impact on the projects of connections offers not being re validated. We would like to understand both the *potential* impact in terms of how such a situation may affect project development as well the *actual* affect on the two projects in question in the case of this dispute (referencing impact on cost time and other such issues as you feel are important)

Re Validation Process See original submission Part 2

To re validate an ongoing project is not an unreasonable request and is actually included within the [REDACTED] Charging Statement as a valid procedure. The fact that [REDACTED] have refused to honour this arrangement must now be challenged by Ofgem as part of this Determination

Where a DNO refuses to re validate a project it simply means that the whole application documentation will need to be re sent and re processed (at both the customers and the DNOs end) and the technical and financial appraisals will start again

We have been advised that any re submissions will go to the bottom of the pile of incoming applications and therefore could take the full 65 days to gain a new connection offer

In the case of the 2 projects under consideration and as a concession we were advised that the projects would not require to be re sent but were given new version numbers to the same admin numbers by [REDACTED]

Potential Impact The impact of losing any connection offer (and then having to re apply) is tangible in both cost and process time
There are costs associated with making any grid connection application and in the case of the [REDACTED] base the applications are not of a frivolous or speculative nature
Multiple applications take time and money are of no benefit to either party and will delay the Local Authority Planning Application process

6 With reference to the connections offers in dispute please explain exactly why it would not be acceptable or possible to make full payment for the connections works upfront i.e. in the time frame required by [REDACTED]

Payment and Stage Payment Regimes See original submission Part 3

Let me segregate this question into its 2 components

Acceptability [REDACTED] only submit their applications for a grid connection once there is a reasonably certainty of gaining all of the other necessary Local Planning Authority (LPA) consents Hence none of their applications are either speculative or spurious It should be acknowledged however that [REDACTED] have refused to engage in preliminary discussions prior to receipt of a formal Section 16 Application and have also refused to entertain any form of self determination of Point of Connection (PoC) such that we can gain an insight into potential connection points and hence potential connection costs
Thus whilst we would anticipate any forthcoming grid connection offer from [REDACTED] would be at a reasonable cost there is by no means any certainty of this fact

Based upon the above my client is not in any position to complete Local Authority Planning consents prior to receipt of a grid connection offer and the grid offer may well influence the outcome of the turbine selection process

If we now consider the timeline for the above it should become apparent that funding the full amount of the grid connection becomes unacceptable purely on the basis that
at worst considerable sums of money would end up being paid to [REDACTED] at an early stage in the overall connection process and for no good reason
any projects that failed to gain LPA consent would require a refund of the connection fees that [REDACTED] are likely to progress the connection works to their time schedule and not to suit the clients timelines.
we assume that [REDACTED] would not offer interest on capital retained on connection fees that were lodged with them
that [REDACTED] would still have to refund any connection fees on projects that failed at the LPA Consent stage and therefore did not progress to the construction phase

Timeframe Please see the section above headed Section 4 Validity Period for Acceptance

7 In specific terms where possible please also explain the benefit of being able to make staged payments of connections charges as well as whether there are alternative time frames or approaches that would be more acceptable for making payments

We have previously approached the remainder of the DNO community and following detailed and comprehensive discussions the majority of DNOs have tentatively agreed revised fee structure arrangements

In addition we have also agreed to provide back stop dates and milestones in order to give the DNOs a degree of certainty that the projects were actually progressing and that we were not attempting to maliciously lock in any form of capacity agreement

It is of note however that [REDACTED] has not been receptive to any form of revision to their charging mechanism

The agreements that have been made and are operating with other DNO s has included for the acceptance of the grid offers and paying (at that time) for A&D Fees and Wayleave fees only The remainder of the connection charges will be paid on completion of the LPA process and when the scheme is ready to proceed to the construction phase

The benefits of the alternative staged payment regime for the client/developer is that there is a reduced capital outlay for the connection at day 1 and the full fees would be paid when the connection is actually required and called off

Clearly the benefit for the DNO in accepting the Assessment and Design Fees (A&D) is that they will only receive the fees required for acceptance and works undertaken with no requirement for refunds should the scheme fail to gain full Planning Consents

Quite simply we cannot see any benefit to the DNO for requiring up front payment for all of the works that may not be occasioned or may not be occasioned for a defined / significant period of time

It is of note that the current practice is that the DNO s are obliged to refund any up spent part of the capital contributions but this would be refunded without interest

- 8 Please explain why you require the costs information to be broken down in more detail particularly in reference to this specific case (we note for example that you have already committed to making payment of fees in respect of assessment and design and wayleaves) What benefit do you believe there would be of having this additional detail?

Clearly the intention of Common Charging Methodology Statement is to provide clarity and transparency to the charging function and a breakdown of costs is designed to assist with this process

In the case of the 2 quotations provided [REDACTED] have not attempted to provide any cost breakdown other than (1) Contestable Charges and (2) Non Contestable Charges We would suggest that it is impossible to quantify or evaluate whether the charges are reasonable or appropriate at this level Likewise we are also unable to reconcile whether any costs have been allocated to reinforcement whether those costs are reasonable or acceptable or whether any appropriate level of CAF apportionment has been included

It is also relevant that the requirement for the DNO to provide a cost breakdown as part of any connection quotation has previously been discussed and agreed with all DNO s and within the ECSG

- 9 Please explain the rationale behind the breakdown of costs you have suggested

The breakdown of costs as suggested is not of our design or rationale

For the Non Contestable element of the quotation these are the actual elements or parts of work undertaken by the DNO that are of a non contestable nature and are required in order to (a) state what work is considered to be of a Non Contestable nature and (b) what their specific charges would be for undertaking that specific part of the work and (c) support the methodology and charges associated with any reinforcement work and any associated CAF calculations

For the Contestable element there is in our opinion a requirement for the DNO to break down their charges in line with their Charging Methodology Statement We would therefore now refer you to the Minutes of the ECSG Meeting dated 9th July 2008 and also to the [REDACTED] Common Methodology Charging Statement You will note however that [REDACTED] have simply provided a composite work description without assigning costs to any part of that work

It would appear however that that [REDACTED] see both scope and leeway in their interpretation of both documents and therefore we believe that there may now be the opportunity to make the documents more prescriptive and thus add clarity transparency and certainty

To continue with this argument to apply the CAF Apportionment calculations [REDACTED] would need to segregate their costs with regard to works that are otherwise defined as reinforcement works

It is of particular relevance that Ofgem have picked up on a number of issues as detailed above and we would refer you to the Ofgem letter dated 26th October 2011 which followed the Ofgem DG Fora

We would bring your attention specifically to the comments made by Ofgem and drawing the attention of the DNO s to issues relating to transparency of cost information

We would also advise that other DNO s and ENW is exemplary do provide cost breakdowns that are both clear and transparent and assist with understanding the grid connection offer. Clearly if ENW is sufficiently compliant we fail to see why [REDACTED] should be so obstructive

[REDACTED]

--

Appendix 1 Further information requested from the customer

Note

Please ensure that each question below is answered as completely as possible
Please ensure that you provide all the information you consider is relevant to assist us in understanding being specific wherever possible
Where you do not consider a question is relevant to your case please indicate this in your response
Please provide copies of any documentation evidence and paperwork you consider is relevant to your case cross referencing the documentation in your responses to the questions where appropriate Please note that such documentation may be used to support your arguments but will not be treated as a substitute for your reasoned arguments which should be set out below
If you wish to provide information in addition to that requested in this template please do so at the end of your submission

Questions

- 1 Please explain exactly what is in dispute in this case attaching any relevant paperwork to back up your argument**

Please find attached the deadlock letter (Appendix 1) written as the final step in our complaints process and which we believe captures the points in dispute in this case (We note from [REDACTED] response to Ofgem in January that they have subsequently withdrawn a number of these points)

- 2 Where applicable please provide a description of the works this dispute relates to attaching any relevant paperwork**

The works that are in dispute relate to offers to connect generation at [REDACTED] (DTB399 – 500kW) and [REDACTED] (DTB483 500kW)

As we do not believe that design and cost are in dispute we do not attach any additional technical or costings information here

- 3 Please explain why you believe that a 30 day validity period for connections offers is reasonable In doing so and with reference to specific lengths of time please quantify any impact on [REDACTED] of a longer validity period**

[REDACTED] offers a 30 day validity period for all of our offers to connect demand generation unmetered SLC15 etc We believe discriminating between different customer groups would be in contravention of our licence The validity period of our offers form part of our commercial contract and as such we do not believe it is determinable by Ofgem

Notwithstanding this our commercial terms and conditions are constantly under review and we are open to discussion with interested stakeholders on potential changes to improve these However we are firmly of the view that extending the validity period for

offers either globally or after they have expired would undermine other applicants position and increase uncertainty for generation developers specifically through a major increase in the incidence of interactivity between different applications and connections Please see our response to Question 4 for a quantification of this impact

We believe our validity period is of a reasonable timescale reflective of contracts for other elements of work associated with projects of this scale It is not intended to reflect the times to secure financing planning permission and / or any other development milestone relevant to any major engineering undertaking a wind farm a large housing estate a commercial development It is not for the DNO or any other service provider for a project (i.e. civil contractor materials/turbine supplier) to mitigate a developer's risks by extending validity periods This would have subsequent impact on other applicants as well as financial implications for the DNO It is always for the applicant to pursue any other project milestones alongside their application In a timescale they deem suitable

Finally our acceptance rate for quotations both generation and demand is comparable to others across the industry showing no negative effect on the ability of applicants to accept our offers

With regard to [REDACTED] response to this question.

- 1 Many of the items could run concurrently (engineering/accounts/land agent/ICPs)
 - 2 Much of the Financial model has already been calculated - [REDACTED] has already provided us with benchmark breakpoints for viable costs
 - 3 Much could be scrutinised before the quote is received i.e. our specimen contract could be scrutinised by a solicitor
 - 4 A quotation may be accepted Non Contestable Only and then presented to ICPs - to be converted to All Works should the developer decide to use the DNO
- 4 **Notwithstanding your answer to Question 3 and why you think a 30 day validity period is reasonable we would be interested in understanding at what point a longer validity period might become unacceptable or unmanageable for [REDACTED] For example would 65 or 90 days be acceptable or manageable? Please explain the rationale for your answer**

As stated in our answer to Question 3 we are firmly of the view that extending the validity period for offers would undermine other applicants positions and increase uncertainty for generation developers through a significant increase in the incidences of interactivity

We are seeing a steady increase in interactive applications at the quotation stage as a result of the unprecedented volumes and the clustering effect of renewable generation (Interactivity is very rare on other types of application) At the moment this affects approximately one quotation per month therefore at least 24 offers per year Should we extend our validity period by doubling or trebling this the number of incidents of interactivity would also double or treble From a developer's perspective the increased risk of interactivity undermines the offer they are given with a validity period which may actually be misleading

The mechanism of interactivity between offers at quotation is well understood and the process documented in Sections 2.21 to 2.28 of our Statement of Methodology and Charges for Connection to [REDACTED] Electricity Distribution System (CCM) Additionally distributed generation connections remain volatile post acceptance during construction and after connection Financial return (via FITs and ROCs) planning permissions and generator availability all drive variation or even cancellation of projects in process Extending the validation of an offer at acceptance would also increase the likelihood of this type of interactivity again requiring withdrawal of an offer before it has expired

[REDACTED]
[REDACTED]
[REDACTED]

The number of projects and level of interactivity here is certainly high but not unique in our area A substantial amount of reinforcement is both planned and on going Any variation in any project can have an impact on others costs or timescales be they in the quotation phase quoted accepted or even in construction Although other sites may not be as busy we require as a business to have processes and procedures in place that can be simply and consistently applied in all situations

- 5 Please indicate whether [REDACTED] was in receipt of interactive connections requests affecting either site in dispute (a) when the connections requests in dispute were received by you (b) when you provided the connections offers to the Customer and (c) at the end of the 30 day validity period

[REDACTED]
[REDACTED]
[REDACTED]

Our answer to Question 4 explains the mechanisms by which quotations interact with each other

- 6 With reference to Section 4.2 of the Statement of Methodology and Charges for Connection to [REDACTED] Electricity Distribution System please explain why you were not able to extend the validity period for the connections offers in dispute. Additionally, if you were of the opinion that these specific connections requests in dispute may have been speculative, please explain why. As part of your answers please quantify any impact on [REDACTED] wherever possible particularly in terms of extending validity periods for speculative projects**

Our process is to extend the validity of a Connection Offer by issuing a revised offer (to comply with the Guaranteed Standards of Performance). This requires us first to confirm that the network's contracted capacity and physical arrangement remains the same. The revised offer includes any revised costs. Additionally, should we receive acceptance of an offer beyond its validity period and should the network and costs remain the same we would process this acceptance as if within validity.

Although this process is, in the majority of cases, completed in a shorter timescale than the GSoPs in [REDACTED] area, the level of generation activity requires that the confirmation of network and costs and issue of revised offer takes place alongside and in the same timescale as new offers. As the capacity of network becomes full, this also ensures that any other applicants retain their position in the queue with a date before that of any extension. In compliance with our licence

Correction with respect to [REDACTED] response to this point.

To enter this process it only requires for the request to be made together with confirmation that all other aspects of the application remain the same. This request can be made any time during at the point when or at a point after the quote has expired.

- 7 Referring to specific timescales where possible, please explain the process and activities required to re-validate or extend a connections offer. You may wish to consider a simple flow diagram to aid understanding. We are also interested in understanding what new work is required as compared to [REDACTED] initial consideration of the connections requests in dispute please include specific time frames for activities or processes where relevant**

To re-quote an applicant (re-validation or extension application the same) we

Raise new version start clock (half an hour)

Review network for contracted capacity physical arrangement (half a man day)

If no change review and confirm costs with the project manager
prepare the new paperwork and pass through for re authorisation (two
man days)
Prepare update and re issue quotation and contract (half man day) -
TOTAL 3 man days

Should any of the applicants or our network change this would require a re modelled
design and costing adding approximately an additional week to the engineers design
and costing time similar to the level of work as for a new application

Once underway timeframes for straightforward re quotes are less than half those for a
new application although either may be subject to delays when confirming costs
However due to the Interactive nature of generation connections and to the volume of
works ongoing this process can take the same time as a new application (still within
GSoPs) as it would only start immediately upon receipt of a request if the engineer
tasked with the re quote had no other work on going

- 8 Please explain both in general terms and with reference to the connections offers in dispute why you think it is reasonable to require full payment of connection charges up front' i e within the timescale you have set out For what specific activities and at what time would [REDACTED] make use of the payments received? What would be the impact on [REDACTED] of not collecting payment in this way please quantify and evidence any impact where possible?**

Our request for payment on acceptance reflected our expenditure Where expenditure is likely to be staged or connection lies behind other works such as transmission reinforcement this is reflected in the payment schedule

In the individual cases under determination our connection offers and costs were based on connection dates of October 2012 and March 2013 respectively With these timescales all funding requested was to actually progress the project

Had the projects been accepted route proving and wayleaving would have commenced while orders would have been placed for the metering RMUs which represents a large portion of the costs with delivery time of 25 30 weeks

- 9 Why do you feel it is reasonable to offer staged payment terms for projects where the customer contribution is above £100 000 and not for smaller projects?**

We would commonly complete connections under £100k within 6 to 12 months and so request full payment to allow progress of the project The offer of staged payments above £100k reflects the size and nature of the task to be completed We do however

offer staged payments in the exceptional cases below £100k where expenditure is likely to be staged or connection lies behind other works such as transmission reinforcement

For the two schemes under determination one was below £100k and proposed to be completed within 12 months and so was not offered staged payments while the other was offered staged payments as it involved works beyond that timeframe

- 10 **Notwithstanding your commitment to refund fees that are unspent or uncommitted at the point of termination for projects that do not proceed, we note the Customer's offer in a letter to [REDACTED] dated 5 September 2011 that A&D and Wayleave Fees could be paid in full and could be considered non refundable. We would be interested in understanding why you felt this was not acceptable and in relation to the connections offers in dispute, why you felt more commitment to construction of the projects was required (we refer to a letter from [REDACTED] of 15 September 2011)**

In the individual cases under determination our connection offers were based on connection dates of October 2012 and March 2013 respectively. With these timescales the funding requested was to actually progress the project.

It is usual for generation connections to wish for as early a connection date as possible. Indeed it is often the case that they are unhappy with the delays we impose on their connection. [REDACTED] did not wish to either pay for or for us to progress with their connection causing [REDACTED] to make the comments around commitment.

With the specific projects under determination [REDACTED] acknowledge that they expected to experience extended planning timeframes. They effectively wished to accept their connection without progressing it, securing capacity at minimum cost. Unfortunately we cannot both accommodate this and develop the network allowing on as much generation as early as possible in an efficient and economic manner. As extensively discussed at the recent Ofgem hosted DG Fora and subsequently with [REDACTED] it was recognised that we could not, for example, make offers or carry out reinforcement for other connections without including [REDACTED] contracted requirements. This could result in more certain generation connections being uneconomic or beyond minimum reinforcement being carried out.

As the timing of an application for a connection is entirely a matter of the applicant's choice, we explained that it may be more appropriate for [REDACTED] who are not certain enough of the progress of their project to allow us to progress the connection works to make their connection application at a later stage in the project development. We do not believe that acceptance of a connection offer should effectively be a capacity

booking facility for projects with the resultant impact in cost and time for other applicants

- 11 With reference to your commitment to refund fees that are unspent or uncommitted at the point of termination (and taking account of e.g. administrative fees) please explain whether it is a policy of [REDACTED] to also refund any interest on the capital held up to that point of termination?**

A customer retains the right to terminate their contract at any point up to energisation. However, it is not our policy to refund interest on any money returned, nor do we believe it is the industry standard to do so.

It was not in any case our intention to hold these funds but to spend them progressing the connection.

Further, we would argue that enhancing the right to terminate by applying interest would be anti-competitive. Independent connection providers do not commonly offer termination without penalty up to energisation and certainly not termination with interest.

- 12 With respect to the breakdown of costs, why do you not, as a matter of course, provide information in a format that is completely broken down or disaggregated?**

Our costs and the description of works are routinely broken down to the level outlined in section 2.18 of our CCM. This included, for the offers under determination, a detailed description of both the contestable and non-contestable elements together with the total costs for these works broken down into all works (including contestable and non-contestable works) and non-contestable option, either of which could have been accepted.

On request, we further break this down again as outlined in Section 2.19 and 2.20 of our CCM – please see attached Appendix 4 and Appendix 5.

The level that costs may be disaggregated to in our offerings is something we constantly have under review. The breakdown does require to balance the requests of our customers, the ease of understanding of the information provided, remembering multiple lines are not always more understandable, and any administrative implications.

With respect to [REDACTED] response to this point,

Our breakdown in costs did indeed provide the level of detail outlined in [REDACTED] response to Question 9

13 With reference to the connections offers in dispute, why do you not feel it is acceptable to provide the information in the format requested by the Customer?

We believe we have provided a breakdown covering all the information requested by [REDACTED]. This is the breakdown that we provided on request please see Appendices 4 and 5

As you will recognise providing ad hoc breakdowns in a format specified by an individual customer is not only an inefficient way to provide information but may not be practicable. For example a contractor's costs may not be provided by labour materials etc but instead by cost per cubic meter