

**DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING CHARGES FOR ELECTRICITY CONNECTION**

**1. Introduction**

- 1.1. This document describes the determination of a dispute between SP Distribution Ltd and [REDACTED]
- 1.2. [REDACTED] (the "Authorised Distributor") has referred for determination by the Gas and Electricity Markets Authority (the "Authority")<sup>1</sup>, a dispute between the Authorised Distributor and SP Distribution Ltd (the "Company"). The dispute relates to the Company's statutory duty to make a connection under section 16(1) of the Electricity Act 1989 (the Act) and concerns a dispute as to whether the expenses incurred in providing the connection at [REDACTED] ("the site") were reasonable.
- 1.3. The dispute was referred to us for determination on 23 April 2012 under section 23 of the Electricity Act 1989 (the Act). Where a case falls within section 23 of the Act, the Authority is required to determine the dispute once either party to the dispute has requested that it do so.
- 1.4. Copies of the submissions from the Authorised Distributor and the Company in relation to this determination are included as Appendices 1 and 2 respectively.

**2. Statutory obligations**

- 2.1. Section 16(1) of the Act, places an obligation on the Company to connect any premises to its distribution system if the owner or occupier (or authorised supplier acting on his behalf) requests it.
- 2.2. Section 16A of the Act sets out the procedure that should be followed when a connection is requested. It specifies that the person requiring a connection under section 16(1) shall give the distributor (i.e. the DNO) notice requiring him to offer terms for making a connection. It also states that as soon as is practicable after receiving that notice and any other information reasonably requested by the distributor, that the distributor shall give to that person a notice:
  - (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.
- 2.3. Section 19 provides that where any electric line or electrical plant is provided by an electricity distributor in pursuance of section 16(1) above, the distributor may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.

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<sup>1</sup> In this document the terms the "Authority" and "we" are used interchangeably

- 2.4. Any dispute arising under sections 16 to 21 of the Act, between an electricity distributor and a person requiring a connection may be referred to us under section 23 of the Act for determination.

### **3. Facts of the case**

- 3.1. We consider the following to be the facts of the case, based on the assessment of the information submitted to us.
- 3.2. On 7 June 2011, the Authorised Distributor, an Independent Network Operator (IDNO), made a connection application on behalf of its client to the Company, for a Point of Connection ("POC") with a capacity of 2206kVA. The POC was proposed to be supplied from [REDACTED] [REDACTED] [REDACTED] ("the Substation") by the addition of a new circuit breaker at the Substation and a new circuit to the Authorised Distributor's client. The application also required a quote for diversionary works.
- 3.3. On 21 June 2011, the Company provided a quote (Quote 1) for **£60,140** for fees and POC works plus **£31,220** for diversionary works, totalling **£91,360**. This offer lapsed on 22 September 2011.
- 3.4. The Authorised Distributor's client decided to amend its development such that the diversionary works were not required, but wished nevertheless, to proceed with the POC. On 3 October 2011 the Authorised Distributor sought to accept the POC only quote of **£60,140**.
- 3.5. On 11 October 2011, the Company determined that the acceptance was outside the three month validity period and issued a POC only quote (Quote 2) for **£76,870**. The Company stated that the connection charges increased as a result of (i) revised contractor estimates for the switchgear and installation and (ii) the original costs not taking account of the extent for the electronic control systems required to be used at the Substation.
- 3.6. On 14 November 2011, the additional costs between Quote 1 and Quote 2 were raised at a regular issues meeting between the Company and the Authorised Distributor. The Company confirmed at this meeting that incorrect fees had been applied to Quote 2 and confirmed its intention to reissue the POC quote as a result.
- 3.7. On 16 November 2011, the Company issued a third Quote (Quote 3) for **£77,450**.
- 3.8. On 24 November 2011, the Company granted approval for the Authorised Distributor's design.
- 3.9. On 30 November 2011, the Authorised Distributor wrote to the Director of Connections at the Company on the matter of increasing costs in quotes.
- 3.10. On 2 February 2012 the Authorised Distributor submitted a minor design amendment.
- 3.11. On 13 March 2012, POC Quote 3 was withdrawn due to the end of the validity period (the Company had written to the Authorised Distributor on 14 February 2012 to advise of this deadline).

- 3.12. On 27 March 2012, the Authorised Distributor submitted another application for a POC.
- 3.13. On 12 April 2012 the Company issued a new POC quote (Quote 4) for **£90,040**. The Company confirmed that the connection charges had increased due to (i) the type of circuit breaker required no longer being available at a preferential rate; and (ii) additional civil works needed to extend the Substation to create a new bay for the new circuit breaker (as it was thought that the previously available spare circuit bay had since been used for another project).
- 3.14. On 26 April 2012, the Company gave design approval (for Binder 4 Version 4) and asked the Authorised Distributor to sign the Construction and Adoption Agreement and make payment of the non-contestable charges within 10 working days (11 May 2012).
- 3.15. On 11 June 2012, the Authorised Distributor submitted acceptance of Quote 4 and paid £90,040, despite having written to the Company on 19 April 2012 to state that 'any payment made beyond the initially quoted sum of £60,140 for the POC will only be done under duress'.
- 3.16. The Authorised Distributor, acting on behalf of their client requested that we determine the dispute and that we should examine whether:
- (a) the Company discharged its responsibility in providing competent quotes to the Authorised Distributor;
  - (b) the Company can refuse to accept the "POC" only proportion of a composite "POC"/Diversionary quote;
  - (c) the Company can approach "POC" applications with the view that an Independent Connection Provider (ICP) applicant should secure their client's acceptance of its quote prior to the ICP's acceptance of the DNO quote for the "POC". (This point was made within the communications between the Authorised Distributor and the Company.)
  - (d) the Company was within its rights to levy the Authorised Distributor with additional charges associated with works and then costs which the Company's shortcomings failed to properly identify.
- 3.17. The four quotes provided by the Company to the Authorised Distributor over a period of a year varied in amounts and increased by just under £30,000 in total. The Authorised Distributor contends that each quote issued by the Company increased due to additional charges associated with works and costs which the Company failed to identify in the first quote issued. The four quotes are set out in the table below:

|                |   |
|----------------|---|
| <b>Quote 1</b> | <b>£60,140</b> (excluding £31,220 for diversionary works which were no longer required) |
| <b>Quote 2</b> | <b>£76,870</b>  |
| <b>Quote 3</b> | <b>£77,450</b>  |
| <b>Quote 4</b> | <b>£90,040</b>  |

- 3.18. We have considered carefully all of the information provided by the Authorised Distributor; the Company and the independent consultant. Copies of the Authorised Distributors' and the Company's responses to the questions are attached as Appendices 1 and 2 respectively.

#### **4. Consideration of Evidence**

- 4.1. The POC Quote 4 was ultimately the quote that was actually accepted by the Authorised Distributor. We will only determine on whether the expenses charged by the Company in the quote were reasonably incurred in providing the 'connection', as that is the material issue to the dispute between the parties. The first three quotations will be considered further in this section of this determination in as much as they are illustrative in nature but we will not make a determination on whether they were reasonable.
- 4.2. We commissioned independent consultants<sup>2</sup> to review the cost of the quotes issued by the Company. We have taken into account their opinion in determining whether the expenses charged in POC Quote 4 were reasonably incurred.

#### **Background information detailing POC Quote 1-4**

- 4.3. The cost of the POC increases from £60,140 to £90,040 between Quote 1 and Quote 4, with the majority of cost increase occurring between Quotes 1 and 2, and then between Quotes 3 and 4.

#### **POC Quote 1 - £60,140** (excluding £31,220 for diversionary works which were no longer required)

- 4.4. The Company confirmed that in Quote 1, the Material Switchgear Multiplier includes the circuit breaker, installation, protection modifications and SCADA works.
- 4.5. The Authorised Distributor's client decided to amend their development such that the diversionary works (£31,220) attached to Quote 1 were not required, but they wished to proceed with the POC only quote. The Authorised Distributor sought to accept the Company's POC 1 Quote, without the diversionary works. The Company determined that this acceptance was outwith the three months validity period of Quote 1 and issued Quote 2.

#### **POC Quote 2 - £76,870**

- 4.6. In Quote 2, the Material Switchgear Multiplier includes the protection modifications and SCADA works only. The circuit breaker is listed as a separate line item.
- 4.7. The Company stated that the increase in price was largely related to the SCADA and communications system programming and commissioning cost. Quote 1 had been estimated from a previous connection and the complexity of the connection had not been taken into account in Quote 1.
- 4.8. For Quote 2, a contractor's quotation was obtained for this piece of work. Due to the position of the new circuit breaker in the SCADA system, the overall control module would need to be reconfigured at a cost of an additional £11,700. The

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<sup>2</sup> TNEI Services Ltd

remaining £2,000 increase was accounted for in the difference between a cost estimate from a previous connection and a specific manufacturer's quotation.

- 4.9. After the increase in cost of £13,747 has been accounted for, there is an additional increased cost of approximately £2,700 between Quote 1 and Quote 2. The Company changed to a different cost estimating system between Quote 1 and Quote 2 and the independent consultants has therefore found it difficult to identify exactly which line items have increased. However, those which appear to have increased include substation earthing and substation locks.

*The following table (fig. 1) sets out a summary of the primary difference between the Quotes 1-2.*

| <b>POC 1</b>  | <b>POC 2</b>   | <b>Increase/Decrease in POC 2</b> |
|---|--|-----------------------------------|
| <b>Material Switchgear Multiplier: £26,400</b><br>Circuit Breaker: included above | <b>Material Switchgear Multiplier: £21,607</b><br>Circuit Breaker: £18,540 |                                   |
| <b>£26,400</b>  | <b>£40,147</b>   |                                   |
| <b>Total Increase from POC 1 to POC 2</b>   |  | <b>+ £13,737</b>                  |

#### **POC Quote 3 - £77,450**

- 4.10. The independent consultant's report considered that the minimal changes from Quote 2 to Quote 3 could be accounted for by the difference in the fees (eg. charge for information on POC). The Company explained this as an error in the fees charged in Quote 2. A scaling factor was applied to these fees by the Company that should not have been applied, due to the estimator not being used in the new system. Once this scaling was removed, Quote 3 increased slightly from Quote 2.
- 4.11. The Company advised the Authorised Distributor on 14 February 2012 that Quote 3 was reaching the end of its validity period. This was reached on 13 March 2012 when Quote 3 was withdrawn.
- 4.12. On 27 March 2012 the Authorised Distributor reapplied for a POC (Quote 4).

#### **POC Quote 4 - £90,040**

- 4.13. Quote 4 included the Modification of the Existing Structure (which included the construction of a new switchgear bay at a cost of £14,237). This was due to the requirement for a new switchgear bay as the previously vacant switchgear bay was no longer thought to be vacant. This was an increase of approximately £7,500 from Quote 3.
- 4.14. The independent consultant's report identified that the Company's estimator believed that, due to another local connection, there was no longer a vacant switchgear bay at the Substation. Therefore Quote 4 included significant civil works to accommodate the new circuit breaker required for the Authorised Distributor's connection.
- 4.15. The Company later discovered during the determination process, that the switchgear bay was still vacant and therefore the additional civil works were not required. We consider this to be a significant error that would have been avoided with due care and attention.

- 4.16. The Company therefore refunded £6,600 of this additional civil work costs to the Authorised Distributor during this determinations process.
- 4.17. Quote 4 included an increase in cost of approximately £2,000 for an additional five engineers and a project coordinator in relation to the modification of the secondary substation to accommodate the new circuit breaker.
- 4.18. The total cost of civils works and engineering and project management time increased by approximately £9,500 from Quote 3 to Quote 4.
- 4.19. Quote 4 also included a new quotation for switchgear at an increase of approximately £2,090 since Quote 3.
- 4.20. The Company asserted that the increase in cost (of £2,090) was due to the contract with the switchgear supplier lapsing. We consider this increase in price to be unavoidable in the circumstances. However, we would expect the Company to take reasonable steps in renewing arrangements with suppliers where appropriate.
- 4.21. Quote 4 also did not include £1,240 (included in Quote 3) due to the omission of the HV straight joints.
- 4.22. Quote 4 included an increase of £2,650 due to an increase in administrative Fees and Charges following the publication of a new charging statement.
- 4.23. A combination of small variations in the pricing of other items accounted for a reduction of £400 from Quote 3 to Quote 4.

*The following table (fig. 2) sets out a summary of primary differences between quotes POC 3 and POC 4.*

| <b>POC 3</b>   | <b>POC 4</b>  | <b>Increase/Decrease in POC 4</b> |
|--|---|-----------------------------------|
| <b>Modification of Existing Structure</b><br>(incl. low level installation modification)<br>£6,752.20                                | <b>Modification of Existing Structure</b><br>(incl. construction of a new switchgear bay)<br>£14,237.85   | <b>+£7,500</b>                    |
|  | <b>Mod/Sub Secondary Substation</b><br>Additional 5 Engineers<br>1 x Project co-ordinator<br>£2,000   | <b>+£2,000</b>                    |
| <b>Material Switchgear Multiplier</b> (incl. protection modifications and SCADA works<br><b>Circuit Breaker</b> is listed separately | New quote for switchgear is shown under <b>Material Switchgear Multiplier</b><br><br>Old <b>Circuit Breaker</b> item is now unavailable as contract with supplier has lapsed. | <b>+£2,090</b>                    |
| HV Straight Joints<br>£1,240   | Omitted from POC Quote 4  | <b>-£1,240</b>                    |
| Fees and Charges<br>£2,250   | Fees and Charges<br>£4,900  | <b>+£2,650</b>                    |
| Other<br>(£400)  |   | <b>-£400</b>                      |
| <b>Total Increase from POC 3 to POC 4</b>  |   | <b>+ £12,600</b>                  |

- 4.24. The Authorised Distributor did not agree with the quote presented by the Company and wrote to the Director of Connections at the Company. Whilst this represented the level of the Authorised Distributor's frustration, it did not follow the Company's complaints procedure and therefore we note that the Company was not given an opportunity to address the complaint fully through its internal complaints procedure.
- 4.25. Following consideration of the evidence provided by the parties, the independent consultant's view is that reasonable expenses for providing the requested connection would have been **£77,511**.
- 4.26. The independent consultant considered that the overall increase in the Company's quotation cost, due to additional civil works which are no longer required, is larger than the £6,600 refunded to the Authorised Distributor, by a margin of £900.
- 4.27. In addition, in Quote 4 there was an increase in £2,000 for engineering and project management costs. There was no change in the quantity of engineering and project management time between Quotes 1, 2 and 3. However, the Company has stated that these costs were related to the outages and project planning associated with the three panel board which the Authorised Distributor was to build for adoption by the Company. These costs were included by the Company within Quote 1. They were however, incorrectly allocated to the scope of diversionary works.
- 4.28. The Company states that Quote 2 was prepared by a different design engineer who extracted the diversionary works, as they were no longer requested. This engineer failed to identify the incorrect allocation in Quote 1, and the fact that these costs should have been reallocated to the non-contestable connection charges. These costs were included in Quote 4.

## **5. Discussion and conclusions**

- 5.1 The Authorised Distributor failed to use the Company's complaints procedure and therefore missed an opportunity to resolve the issue between the parties before proceeding to the determination.
- 5.2 We also consider that part of the increase in costs could have been avoided if the Authorised Distributor had not let previous offers lapse.
- 5.3 However, it appears from our examination of the material in this determination that the Company does not have in place systems and processes which would have allowed it to issue accurate and consistent quotations to the Authorised Distributor.
- 5.4 In the context of this dispute, the four Quotes provided varied by approximately £30,000 (not taking into consideration the subsequent refund by the Company to the Authorised Distributor of £6,600). The Company has given reasons for the changes and errors and the independent consultant has largely been able to validate the changes and errors.
- 5.5 The Quotes were issued over the period of a year, and it is reasonable to assume that the costs involved in a POC quote will vary over this time period due to changes in cost of equipment or fees charged by project managers etc. In at least one instance, the difference in cost was due to the lapsing of a contract with a

supplier and so a new price had to be obtained for the specific piece of equipment.

5.6 While some of the changes have been shown to be justifiable, there are a number of errors in the Quotes that have been highlighted (and corrected in subsequent quotes) by the Company. These are listed as follows:

- (a) the Company omitted costs of £11,700 in POC Quote 1 which were subsequently included in POC Quote 2;
- (b) the Company incorporated incorrect fees and charges due to an incorrect scaling factor in POC Quote 2;
- (c) the Company refunded £6,600 to the Authorised Distributor, with reference to an increase in costs from Quote 3 to Quote 4 for civils works which have turned out to be unnecessary due to an internal miscommunication;
- (d) the independent consultant found the overall increase in quotation cost in Quote 4 due to additional civil works to be £7,500 (£900 more than the £6,600 refunded); and
- (e) the Company included an additional £2,000 in Engineering and Project Coordinator costs which had been incorrectly allocated to diversionary works in Quote 1 and then not included in POC Quote 2 and 3 and then included in Quote 4.

5.7 The Company make the point in its submission of evidence that, had the initial quotation been accepted and connection charges paid in accordance with the terms and conditions of that quotation (Quote 1), the increases in costs later included in Quote 2, would have been borne by the Company.

5.8 However, we note that the responsibility for providing accurate quotes rests with the Company.

## 6. Determination

6.1. In respect of the Authorised Distributor's challenge on the reasonableness of quotes expenses for the connections works, we find that the figure of **£90,040** (Quote 4) was not reasonable and consider that expenses in the region of **£77,511** (as advised by the independent consultant) would have been reasonable in providing this connection.

6.2. We note that the Company has refunded the Authorised Distributor £6,600 following POC Quote 4 as a result of identifying an error. **We therefore determine that the Company should refund the remaining difference between Quote 4 and the independent consultant's reasonable quote.**

$$\mathbf{£90,040 - £77,511 = £12,529}$$

$$\text{(Quote 4 - independent consultant's reasonable quote) = } \mathbf{£12,529}$$

$$\mathbf{£12,529 - £6,600 = £5,929}$$

(Difference between Quote 4 and reasonable quote - refund already made by Company) = **£5,929** to be refunded by the Company to the Authorised Distributor.

6.3. We also consider that the Company should take steps to avoid similar disputes and to give its customers greater confidence in the service it provides by improving its ability to issue connection quotes more accurately.

- 6.4. Given that five significant errors have been identified in the issuing of the four quotes, we consider that there is a need for greater accuracy and transparency from the Company. In issuing a connection quote, the Company should ensure that the systems and processes employed are consistent and accurate. We consider that quotations issued should not vary significantly according to the individual members of staff carrying out the quotation.
- 6.5. We find that it is necessary for the Company to employ more accurate checks and quality control before issuing quotations. We believe that this would assist the Company in avoiding the errors identified in Quotes 1-4 above.
- 6.6. The Company has stated in its evidence that where a quote was issued incorrectly the risk would be carried by the Company and that had Quote 1 been accepted, the Company would have had to bear the additional cost. However, we are concerned that in other instances the same type of error could lead to customers being quoted higher costs than those than they should reasonably incur.
- 6.7. We note that had the Authorised Distributor not missed the deadline to accept the third quote it may have avoided this issue escalating to the point that a determination of the dispute was necessary. In addition, we note that, in part, the Authorised Distributor may have missed the opportunity to avoid some of the delays and difficulties which arose as a result of this dispute had it pursued the Company's official complaints procedure in order to present the Company with a reasonable opportunity to correct any errors made.
- 6.8. In conclusion, we would expect SP Distribution Ltd to refund the Authorised Distributor, as soon as reasonably practicable, the sum of **£5,929** as stated in section 6.2.



**Associate Partner, Transmission and Distribution Policy**

**Duly authorised on behalf of the Gas and Electricity Markets Authority  
4 January 2013**

## **Appendix 1: Authorised Distributor's submission of facts and reasons.**

### **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 [whether there is a dispute and, if so, the grounds for such a dispute/the grounds of the dispute]\*.
- Where you do not consider a question is relevant to your case please indicate this in your response.
- Please provide copies of any documentation 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.**

This connection was being made for adoption by [REDACTED] [REDACTED] and as such is an IDNO application

[REDACTED] [REDACTED] made application on behalf of their Client to ScottishPower Energy Networks (SPEN) on 7/6/2011 for a Point of Connection for supply to a [REDACTED]. The application also required a quote for diversionary works

SPEN provided quote (1) on 21/6/2011 for £60140 for the POC and £31220 for the diversionary works.

By 6/9/2011 the client had decided to amend his development such that the diversionary works were not required, but he wished to proceed with the POC. He subsequently accepted [REDACTED]'s POC only quote, based on Quote 1 (£60,140)

3/10/2011 [REDACTED] sought to accept SPEN's POC Quote 1 without the associated diversionary works.

11/10/2011 SPEN determined that this was outwith the 3 months validity period of Quote 1 and issued Quote 2, a POC only quote for £76870 containing an additional £16729 of costs for items which had been 'missed' from Quote 1. A 27% increase.

14/11/2011 this additional cost was raised at a regular 'issues' meeting between [REDACTED] and SPEN who then superseded Quote 2 with Quote 3 for £77450 now including a further £580 for 'system costing errors' which had not previously been picked up. An effective 29% increase.

30/11/2011 [REDACTED] write to SPEN Director of Connections on the matter.

14/12/2011 SPEN Director responds to above letter

17/1/2011 [REDACTED] responds to SPEN Director

14/2/2012 SPEN advise [REDACTED] that Quote 3 was reaching the end of its validity period. This was reached on 13/3/2012 when the POC quote 3 was withdrawn.

27/3/2012 [REDACTED] reapplied for a POC

12/4/2012 SPEN issued Quote 4 for £90,040.92 now £29900 in excess of Quote 1, an effective 49.7% increase over 10 months.

11/6/2012 [REDACTED] under pressure from the client to progress the works, reluctantly paid the £90040.92 to SPEN.

The issues which arise from this dispute relating to the reasonableness of the charges lie in the volatility of the charges and the acceptance of the quotes.

#### Volatility of the Charges

[REDACTED] operates in a competitive market place, interfacing with end clients who require connection to networks owned by incumbent DNO's. The quotes provided by [REDACTED] for the overall service provided to the client rely heavily on the upstream charges levied by the DNO for final connection to their network. These charges require to be stable within acceptable tolerances in order for [REDACTED] to minimise its risk in using these charges and be an effective contributor to the competitive market.

The issue we wish Ofgem to consider is SPEN's reasonableness in varying its charges for connection so widely over the four quotes when as they admit the reason was down to failures of their own systems; and indeed for Ofgem to consider SPEN's competency in discharging its responsibility to do so.

#### Acceptance of Quotes

(a) [REDACTED] made application in good faith for a composite POC and Diversionsary quote. The client however, as is his prerogative, chose only to accept the POC component of the quote.

In issuing a composite quote for POC and Diversionsary works can SPEN refuse to accept acceptance of the POC only and then go on to issue a revised quote?

(b) In his response (Item 7 paragraph 3) to our letter of complaint Mr P Brown ascertained that [REDACTED] were at fault in finding themselves commercially exposed by not ensuring *'that it had accepted the initial offer before entering into an agreement with its client'*

[REDACTED] are of the view that it cannot accept SPEN's quote prior to securing the Client. The client is ultimate user of the connection and the capacity, for [REDACTED] to do so would put it at commercial and regulatory compliance risk since [REDACTED] would be in contract with SPEN for connection and capacity with potentially no client.

We wish Ofgem to consider whether SPEN can approach POC applications on the basis that the ICP/IDNO applicant should secure their quote prior to securing their clients acceptance?

On the wider issue of this determination, [REDACTED] have due to commercial expediency, paid the Connection Charge of £90040. We understand that Ofgem do not determine on theoretical issues but on actual disputes. We trust however that since we have been forced to pay this charge that it will not preclude completion of the

determination process. We still hold the levy of this charge as in dispute and would seek if the determination is found in [REDACTED]'s favour that a refund would be instructed.

- 2. Please explain how you have escalated your complaint with the Company. (Note: Ofgem expects that any dispute has been escalated through the Company's formal dispute resolution procedure and that this avenue has been exhausted prior to it being referred to Ofgem for determination.)**

**In addition, please provide your complaint ID (if you have one) and details of any correspondence enclosing all relevant documentation and evidence (e.g. presentation slides and minutes from both parties) including:**

- All relevant documentation (e.g. presentation slides and minutes) from the regular issues meeting on 14 November 2011 between [REDACTED] and the Company where the issue of additional cost was raised.
- All relevant documentation regarding the opening of the formal complaints process with the Company on 30 November 2011.
- All relevant documentation (e.g. minutes of conversations and letters) regarding the most recent correspondence between Mr Paul Brown (SPEN's Networks Connection Director) and [REDACTED] | [REDACTED]

Complaint ID      N/A

Contact            (1) Mr Andy Scott Connections Manager North then  
                          (2) Paul Brown Network Connection Director.

#### **Details of dispute escalation**

In November 2011 there were two main avenues for complaints which [REDACTED] required to be raised within SPEN; the fortnightly conference call and the quarterly meeting between some of the senior managers of each organisation. These meetings however did not preclude [REDACTED] from seeking direct redress with SPEN's Directors or Ofgem where they felt unhappy about progress in these avenues.

It should also be understood that the conference calls are also attended by relatively senior individuals within SPEN so scope for effective escalation is limited.

In this instance it was clear that following the conference call on 14/11/2011 it was pointless seeking the view of the next managerial tier and that a letter to the ultimate decision maker would save time and effort.

This view has proved to be correct since the approach to Mr Paul Brown has resulted in no change to SPEN's position.

For the purposes of this determination we believe that although a five stage complaints process was short circuited, the ultimate decision maker, Mr P Brown has confirmed SPEN's position in this matter and there is no further avenue within SPEN to seek a different outcome; the escalation process has therefore been exhausted.

- 3. Please provide details of the four quotes provided to you by the Company, attaching any relevant supporting documentation.**
- **Please provide details of each of the quotes you have received from the Company, including the dates you requested, received and accepted**

**quotes, plus any breakdown in charges relating to Point of Connection (POC) costs and Diversion costs.**

- **Please provide details of any additional costs included in quotes issued after the initial quote provided.**

**Summary of Quotes Requested and Received**

| Date POC Requested | Date Quote Received | POC Cost | Addition. POC cost cumlo          | Diversion Cost | Comment  | Items       |
|--------------------|---------------------|----------|-----------------------------------|----------------|--|-------------|
| 7/6/2011           | (Q1)<br>21/6/2011   | £60140   | -                                 | £31220         | 6/9/2011 Client declines need for diversion                                    | 1&2         |
| 3/10/2011*         | (Q2)<br>11/10/2011  | £76870   | £16729<br>+ 27%<br>in 4<br>months | Nil            | Q(2) replaces Q(1) with +£16,729 'revised' costs- raised at meeting 14/11/2011 | 3&4         |
| N/A                | (Q3)<br>16/11/2011  | £77450   | £17310<br>+29% in<br>5<br>months  | Nil            | Q3 replaces Q2 with +£580 additional 'missed' costs                            | 5           |
| 27/3/2012          | (Q4)<br>12/4/2012   | £90040   | £29900<br>+49% in<br>10<br>months | Nil            | Q(4) replaces Q(3) with +£12590 'revised' costs                                | 9,10,<br>11 |

\* This was not a request for a revised POC but an attempt to accept Q1 less diversionary costs

- 4. Please provide details and any supporting documentation given by the Company with regard to explanations for the changing costs between Quote 1-4 and if any breakdown was provided to justify the changes in price between these quotes.**

Little explanation is provided in the quotes themselves as to the detail of the charges being levied. This is evidenced in Items-2, 4, 5 and 11 where the table entitled BREAKDOWN OF NON CONTESTABLE COSTS provides information on the values of the different categories of charge being levied.

The detail of the Charge for Connection is limited to the first paragraph of Part 1 of each quote 'This POC requires a new circuit breaker to be installed out of [REDACTED] [REDACTED]. The circuit will comprise 185(3)11kV cable between [REDACTED] [REDACTED] and a new switching station in the vicinity of [REDACTED] [REDACTED]

The revised quotes, within themselves, make no reference as to the variation of the costs, this requires to be questioned.

The difference between Q2 and Q1 (£16729) was questioned at the conference call meeting on 14/11/2011 and explained as 'costs that were missed in the original quote'. (Item 12) This was later explained by Mr P Brown in his letter of 14th December (Item 7 Para 2) as being 'predominately as a result of my team receiving a revised estimate'.

The difference between Q2 and Q3 was advised to [REDACTED] at the same meeting and related to 'wrong charging' for POC, Design Approval, Inspection and Witnessing. This was later explained in Mr Brown's letter (Item 7) as a 'system error'.

The difference between Q3 and Q4 was alluded to in an email (Item 13) of 27<sup>th</sup> March from K. Sharp (SPEN) to [REDACTED] ([REDACTED]) although the inference was that the change would be minimal when indeed it turned out to be substantial i.e. plus £12590.

Changes in all categories of charge have taken place over the period of the 4 quotes. These are highlighted in Item 14

The substantial change however is clearly in the Connection Charge which has risen 49% over the 10 months. It should be noted that this increase in costs reflects no change in the physical work required to be done by SPEN in order to make the connection.

Mr P Brown goes some way to explain this in his letter of 14th December 2011 (Item 7 para. 4) the reason for the increase between Q1 and Q2. We find this explanation weak and unacceptable from an organisation which is tasked with issuing accurate quotes, upon which ICPs, IDNOs and ultimately clients can depend. No explanation has been provided for the difference of £9940 between the Connection Charge of Q3 and Q4.

**5. Please include details and any supporting documentation as to why you (on behalf of your client) did not wish to proceed with diversionary works as originally requested.**

It was identified by the client following the first quote that the already contracted 'build out' programme for the development would not be affected by the retention of the overhead lines on the site, the diversion of which comprised the proposed works. The project required the installation of multi utility infrastructure to support future development and the retention of the overhead line did not impede this infrastructure installation.

It is understood therefore that for commercial reasons the client chose to leave the overhead line in place and defer the diversionary expenditure until the parcel of land which it crosses is developed.

This overhead line therefore currently remains on the site, unaffected, and will only be required to be moved once the parcel of land which it occupies is developed.

Item 3 identifies [REDACTED]'s revised application to SPEN requesting that Diversionary costs are not to be included.

**6. Please include any other facts relevant to the case for example, whether the Company has offered any compensation etc and attach any relevant correspondence.**

All communications between SPEN and [REDACTED] on this matter have been included in the detail described above and the Items included as evidence. No revision of SP Distribution Ltd's position has been communicated to [REDACTED] and no suggestion of compensation or refund has been made.

## Appendix 2: Company's submission of facts and reasons.

### Determination of a dispute between [REDACTED] and SP Distribution Ltd ([REDACTED]) Company's response to Customer's case

#### 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 [whether there is a dispute and, if so, the grounds for such a dispute/the grounds of the dispute]\*.
- Where you do not consider a question is relevant to your case please indicate this in your response.
- Please provide copies of any documentation 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 provide a description of the works this dispute relates to attaching any relevant paperwork.

Please note that SP Energy Networks (SPEN) is referenced throughout this response as the business unit of ScottishPower that provides network services in the SP Distribution and SP Manweb licence areas.

This Point of Connection (POC) requires a new circuit breaker to be installed at [REDACTED] Primary to connect to a new circuit to be built by [REDACTED]. The scope of the non contestable works to be provided by SPEN is as follows:

- **Switchgear works:** Procurement, installation and commissioning of new circuit breaker at [REDACTED] primary substation.
- **Protection works:** the secondary wiring modifications to incorporate the new circuit breaker panel, the testing and commissioning of the protection: over current; earth fault; bus bar protection, supervision and control facilities.
- **Scada/works:** Extend the monitoring and control equipment and associated software at both [REDACTED] primary and at the SPEN control room.
- **Excavation and jointing works:** Excavate lay, blind, tape, backfill and reinstate 20m of three single core 300mm<sup>2</sup> XLPE cable from the [REDACTED] primary substation building to the footpath beyond the substation perimeter. Terminate the single core cables in the new circuit breaker end box. Complete the joint of the single cores to the 11kV cable (to be laid by [REDACTED]).
- **Project management:** In addition to the supervision of the works this includes the engineering time for plant commissioning, plant outages and subsequent commissioning to connect the new circuit breaker at [REDACTED] primary substation. In addition this includes the engineering time required for safety precautions, shutdowns and commissioning of the contestable works being constructed by [REDACTED].

The following diversionary works were required under [REDACTED] first application. At the request of [REDACTED] these works were removed from the second and subsequent offers.

The non contestable works associated with establishing a new substation to maintain connections to SPD customers fed from Tarrareach PTE:

- Recover 2 spans 11kV and 7 spans LV conductor, poles and stays;
- Provide sectionalisers, and 11KV cable tail (including surge diverters, termination equipment and pole mounting equipment) to connect new 11KV tail to replacement substation;
- LV joints to connect the contestable works to SPD existing customers; and
- Project management and engineering time required for safety precautions, shutdowns and commissioning of the contestable works associated with these diversions being constructed by [REDACTED]

The non contestable works associated with the diversion of 3 spans of 11KV overhead line between Tarrareach sectionalisers and Brown Street sectionalisers and T off pole:

- Recover the conductor and poles;
- Establish an H pole, install one set of 11kV sectionalisers, three 11kV cable tails (including surge diverters, termination equipment and pole mounting equipment);
- three 11Kv joints; and
- project management and engineering time required for safety precautions, shutdowns and commissioning of the contestable works associated with these diversions being constructed by [REDACTED]

**2. Please set out your view of the timeline of events that led to us being asked to determine this dispute. Please include how you dealt with Energetic's complaint?**

In your answer please include details of any correspondence enclosing all relevant documentation and evidence (e.g. presentation slides and minutes from both parties) including;

- All relevant documentation (e.g. presentation slides and minutes) from relevant regular issues meetings between you and [REDACTED]
- All relevant documentation regarding any opening of your formal complaints process.
- All relevant documentation (e.g. minutes of conversations and letters) regarding any relevant recent correspondence between ScottishPower Energy Networks and [REDACTED]

**Please provide the complaint ID (if you have one) and details of any correspondence attaching any relevant documentation.**

We have provided a Chronological Timeline detailing the documents in the Section Reference Pack for this Project including all information that was uploaded via the web management tool interface and any other documentation relevant to the events. The timeline includes both [REDACTED] and SPEN's comments in relation to each stage and a refined version is detailed below:

**Key for Binders**

Binder 1 – Point of Connection (POC) Application  
Binder 4 – Design Approval  
Binder 5 – Contract Acceptance and Payment  
Binder 7 – Connection Date Request

**Timeline**

- **7th June 2011** [REDACTED] submitted a request for a connection to an IDNO network with a capacity of 2206kVA at [REDACTED]. The submission also

included a request for non-contestable costs for all diversionary works within the site. (Reference Pack A001)

- **21st June 2011** SPEN issued a POC quote of £60,140.31 for fees and connection works plus £31,220.30 for diversionary works. Total £91,361.03. This offer lapsed on 22nd September 2011. (Reference Pack A002)
- **3rd October 2011** [REDACTED] submitted a revised request for connection which specifically excluded all diversionary works. (Reference Pack A003)
- **12th October 2011** SPEN issued POC quote 2 of £76,870.10. (Reference Pack A005) The connection charges increased from those previously quoted, primarily as a result of: (i) revised contractor estimates for the switchgear and installation and (ii) the original costs not taking account of the extent of the electronic control systems required to be utilised at the [REDACTED] primary substation. We would note that had the initial quotation been accepted and connection charges paid in accordance with the terms and conditions of that quotation, the increases in costs referred to above would have been borne by SPD.
- **28th October 2011** [REDACTED] submitted a design to SPEN for approval but this was withdrawn by mutual agreement pending a meeting for both parties to discuss the complexities on the site. (Reference Pack A004). This was an informal meeting that took place at SPD [REDACTED] offices on 1st November 2011 and no minutes were recorded.
- **14th November 2011** As part of our ongoing efforts to facilitate better relations with [REDACTED] SPEN holds a regular fortnightly design call to discuss issues arising. The agenda for these meetings is typically dictated by [REDACTED]. The [REDACTED] project was highlighted for discussion on this occasion as a result of the change in value between POC quote 1 issued on the 21st June 2011 and that issued on 12th October 2011 (POC quote 2). SPEN confirmed at this meeting that incorrect fees had been applied to POC quote 2 and its intention to reissue as a result.
- **16th November 2011** POC quote 2 was superseded by POC quote 3 which totalled £77,450.60. (Reference Pack A006).
- Between the **18th and 23rd November 2011** requests for design approval were initiated by [REDACTED] (Reference Pack A007)
- **24th November 2011** SPEN granted approval for [REDACTED] design. [REDACTED] did not submit their final acceptance and payment to SPEN and this quote therefore should have lapsed on 8th December 2011 (10 working days after design approval) in line with the terms and conditions, as noted below. (Reference Pack A008) However, pending the resolution of the complaint SPD kept the offer valid until the end of the 3 month validity period.

*"...If these conditions are satisfied within this 3 month validity period, we will then consider your contestable design and provide a response within 10 Working Days (or 20 working days for extra high voltage (EHV) category projects). Where we accept the contestable design, you will be provided with a Construction and Adoption Agreement. The Construction and Adoption Agreement must be signed by the Developer & Contractor and returned to us, together with payment of the Non-Contestable Connection Charge (as specified in Part 1B of the Schedule), within 10 working days from the date of our response.*

***For the avoidance of doubt, you will not be deemed to have entered into an agreement to connect to the Distributor's Distribution System until such times as the Construction and Adoption Agreement has unconditionally been entered into."***

- **30th November 2011** [REDACTED] writes to the SPEN Network Connections Director on the matter. (Reference Pack A009)
- **14th December 2011** SPEN Network Connections Director responds to the above letter. (Reference Pack A010)
- **17th January 2012** [REDACTED] responds to SPEN Network Connections Director. (Reference Pack A011)
- **2nd February 2012** [REDACTED] submitted a minor design amendment. (Reference Pack A012)
- **7th February 2012** SPEN approved the design amendment. (Reference Pack A013)
- **14th February 2012** SPEN advise [REDACTED] that POC quote 3 is reaching the end of its validity period. The letter issued to [REDACTED] stated that the quotation was only valid for a further 20 working days. (Reference Pack A014).
- **27th March 2012** Following expiry of the validity period for POC quote 3, [REDACTED] submitted another application for connection to this site. (Reference Pack A015))
- **12th April 2012** SPEN issued a new POC quote for £90,040.92 (Quote 4). This further increase in cost resulted from the following occurring in the intervening period:

Revision to charges for Point of Connection and Design Approval.

Changes to SPEN's bulk switchgear contract meant that the type of circuit breaker required at [REDACTED] was no longer available at a preferential rate.

At the time it was thought that the available spare circuit breaker bay at [REDACTED] had been utilised for another project. As a result it was appropriate to increase the costs quoted to include additional costs to extend [REDACTED] switchboard (the original design was based on utilising a spare bay for an additional circuit breaker at [REDACTED]). The additional costs were based on civil works to extend the switchgear plinth and cable chase and install an additional unistrut channel to create a new bay to accommodate the new circuit breaker.

Please note that we have become aware that the spare bay at [REDACTED] has not in fact been utilised as originally understood. As a result the civil works to facilitate the extension of the substation switchboard is now no longer necessary. The additional civil costs associated with the extension to the switchboard will therefore be refunded to [REDACTED]. The value of this refund equates to £6,600. [REDACTED] have been informed of this decision and sent a variation acceptance form. (Reference Pack A016).

- **19th April 2012** [REDACTED] write to SPEN to state that "Any payment made beyond the initially quoted sum of £60,140 for the POC will only be done so under

duress". [REDACTED] also submit the POC Acceptance Form. (Reference Pack A016)  
Please note, no payment is made to SPEN at this time.

- **26<sup>th</sup> April 2012** SPEN approve Design Approval for Binder 4 Version 4. Please note, the terms of the POC quotation require that [REDACTED] sign the Construction & Adoption Agreement and make payment of the non contestable charges within 10 working days, expiring on 11th May 2012. (Reference Pack A017)
- **31<sup>st</sup> May 2012** [REDACTED] uploaded a variation to the design and this was rejected by SPEN on the 31st May 2012. (Reference Pack A018).
- **7th June 2012** SPEN approve Design Approval for Binder 4 Version 7 and upload drawings. (Reference Pack A019)
- **11<sup>th</sup> June 2012** [REDACTED] submitted their acceptance paid the £90,040.92. Binder 5 is uploaded onto CRAM. (Reference Pack A020).

#### **Complaint ID:**

The Complaint ID for this project is CCT643442.

Details of Company staff who have dealt with the complaint:

Persons involved from SPEN:

Ken Sharp, Senior Project Engineer

Paul Brown, Network Connections Director

Andy Scott, Design and CIC Manager

Graham Campbell, Commercial and Compliance Manager

Paul McGimpsey, Distribution Policy Manager

Jeremy Blackford, Licence Manager

#### **Details of dispute escalation process followed:**

We would note that [REDACTED] did not follow the escalation route as noted in the letter between Paul Brown, SPEN Network Connections Director to [REDACTED] [REDACTED] (Reference Pack A010)

### **3. Following this complaint being escalated through your complaints handling procedures it has still not been resolved. How have you satisfied yourself that the charges within the quotes you provided are reasonable/cost reflective? What is your justification for the quotes issued?**

At the time of this determination request [REDACTED] had circumvented the initial steps of the escalation procedure between the companies. Adherence to the full escalation process would have increased the likelihood for a mutually acceptable resolution to this complaint.

For each of the quotations issued to [REDACTED] we have followed the guidelines described within the Connection Charging Methodology ensuring adherence to the minimum design criteria. Prior to quotations being issued they are subject to SPEN's internal technical and financial authorisation procedures. In addition unit rates are subject to regular review. Indeed it is as a result of this review of unit rates that some of the variances between quotations can be explained.

Changes to costs between quotes are set out in detail in our response to question 2, however these were mainly as a result of changes in the offer details and costs over the significant time period between POC quote 1 and POC quote 4.

At no point did [REDACTED] accept any of the earlier quotes. Had it done so the increase in costs to [REDACTED] could have been minimised or avoided entirely.

As per our response to Question 2, we have established that an error occurred in relation to POC quote 4 and have as a result thus offered a refund to [REDACTED] for its acceptance. Please note that the necessity for this refund would have been identified during the standard construction process and offered regardless of this determination request.

**4. Please provide details of the four quotes you provided to [REDACTED] (and any subsequent breakdowns/explanations), attaching any relevant documentation.**

**Please provide details of each of the quotes you provided to [REDACTED] including the dates they were requested, provided and accepted, plus any breakdown in charges relating to Point of Connection (POC) costs and Diversion costs.**

**Please provide details of any additional costs included in quotes issued after the initial quote you provided.**

Please see summary table and attached cost estimates and cost breakdowns contained in the quotation letters (Reference Packs A002, A005, A006 and A016). The table below should be read in conjunction with the timeline provided in question 2 with reference to supporting documentation.

**Charge for Connection Costs**

| Description of Works                         | 1st POC Offer (21/06/11) | 2nd POC Offer (12/10/11) | 3rd POC Offer (16/11/2011) | 4th POC Offer (12/04/2012) |
|--|--------------------------|--------------------------|----------------------------|----------------------------|
| Civil Works                                  | £10,849.79               | £11,327.76               | £11,327.76                 | £17,972.76                 |
| Switchgear & Installation Works              | £20,453.56               | £30,363.29               | £30,363.29                 | £33,658.60                 |
| Protection Works                             | £9,609.72                | £12,112.10               | £12,112.10                 | £12,112.10                 |
| SCADA Works                                  | £2,461.00                | £5,666.45                | £5,666.45                  | £5,666.45                  |
| Project Management & Labour                  | £13,716.66               | £15,731.00               | £15,731.00                 | £15,731.00                 |
| <b>Sub-Total</b>                             | <b>£57,090.73</b>        | <b>£75,200.60</b>        | <b>£75,200.60</b>          | <b>£85,140.92</b>          |
| Charge for information on POC                | £250.00                  | £185.50                  | £250.00                    | £1,500.00                  |
| Charge for Design Approval                   | £1,500.00                | £556.50                  | £750.00                    | £2,500.00                  |
| Inspection & Monitoring of Contestable Works | £400.00                  | £148.40                  | £200.00                    | £200.00                    |
| Witness of Testing                           | £700.00                  | £779.10                  | £1,050.00                  | £700.00                    |
| Off Site Wayleaves & Easements               | £200.00                  | £0                       | £0                         | £0                         |
| <b>Sub Total of Charges</b>                  | <b>£3,050.00</b>         | <b>£1,669.50</b>         | <b>£2,250.00</b>           | <b>£4,900.00</b>           |
| <b>Total</b>                                 | <b>£60,140.73</b>        | <b>£76,870.10</b>        | <b>£77,450.60</b>          | <b>£90,040.92</b>          |

**5. Please provide details and any supporting documentation you gave with regard to explanations for the changing costs between Quote 1-4 and if any breakdown was provided to justify the changes in price between the quotes?**

Please note that POC quote 2 was issued as a result of [REDACTED] allowing POC quote 1 to lapse. POC quote 3 was issued and the reasons for so doing were explained in full during the meeting of 14th November 2011 (refer to the details provided in the timeline provided in question 2). At that same meeting the factors that lead to the changes in costs between POC quotes 1 and 2 were explained. POC quote 4 was the subject of a new connection application and was issued as a result of [REDACTED] allowing POC quote 3 to lapse.

**6. Please include any other facts relevant to the case for example, whether the Company has offered any compensation etc and attach any relevant correspondence.**

At the time of this determination request [REDACTED] had circumvented the initial steps of the escalation procedure between the companies. Adherence to the full escalation process would have increased the likelihood for a mutually acceptable resolution to this complaint. Subject to our comments above in relation to events following the POC quote 4 of 12th April 2012, where we acknowledge that a refund to [REDACTED] is necessary to accommodate the error made by SPEN, we did not at the time and do not currently, feel that it is appropriate to make an offer of compensation to [REDACTED].

We would emphasise again that [REDACTED] multiple lapsed applications followed by delayed acceptance and payment (11th June 2012) has resulted in a disproportionate amount of work for SPEN in managing this connection to this stage. Although changes to our costs have occurred during the considerable period that lapsed between [REDACTED] first application on the 7th June 2011 and their acceptance of our fourth quotation on 11th June 2012, no additional charges have been levied by SPEN for this additional work. In addition, in the interests of resolving this matter and progressing the works you will note from the above that SPEN, at several points, allowed the offers to remain valid by waiving its right to withdraw them as it was entitled to do (24th November 2011 and 14th February 2012).