

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT BY WILLMOTT DIXON CONSTRUCTION LIMITED UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 - concerning the payment of interest for advance payment for an electricity connection.

Final Decision

1. Introduction

1. On 19 February 2014 Willmott Dixon Construction Limited ("the Customer") referred to the Gas and Electricity Markets Authority ("the Authority"¹) a dispute under section 23(1) of the Electricity Act 1989 ("the Act") and asked us to make a determination on whether the Customer was entitled to receive interest which accrued in respect of an advance payment made by the Customer to UK Power Networks (Operations) Limited ("the Company") for 262 domestic electricity connections.²
2. The Customer alleges that the advance payment it made to the Company constitutes "security" within the meaning of section 20 of the Act. Section 20 of the Act requires interest to be paid on any money deposited with an electricity distributor as follows -

"Where any money is deposited [with an electricity distributor] by way of security in pursuance of this section, the [distributor] shall pay interest, at such rate as may from time to time be fixed by the [distributor] with the approval of [the Authority]..."

3. The Company disagrees that the advance payment constitutes security within the meaning of section 20 of the Act and refers to its Terms and Conditions, signed by the Customer, which includes clause 6.1.3 -

"The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the Works."

2. Summary of decision

4. We have determined that section 20 of the Act governs the circumstances in which money may be required to be paid or deposited in advance and that the advance payment in this matter constitutes a payment by way of security. Therefore, the Customer is entitled to receive interest from the Company, accrued in respect of the advance payment. We provide the reasons for this decision in Sections 5 and 6 of this document. In Section 7 we indicate the minimum rate of interest that we would be prepared to approve under section 20(3) of the Act. We invite the Company to submit an interest rate to us for our approval under section 20(3) of the Act by 26 August 2016.

3. Jurisdiction

5. 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 a

¹ The terms "Ofgem", "the Authority", "we" and "us" are used interchangeably in this document.

² See appendices for evidence submitted.

determination. The specific sections of the Act that relate to this dispute are summarised below.

6. Section 16 of the Act provides that an electricity distributor is under a duty to make a connection between his distribution system and any premises when required to do so by either the owner or occupier of those premises or an authorised agent acting with the consent of the owner/occupier of the premises.
7. 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.
8. Under section 16A(2) of the Act, the 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.
9. Under section 16A(5), as soon as practicable after receiving the notice the distributor shall give to the person requiring the connection 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.
10. Section 19(1) of the Act allows an electricity distributor to require any expenses reasonably incurred in providing any electric line or plant in pursuance of section 16(1) to be defrayed by the person requiring the connection to such extent as is reasonable in the circumstances.
11. Section 19(4) of the Act provides that any reference in section 19 to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.
12. Section 20 provides that an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give a reasonable security for the payment to it under section 19 in respect of the provision of any electric line or electrical plant. Section 20(3) provides:

"Where any money is deposited with [an electricity distributor] by way of security in pursuance of this section, the [distributor] shall pay interest, at such rate as may from time to time be fixed by the [distributor] with the approval of [the Authority], on every sum of 50p so deposited for every three months during which it remains in the hands of the [distributor]."

13. Under section 21(b), an electricity distributor may require any person who requires a connection in pursuance of section 16(1) of the Act 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.
14. 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 by either party.
15. This dispute requires us to determine the extent of the Company's powers under sections 19 and 20 to require an advance payment and whether interest is required to be paid in respect of any such payment in advance under section 20 of the Act.

4. Facts of the case

The advance payment

16. The Company received an application via the Customer's agent for electricity connection works at the Tesco site, Grand Depot Road, Woolwich, London SE 18. The Company issued a connection offer to the Customer dated 25 May 2011. This offer constituted a notice required to be made under section 16 of the Act.
17. The connection offer made by the Company included a provisional price, an outline of the works to be completed and the terms and conditions of the contract relating to the connection works.
18. The terms and conditions issued by the Company, and signed by the Customer, included at paragraph 3.2.1 a term that an advance payment of the full contractual price was required prior to works commencing -

"The DNO shall not be obliged to begin or continue the Works until:

- i) it has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice in cleared funds..."*

19. The provisional price was confirmed once the Company had completed a detailed design and procurement of the works. The connection offer was accepted by the Customer on 7 July 2011. The Customer paid a total of £1,478,965.84 plus VAT for the works in three instalments (£1,271,656.19 plus VAT on 22 August 2011, £160,000.00 plus VAT on 21 December 2011 and £47,309.65 plus VAT on 30 January 2012).
20. The final account was settled on 10 October 2013.

The dispute

21. The Customer made a complaint in January 2014, via its agent ("the Agent"), to the Company requesting that interest be paid on the advance payment, referring to section 20(3) of the Act (see paragraph 12).
22. The Company responded in its letter of 14 February 2014 that it *"does not accept it has requested security ... nor that it should pay interest on the sums that were returned..."*. The Company argued that the money paid was *"...not made as security for payment but ... payments in advance to work being undertaken and, therefore, do not attract interest."*

23. In that letter the Company referred to various sections of the Act. It said, in relation to section 20, that *"it is clear that legislation envisages that the payment for the provision of the connection and the payment of security are different things"*.

24. The letter directed the Customer to section 21 of the Act which allows the distributor to *"require the customer to accept terms which are reasonable in all the circumstances"*. The Company also referred to its contractual terms and conditions, which the Customer signed, and to paragraph 6.1.3 in particular, which provides the following -

"...The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the Works."

25. The letter said that if security was sought from the Customer by the Company then this would have been made clear. It stated that security would be required pursuant to section 20 of the Act.

26. It stated that the Act does not define the term "security", and contended (by reference to a dictionary definition) that *"security is something that can be called upon/is forfeited in the event of a breach of an obligation (usually a payment obligation) by the party providing the security"*. The Company contended that the Customer was not entitled to receive interest in relation to the advance payment because the payment did not, in its view, constitute security.

Negotiations

27. The Customer was not satisfied with the response it received from the Company and referred the dispute for a determination by us under section 23 of the Act on 19 February 2014.

28. Subsequently, the Customer and the Company held mediation meetings with a view to resolving the dispute on 19 May 2014 and on 27 June 2014. Following the second meeting a deadlock email was submitted by the Company on 4 July 2014, to the Customer.

29. The email outlined the Company's explanation as to why an advance payment does not constitute security -

- The definition of "security" is specific and is generally applied *"to a deposit, lien, or mortgage voluntarily given by a debtor to a creditor to guarantee payment"*. Based on this definition, security is different to an advanced payment.
- Payment and security are referred to in different contexts within the Act. The language would have been clearer had the legislation intended to provide that interest would be due on advance payments.
- The Company's policy is consistent with paragraph 6.3 of its Connection Charging Methodology Statement. This statement has been approved by Ofgem.

30. The Company offered the Customer compensation of £21,852. This was to acknowledge that the Company should have offered to the Customer the opportunity to pay in stages for the works. The Company states that *"for the avoidance of doubt, we do not agree that the taking of payment in advance constitutes the taking of security, and therefore, interest is not payable on payments made in advance"*.

Our involvement

31. The Customer progressed the determination by submitting its statement of facts to us on 21 August 2014. The Company submitted its statement of facts on 25 September 2014. Both the Customer and the Company commented on the other's evidence and comments.
32. In December 2014 we offered each party the opportunity to attend an oral hearing to express its views. Both parties declined.
33. On 13 April 2015, we provided our *Minded-to Decision* to the parties in order to give them the opportunity to respond to our provisional view of the correct interpretation of the Act. In this provisional decision, we stated that we were minded to determine that section 20 governed the circumstances in which money might be required to be paid in advance, and that the advance payment constituted a payment by way of security (rather than any payment under section 19). In short summary, we reached that view for the following reasons-
- a) The heading of section 19 is "*Power to recover expenditure*". Our view was that the use of the term "*recover*" suggests obtaining payment after the expenditure has been incurred.³
 - b) The formulation "*Where any electric line or electric plant is provided the [distributor] may require any expenses reasonably incurred....*" (our emphasis) in section 19(1) strongly indicated, through the use of the past tense, that the expenses would have been incurred by the distributor before being recovered from the customer.⁴
 - c) Subsection (4) helped distinguish between when the Act permits payment before works have commenced (continuing provision of existing line or plant) from when it requires payment to be made after work has been completed (new connection under section 16(1)).⁵
 - d) Security could be required to be provided by way of a money payment in advance under section 20, which confirmed that section 19 contemplated payment for the connection after the event. Otherwise, it was difficult to see why the legislature should have gone on to provide for security to be required. Moreover, a distributor would be able to avoid the requirement to pay interest on security in section 20(3) by requiring security by way of a "deposit" under section 19.⁶
34. On that basis, we were of the view that the Customer was entitled to receive interest from the Company, accrued in respect of the advance payment.⁷

The Company's response to the *Minded-to Decision*

35. On 15 May 2015, we received a detailed response from the Company to our *Minded-to Decision* ("the Company's Response"). In summary, the Company made the following principal submissions.
36. First, the Company submitted that our *Minded-to Decision* was wrong in interpreting section 19 as preventing the Company from requiring advance payment for works. In particular -

³ *Minded-To Decision*, paragraph 35

⁴ *Ibid*, paragraph 36

⁵ *Ibid*, paragraph 37

⁶ *Ibid*, paragraph 42

⁷ *Ibid*, paragraph 47

- a) It was wrong to focus on the heading to section 19 on the basis that it suggested that the power to obtain payment only existed after expenditure has been incurred. This was so for the following reasons: (i) the heading is a brief and necessarily inaccurate guide to the content of the section; (ii) directly analogous provisions in the Act have no equivalent heading;⁸ (iii) directly analogous provisions in parallel legislation have no equivalent heading;⁹ (iv) section 18 of the Act (now repealed) had an identical heading but expressly envisaged payment in advance;¹⁰ (v) section 19 itself uses the word "*defrayed*" rather than "*recover*", which is consistent with permitting advance payment; and (vi) section 19(4) expressly permits payment in advance, contrary to what is suggested by the heading.¹¹
 - b) It was wrong to focus on the words "*is provided*" and "*reasonably incurred*" in section 19(1) and to conclude that the use of the past tense strongly indicated that expenses should be incurred by the distributor before being recovered from the customer. This was because the text of the section was in fact in the present tense.¹²
 - c) It was wrong to consider that the existence of section 19(4) helped to distinguish between when the Act permits payment before works have commenced (continuing provisions of existing line or plant) from when it requires payment to be made after work has been completed (new connection under section 16(1)). This was so for the following reasons: (i) section 19(4) did not purport to make provision for all circumstances in which future expenses were to be considered "*expenses reasonably incurred*"; (ii) section 19(4) was consistent with an interpretation of section 19 whereby it was not confined to expenses that have already been incurred by the time that payment was made; (iii) subsequent regulations made under the Act were also consistent with the Company's interpretation of section 19.¹³
37. Second, the Company submitted that our Minded-to Decision was wrong in categorising a request for advance payment as a request for payment of security. An advance payment could not constitute a security for the following reasons-¹⁴
- a) A security consisted of some promise or obligation in addition to the original obligation intended to be secured. The sums paid by the Customer, however, were themselves consideration for the provision of the new connection and so could not be categorised as a security.
 - b) A security is normally forfeited if the primary obligation is breached or returned if it was satisfied. This was consistent with the wording of section 20(3). However, the sums paid by the Customer were not treated in this way. They were never intended to be returned.
 - c) Parliament did not consider that advance payment could constitute security and, if it had done, section 20(3) would have made express provision for advance payment.¹⁵

⁸ See for example section 8, Schedule 2ZA of the Act.

⁹ See for example section 10(5) of the Gas Act 1986.

¹⁰ See section 20(4) of the Act as originally enacted.

¹¹ The Company's Response, paragraphs 12-14

¹² Ibid, paragraphs 15-16

¹³ See the Electricity (Connection Standards of Performance) Regulations 2015 (SI 2015/698), regulation 8; and see the Company's Response, paragraphs 17-19.

¹⁴ The Company's Response, paragraphs 20-29

¹⁵ The Company quotes a speech of Lord Sanderson from Hansard.

- d) The distinction between advance payment and security was reflected in subsequent legislation.¹⁶

38. Third, the Company submitted that, even if it was wrong and advance payment by the Customer was only to be construed as a security under the Act, such advance payment would not be a form of security to which the obligation to pay interest would attach. This was because section 20(3) was clear that interest was only payable on sums deposited with the distributor. A deposit had to be returned to the Customer; advance payment did not and so could not be characterised as a deposit.¹⁷

39. The Company further submitted that we were wrong to conclude that, if security may be required to be provided by a money payment in advance under section 20, this provided confirmation that section 20 contemplated payment for the connection after the event. This was so for the following reasons -

- a) A security and advance payment were in principle different and our reasoning therefore confused two distinct and separate concepts.¹⁸
- b) It would be possible for the Act to permit both security and payment in advance: for example, where the work to be undertaken involved some costs which were difficult to ascertain or which would not be incurred at all.¹⁹
- c) Section 19 gave the Company the right to be paid in advance. It was therefore open to the Company not to take payment in advance but to be paid in arrears and to seek security.²⁰

40. The Company further pointed out that its Charging Statement was consistent with its interpretation of the Act and had been approved by us.²¹

The Customer's responses

41. The Customer did not make substantive comments on the Minded-to Decision. It did, however submit further comments on the Company's response to the Minded-to Decision (which had been provided to it) on 17 July 2015. By these, it supported the provisional conclusions set out in the Minded-to Decision.

5. Discussion and conclusions

42. The dispute between the parties relates to whether the advance payment constitutes payment by way of security. To begin we discuss whether a distributor can request a payment in advance of making a connection. We then discuss whether an advance payment constitutes security in accordance with section 20 of the Act.

43. As described above, section 19 of the Act provides for the power to recover expenditure in relation to making a connection requested under section 16A. Subsection 19(1) provides the following-

¹⁶ See the Electricity (Connection Standards of Performance) Regulations 2015 (SI 2015/698), regulation 8.

¹⁷ The Company's Response, paragraphs 30-31.

¹⁸ Ibid, paragraph 33.

¹⁹ Ibid, paragraph 34; see the other examples set out there.

²⁰ Subject to any necessary changes being made to the Connection Charging Methodology and the Use of System Charging Methodology: *ibid*, paragraph 36.

²¹ *Ibid*, paragraph 39.

"Where any electric line or electric 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".

44. We note that the heading of section 19 is "Power to recover expenditure". We have considered the points that the Company has made in its response to our Minded-to Decision on the interpretative value of the heading. Our view is that the heading's value is limited but the use of the term "recover" at least suggests obtaining payment after the expenditure has been incurred. With respect to the Company's specific points⁻²²

- a) Although the Company is right that the heading of a section may be brief and possibly inaccurate, it is nonetheless part of the Act and so has some limited interpretative weight.
- b) The Company is right that paragraph 8 of Schedule 2ZA of the Act has no equivalent heading. However, the paragraphs of schedules to statutes do not generally have headings.²³ This should not mean that the heading to section 19 should be ignored.
- c) The Company is right that the analogous provisions of the Gas Act 1986 (section 10(5)) have no equivalent heading. However, that may be because section 10 of the Gas Act 1986 is much broader in scope than section 19 of the Act.²⁴ In any event, section 19's heading should not be disregarded solely because it is not replicated in a different statute.
- d) The Company is right that section 19 explicitly envisages the payment of future expenses under subsection (4) and that the word "recovery" in the heading therefore applies to future as well as past expenses. However, the heading may be taken as describing (briefly) the general position under section 19, which (on our view) is that payment in respect of expenses should be made after they have been incurred. The same applies in relation to the Company's point about section 18 of the Act (now repealed). We accept, however, that the interpretative value of the use of "recovery" in the heading must in these circumstances be limited.
- e) The Company is right that the body of the section uses the word "defray" as opposed to "recover". In our view, however, that does not mean that the heading has no interpretative value. We note that the use of the word "defray" is consistent both with payment after the event and with payment in advance.

45. We also remain of the view that the formulation in section 19(1), *"Where any electric line or electric plant is provided the [distributor] may require any expenses reasonably incurred...."* indicates that the provision contemplates that the expenses would have been incurred by the distributor before being recovered from the Customer. We note the Company's submission that these verbs are in the present and not the past tense.²⁵ We accept that "is provided" is present tense, and that while the tense of "reasonably incurred" is not clear, it may be present tense (consistently with "is provided"). Whatever the tense of that expression, however, we note that the structure and wording of section 19(1) still suggests payment after expenses have been incurred and so after the provision of the connection. If the Act were clear that payment could

²² The Company's Response, paragraph 13

²³ Bennion on Statutory Interpretation (6th ed.), p. 696

²⁴ Section 10 Gas Act 1986 covers makes provision for the duty to connect, the notice to be served by the person requesting the connection, and the payment of expenses.

²⁵ The Company's Response, paragraph 16

be requested in advance, it might have used a formulation such as "*reasonably incurred or to be incurred*".

46. By contrast to subsection (1), subsection (4) uses plain language in referring to payments for future obligations, but these only apply to the distributor being entitled to claim for expenses "*likely to be incurred*" in the continuing provision of existing plant or line. We have considered the points made by the Company with respect to subsection (4) and we remain of the view that, although this subsection is not applicable in this case, it helps to distinguish between when the Act permits payment before works have commenced (continuing provision of existing line or plant) from when it requires payment to be made after work has been completed (new connection under section 16(1)).
47. The Company has submitted that subsection (4) is consistent with an interpretation of "*expenses reasonably incurred*" whereby it is not confined to expenses that have already been incurred by the time that payment is made.²⁶ In our view, however, the fact that subsection (4) makes express stipulation for future expenses to be included in "*expenses reasonably incurred*" suggests that such expenses are not normally or otherwise covered by that expression, and in particular are not covered in that expression in subsection (1).
48. We further do not consider that the *Electricity Standards (Connection Standards of Performance) Regulations 2015* (SI 2015/698) provide much assistance in interpreting subsection (4) or section 19 in general.²⁷ Although the Company is correct that these Regulations (and regulation 8 in particular) appear to envisage payment in advance (distinctly from security), we note that they came into force on 1 April 2015, long after the Act was enacted. According to the principles set out in *Hanlon v Law Society*,²⁸ to which the Company has referred, subordinate legislation may tend to confirm the interpretation of an Act where it is contemporaneous or close in time to it.²⁹ That is not the case here.
49. With respect to section 19, we conclude that its wording suggests (although it does not, on the wording alone, put the matter beyond doubt) that the distributor may collect payment only after the works have been completed other than in a situation covered by section 19(4).
50. Section 20 expressly sets out the power of an electricity distributor to require security and provides the following-

"(1) Subject to the following provisions of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security for the payment to him under section 19 in respect of the provision of any electric line or electrical plant.

(1A) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit -

- (a) If the connection has not been made, refuse to provide the line or plant for so long as the failure continues,*
- (b) If the connection is being maintained, disconnect the premises or distribution system in question.*

²⁶ Ibid, paragraph 19

²⁷ Ibid, paragraph 19

²⁸ [1981] AC 124

²⁹ *Hanlon v Law Society*, p. 194. See also: *Deposit Protection Board v Dalia* [1994] 2 WLR 732 at 755 per Lord Browne Wilkinson; *Scottish & Newcastle plc v Raguz* [2008] 1 WLR 2492 at 2504; *Dimond v Lovell* [1999] 3 All ER 1 at 10.

(3) Where any money is deposited with [an electricity distributor] by way of security in pursuance of this section, the [distributor] shall pay interest, at such rate as may from time to time be fixed by the [distributor] with the approval of [the Authority], on every sum of 50p so deposited for every three months during which it remains in the hands of the [distributor]”.

51. We note that sub-section (3) of section 20 of the Act expressly refers to “*money deposited*” with the distributor. It then requires interest to be paid on sums so deposited.

6. Our final determination

52. We consider that section 19 of the Act allows the distributor to collect payment only after the works have been completed both for the reasons discussed above at paragraphs 42 to 49 and for the further reasons discussed below. Section 20 allows the distributor to require security for payments due in relation to providing a connection under section 16(1).

53. We have considered the Company’s submissions on the issue of whether payment in advance can constitute security. We remain of the view that “security” under the Act can cover an advance “payment” provided in respect of a future payment obligation that has not yet arisen. With respect to the points made by the Company-

- a) We consider that the term “security” does not just mean “*a deposit, lien or mortgage*” as suggested by the Company’s email of 4 July 2014 (or just a “bond or guarantee” provided by a third party as the Company earlier suggested in an email dated 23 January 2014). Security could include those arrangements, but it could also mean an up-front payment, provided as “security” for a future payment obligation. Indeed, it is difficult to see why a “deposit” required at the outset (where payment is not yet due) is different in principle from “security”. We note that subsection (3) expressly refers to “*money deposited*” with the distributor, and makes provision for interest to be paid on it.
- b) We also do not consider that advance payment cannot amount to a security because it is itself the consideration for the provision of the new connection.³⁰ Even if it is right that a security can only be something additional to the obligation intended to be secured, we consider that an advance payment would satisfy this condition. Such payment is made (in our view, for the reasons set out in this Determination) before the obligation to pay has arisen under the Act. In this sense, it can be characterised as a deposit in respect of a future payment obligation.
- c) We also reject the argument that advance payment cannot be security because it is not intended to be returned (or indeed forfeited in a case of breach).³¹ We do not consider that “the usual case” is that a security is returned and the primary payment obligation is separately satisfied, nor that the wording of section 20(3) suggests this. It is perfectly possible in our view for money deposited by way of security to go to diminution of satisfaction of the primary payment obligation and so not to be returned.³²
- d) It does not appear to us that Parliament intended “advance payment” not to constitute security.³³ The passage of Hansard quoted by the Company suggests only that where

³⁰ The Company’s Response, paragraph 23

³¹ The Company’s Response, paragraph 24

³² Stroud’s Judicial Dictionary, s.v. “*deposit*”

³³ The Company’s Response, paragraphs 26-27

advance payment is provided (through the system of prepayment meters established by the now repealed section 20(4) of the Act) security could not be requested in addition.

- e) Finally, we do not consider the *Electricity (Connection Standards of Performance) Regulations 2015* and any distinction between advance payment and security which they make to be of great assistance in interpreting the Act for the reasons given at paragraph 48 above.³⁴

54. If security may be required to be provided by a money payment in advance, then in our view it provides confirmation that section 19 (by contrast) contemplates payment for the connection after the event. Otherwise, it is difficult to see why the legislature should have gone on to provide for security to be required. Also, a distributor would be able to avoid the requirement to pay interest on security in section 20(3) by requiring security by way of a "deposit" under section 19. That cannot be right.

55. The Company disagrees with this analysis. It has stated that security and advance payment are distinct and separate concepts and that the interpretation of section 20 cannot therefore confirm the interpretation of section 19.³⁵ For the reasons we have given above, we do not consider that there is the conceptual difference between advance payment and security which the Company suggests. In our view, it is possible for advance payment (i.e. money deposited in respect of a future payment obligation) to amount to a security.

56. The Company has also stated that a security may be requested in addition to advance payment in certain circumstances and that there is nothing to prevent a distributor from not requiring advance payment and so requesting a security instead.³⁶ However, the result of the Company's interpretation would mean that where it requests a sum of money in advance of completing the works, it can choose to characterise that either as an advance payment under section 19 or as a security under section 20(3). This would mean that, by doing the former, it could avoid the requirement to pay interest. It cannot be right that the requirement to pay interest under section 20(3) is entirely at the discretion of the distributor.

57. On the issue of interest payments, the Company has submitted that even if an advance payment can be characterised as a security, no interest is payable. This is because interest should be paid only on money deposited with the distributor, and advance payment is not such a deposit.³⁷ We do not consider this to be correct. For the reasons given above, it seems to us that a deposit does not have to be returned when the primary payment obligation is satisfied but can itself go in diminution or satisfaction of that obligation. For that reason, an advance payment can be covered by section 20(3) and so attract interest.

58. We therefore find that the Company's request for an advance payment was unlawful, unless it was as a request for security within section 20. An advance payment cannot be required under section 19, as this refers to payments being made after a connection has been provided.

59. This also applies in reviewing the Company's Charging Statement, dated October 2012 to which the Company refers in its email dated 4 July 2014. The Statement in paragraph 6.3 states "*We normally require payment in full in advance*". In our view, this statement of practice is only lawful if this is a requirement for payment by way of security under section 20 of the Act.

³⁴ Ibid, paragraph 29

³⁵ Ibid, paragraph 33

³⁶ Ibid, paragraphs 34-36

³⁷ The Company's Response, paragraphs 30-31

60. The approved Charging Statement does not give the Company any rights which it does not otherwise possess under the Act. The Charging Statement can be read consistently with the Act if, and only if, the advance payment constitutes security under section 20 of the Act.
61. In this regard the fact that the Company specifies in its terms and conditions, which were signed by the Customer, that interest will not be paid cannot be considered as consistent with the Act and therefore cannot be given effect. Section 16 of the Act places a duty upon the distributor to make a connection upon request, subject only to the provision contained in the subsequent provisions of the Act. Accordingly, because (as we have found) the Act does not permit charging in advance save by way of security, the distributor is not entitled to augment its rights (or narrow its duty) by proposing terms and conditions giving it additional rights.
62. Accordingly, the Company must be taken to have requested advance payment from the Customer by way of security whether it intended to or not. Any other interpretation would not, in our view, be compliant with the Act. As the advance payment represented a security deposit the company is therefore required to pay interest on any sums paid in advance of the connection being provided.

7. The relevant interest rate

63. We have decided to indicate as part of this determination the minimum rate of interest that we would be prepared to approve under section 20(3) of the Act, in relation to this connection. We consider that we have the power to do so under section 20(3), which confers on us a discretion to approve the rate of interest set by a distributor. We further consider that it would be appropriate to decide this issue as it arises as an ancillary matter to the main dispute referred to us and determined above. Neither the Company nor the Customer have suggested that we do not have such a power or should not in principle exercise it (although the Company of course submits that the question should not arise because its case is that security was not required or provided).
64. On 11 December 2015, we wrote to both the Company and the Customer asking for their views on (i) the minimum rate of interest that should be applied to amounts deposited by the Customer under section 20(3) of the Act and (ii) the factors that we should take into account in approving any such rate of interest. We further indicated that these factors could include the following and sought the Company's and Customer's views on those proposed factors:
- a) The Bank of England base rate during the period during which the money was deposited by the Customer with the Company;
 - b) The prevailing rate of interest available from commercial banks for deposits of this nature during the period during which the money was deposited by the Customer with the Company; and/or the rate of return which the Company might reasonably expect to make on the money deposited while held by it;
 - c) The demand for new connections in the part of the network where the connections were provided and the scarcity value associated with the grid capacity secured through the acceptance of the offer, and thus the degree of benefit thereby secured to the Customer;
 - d) The fact that the Customer may have received an ongoing benefit insofar as the Company was undertaking work on its behalf (without advance payment) during some or all of the period for which the security was held; and, if so, the profile of expenditure associated with making the connection from the time the money was deposited by the Customer with the Company.

The Company's response

65. The Company replied to our initial letter on 24 December 2015. In its reply the Company stated that it was "*premature to address this detailed question*". The Company indicated that it did have views on the questions asked, but that it considered that the stage "*has not yet been reached*" for the Company to provide them to us.
66. On 7 March 2016 we wrote to the Company stating that if it did wish to make representations, it should provide them to us at that time, so that we could take them into account in our final decision in this determination, to the extent they arose or were relevant. In our letter of 7 March 2016, we also asked the Company to confirm: (i) the date that it was paid by the Customer; (ii) the date that the Company commenced work; (iii) the date that the Company completed work; (iv) the profile of expenditure between these dates; and (v) whether there was significant demand for new connections in the part of the network where the relevant connection was provided such there was a scarcity value associated with the grid capacity secured for the Customer.
67. The Company replied on 21 March 2016. The Company reiterated its view that the Minded-To Decision was wrong in law for the substantive reasons addressed above. Without prejudice to this view, the Company made the following substantive comments on the minimum rate of interest that we should approve.
68. The Company proposed five regulatory principles that we should use to determine an appropriate level of interest. The Company proposed that the level of interest should be-
- a) simple to operate;
 - b) cost reflective;
 - c) consistent for all connections providers;
 - d) consistent as between customers; and
 - e) such that customers are not incentivised to deposit money with a connections provider rather than with a bank.
69. We agree with some of these principles; however we do not endorse all of them in this instance. We agree that the interest rate should be easy to operate and in general that it should be consistent between customers and consistent for all connections providers. However, we do not consider that the interest rate that is applied in this instance should necessarily be the same as the interest rate that is applied to all other electricity distributors and all other connection customers. In this determination, we have considered the facts of this specific case to determine the minimum level of interest that we would consider to be appropriate in this instance. We explain our view further below. Dependent on what the Company is referring to, we are not persuaded that the rate of interest should be cost-reflective. Insofar as this suggests that the rate should incorporate the Company's costs of administering the calculation and payment of interest, we acknowledge that there will be some cost associated with administering the calculation and payment of interest. However, we have seen no evidence that the Company will incur significant costs in this regard. Based on the information currently available to us, therefore, it is not possible to conclude that this is a material factor which should reduce the interest rate which we would otherwise determine to be appropriate.

70. Insofar as cost reflectivity would mean that the rate of interest should reflect the costs to the Customer of being deprived of the relevant sums, we agree with the Company's separate submission (as explained below) that the rate should focus on the benefit to the Company of receiving advance payment as opposed to the cost to the Customer of foregoing the sum deposited.
71. We further consider that the final principle proposed by the Company (that customers should not be incentivised to deposit money with a connections provider rather than with a bank) is not a relevant consideration to determining the minimum rate of interest we would be prepared to approve as proposed by the Company. We do not consider that it would be open to the Customer to choose to deposit monies with the Company in the same way that it would a bank. We note that under section 20(1) of the Act it is for the distributor to choose to require a customer to deposit monies with it by way of an advance payment. Whether or not a deposit is made is therefore a matter within the Company's control, not solely within the Customer's. However, we do accept that the level of interest should not be set so high that the Company would be effectively disincentivised from requiring security by way of an advance payment, even where merited because (for example) of a doubt as to credit status of the Customer. To this extent we accept the point.
72. The Company also submitted that the interest should only be paid on sums above £10,000 to ensure that the cost of administering any interest payment does not exceed the interest payment itself. We accept that the Company will incur costs in administering interest (although, as noted above, we have seen no evidence that those costs are material to the rate in this case). However, we note that section 20(3) of the Act specifies that the Company should pay interest *"on every sum of 50p so deposited for every three months during which it remains in the hands of the Electricity Distributor"*. It is our view that the Act does not allow for a de minimis level of £10,000. We consider that the Act is clear that interest must be paid on all sums above 50p that are deposited with the Company, for each full three months until the work is completed and payment is due.
73. The Company further submitted that the interest rate should be 0.05 per cent (on sums above £10,000). The Company considers that this is appropriate because this is the gross interest rate currently offered by several leading clearing banks. In accordance with its proposed regulatory principles, the Company considers that aligning the interest rate identified under section 20 of the Act with the interest rate available from leading clearing banks will ensure that there is no financial incentive for customers to deposit funds with the Company, rather than with a commercial bank. For the reasons we have given above, we do not agree that the financial incentive to which the Company refers is a relevant consideration. We further consider that the rate of interest we would be prepared to approve under section 20 of the Act should take into consideration the rate of interest that the Company can earn on the monies deposited with it. We consider that an interest rate of 0.05 per cent is too low because it would not accurately reflect the rate of return that the Company can earn on sums that are deposited with it by putting the money "to work" as a contribution to the Company's capital. The Company is not required to preserve or ring-fence monies deposited with it by way of advance payment by simply putting that money in a bank account. We consider that approving an interest rate of 0.05 per cent would be inappropriate because it would allow the Company to earn a profit on the monies that have been deposited with it, because (as explained below) the Company can be expected to earn a higher rate of return than that.
74. The Company further commented that the approved interest rate should acknowledge that in paying a connection charge, a customer is securing valuable capacity on the electricity network for future use. The Company considers that securing that capacity in areas of scarce availability

is in itself a return on the payment of the connection charge. However, the Company does not quantify the scarcity value associated with the grid capacity secured for the Customer. We consider that it would be difficult to require the Company to accurately estimate the "value" of securing capacity on the electricity network to the Customer, and difficult for us to assess that estimation accurately when approving a rate of interest. It would also potentially vary in each individual case, making it extremely difficult to set a uniform rate (or even a set of rates), contrary to the consistency which the Company itself seeks by way of its regulatory principles. Thus, notwithstanding that we raised this consideration in our letter of 11 December 2015, in the light of the parties' responses and on further consideration, we do not consider that it is one to which we should attach weight when approving the rate of interest under section 20 of the Act. We consider that a more pressing consideration is the rate of interest that the Company can earn on monies that are deposited with it, as explained above.

75. The Company pointed out that in some cases, a customer could secure a connections contract at an early stage in its planning process and then defer works relating to the connection until a later period. The Company submitted that the interest rate should be set at such a level to discourage a customer from intentionally deferring the commencement of the works in order to be paid a sum in interest. We agree that the interest rate should not be so high as to incentivise deliberate delay on the part of a customer and take that consideration into account in reaching our conclusions below.
76. In its letter of 21 March 2016, the Company stated that the costs associated with introducing a new interest payment administration mechanism should be borne by connecting customers. The Company was concerned that the introduction of a new interest rate mechanism would undermine this principle as part of the RIIO-ED1 net-to-gross true-up mechanism.³⁸ We do not consider that this should be a relevant consideration in determining the rate of interest that we should approve. However, we acknowledge that this may be a relevant consideration when implementing the RIIO-ED1 net-to-gross true-up mechanism and may require us to review our reporting requirements.
77. In addition, the Company provided answers to the questions that we had asked in our letter of 7 March 2016. Its answers were in summary as follows-
- a) The Company stated that it had initially been paid in respect of the works on 27 July 2011, commenced the works in September 2011 and substantially completed the works in May 2012 (with initial energisation in October 2012).
 - b) The Company provided a graph intended to demonstrate an indicative spend profile and a hypothetical income profile based on a staged payment process if applied. The graph indicates that costs began to be incurred in October 2011 and continued to be incurred on a more or less straight line basis until May 2012, the time at which the Company submitted that it substantially completed the work (with initial energisation in October 2012).
 - c) The Company pointed out that there was significant demand for capacity in the area in which the connection request was made. We have addressed this point above and do not consider that this is a consideration to which we should attach significant weight.

³⁸ Through their RIIO-ED1 business plans, each DNO forecast the proportion of its load-related expenditure (connections and reinforcement) that would be funded by connecting customers. If, at the end of the RIIO-ED1 period, the actual proportion of load-related expenditure funded by connections customers falls outside of the tolerance thresholds established in CRC 5G (Net to gross adjustment for Load Related Expenditure), we can make a positive or negative adjustment to the DNO's revenue.

The Customer's responses

78. On 5 January 2016, the Customer responded to our initial letter of 11 December 2015. We also sent a second letter to the Customer on 11 March 2016 asking it to confirm the date that it paid the Company, the date that the Company started work and the date the Company completed work. The Customer responded to our second letter on 18 March 2016.
79. In the Customer's letter of 5 January 2016, it submitted that the interest rate should be four per cent per annum above the base rate of HSBC Bank plc and should accrue from day to day, compounded quarterly. The Customer considers that this would be appropriate because it is consistent with the interest rate specified by the Company in Clause 6.1.3 of the Company's standard Terms and Conditions for new connection customers. We note that the relevant interest rate identified by the Customer is payable in situations where the Customer does not pay for the connection works on time. Its purpose is therefore to deter the Customer from paying late or to reflect the high additional costs that the Company may face in the event of late payment. We therefore do not consider that this contractual rate of interest should be a relevant consideration when approving the rate of interest under section 20(3) of the Act. We further consider that an interest rate of four per cent per annum above HSBC's base rate is significantly higher than the rate of return that the Company can earn on amounts that are deposited with it. We consider that requiring the Company to pay interest at four per cent above the HSBC base rate could therefore create significant additional financial costs for the Company, insofar as the rate of four per cent is higher than the rate of return that the Company would be likely to earn on sums deposited with it. We therefore consider that this suggested interest rate is too high.
80. The Customer considers that in determining the appropriate minimum rate of interest, we should take into account the Company's ownership structure. The Customer suggests that as a result of its foreign ownership, the Company may be able to secure a better rate of return than the prevailing rate of interest available from commercial banks based in the UK. However, the Company has submitted no evidence in this respect and it is not clear to us that the Company's ownership structure will significantly affect what it can earn by way of a return or, if it does, to what extent. Whilst we do not therefore consider that the Company's ownership structure should be a consideration to which we attach significant weight, we do consider it relevant to consider or estimate the rate of return that the Company is able to earn on monies that are deposited with it. If we do not take this into account when approving the rate of interest, then the Company may be able to earn a profit on sums that are deposited with it.
81. The Customer also states that we should take into consideration the rate of return that the Customer could have earned if it had invested the money elsewhere. The Customer considers that if it had invested the money elsewhere then it could have earned up to 15 per cent profit. We do not consider that this should be a relevant consideration when approving the level of interest that the Company should pay on monies that are deposited with it. In our view, it is not unreasonable for the Company to request payment in advance by way of security (indeed, the Act specifically provides for it) and it should not be required to compensate the Customer for the potential returns lost in making advance payment. This would require the Company to make a difficult assessment of what return each different Customer could earn and would further potentially lead to a rate of interest so high that the Company would be deterred from requiring security. Moreover, were the rate of interest very high, it could create an incentive for the Customer (where it had made an advance payment) to delay the works intentionally with a view to making a greater sum in interest. We consider that the intention of the legislation is to allow the likely return earned on sums that are deposited with the Company, to be returned to the customer that deposited the money. We therefore consider that the rate of interest

approved under section 20 of the Act should reflect the return that the Company can be expected to earn on monies that are deposited with it. We also consider that it would be unreasonable to require the Company to accurately assess the rate of return that the Customer could have secured if it had invested the money elsewhere, without the opportunity to request additional information and evidence from the Customer. In addition, the Customer has submitted little evidence to substantiate the rate of 15 per cent proposed by it.

82. In its letter of 18 March 2016, the Customer further answered the specific questions that we had put in our letter of 11 March 2016. The Customer's responses were in summary as follows-

- a) The Customer's payments for the works were: (i) a payment of £1,459,559.43 on 22 August 2011; (ii) a payment of £192,000 on 21 December 2011; and (iii) a payment of £45,570.18 on 30 January 2012. We noted that this answer appeared to be different from that provided by the Company.
- b) The Customer believed that works on the connection commenced shortly after the first payment was made. We note that in this respect the Customer appears to agree with the Company that works commenced around September 2011.
- c) The Customer was informed by the Company on 10 October 2013 that works on the Kellaway Road Substation were completed on 24 September 2013. We noted that this answer appeared to be different from that provided by the Company.

Further views from the parties

83. Following receipt of replies from the Company and the Customer, we provided each with the replies of the other on 23 March 2016 in order to give them the opportunity to respond or provide comments on the same.

84. The Customer replied on 1 April 2016 and stated that it did not have any comments save that it repeated that it thought that Ofgem should consider a rate of four per cent above the base rate of HSBC Bank plc in line with the Company's standard terms and conditions.

85. The Company replied on 6 April 2016 making the following points-

- a) The Company did not think the rate of four per cent above the base rate of HSBC Bank plc in its standard terms and conditions was relevant, nor the fact that its ownership was foreign.
- b) The Company did not think that the rate should be 15 per cent or close to that figure. The Customer had not been transparent as to why or how it could earn that sum as a return.
- c) The Company repeated its position as to the relevance of scarcity value.
- d) The Company agreed that the Customer had made payments on the dates it set out in its email of 18 March 2016 (not solely in July 2011 as the Company had initially suggested). For completeness, the Company noted that it issued a refund to the Customer of £160,345.74 plus VAT in October 2013 to reflect outturn costs.
- e) The Company reiterated that installation works began in September 2011, although assessment and design works may have commenced before that date.

- f) With respect to the Customer's statement that works were not completed until September 2013, the Company stated: *"We would like to explain that Kellaway Road Substation is an 'off-site' substation where works to make the full capacity available were completed after the initial connections were energised, and that the customer did not require the full capacity to be available between these dates."* It seems therefore that initial energisation works were completed in May 2012 as the Company suggested and that ancillary works at the relevant substation were completed later in September 2013.

Our view on the interest rate

86. On the basis of the evidence and submissions we have received, we have decided that the minimum rate of interest that we would be prepared to approve under section 20(3), in relation to this connection, would be 0.75 per cent per annum. We consider that this takes into account the value of the borrowing costs that the Company has avoided, and the reduction in benefits once financing costs are considered.

87. We reach this rate as follows. Based on our knowledge of the Company and the financial environment, we consider that the Company should be able to earn a rate of return of approximately 1.5 per cent per annum, on sums that are deposited with it. We derived this value by considering the impact that depositing funds with the Company would have had on its overall costs of borrowing,³⁹ and then deducted inflation from this to reflect that by charging for connections upfront, the Company is implicitly taking inflation risk.⁴⁰

88. However, we also consider it relevant to take into account the fact that the Customer in this case has received an ongoing benefit over the period of the works in that the Company has undertaken the works and incurred costs in doing so in advance of payment⁴¹ becoming due. In this case, because the Company (wrongly) believed that it could require payment "up front" without payment of interest, it can be safely assumed that it will not have included in the cost quoted and charged to the Customer any sum representing the financing cost of the Company doing the work in advance of payment (because it did not understand that it was financing the works) (the Company may further have taken into account that it could use the monies that were deposited with it to defray other financing costs). This is an element of the Company's cost of doing the work which it would be entitled to recover from the Customer. Hence, in deciding what interest rate is the minimum appropriate in respect of the advance payment, it is appropriate to reduce the rate to avoid the Company being penalised – and the Customer receiving a windfall – by virtue of the sum charged not including the cost of financing.

89. Based on the indicative spend information provided by UKPN in its letter of 21 March 2016, it appears that the Company incurred costs on a roughly straight line basis from October 2011 to May 2012. In our view, therefore, the ongoing benefit to the Company of holding the advance

³⁹ We consider this in light of market conditions in the bond markets, which the Company is traditionally active in. The nominal yields on the iBoxx Benchmark indices for non-financial corporates (prior to the recent post-referendum volatility) indicate at the short end (1-3 years maturity) in the range 1.35 to 1.5 per cent for A-rated and 2.0 to 2.15 per cent for BBB rated debt and, at the longer end (10+ years maturity) in the range 3.15 to 3.6 per cent for A-rated and 3.6 to 3.8 per cent for BBB-rated debt. We consider the shorter end interest rates would reflect better the incremental impact on the Company's borrowing costs of having funds available in the short term.

⁴⁰ We consider that by charging for connections upfront, the Company is implicitly taking inflation risk. It therefore seems appropriate for us to deduct inflation from these rates. Over the last couple of years, RPI inflation has averaged 1.2 per cent while CPI inflation has averaged 0.2 per cent. Over this time, implied forward RPI inflation rates have averaged about 2.1 per cent over the course of the current year. We generally consider that implied forward inflation in principle reflects better the inflation component of nominal interest rates. We recognise RPI inherently overstates inflation, so would place more weight on forward views of CPI inflation. In the absence of an active market in CPI-indexed gilts, we have to extrapolate from the market in RPI-indexed gilts to suggest forward CPI inflation could be in the region of 1 per cent per annum.

⁴¹ Payment under section 19 of the Act, rather than a deposit under section 20 of the Act.

payment was significantly reduced once one takes into account the cost of financing the works. In our view, the appropriate reduction would be to halve the interest rate of 1.5 per cent to 0.75 per cent.

90. Taking these factors into account, and on the basis of the evidence and submissions we have received, we consider that a minimum rate of interest of 0.75 per cent per annum would appropriately balance the rate of return that the Company can earn on monies that are deposited with it, with the various factors identified above that point towards lowering the interest rate. We emphasise that it is not feasible or in our view appropriate for us to quantify precisely the effect of the factors identified above. Given that we agree that the rate of interest should be simple to operate, we consider it is appropriate to adopt a rough and ready approach.

91. We note that interest is only payable on monies that are deposited with the Company and remain in its hand for a period of three months. If a sum is deposited with the Company, but it does not remain in the Company's hands for a period of three months (for example, in a situation where the works were completed within three months such that payment became due on completion of the works) then the Company would not make any interest payment.

92. The submissions provided by the Company and Customer suggest that the Customer made an initial payment to the Company in late August 2011, with subsequent payments made to the Company in late December 2011 and late January 2012. A refund was issued to the Customer in October 2013, to reflect out-turn costs. We consider that the Company should pay interest for each three month period that this money deposited by the Customer remained in the hands of the Company.

93. In accordance with section 20(3) of the Act, we invite the Company to submit the rate of interest in relation to the Customer's connection for our approval by 26 August 2016.



Andrew Burgess 26 July 2016

Associate Partner, Energy Systems Integration

Duly authorised on behalf of the Gas and Electricity Markets Authority

Postscript

We appreciate that it has been common practice for DNOs to request advance payment prior to making a connection to the distribution network. In making this determination we want to be clear that we do not wish to discourage these arrangements, which we believe are essential where they help to protect the interests of other consumers. We do not support any arrangement which would expose other customers to additional costs arising from connections-related expenditure that the DNO found it could not recover from the connecting customer.

We should also add that this decision is made on the dispute between the parties, and on the basis of the submissions and evidence adduced by them. We are conscious that the issues raised and determined by this matter may be of interest to, and have potential consequences for, many bodies in the industry and their customers. It has not been appropriate to consult more widely in resolving what is a dispute between specific parties.

Appendix 1 - Customer statement of facts

Questions

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

This dispute in its simplicity concerns the pursuit of statutory interest on deposited monies by reason of a series of payments of security at the behest of the incumbent electricity undertaker for provisional sums, in excess of £1,478,965, plus VAT for electricity connections works undertaken at the Tesco site and environs, Grand Depot Road, Woolwich, London, SE 18.

Dramatis personae:

Office of Gas and Electricity Markets (OFGEM) – Statutory arbitrator
Willmott Dixon Construction Limited (WDCL) – Claimant
UK Power Networks Ltd (UKPN) – Defendant

The dispute:

On application by WDCL for statutory electricity connections to its development at the Tesco site, Woolwich, London, the licensee UKPN complied by responding with a copy of its contractual Terms and Conditions. In Clause 3.2.1 it decrees, 'The DNO shall not be obliged to begin or continue the Works until:

- (i) *It has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice of cleared funds....'* **EXHIBIT 1**

The Statutory Regime:

The issue is that the works were statutory, to the Electricity Act 1989 (the Act) as amended – not contractual. Despite its contractual Terms and Conditions, UKPN responded with its mandatory notice for statutory works under the Electricity Act 1989 (the Act) s.16A(5) requiring 'payment in advance of works to be undertaken' against its provisional costs prior to undertaking the relevant connections Works.

The UKPN Contract:

UKPN declined the WDCL request for payment of interest on the security payments purporting that WDCL entered a contract with UKPN which did not cater for interest to be paid on deposits in its Terms and Conditions – Clause 6.1.3 of the Terms and Conditions makes known that: '*The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the works*'. [sic].

The contract appears as a 'take it or leave contract' (Adhesion Contract) which demonstrates an unconscionability of inequality of bargaining power in favour of UKPN over WDCL. Whereas the substantive law espoused within the Act, as amended, was the route undertaken by WDCL.

The Determinations:

The Director General, OFGEM, in his Determination, *S23/C/092(B)* in consonance with his earlier Determination *S23/C/51(b)* ruminated on the importance of interest payments in his *ratio decidendi* (the reason for deciding) dedares with the doctrine of *stare decisis* (the court would stand by a previous decision) as being cogent to the statute, the Act 1989 (as amended), s.20(3) as inserted into the Utilities Act 2000, s.47(2) which talks of reasonable 'security for the payment'.

UKPN obiter letter:

In its undated letter, UKPN **EXHIBIT 2**, meanders in hypothetical language through the UKPN definition of the Act, s.20(3) and pre-supposes an imaginary scenario that purports to defeat the Act.

In particular commencing at Paragraph 8 within the letter saying:

'It is not impossible to imagine a situation where a request for security payment is made notwithstanding that advance payments have been made to the DNO. For example, if a customer has paid a DNO in advance for the works to be undertaken by a DNO to provide the connection but there is a concern that the customer may not be able to pay for future anticipated variations to those works, the DNO could request that the customer pays to it a security deposit so that if the customer fails to pay for variations when requested the DNO could withdraw the appropriate sum from the security deposit. If such a security deposit was taken it would be covered by section 20 of the Electricity Act and the DNO would be required to pay interest on such a deposit in accordance with section 20(3) Electricity Act 1989 (as amended)'. [sic].

The above imaginary example is engineered to fit the UKPN purpose. UKPN views the actual works as contractual but alternates to suit the purpose of the tale to a statutory solution.

It is helpful to peruse the amended 1989 Act for clarity, whereby, s.16, the provision of any electric line and for the payment s.19 are interrelated with s.20.

2. **Where applicable, please provide a description of the works this dispute relates to attaching any relevant paperwork. In particular, please provide copies of the relevant quotes, connection agreements and works contracts.**

The dispute relates to the payment of interest on money deposited as security in accordance with the Act s.20(3) as amended and placed with the incumbent distributor UKPN.

UKPN did not provide a 'quote' per se other than a 'provisional price' as per letter to Dean Hyndman dated 25 May 2011 which details are already in hand with OFGEM.

3. **Please explain how you have escalated your complaint with the Company. Please provide your complaint ID (if you have one) and details of any correspondence attaching any relevant documentation. (*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.*)**

Complaint ID: WDCL/NRSWA 1/9/2013

Escalation of the complaint was furthered by mediation meetings to settle, attended by both parties on 19 May 2014 at UKPN offices, London, and 27 June 2014 at WDCL offices, Basingstoke.

Following the 27 June meeting a deadlock email was submitted from UKPN to WDCL on 4 July 2014 to which a copy is in hand with OFGEM.

4. **Please provide your Citizens Advice Bureau / Energy Ombudsman reference along with details of any correspondence you have had with either of these bodies (if relevant). Please attach any relevant paperwork. (Note: Ofgem expects that any relevant dispute has been referred to Citizens Advice Bureau (CAB) / the Energy Ombudsman and that this avenue has been exhausted prior to it being referred to Ofgem for determination.)**

CAB / Energy Ombudsman ID.....

Contact.....

Details of CAB / Energy Ombudsman referral **NOT APPLICABLE**

5. **Please explain your justification on why interest is due on the payment made and how you expect the rate of interest to be calculated.**

Justification as to why interest is due:

The discourse of UKPN in its undated letter, that interest should not be paid on deposited sums held after 3 months was not the evident intention of the Parliamentary draftsman. Neither was it so in the deliberation of the Director in Determination S23/C/092(B) as below.

By reason of the authoritative precedent by the Director General, OFGEM, in Determination No.S23/C/092(B) wherein he interprets the meaning of the noun, 'security':

'For the reasons set out in determination S23/C/51(b), I consider that the Courts would interpret "security" having regard primarily to its normal meaning, although also taking into account any particular meaning that is given to it in the context of the electricity supply industry. It is clear from section 20(3) that a cash deposit should be regarded as security.' [sic.].

As inserted into the Electricity Act 1989 by the Utilities Act 2000:

'(1) Where a person requires a connection to be made by an electricity distributor in pursuance section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection'. In particular

'(5)(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'.

UKPN specifies the security under (c) above, in its Notice dated 25 May 2011 for £1,456,559.43.

Rate of interest to be calculated:

It is equitable that the rate of interest is calculated in the mirror image of that which UKPN calculate within its contractual terms and conditions which are not applicable to this Determination but is extracted for guidance only in clause 6.1.3:

'The interest shall be at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly.'[sic.]

WDCL are claiming statutory interest on its deposited sum of £1,478,965.84 excluding VAT from time of depositing money with UKPN commencing 22 August 2011 until the date of payment in accordance with substantive legislation the Act s.20(3) as substituted and inserted by the Utilities Act 2000, Chapter 27, s.47(3) SI 2001/3266, C106, and OFGEM Determination S23/C/092/(B).

Statutory interest:

Statutory interest is due by reason of:

(a) The Electricity Act 1989 (the Act) as partially amended to impose duties on electricity distributors. In short, UKPN knew or ought to have known, that it had not properly applied the doctrine of 'duty of care' in its formulation of the statutory works actual costs.

(b) By correspondence, dated 25 May 2011, UKPN noted in UKPN's quasi contractual Connection offer letter, Paragraph 2, to Mr Dean Hyndman, of Scott Wilson and Partners, agent to WDCL, UKPN enunciated: '...I am pleased to provide you with a provisional price for the work.'

(c) In adopting the doctrine of *stare decisis*, the Director General (OFGEM) in his *ratio decidendi* embraced his Determination No. S23/C/092(B) in the context of Electricity Distribution companies:

OFGEM: CLAUSE 9. THE FORM OF THE SECURITY

In his sub-clause, 9.1, the Director said, '*...It is clear from section 20(3) that a cash deposit should be regarded as security.*' [sic].

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.

The respondent Company UKPN, has not offered compensation in the matter of interest on deposited sums. It has offered compensation outside of this dispute the sum of £21,852 to compensate for interest lost as a result of it failing to correctly apply its policy for stage payments. Ofgem are cognisant of this fact in that it has been supplied with a copy of the UKPN offer.

WDCL are solely claiming statutory interest on its deposited sum compounded, from the date of payment of deposit to the date of settlement. The WDCL equitable rate of interest is calculable at 4% plus base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly. This is a reasonable calculation upon which UKPN charges its customers for contractual works as announced in its contract Terms and Conditions, Page 9, Clause 6.1.3.

John Duncan NRSWA Ltd

As agent for and on behalf of Willmott Dixon Construction Limited

Customer's Annex 1 (Company Terms and Conditions)

02 Terms and Conditions

Terms and Conditions

1. Definitions

- 1.1 The following words and expressions have the meanings set out below unless the context otherwise requires:
- 1.1.1 "Adverse Ground Conditions" means any ground conditions (including archaeological remains, apparatus belonging to a third party, unexploded ordnance and contamination) which prevent or delay the carrying out of the Works or which render them more expensive to carry out.
- 1.1.2 "Act" means the Electricity Act 1989.
- 1.1.3 "Capacity" means the Import Capacity and the Export Capacity.
- 1.1.4 "Change of Law" means the coming into force after the date of the Notice of any Act of Parliament and any Legislation made under it, any judgement of the Court that changes binding precedent and any guidance, designation, direction or instruction of any competent authority with which the DNO is bound to or requested to comply.
- 1.1.5 "Connection Agreement" means an agreement in the form available from the DNO, Income Management, Energy House, Hazelwick Business Park, Crawley, West Sussex RH10 1EX at the time of Energisation.
- 1.1.6 "Consents" means any permission, consent, approval or licence (statutory or otherwise) that is required to carry out the Works or Your Works.
- 1.1.7 "Costs" means all expenses and costs incurred including attributable overheads.
- 1.1.8 "Distribution System" means the system for the distribution of electricity belonging to the DNO.
- 1.1.9 "Diversions Works" means those elements of the Works identified as such in the Schedule.
- 1.1.10 "DNO" means the Distribution System owner identified in the Letter.
- 1.1.11 "Electric Line" and "Electrical Plant" bear the meaning given to those terms by Section 64 (1) of the Act.
- 1.1.12 "Energisation" means the first occasion of the operation of any switchgear or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow to or from the Distribution System, via Your Works.
- 1.1.13 "Exchange Rate" means the exchange rate between £ Sterling and the currency in which the DNO or its affiliate is required to pay for the goods and/or services comprised in or required for the Works and includes any charge made by a bank for effecting or receiving the transfer or changing such currency.
- 1.1.14 "Exit Point" means the point or points of connection at which a supply of electricity may flow from the Distribution System to Your Installation, which may be better shown in the Schedule.
- 1.1.15 "Export Capacity" means the maximum flow of electricity expressed in kilovolt amperes set out in the Schedule that may flow into the Distribution System:
- (a) from Your Site; or
 - (b) from each Premises connected thereto where the Works provide for more than one Premises to be connected; or
 - (c) through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- 1.1.16 "Full Title Guarantee" means the covenant for title implied by Section 3 (1) of the Law of Property (Miscellaneous Provisions) Act 1994 save that the words "other than any charges, encumbrances or rights which that person does not or could not reasonably be expected to know about" shall be deleted in their entirety.
- 1.1.17 "Force Majeure" means, in relation to either

- of us, any event or circumstance which is beyond the reasonable control of the Party affected by it and which results in or causes the failure of that Party to perform its obligations under the Notice. Lack of funds is not an event of Force Majeure.
- 1.1.18 "GS Payment" means a payment required under the Electricity (Connection Standards of Performance) Regulations 2010 as a result of failure by the DNO to comply with the required standards of performance for connections.
- 1.1.19 "Import Capacity" means the maximum flow of electricity expressed in kilovolt amperes set out in the Schedule that may flow from the Distribution System:
- (a) into Your Site; or
 - (b) into each Premises connected thereto where the Works provide for more than one Premises to be connected; or
 - (c) through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- 1.1.20 "Initial Reservation Period" means the period beginning on the first twelve-month anniversary of the date upon which the Works are completed, and ending on the 31 December following.
- 1.1.21 "Land Rights" means in relation to Your Site, the interest in land upon the terms set out by the DNO following your acceptance of the Notice and in relation to the remainder of the Site the interest in land upon the terms set out by the DNO.
- 1.1.22 "Legislation" means:
- (a) any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) Interpretation Act 1978; or
 - (b) any exercise of the Royal Prerogative and any enforceable community right within the meaning of the European Communities Act 1972, in each case within the United Kingdom and includes the Licence.
- 1.1.23 "Letter" means the DNO's offer to You to carry out the Works upon these Terms and Conditions and the Schedule.
- 1.1.24 "Licence" means the licence (as from time to time modified) issued to the DNO pursuant to Section 6(1)(c) of the Act.
- 1.1.25 "Notice" means the Letter, these Terms and Conditions and the Schedule together comprising the notice under Section 16 A(6) of the Act.
- 1.1.26 "NRSWA" means the New Roads and Street Works Act 1991.
- 1.1.27 "Outstanding Capacity" means (if applicable) the Capacity that has not been taken up by You at relevant the Exit Point determined by the DNO as set out in the Additional Information section of the Schedule.
- 1.1.28 "Party" means You or the DNO as the case may be. "Parties" means You and the DNO.
- 1.1.29 "Plant" means machinery, apparatus, materials, articles and things of all kinds to be provided by the DNO under the Notice other than its equipment required for the purpose of the Works.
- 1.1.30 "Premises" includes any land, building or structure.
- 1.1.31 "Price" means the price stated in the Notice (as varied in accordance with the Notice) for the carrying out of the Works.
- 1.1.32 "Reservation Application" means (if applicable) your application to the DNO in the form set out in the Additional Information section of the Schedule.
- 1.1.33 "Reservation Application Address" means (if applicable) the address set out in the Additional Information section of the Schedule.
- 1.1.34 "Reservation Charge" means the amount specified by the DNO and set out in the Reservation Information.
- 1.1.35 "Reservation Confirmation" means (if applicable) confirmation in the form set out in the Additional Information section of the Schedule.

04 Terms and Conditions

- 1.1.36 "Reservation Information" means (if applicable) the information to be provided by the DNO in the form set out in the Additional Information section of the Schedule.
- 1.1.37 "Reserve" means to hold Capacity on the Distribution System in accordance with the provisions of paragraph 17 and cognate expressions shall be construed accordingly.
- 1.1.38 "Schedule" means the documentation attached to the Letter being: 1.Summary; 2.The Price; 3.Works to be completed by UK Power Networks; 4.Works which you (the Customer) need to complete; 5.Land rights; 6.Drawing Schedule; 7. Additional Information; and any other documentation that may be included with the Letter.
- 1.1.39 "Site" means the place at which the Works are to be carried out.
- 1.1.40 "Speculative Development" has the meaning given to that term in the DNO's Connection Charge Methodology.
- 1.1.41 "Street" means any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. Where a street passes over a bridge or through a tunnel the term Street includes the bridge or tunnel.
- 1.1.42 "Subsequent Reservation Period" means (if applicable) each successive calendar year commencing 1 January following the Initial Reservation Period up to a maximum of ten calendar years thereafter.
- 1.1.43 "Variation" means any alteration of the Works including any addition, modification or omission.
- 1.1.44 "Works" means the work described in the Schedule that is to be carried out by the DNO on these Terms and Conditions.
- 1.1.45 "You" means you, your agent sub-contractors and their officers, employees, servants and agents and any reference to "you" and "your" shall be construed accordingly.
- 1.1.46 "Your Installation" means all electrical equipment and apparatus not being part of the Distribution System used or to be used by You and connected to or to be connected to the Distribution System.
- 1.1.47 "Your Site" means that part of the Site within your occupation or control.
- 1.1.48 "Your Works" means all works mentioned in the Schedule that You are required to carry out on these Terms and Conditions.
- 1.2 Unless expressly provided to the contrary, any consent required of a Party under these Terms and Conditions shall not be withheld or delayed unreasonably.
- 1.3 The headings in the Terms and Conditions do not form part of them and shall not be taken into consideration in the interpretation or construction of the Notice.
- 1.4 The word "including" is to be construed without limitation.
- 1.5 Any reference in the Notice to the masculine includes the feminine and any reference to the singular includes the plural and vice-versa in each case.
- 1.6 Any reference to a statute shall be construed as a reference to any statutory instrument, regulation, order or code of practice made under it and as any of the foregoing may be amended or re-enacted from time to time.

2. Your Obligations

- 2.1 Your Site.
- 2.1.1 If Your Site is notifiable under The Construction (Design and Management) Regulations 2007 You must notify the DNO upon acceptance of the Notice the name, postal address, telephone number and email address of the CDM Co-ordinator and the Principal Contractor.
- 2.1.2 You must at your expense give the DNO:
- (i) unobstructed pedestrian and vehicular access (including the provision of any load bearing surfaces required by the DNO) to and within Your Site; and
 - (ii) site facilities, including provision of main services, site huts, parking, storage and a secure facilities compound, on

- Your Site, as it shall require to enable it to complete its Works by the date specified in the Schedule for their completion or if no date is stated in the Schedule at such time as shall be required by the DNO when programming the Works.
- 2.1.3 You are responsible at your own expense for the security of all Plant and the DNO's equipment (and that of its sub-contractors) on Your Site.
- 2.1.4 At the DNO's request You must operate free of charge for the purposes of the Works any suitable lifting equipment belonging to You or under your control that may be on Your Site. You must retain control of and be responsible for the safe working of the lifting equipment.
- 2.2 Consents/Land Rights.
- 2.2.1 You must obtain at your expense any Consents for Your Works free from conditions affecting the DNO's execution of the Works and their subsequent use and which also will allow:
- (i) the Works to be carried out in a continuous and logical progression; and
 - (ii) the Premises to be used for the purpose for which connection to the DNO's Distribution System is required.
- 2.2.2 Where Your Premises are to be connected to the Distribution System of the DNO in London You must obtain the in principle agreement of the landowner and any occupier of any land (not being a Street maintainable at public expense) to the DNO's installation of any Electric Line and/or any Electrical Plant in their land in the position shown on the plan provided to You by the DNO and upon the terms that the DNO will require. When You have obtained such in principle agreement You must notify the DNO in writing providing the relevant landowner's (and where different its occupier's) name and address and that of their solicitors as it is not until then that the DNO will instruct its solicitors to obtain the Land Rights that it requires from the relevant owner and occupier.
- 2.2.3 You must provide to the DNO before it carries out its Works, either:
- (i) a copy of the planning permission for Your Works; or
 - (ii) if planning permission is not required for Your Works, confirmation of that fact from the local planning authority.
- 2.2.4 You must transfer or grant (or procure the transfer or grant of) the Land Rights in relation to Your Site to the DNO with Full Title Guarantee.
- 2.2.5 Energisation will not take place in any case where the vendor/lessor/grantor of the Land Rights is not legally represented by a solicitor or licensed conveyancer unless the vendor/lessor/grantor provides the DNO's solicitors with independent verification of such person's identity satisfactory to the DNO's solicitors. Such verification will be a declaration and photograph as required in the application for a British Passport.
- 2.3 Your Works.
- 2.3.1 You must carry out and complete Your Works at your own cost before the DNO begins its Works on Your Site and they must be of the quality specified by the DNO, comply with relevant Legislation and be carried out in such a manner as will enable the DNO to carry out its Works in a continuous, efficient and logical progression.
- 2.3.2 The DNO may inspect Your Works and where Your Works are not in conformity with your obligations under the Notice You must rectify all shortcomings at your own expense. Each subsequent inspection required by the DNO must be paid for by You shall be carried out after the DNO's receipt in cleared funds of the re-inspection fee specified in the Schedule.
- 2.3.3 You must ensure that Your Works, and any Premises owned, occupied, controlled or to be constructed by You, are designed and so constructed that the operation of the Distribution System shall not cause any nuisance, inconvenience, annoyance or disturbance to any person using or

occupying such Premises or those adjoining it.

2.4 Provision of Information and Assistance.

2.4.1 You must give to the DNO, free of charge and within a reasonable time to prevent delay and/or disruption to the Works, all necessary and relevant data and information in your possession or under your control relating to the Works, Your Installation, Your Site and Your Works.

2.4.2 You are responsible for errors, omissions or discrepancies in drawings and written information supplied by You and shall pay the DNO the Costs it incurs as a consequence of such errors, omissions or discrepancies.

2.4.3 You must give at your expense such assistance in connection with the Works as reasonably requested by the DNO.

2.5 Contamination.

2.5.1 It is your responsibility to identify whether Your Site is contaminated and to remove any contamination at your expense before the DNO begins the Works.

2.5.2 The DNO may suspend the Works while contamination, wherever discovered, is removed and recover from You the additional Costs it incurs as a result of such suspension and (if it shall remove the same) removal.

2.5.3 If contamination migrates to or from the Site during or after the Works You shall indemnify the DNO against all Costs, claims, demands and liabilities it incurs as a result of such migration other than those arising from its negligence.

2.6 Connection Agreement.

2.6.1 You appoint the DNO irrevocably to complete the relevant Connection Agreement on your behalf.

2.6.2 Neither You nor anyone occupying the Premises for which connection to the Distribution System is to be made will have any express or implied entitlement to any Capacity on the Distribution System on and following the 12 month anniversary of completion of the Works beyond that then taken up and used by You and/or such person.

2.7 Breach of Your Obligations.

2.7.1 If You are in breach of any of your obligations under the Notice the DNO's estimate of the Costs that may be incurred by the DNO as a result of such breach shall be added to the Price and the DNO shall be entitled to such extension of time for the performance of its obligations as reasonably it shall require but in all cases equal at least to the period of delay.

3. The DNO's Obligations

3.1 The Works.

3.1.1 The DNO shall, subject to the provisions of the Notice, design, supply and execute the Works with reasonable skill and care but such duty does not extend to determining the existence of Adverse Ground Conditions.

3.2 Conditions.

3.2.1 The DNO shall not be obliged to begin or continue the Works until:

- (i) it has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice in cleared funds; and

(ii) it has obtained the Land Rights and any Consents on such terms as it shall require to carry out the Works; and

(iii) You have obtained the Consents as required in paragraphs 2.2.1, 2.2.2 and 2.2.3 and have provided copies of them to the DNO; and

(iv) You have provided the information required under paragraph 2.1.1 and 2.4.1 and You have provided access to the Site in accordance with paragraph 2.1.2; and

- (iv) You have carried out Your Works in conformity with the Notice; and
- (v) it has given (following satisfaction of the conditions above in this paragraph 3.2.1) notice required by the Traffic Management Act 2004 and NRSWA and any period required to have elapsed before that part of the Works is commenced, has elapsed; and
- (vi) any required reinforcement of the Distribution System and transmission system has been completed.

3.3 Consents and Land Rights.

- 3.3.1 The DNO shall use reasonable endeavours to obtain, at Your Cost, the Land Rights and the Consents free of conditions that it requires for any Works that are not on Your Site.
- 3.3.2 If the Consents and/or Land Rights that the DNO requires pursuant to paragraph 3.3.1 cannot be obtained in accordance with its terms, lapse, are terminated or revoked, it may in its absolute discretion exercise its powers under the Act and in such case:
 - (i) the DNO may (but shall not be obliged to) exercise its powers under the Act without first having notified You of its intention to do so and without having

regard to any comments that You may make;

- (ii) as a condition precedent to it continuing to use such powers You must pay to the DNO its estimate of the Costs of preparing for and exercising those powers, the costs of proceedings before the Lands Tribunal, and of the compensation that it considers may be awarded by the Lands Tribunal; and
- (iii) if the DNO's estimates pursuant to (ii) above are too low You must pay the shortfall before it proceeds further. If its estimates are too high the DNO will re-pay the excess to You within 21 days of the conclusion of all proceedings

3.3.3 If the DNO does not within 6 months of your acceptance of the Notice acquire the Land Rights or the Consents under paragraph 2.2.4 or paragraph 3.3.1, or it is not given access by You as required by paragraph 2.1.2, the DNO's obligations under the Notice may be terminated by it. You may make another request to the DNO to make a connection to its Distribution System.

4. Variations To Works / Your Works

- 4.1 Either Party may at any time propose Variations by notice in writing to the other Party. Subject to paragraph 4.6, no Variation shall be effective unless agreed by both Parties in writing.
- 4.2 As soon as possible after having received a request for, or proposed, a Variation (other than in relation to any required by the DNO under paragraph 4.6 to which the provisions of paragraphs 4.1- 4.4 shall not apply) the DNO will notify You:
 - (i) if, in its reasonable opinion, the Variation will involve an addition to or deduction from the cost of the Works; and

- (ii) what it then considers to be the effect upon their completion date.

4.3 The Cost incurred by the DNO in preparing a Variation requested by You shall be added to the Price whether or not You instruct the DNO to proceed with the Variation.

4.4 Within seven (7) days of the DNO's notification under paragraph 4.2 You must confirm in writing whether the DNO is to proceed with the Variation. The Price shall be adjusted accordingly and any increase in the Price shall be paid with your instruction. Any reduction in the Price shall be re-paid to You within twenty-one (21) days of the

08 Terms and Conditions

- completion of the Works. Where Plant or any work or service has been supplied or is being supplied or an order has been placed for it to be supplied, the Costs of the variation shall be paid by You. Once instruction is given the DNO's obligations shall be deemed to have been modified to such an extent as would enable the DNO to fulfil its obligations without any prejudicial effect upon them.
- 4.5 No Variation shall constitute or be construed as a waiver of any of the Terms and Conditions or obligations of either of us.
- 4.6 If before or during the carrying out of the Works, any part of the Works or their means of execution is affected by:
- 4.6.1 Force Majeure and/or
- 4.6.2 the existence of Adverse Ground Conditions; and/or
- 4.6.3 a Change of Law; and/or
- 4.6.4 the absence of any Consents for the Works or by the terms upon which they are granted or an inability to obtain access to any Premises (including those belonging to the DNO); and/or
- 4.6.5 the DNO's existing ducts being unable to be utilised; and/or
- 4.6.6 any Legislation the object or effect of which is intended to achieve the efficient and/or secure conduct of the 2012 Olympic Games, or the effects of an event for which emergency Regulations have been made under the Civil Contingencies Act 2004; and/or
- 4.6.7 industrial action by the DNO's employees or its agents; and/or
- 4.6.8 the act of default of anyone other than the DNO's officers, employees or its agent; and/or
- 4.6.9 a network system emergency that causes the DNO (or its affiliates) to re-direct its resources and thereby prevents it from completing action required by regulations under which GS Payments may be required; and/or
- 4.6.10 there is a variation or termination of an agreement referred to in paragraph 6.2.4,
- the DNO shall be entitled to require a Variation to take account of such and any increase or decrease in the cost to the DNO consequent upon such circumstance or event shall be added to or deducted from the Price and the date for completion of the Works shall be extended by such time as the DNO considers reasonable but in all cases equal at least to the period of delay.

5. Hours of Work

- 5.1 You may request that the Works be carried out at times other than the normal working hours (08.00-16.30 Monday to Friday, public holidays excepted). The DNO may carry out the Works outside normal working hours if in the circumstances it shall be practicable to do so and its estimate of the Costs of doing so shall be added to the Price and be paid by You in advance of it undertaking such work. If the DNO's estimate is too low it will require that You pay the shortfall of any re-estimate made by it before it proceeds further. If its estimate is too high it will repay the excess to You within 21 days of its completion of the Works.

6. Payment

- 6.1 Terms of Payment
- 6.1.1 You shall pay the Price at the time(s) stated in the Notice.
- 6.1.2 If the DNO becomes entitled to claim Costs; an indemnity under these Terms and Conditions; or any other sum, it will submit an invoice to You and You must pay it within fifteen (15) days of its date or before Energisation, whichever is the sooner.

6.1.3 If payment of any sum payable under these Terms and Conditions is delayed, the Party entitled to payment is entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly. The DNO is entitled to interest without formal notice and without prejudice to any other right or remedy. The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the Works.

6.1.4 If You fail to make any payment to which the DNO is entitled, the DNO shall be entitled:

- (i) to stop the Works until the failure has been remedied, by giving two (2) days' notice to You in which event the Costs of any demobilisation and of the resumption of the Works shall be paid before resumption of the Works; and/or
- (ii) to terminate the Notice in accordance with paragraph 12.1.1 whether or not the DNO has previously stopped the Works under this paragraph 6.1.4.

6.1.5 All amounts becoming due under the Notice shall be exclusive of Value Added Tax which, subject to express provision to the contrary, shall be payable in addition thereto and at the rate prevailing at the date upon which payment is due.

6.1.6 If the Works include or comprise Diversionary Works, that element of the Price identified in the Notice as being referable to the Diversionary Works is an estimate only. You will bear all Costs suffered or reasonably incurred by the DNO in performing its obligations in this Notice in relation to the Diversionary Works.

6.1.7 If You are a Highway Authority, a Bridge Authority or a Transport Authority (as defined by respectively Sections 86(1), 88(1)

and 91(1) of NRSWA) carrying out major highway works, major bridge works or major transport works (as defined respectively by sections 86(3), 88(2) and 91(2) of NRSWA) which affects or may affect the DNO's Apparatus (as defined by Section 105(1) of NRSWA) that is in a Street, the reference to Costs in paragraph 6.1.6 is a reference to the allowable costs of the measures needing to be taken in relation to that apparatus and which shall be borne by You and the DNO in the proportions prescribed by The Street Works (Sharing of Costs of Works) (England) Regulations 2000.

6.2 Variations to the Price.

The DNO may vary the Price:

6.2.1 if at the later of:

- (i) the date of your acceptance of the Notice; and
- (ii) the date upon which it places its order with its suppliers of materials or plant to be comprised in the Works;

the price of those materials or plant shall have increased from those included in the Price, the Price may be varied by an amount equal to the increase or decrease (if any) in its suppliers' prices for such materials or plant to be comprised in the Works and that are required to be paid by the DNO by reason of the price of the relevant material or plant being less or more than the relevant price therefor in the Price; and/or

6.2.2 to reflect any change in the Exchange Rate between the date of the Letter and the Exchange Rate prevailing at the date upon which its bank transfers the currency to the payee for the goods and/or services comprised in or required for the Works; and/or

6.2.3 if otherwise than solely because of its breach of this Notice, the Works have not been completed within twelve months of the

10 Terms and Conditions

date of your acceptance of the Notice, the portion of the Price that may be increased is that which is referable to that part of the Works as has not been completed at each such twelve month anniversary disregarding that element of the Works which but solely for the DNO's breach of this Notice would have been completed before the relevant 12 month anniversary. The increased Price shall be calculated in accordance with the DNO's Connection Charge Methodology from time to time issued pursuant to the Licence; and/or

6.2.4 if the Price is apportioned between You and/or a third party and/or the DNO and that third party, varies or terminates the relevant agreement for carrying out the relevant works; and/or

6.2.6 in accordance with paragraph 4.6.

6.3 Additional Costs.

6.3.1 If alterations to the design are required reasonably by the DNO otherwise than due to its want of reasonable skill and care the Cost of making those changes and any changes to the Works shall be borne by You.

6.3.2 The Costs of obtaining all Consents and the Land Rights required by the DNO lawfully to carry out and retain the Works shall be paid by You in accordance with paragraph 6.1.2 but in any event before Energisation.

6.3.3 If the DNO installs Electric Lines and/or Electrical Plant for itself and/or others in the Site at the same time as it carries out the Works, the Price of such part of the Works shall be apportioned as provided in its Connection Charge Methodology from time to time issued pursuant to the Licence.

7. Property In The Works

7.1 The Works shall form part of the Distribution System and shall be owned, operated and maintained by the DNO.

8. Copyright Of Documents

8.1 Each Party owns the copyright in all documents and data created or provided by it for use in connection with the Works, Your Works and Your Installation as the case may be and each Party hereby grants a non-exclusive, irrevocable, royalty free licence to the other Party to use such documents and data solely for the purposes of performing their respective obligations under this Notice

and in the case of the DNO for the purposes of owning, operating and maintaining its Distribution System. Except with the other Party's prior written consent neither Party shall make copies or permit copies of such documents or data to be made nor may the other Party use or permit those documents or that data to be used other than in accordance with this paragraph 8.1.

9. Force Majeure

9.1 The DNO may suspend the progress of the Works at any time owing to Force Majeure.

9.2 If suspension as a result of Force Majeure has continued for more than ninety (90) days You or the DNO may terminate the Notice, in which event paragraph 12.3 shall apply.

9.3 If following suspension under paragraph 9.1 the DNO proceeds with the Works, You must pay to the DNO, before the DNO resumes the Works, the Costs incurred.

10. Liability

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| <p>10.1 Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by its negligence (as to which in each case no limitation or exclusion of liability shall apply) and subject to paragraph 17.10:</p> <p>10.1.1 the DNO will be liable to You (and any third party) only for its negligent act or omission that causes delay in completing the Works and then only in the amount of the GS Payment paid or payable in relation to such delay (allowance being made therefrom in respect of any ex gratia payment paid or agreed to be paid) and in respect of physical damage only in a sum or sums that in the aggregate does not exceed the lower of the reasonable Cost of making good any physical damage caused by the DNO and the Price excluding Value Added Tax and after deducting therefrom any discount allowed by the DNO pursuant to the regulations referred to in paragraph 8.</p> <p>10.1.2 the DNO will not be liable to You for any special, indirect or consequential damage or loss nor for any economic loss, loss of profit, loss of opportunity, loss of savings, loss of goodwill, loss of use, or any like losses.</p> <p>10.2 If the only works to be carried out by the DNO are Diversionary Works and they are otherwise un-related to the making or modification of any connection to the Distribution System paragraph 10.1.1 shall not apply and subject to paragraphs 10.1 and 10.3, the DNO will not be liable to You (or any third party) for breach of these Terms and Conditions or any tortious (including negligent act or omission) or otherwise in a sum or sums that in the aggregate exceeds the Price excluding Value Added Tax.</p> | <p>10.3 Each of us shall be liable to the other for and shall indemnify the other against all claims in respect of personal injury or death arising from our respective negligence and that of our sub-contractors and their and our officers, employees, servants and agents.</p> <p>10.4 If the DNO shall receive any claim in respect of damage or injury to the Premises of a third party arising out of the execution of the Works, it shall report the claim to You who shall then negotiate the settlement of and pay all sums due in respect of such claim. You must indemnify the DNO in respect of the claim and in respect of all proceedings, damages, Costs, charges and expenses relating to such claim but your obligation to indemnify the DNO does not apply to damage caused by the DNO's negligence.</p> <p>10.5 Each of us shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that we can do so without unreasonable inconvenience or cost.</p> <p>10.6 Set off.</p> <p>10.6.1 The DNO shall be entitled but not obliged at any time or times without notice to You to set off any liability of You to the DNO against its liability to You (in either case howsoever arising and whether any such liability is present or future liquidation or un-liquidated). Any exercise by the DNO of its rights under this paragraph shall be without prejudice to any other rights or remedies available to the DNO under the Notice or otherwise.</p> |
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11. Assignment

- 11.1** You may not assign or transfer the benefit of the Notice to anyone. The DNO may do so without your consent.

12 Terms and Conditions

12. Termination

- 12.1** Either of us ("the Aggrieved Party") may (without prejudice to any other right or remedy) by written notice to the other ("the Defaulting Party") terminate the Notice with immediate effect if:
- 12.1.1** the Defaulting Party commits a breach of any of its obligations hereunder and fails to rectify the same (and notify the Aggrieved Party of such rectification) within fifteen (15) days of being notified thereof by the Aggrieved Party; or
- 12.1.2** the Defaulting Party: becomes bankrupt; makes any composition or arrangement with its creditors; has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986; has an application made under the Insolvency Act 1986 in respect of itself to the Court for the appointment of an administrator; has a winding up order made or a resolution for a voluntary winding up passed; a receiver or manager of its business or undertaking is duly appointed; has an administrative receiver as defined in the Insolvency Act 1986 appointed; or possession is taken by or on behalf of any creditor of any property the subject of a Price.
- 12.2** You may terminate the Notice on written notice to the DNO, provided that at the date of the Notice the Works and any part of them are not intended to or do not subsequently form part of or comprise works to provide a connection to anyone other than You. If the Works at the date of the Notice are intended to or subsequently form part of or comprise works to provide a connection to anyone other than You the DNO may subsequently terminate the Notice by written notice to you with immediate effect if such other third party does not accept the notice issued to them by the DNO in connection with such works or any such notice is terminated.
- 12.3** Without prejudice to any antecedent breach of the Notice by the DNO, upon termination of the Notice by either of us, You shall pay to the DNO all undisputed sums then due and payable or accrued under the Notice to the extent necessary to indemnify the DNO against the Costs it has reasonably incurred in accordance with the Notice, in carrying out the Works, including the Costs of materials or goods reasonably ordered for the Works prior to the date of termination.
- 12.4** If the DNO terminates the Notice in accordance with paragraph 12.1 or paragraph 12.2, in addition to the payments provided above, You shall pay to the DNO the DNO's Costs of vacating the Site or in the case of a termination in accordance with paragraph 12.2 a reasonable proportion of the DNO's costs of vacating the Site.
- 12.5** The DNO may terminate the Notice at any time if any one or more of the statutory duties to connect set out in Section 17 of the Act shall apply.
- 12.6** Paragraphs 2.2.4, 2.6.3, 2.6.2, 6, 8, 10, 12, 13, 14, 15 and 16 shall survive termination of the Notice.
- 12.7** If the Notice is terminated for any reason the DNO shall be entitled to carry on and complete so much of the Works as it considers necessary to render the same stable and safe or to comply with any condition attaching to any Consent and/or Land Right and to ensure that its Distribution System can operate not less effectively than before the commencement of the Works. The Cost properly incurred by the DNO in relation thereto shall be borne by You except where the Notice is terminated due to a breach by the DNO.

13. Notices

- 13.1** Any notice or consent given under the Notice shall have been properly given only if in legible writing and sent by first class prepaid letter post, by hand, or by facsimile transmission to the address of the Party to be served specified in the Notice or in either case to such other address as has been given to that other in accordance with this paragraph 13.

- 13.2 Any notice given by post shall be deemed to have been given two working days after it was sent and a notice delivered by hand or by facsimile transmission shall be deemed to be served upon actual delivery or transmission.

14. Law

- 14.1 The Notice shall be governed by and construed in accordance with the law of England and Wales.

15. Entire Agreement

- 15.1 The Notice is the entire agreement between us and replace all previous correspondence and any previous understanding between us. Neither of us has entered the Notice in reliance on any statement that is not set out fully in the Notice. Nothing in this paragraph shall exclude liability for fraud.

16. Non-waiver

- 16.1 None of the provisions of the Notice shall be considered waived by either of us except when such waiver is expressly given in writing.
- 16.2 No delay by or omission by either of us in exercising any right power privilege or remedy under the Notice shall impair such right power privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right power privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right power privilege or remedy.

17. Reservation Of Capacity

- 17.1 You may (but are not obliged to) Reserve the Outstanding Capacity (in MVA to one decimal place) on the Distribution System in accordance with the provisions of this paragraph 17.
- 17.2 The right to Reserve Outstanding Capacity is conditional upon:
- 17.2.1 You agreeing as part of the Works to the installation of and the payment to the DNO of the Costs of measurement capability to allow the Outstanding Capacity to be determined in accordance with this Notice;
- 17.2.2 the Works not being only Diversionary Works; and
- 17.2.3 the Works being for a Speculative Development.
- 17.3 To Reserve the Outstanding Capacity on the Distribution System You must send the Reservation Application with a copy of the Notice to the DNO at the Reservation Application Address:
- 17.3.1 for reservation during the Initial Reservation Period, not more than four nor less than two months before the start of the Initial Reservation Period; and two months before the start of the Initial Reservation Period; and

14 Terms and Conditions

17.3.2 for reservation during each Subsequent Reservation Period, not more than four nor less than two months before the end of the Initial Reservation Period or the preceding Subsequent Reservation Period (as the case may be).

17.4 Within twenty-one days of its receipt of the Reservation Application the DNO shall give You the Reservation Information.

17.5 If You wish to confirm your desire to Reserve the Outstanding Capacity upon the Distribution System for use at the Exit Point for the Initial Reservation Period or the relevant Subsequent Reservation Period (as the case may be) You must send the Reservation Confirmation to the DNO at the Reservation Application Address within ten days of your receipt of the Reservation Information and at that time pay to the DNO the Reservation Charge as specified in the Reservation Confirmation.

17.6 Upon receipt of the Reservation Confirmation and full payment of the Reservation Charge in cleared funds the DNO will Reserve the Capacity for the Initial Reservation Period or the relevant Subsequent Reservation Period only.

17.7 You are not entitled to Reserve any Outstanding Capacity upon the Distribution System for use at the Exit Point in an amount greater than the lesser of the

Outstanding Capacity Reserved by You in the Initial Reservation Period or the preceding Subsequent Reservation Period and the Capacity at such Exit Point available to be taken up.

17.8 Where Outstanding Capacity is not Reserved for the Initial Reservations period or the relevant Subsequent Reservation Period (as the case may be) this paragraph 17 shall cease to apply and You shall have no further right to Reserve Capacity under this Notice.

17.9 Time is of the essence for the purposes of this paragraph 17.

17.10 Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by its negligence (as to which no limitation or exclusion shall apply) the DNO's Liability to You for breach of its obligations under this paragraph 17 only (including negligence) to Reserve Outstanding Capacity pursuant to a notice under paragraph 17.3 is limited to the Reservation Charge for the Initial Reservation Period or relevant Subsequent Reservation Period as the case may be.

17.11 If You or a third party require a Connection at the Exit Point the DNO will require such party to enter into the Connection Agreement.

18. Reference To Ofgem

18.1 If You have followed the DNO's complaints procedure available at www.ukpowernetworks.co.uk by visiting www.ukpowernetworks.co.uk (navigate to Customer Services then click on the Complaints tab) and You are unable to resolve a dispute about the DNO's duty to connect and the conditions under which that duty is discharged (sections 16-21 of the Act) You have the right to contact the Energy Ombudsman which is the independent

ombudsman for gas and electricity consumers. The Energy Ombudsman's contact details are provided below.

Telephone: 0845 055 0760

Fax: 0845 055 0765

Email: enquiries@energy-ombudsman.org.uk

Website: www.energy-ombudsman.org.uk

Energy Ombudsman

PO Box 966

Warrington WA4 9DF

In addition, You can refer the dispute to the Gas and Electricity Markets Authority (known as Ofgem) within twelve months of the date on which your connection was made to our Distribution System. Ofgem will require that You give the DNO Networks and the Energy Ombudsman an adequate opportunity to resolve any complaint or dispute before any action is taken by them.

Ofgem's decision will be enforceable as if it were a judgement of the Court and will include such provisions as it considers appropriate which may include who pays its costs in determining the dispute. Ofgem may give directions to us as to the terms on which we are to make or maintain a connection pending determination of the dispute.

Ofgem can be contacted at 9 Millbank,
London SW1P 3GE, or via their website
www.ofgem.gov.uk

Customer's Annex 2 (Email from the Company)



Registered Office:
Newman House
217 Southbank Bridge Road
London SE1 6HP
Registered in England and Wales No: 2190529

Companies:
London Power Networks plc
Eastern Power Networks plc
South Eastern Power Networks plc
UK Power Networks Operations Ltd
UK Power Networks Transport Ltd

Mr John Duncan
NRSWA Ltd.
The Rosery
Odiham Road
Riseley
Berks
RG7 1SD

Dear Mr. Duncan

Subject WITHOUT PREJUDICE – complaint re Refs 40081769 and 41197185 – Request for payment of interest on advanced payments

Thank you for your email dated 24 January (05:09PM) which, in accordance with UK Power Networks' complaints procedure, has been referred to me as Head of Projects to consider further.

From my reading of the correspondence on this matter it seems that, in short, your complaint is that UK Power Networks should pay your client interest on the sums paid by your client in connection with the above Notices as it is your view that such payments constitute security for payment and thus attract interest under section 20(3) of the Electricity Act 1989 (as amended). Please do let me know if you do not consider that this is a fair "distillation" of your complaint.

Your email below makes reference to an Ofgem determination (RBA/TR/A/DET/154: Housing Developer v Electricity Distribution Company and a case *Norweb plc v Dixon* [1995]. Whilst these references are certainly interesting they are not germane to whether or not the making of advanced payments constitutes a request for security for payment. These cases focus more on the relationship between the customer and the distributor and whether or not it is a relationship borne of statute or contract – a matter which, in this context, is not relevant. The matter in hand is essentially: has UK Power Networks requested security for payment from your client under section 20 of the Electricity Act.

UK Power Networks does not accept either that it has requested security from your client nor that it should pay your client interest on the sums that were returned to your client. The payments that were made to UK Power Networks by your client were not made as security for payment but were payments in advance of work being undertaken and, therefore, do not attract interest.

Section 16A(5) of the Electricity Act 1989 (as amended) anticipates that the Notice issued by the DNO to the customer will state:

- (a) The extent (if any) to which the customer's proposals to the DNO are acceptable and counter proposals made by him;
- (b) Any payment which the customer will be required to make under section 19(1);
- (c) Any security which that person will be required to give under section 20; and
- (d) Any other terms which that person will be required to accept under section 21.

Section 19 of the Electricity Act 1989 gives the DNO the right to require any expenses reasonably incurred in providing the connection to be paid by the person requiring the connection to such extent as is reasonable in all the circumstances. Section 20(1) then entitles the DNO to require reasonable security for the payment due to him under section 19 of the Electricity Act (as amended). From the above it is clear that legislation envisages that the payment for the provision of the connection and the payment of security are different things. By virtue of section 21(c) the DNO can require the customer to accept terms which are reasonable in all the circumstances. UK Power Networks is firmly of the view that the request for payment in advance constitutes a term which is reasonable in the circumstances (as is Clause 6.1.7 in the current Terms and Conditions (Clause 6.1.3 of the previous version of the terms and conditions) which states "The DNO shall not pay interest or give credit for interest received in any element of the Price paid by You in advance of the Works"). Further, one can infer from the above that if security was to be sought from a customer it would have to be made clear to the customer that such sum was being sought as security under section 20 of the Electricity Act 1989 and not as payment.

The Electricity Act 1989 (as amended) does not define "security". The dictionary definition of "security" is "... (6) the specific asset that a creditor can claim title to in the event of a default on obligation (7) something given or pledged to secure the fulfilment of a promise or obligation..." (Collins English Dictionary). To put it another way, security is something that can be called upon/is forfeited in the event of a breach of an obligation (usually a payment obligation) by the party providing the security. If there is no default the security is returned at the end of the relevant period. The making of an advanced payment, therefore, is not security as the making of the advance payment is the discharge of the obligation to make the payment itself.

It is not impossible to imagine a situation where a request for security of payment is made notwithstanding that advance payments have been made to the DNO. For example, if a customer has paid a DNO in advance for the works to be undertaken by a DNO to provide the connection but there is a concern that that the customer may not be able to pay for future anticipated variations to those works, the DNO could request that the customer pays to it a security deposit so that if the customer fails to pay for variations when requested the DNO could withdraw the appropriate sum from the security deposit. If such a security deposit was taken it would be covered by section 20 of the Electricity Act and the DNO would be required to pay interest on such a deposit in accordance with section 20(3) Electricity Act 1989 (as amended).

I trust that the above has clarified matters for you and that you agree that in this instance UK Power Networks has not received security from your client and is not obliged to pay interest to your client.

It should be noted that the final account and rebates due on the above projects were settled with Richard Nash of Willmott Dixon Construction Limited on 10 October 2013 and it was agreed that interest was not payable in connection with these connections. A total of £160,345.74 + VAT was subsequently paid to Willmott Dixon. Therefore, I should be grateful if Willmott Dixon could confirm that this complaint has been explored to its satisfaction, that the request for interest is withdrawn and the complaint has now been resolved.

Yours Sincerely,

[Redacted Signature]
Head of Projects, Connections

[Redacted Email Address]@ukpowernetworks.co.uk

Cc Mr Richard Nash, Willmott Dixon

UK Power Networks Barton Road Bury St Edmunds Suffolk IP32 7BG

Appendix 2 - Company statement of fact and comments on Customer evidence

Questions

- 1. Please confirm your understanding of what is in dispute in this case, attaching any relevant paperwork to back up your argument.**

As set out in the request for determination and recorded in Ofgem's 2 September 2014 letter, this dispute relates to s.20 of the Electricity Act 1989 (as amended) (the "Act"). It is the Customer's view that s.20 of the Act requires UK Power Networks to pay interest on an agreed advance payment made to UK Power Networks by the customer pursuant to the connection offer. UK Power Networks does not agree with the Customer's interpretation of s.20 of the Act. This is not a dispute about whether UK Power Networks' terms and conditions take priority over the Act.

- 2. Please provide a description of the works this dispute relates to attaching any relevant paperwork. In particular, please provide copies of the relevant quotes, connection agreements and works contracts.**

The works consisted of:

1. The laying of approximately 7km of 11kV underground cable;
2. The installation of 2 new 11kV/LV secondary substations;
3. The installation of a 11kV supply substation; and
4. Provision of additional 11kV switchgear at an existing secondary substation.

UK Power Networks received an application for a connection from the agent on behalf of the customer (the "Customer") and made a connection offer (the "connection offer") to the Customer dated 25 May 2011. The connection offer included a booklet containing terms and conditions (the "Terms and Conditions").

UK Power Networks gave notice to the Customer under Section 16A(5)(c) of the Act that it was required to pay the cost of certain works relating to the connection for the supply of electricity in the sum of £1,456,559.43 inclusive of VAT (the "Price"). The Notice stated that the Price was 'provisional' and was to be 'firmed-up' once UK Power Networks completed its detailed design and procurement of the works (the "Works"). The Price was increased subsequently by £207,305 as part of a variation required to address a change in the cable route which became necessary due to difficulties with obtaining land rights.

The connection offer was accepted by the Customer within the period for acceptance. The Terms and Conditions of the connection offer were that UK Power Networks would not be obliged to begin or continue with the Works until it had received the Price (paragraph 3.2.1) and that UK Power Networks would not pay interest or give credit for interest received on the Price paid in advance of the Works (paragraph 6.1.3). The connection offer made to the Customer does not state that the payment of £1,456,559.43 is security. The connection offer makes it very clear in section 2 headed "The Price" that this sum was the price to be paid for the Works.

Please find attached the following documents which support the facts summarised above:

1. Connection offer from UK Power Networks to Scott Wilson Buildings and Infrastructure dated 25 May 2011;
2. A breakdown of charges provided by UK Power Networks;
3. Annotated copy of the proposal plan to support the breakdown of charges; and

2 of 9

4. Quotation acceptance from the Customer dated 7 July 2011.

We have also attached the following documents:

- 1. UK Power Networks' response to Customer request for interest payments (sent by email 14 February 2014);**
- 2. UK Power Networks email to the Customer dated 4 July 2014 (timed 18:21); and**
- 3. UK Power Networks' covering letter dated 17 July 2014 with cheque in relation to staged payments that should have been applied.**

3. Please set out whether UKPN requested prior approval from the Authority on a rate of interest that would be payable as interest of money held as security in accordance with section 20(3) of the Electricity Act 1986?

UK Power Networks does not hold monies as security in accordance with s.20(3) of the Act and, therefore, it has not requested approval from the Authority for a rate of interest payable where money is deposited with it by way of security.

Further, UK Power Networks does not have a record of the Authority requesting that UK Power Networks should supply to it a rate of interest for approval for use in connection with s.20 of the Act.

4. Please explain your justification on why interest is not due on the payment made?

As stated in answer to question 3, UK Power Networks does not hold customers' money as security. It is entitled to charge for and be paid for connection works under s.19 of the Act. Typically charges for connection works are modest and will be paid shortly before the works are undertaken. However, on occasions where connection charges are more than £[REDACTED], UK Power Networks will request payment to be made in stages which are consistent with the commencement of different stages of the works. There are some occasions, for example when elements of the works are uncertain, where the price is described as 'provisional'. In this situation the Price will usually be 'firmed up' prior to the Works commencing or during the carrying out of the Works as the case may be. In this case

3 of 9

the Works were carried out by UK Power Networks and its contractors. UK Power Networks paid its contractor in three milestone payments.

Where payment under s.19 of the Act is requested by UK Power Networks, it is paid into an account from which payments may be made to contractors to carry out and complete the Works. It is not held as security to ensure that the Customer pays for the cost of the Works once they have been completed. In summary, therefore, UK Power Networks requests advance payment for the cost of the Works required to provide a connection.

The principles applicable to the provision of security in respect of payment for the cost of the Works required to provide a connection are different from those applicable to advanced and stage payments. The term 'security' is applied to a deposit, lien, or mortgage voluntarily given by a debtor to a creditor to guarantee payment. Security provides the creditor with a resource to be forfeited, sold or possessed in case of the debtor's failure to meet his or her financial obligation. Monies held as 'security' are usually held in a separate account and would be required to be accounted for and returned to the Customer upon payment for the cost of the Works; money provided as security may not be used to pay for the Works as they are carried out. 'Security' has an established meaning and therefore only a brief explanation is provided. Knox J in *re A Debtor* (No 310 of 1988):

"That raises the issue which it seems to me does arise for decision, namely, whether the assigned rights against the Export Credit Guarantee Department constitute "security" for the purposes of rule 6.1(5) of the Insolvency Rules 1986, which reads:

"If the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but

(a) there shall in the demand be specified the nature of the security, and the value which the creditor puts upon it as at the date of the demand, and

(b) the amount of which payment is claimed by the demand shall be the full amount of the debt, less the amount specified as the value of the security."

That is what is to go into the statutory demand, rule 6 being headed, "Form and content of statutory demand," a heading which is amply justified by the subsequent provisions of the rule which I need not read, except for rule 6.1(5).

The Insolvency Act 1986, itself, has definitions. Section 385(1) contains, inter alia: "Secured" and related expressions are to be construed in accordance with section 383." That throws one back to that section, which contains in subsection (2) the following:

"Subject to the next two subsections and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of this Group of Parts to the extent that the person to whom the debt is owed

4 of 9

holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed."

Further consideration of the meaning of 'Security' can be found in other common law jurisdictions including Canada. For example in Alberta in the case of *Treasury v Minister of National Revenue* (1996) 1SCR 963 Justice Cory of Canada's Supreme Court stated that:

"A security interest exists at any time if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and to the extent that, at such time, the holder has parted with money or money's worth." Income Tax Act, RSC 1985, c 1 (5th Supp), s 224(1.3).]

'[14] In this case, Parliament has chosen an expansive definition of "security interest" in s 224(1.3) ITA in order to enable maximum recovery by the Crown under its deemed trust for unremitted income tax and employment insurance premiums deducted at source by employers. Parliament did so, in part, in response to this Court's decision in Royal Bank of Canada v Sparrow Electric Corp [1997] 1 SCR 411, which interpreted the former deemed trust provisions in the ITA narrowly.

'[15] In order to constitute a security interest for the purposes of s 227(4.1) ITA and s 86(2.1) ELA, the creditor must hold "any interest in property that secures payment or performance of an obligation". The definition of "security interest" in s 224(1.3) ITA does not require that the agreement between the creditor and debtor take any particular form, nor is any particular form expressly excluded. So long as the creditor's interest in the debtor's property secures payment or performance of an obligation, there is a "security interest" within the meaning of this section. While Parliament has provided a list of "included" examples, these examples do not diminish the broad scope of the words "any interest in property": see Dagg v Canada (Minister of Finance) [1997] 2 SCR 403, at para 68, and R Sullivan, Sullivan on the Construction of Statutes (5th ed 2008), at pp 61-68."

'[16] I agree with my colleague that the common linguistic meaning of the defined term "security interest" in s 224(1.3) ITA is the English term "security interest". A "security interest" is defined as any interest in property or "droit sur un bien" (right over property) that secures the performance of an obligation.' Caisse populaire Desjardins de l'Est de Drummond v Canada [2009] SCJ No 29, 2009 SCC 29 at [14]-[16], per Rothstein J Similarly in Fournogerakis v Barlow 2003 BCSC 1389 Justice Holme stated "(S)ecurity ... would normally be expected to relate to a pledge to guarantee fulfillment of some type of obligation".

Security, therefore, is different from advance payment. In the case of advanced payment the Customer's rights in relation to advance payments are limited to damages for breach of the obligation to carry out and complete the Works. This is consistent with s.16A(5)(b) of the Act which requires UK Power Networks to identify the payment that the Customer is required to pay. Section 16A(5)(c), meanwhile, requires that any security which the Customer will be required to give under s.20 of the Act is also identified. The context in which the words 'payment' and 'security' are used in the Act are quite different and the wording of the connection offer is consistent only with the advance payments made by the

5 of 9

Customer being payments for works to be undertaken and not being held as any form of security. If Parliament had intended interest to be paid on advance payments as well as upon sums deposited by way of security it would have expressly referred to interest being payable on advance payments in s.20 of the Act.

We do not consider that any support for the Customer's position can be gained from the previous Ofgem decisions which it has referred to, indeed the contrary is the position. Accordingly, at this stage UK Power Networks does not make submissions on the Ofgem decisions referred to by the Customer.

UK Power Networks' approach to advance payment in this case is consistent with Licence Condition 13 of its Licence which requires it to issue to Ofgem for its approval a Charging Methodology, which once approved must be complied with when calculating the price of providing a connection to its distribution network (Licence Condition 14). Section 6.3 (p69) of the Charging Methodology states:

"We normally require payment in full and in advance. However, if major works are to be carried out over an extended period of time, the Company [UK Power Networks] may agree to payment being made in instalments; each instalment being paid before the next phase of the works has begun. Payment in advance is required for all of the following charge elements including Budget Estimate, Feasibility Study, Construction, Competition in Connection Charges, Other Charges and for Land Rights. Charges for Assessment & Design are to be paid on acceptance of any Connection Offer, or POC Offer as applicable."

Further, this approach is acknowledged and accepted by the British Property Federation, see July 2011 Guide for Developers to Utilities Connections which states that:

"Developers may have to pay months in advance for a service"

"The GDN/DNO will charge the customer an up front connection charge as a contribution towards the capital cost of installing the connection assets. The basis of that charge should be set out in its Licence Condition Charging Statement which all GDNs and DNOs should make available on their websites".

In relation to the position of competitors and in particular independent DNO's ("IDNO")
"The IGT/DNO will charge the developer an up front connection charge as a capital contribution towards the cost of installing the assets,..."

Thus, in this case UK Power Networks requested advance payment in accordance with s.19 of the Act and it was agreed to by the Customer. The agreement with respect to the advance

6 of 9

payment is consistent with UK Power Networks' Ofgem approved charging methodology and it is consistent with the known standard in the industry (please see the BPF Guide, p10: http://www.bpf.org.uk/en/files/bpf_documents/construction/Getting_Connected_utilities_guide_for_developers.pdf).

Nevertheless, during its investigation of the complaint UK Power Networks noted that, despite the Customer's agreement to pay the whole of the connection charge in advance, UK Power Networks would normally have offered staged payments for a project of this value, in accordance with its internal policy. As a result of this omission on 17 July 2014 UK Power Networks sent a cheque to the Customer for the amount of £21,852 as redress. In effect, therefore, UK Power Networks has already compensated the Customer in full on the basis that the Customer should have been allowed to make stage payments prior to each stage of the Works commencing. The payment made is not interest on 'security' within the meaning of s.20(3) of the Act but is a sum of money intended to acknowledge the mistake and compensate the Customer for any loss and inconvenience suffered by it as a result of UK Power Networks not applying its internal policy on stage payments and to make clear to the Customer that UK Power Networks takes customer service standards seriously.

5. Please include any other facts relevant to the case for example whether you offered to resolve the matter by making a payment etc and attach relevant correspondence or minutes from meetings. This includes minutes from internal meetings discussing payment or interest relating to the customer, and minutes from external meetings of negotiation in respect of obtaining the work and also in respect of resolving the current complaint.

UK Power Networks issued a connection offer with a provisional Price because:

1. The design provided for significant cost saving by selection of a cable route crossing third party owned land for part of the route. At the time of quotation the legal process for securing rights to cross the private land had not been completed and therefore it was reasonable to expect that additional costs may be incurred.

7 of 9

2. The works were due to be completed close to the time of the London 2012 Olympic and Paralympic Games and it was anticipated that additional costs could result from road closures and general highway access restrictions.

In the event LOCOG (London Organising Committee of the Olympic and Paralympic Games) took over control of the third party land and required onerous conditions for the granting of an easement. The Customer raised concerns on behalf of one of its clients that UK Power Networks may fail to provide the connection in time for the planned opening of its retail store and the Customer requested UK Power Networks to abort plans for the crossing of the third party land and to use an alternative and more expensive route on the public highway instead. The Customer paid UK Power Networks the additional costs amounting to £207,305.

UK Power Networks is able to recover the expenses that it has incurred in providing the connection to the extent that is reasonable in all the circumstances. S.19. of the Act and the Terms and Conditions for connection and diversionary works explain the circumstances under which the Price may vary and this would include where the Price is not marked as being provisional in the offer.

On completion of the project UK Power Networks reviewed the costs it had incurred in providing the connection and made a refund payment to the Customer of £145,115. The effect of the payments referred to above may be seen in the Payment Schedule below.

	Payment Schedule		
	Charge	VAT	Total
Original	£1,271,656	£184,903	£1,456,559
Variation	£ 207,305	£ 30,261	£ 237,566
Total	£1,478,961	£215,164	£1,694,125
Refund	£ 145,115	£ 29,023	£ 174,138
Net Paid	£1,333,846	£186,141	£1,519,987

8 of 9

UK Power Networks received a complaint from the Customer's agent suggesting that interest was applicable on the connection charges that had been paid. The Customer's agent referred to s.20(3) of the Act and considered that the payments were security. UK Power Networks responded with its letter sent to the Customer's agent on 14 February 2014.

The Customer's agent was not satisfied with UK Power Networks' response and after further correspondence UK Power Networks offered to meet with the Customer and its agent in order to see if it would be possible to resolve the matter. UK Power Networks met with the Customer and the Customer's agent at UK Power Networks' offices on 19 May 2014.

Following time for consideration of the Customer's request, including for further escalation of the complaint within UK Power Networks, UK Power Networks met again with the Customer and the Customer's agent at the Customer's offices on 27 June 2014. At this meeting UK Power Networks explained that its review of the complaint had revealed that the connection charge should have been collected by way of staged payments over time instead of a full upfront payment, and as a result it was willing to pay compensation to the Customer for the failure to apply its internal policy on stage payments.

Following this second meeting UK Power Networks sent the Customer an email dated 4 July 2014 (timed 18:21) followed by a letter dated 17 July 2014 with a cheque for the amount of £21,852 as recompense.

Company's Annex 1 (Connection offer from UKPN)



Mr Dean Hyndman
Scott Wilson Buildings & Infrastructure
6-8 Greencoat Place
London
SW1P 1PL

25th May 2011

Our Ref: 400481769/QID109733

Dear Mr Hyndman

Site Address: Tesco Development, Grand Depot Road, London, SE18

UK Power Networks (Operations) Limited ("UK Power Networks") is writing to you on behalf of London Power Networks plc the distribution network owner in London.

Thank you for your recent enquiry regarding the above site. I am pleased to be able to provide you with a provisional price for the work.

Summary of what's included: All of the paperwork included in this quote is important, so please take the time to read it. Here is an overview of what's included:

- Summary of the work
- A connection offer with provisional price
- Works to be completed by UK Power Networks
- Works which you (the customer) need to complete
- Land rights
- Drawings schedule
- Additional information
- Acceptance of Notice form
- Terms and conditions booklet
- Connections Standards of Performance leaflet

UK Power Networks, Connections, Bengeworth Rd, London, SE5 9AJ

This letter and attachments listed above constitute the Notice for the purposes of Section 16A(5) of the Electricity Act 1989.

At the date of issue of this Notice to you UK Power Networks has not finished its detailed design or the procurement of the Works. Accordingly, the location of the Electric Lines (as defined in the Terms and Conditions) and the electrical plant, the design, the delivery dates and the Price are provisional only. When UK Power Networks has completed its detailed design and it has received a price for the Works it will notify you in writing of the adjustment (if any) to the Price, delivery dates, Works and Your Works (as defined in the Terms and Conditions) and the Price and delivery dates so adjusted shall, subject to the Terms and Conditions, become the Price payable by you and the stage payments (if any) thereof shall be adjusted pro-rata or otherwise as UK Power Networks reasonably requires and the delivery dates so adjusted shall be those (subject to the Terms and Conditions) pursuant to which UK Power Networks shall carry out the Works and the Works and Site Infrastructure shall be so adjusted.

What you should do next: This connection offer with a provisional price is valid for 90 days from the date of this letter. If you wish to proceed and accept the terms of the Notice you will need to complete the following:

- Sign both copies of the Acceptance of Notice Form (you keep the customer copy for yourself) and send the other form back to us
- Make your payment in full

So that both the Acceptance of Notice Form and the payment are received within 90 days from the date of this Letter Payment can be made by cheque, BACS payment or card. All payment details are on the Acceptance of Notice Form

Provided that we have received the above within 90 days from the date of this letter, our delivery team will contact you in accordance with our Guaranteed Standards of Performance (refer to the enclosed 'Our Connections Standards of Performance' leaflet) to discuss delivery dates.

If you have any questions about your application or need more information, please contact me.

Yours sincerely



Tel: 
Mob: 
Email: @ukpowernetworks.co.uk

1. Summary of the work

Please note this is a connection offer with a provisional price.

I understand that the Customer's development at Tesco, Grand Depot Road, London, and SE18 is divided into a number of phases. To fit the Customer's phasing of its project UK Power Networks' works have been divided into 4 phases:

Phase 1 - Not provided under this Notice

Advanced trenching across Woolwich New Road. This phase was carried out and completed pursuant to a separate offer,

Phase 2 - Provided under this Notice

New Tesco Store and Car Parks	1300 KVA
Non Food Retail	120 KVA
262 Domestic Flats	655 KVA
Landlords Supply	350 KVA
Total Phase 2 load	2425 KVA

Phase 3 - Not provided under this Notice

40,000 Sq Feet of Retail	480 KVA
180 Domestic Flats	450 KVA
Total Phase 3 load	930 KVA

Phase 4 - Not provided under this Notice.

New 120 Beds Hotel	400 KVA
500 Domestic Flats	1250 KVA
Total Phase 4 load	1650 KVA

This Notice relates to Phase 2 (as described above) ONLY and includes the trenching, re-instatement, cabling of the proposed two new feeders from Faregon Rd Main Substation directly to the proposed phase 2 substation together with , plant, legal costs, metering C.T.'S to deliver the 2425 KVA capacity. Please refer to drawing 400481769C.
No costs for any element of the future phases 3 & 4 works are included in this Notice.

The two said new feeders supplying Phase 2 directly from Fargeon Road Main Substation have the capacity to deliver the required power to phases 3 & 4 listed above. But these said new feeders would need to be extended to deliver power to the future phases 3 & 4, plus this

would be at extra cost and not included in this Notice. Please refer to drawing 400481769T which shows the proposed feeder route supplying phase 2 only.

To complete Phase 2 of this project only, it will be necessary to install:

- 2 x 2000amp ACB services.
- 1 x 1300kVA HV service.

For Guaranteed Standards of Performance purposes, this Notice covers phase 2 described above that is subject to the post acceptance standards as detailed in the enclosed 'Our Connections Standards of Performance' leaflet.

It has been assumed the existing two switches in the Main Substation known as Fargeon Road are in a suitable condition to provide the connection. If the switches are not in a suitable condition to provide the connection the cost of replacing the switches approximately £60,000 +VAT each will be passed onto the customer.

This provisional price includes costs for the installation of 7597 metres (circuit length) of 11kV cable and 1 x 11kV/LV double substations and 11,000 metered ring main unit. The cable will be laid in prepared trenches or ducts installed by UK Power Networks and others in footpath/carriageway. Joints are included.

2. The price

The provisional price for this work, including the charges for connection to the existing distribution system is:

£1,271,656.19 plus VAT at an appropriate rate as per the table below

The outstanding balance to pay is £1,456,559.43 inclusive of VAT as appropriate

Connection Charge				
Charge Type	Net	Vat Rate %	VAT charged	Gross
Non-domestic	£924,516.18	20	£184,903.24	£1,109,419.42
Domestic	£347,140.01	0	£0.00	£347,140.01
Total	£1,271,656.19		£184,903.24	£1,456,559.43
Advanced Payments Received				
Charge Type	Net	Vat Rate %	VAT charged	Gross
Non-domestic	£0.00	0	£0.00	£0.00
Domestic	£0.00	0	£0.00	£0.00
Total	£0.00		£0.00	£0.00
Outstanding Balance				
Charge Type	Net		VAT charged	Gross
Non-domestic	£924,516.18		£184,903.24	£1,109,419.42
Domestic	£347,140.01		£0.00	£347,140.01
Total	£1,271,656.19		£184,903.24	£1,456,559.43

Please note that payment is required in full, in advance of the work being programmed.

Cost breakdown

Please see below for a breakdown of costs for this provisional price:

Description of non-contestable charges	Plant & Materials (£)	Installation / Other (£)	Total (£)
LV Works	£143.98	£3,489.15	£3,633.13
HV Works	£3,641.68	£119,602.09	£123,243.77
EHV Works	£0.00	£0.00	£0.00
Miscellaneous	£0.00	£7,431.00	£7,431.00
Credits	£0.00	£0.00	£0.00
Customer Funded Reinforcement Works	£0.00	£0.00	£0.00
Assessment / Design Charges			£7,640.00
Testing & Inspection Charges			£0.00
Operation, Repair & Maintenance			£0.00
Funded by or for Others			£0.00
Total Non-Contestable Charges (Excl VAT)			£141,947.91

Non-contestable charges detail the work that has to be completed by UK Power Networks:

Description of contestable charges	Plant & Materials (£)	Installation/Other (£)	Total (£)
LV Works	£2,851.16	£2,462.63	£5,313.79
HV Works	£515,778.70	£594,162.14	£1,109,940.84
EHV Works	£0.00	£0.00	£0.00
Miscellaneous	£315.66	£14,137.99	£14,453.65
Credits	£0.00	£0.00	£0.00
Total Contestable Charges (Excl VAT)			£1,129,708.28

Contestable charges detail the work which can be completed by either an Independent Connections Provider (ICP) or UK Power Networks.

Any contractor employed by you to carry out the contestable parts of the work must have the prior approval of UK Power Networks. Further details can be made available on request. This Notice assumes that UK Power Networks will carry out the contestable and non-contestable parts of the Works. If you employ a different contractor to carry out the contestable parts of the Works you will need to enter into a different agreement.

Please note that where UK Power Networks does not undertake all the contestable work there will be additional charges to cover the cost of inspecting and testing the electricity assets installed by a third party for adoption by UK Power Networks. For more information about Competition in Connections, please visit our website at www.ukpowernetworks.co.uk navigating to 'Networks', 'Connection Services' then 'Competition in Connections'.

Interactive process

Please be aware that if UK Power Networks receives another application for a connection to the same part of its distribution system and there is insufficient capacity upon its distribution system or there are other constraints upon it that will prevent both connections being made, UK Power Networks will apply its interactive connection application process and the period within which you must return payment and the signed Acceptance of Notice form as set out above will be reduced and you will be contacted as soon as this occurs.

Works to be completed by UK Power Networks for phase 2 only:

Please note that we will not be able to programme any work until:

- payment and a signed Acceptance of Notice Form is received.
- all necessary legal consents have been obtained successfully.
- a site meeting has taken place with our Delivery Team to determine the scale and complexity of the works.

The works referred to in this Notice will be completed 12 months after all the necessary Consents have been obtained. This date is also subject to:

- the date of your acceptance of this Notice.
- any further discussions we may have with you regarding the programming of the works.
- the completion of works by others, as stated in the Notice, that are prerequisite to the completion of our works but are not our responsibility to complete.
- the Terms and Conditions of this Notice.

Safety

If this project is notifiable under the Construction (Design and Management) (CDM 2007), UK Power Networks will not commence on-site works until you have provided information of your appointed CDM Coordinator and Principal Contractor.

Trenches

UK Power Networks will:

- excavate and reinstate all off-site trenches up to your site boundary as indicated on the enclosed drawing UKPN/400481769C.

Services

UK Power Networks will:

- install 2 x 2000amp ACB services.
- install 1 x 1300kVA HV service.
- complete jointing and fitting of customer's services cables within substation included.
- supply and install metering current transformers.
- not install and connect metering equipment, this is excluded.

All services in excess of 70kVA will terminate in removable link current transformer enclosures, either integral within a switch panel or separately mounted.

No means of isolation other than a fuse-link will be accepted for the un-metered sections of the installation.

The supply terminals are defined as the fixed contacts on the circuit side of the service circuit breakers.

UK Power Networks will only connect supplies if the rising and lateral mains system, including distribution fuse boards, installed by the Customer is to UK Power Networks' standard.

Plant

UK Power Networks will provide and install:

- 2 x 800kVA, 11kV transformer complete with all HV and LV connections.

- 2 x 2000Amp ACB.
- 2 x 11kV Ring Main Unit.
- 1 x 11kV Metered RMU.
- 1 x Extensible RMU.
- 2 x One Type M1/M2 LV distribution board.

Non-domestic services

The specification for the connection is indicated in the table below:

Landlords Supply			
Quantity	Meter Position	Voltage	Phase/Frequency
1	Internal	400V	Three Phase, 50HZ
Service Cable	Fuse Size	Earthing	Metering
To be confirmed	To be confirmed	PME(TN-C-S)	CT Metering

Commercial			
Quantity	Meter Position	Voltage	Phase/Frequency
1	Internal	11,000	Three Phase, 50HZ
Service Cable	Fuse Size	Earthing	Metering
To be confirmed	To be confirmed	Customer to provide	HV Metering

Commercial			
Quantity	Meter Position	Voltage	Phase/Frequency
1	Internal	400V	Three Phase, 50HZ
Service Cable	Fuse Size	Earthing	Metering
To be confirmed	To be confirmed	PME(TN-C-S)	CT Metering

Rising mains

UK Power Networks will:

- not install rising and lateral mains or distribution equipment after the Air Circuit Breakers within our Phase 2 substation on site.

Commercial or industrial supplies over 70kVA

UK Power Networks will:

- unless otherwise stated, make available an earthing terminal connected to a Protective Multiple Earthing (PME) system (TN-C-S).
- supply and install (current transformers, test blocks etc.) for the metering of supplies.

Substations

UK Power Networks will:

- terminate all high voltage and low voltage cables in the substation enclosure.
- need to inspect the substation building to ensure that UK Power Networks' specification has been met. Where UK Power Networks has to make any additional visits to ensure that non-conformances (as determined by UK Power Networks) to its specification have been rectified, an additional minimal charge of £275 + VAT will be charged for each and every subsequent inspection. Payment will be required before a return visit can be arranged.

High voltage supplies

UK Power Networks will:

- install 1 high voltage metered ring main unit to be located as indicated on the enclosed plan UKPN/400481769Cc.
- provide a connection to the distribution system at a voltage of 11,000/6,600 Volts, (+/- 6%), 50 Hertz, (+/- 1%), three phase, three wire, alternating current.
- terminate all high voltage cables in the high voltage switch room.

Ducts

UK Power Networks will:

- install ducts only after securing necessary legal rights.
- not install any onsite ducts.
- install all cable ducts off site as indicated on the enclosed plan UKPN/400481769C.

4. Works which you (the customer) need to complete

Safety

You are responsible for identifying whether the site is notifiable under the Construction (Design and Management) regulations. Upon acceptance of UK Power Networks' Notice, you need to advise who the appointed CDM Coordinator and Principal Contractor for the on-site works. Please provide these details on the Acceptance of Notice form if you did not previously include them in your application form. Please note that the Principal Contractor must hold a site safety induction meeting for all contractors prior to any works starting on-site. The objective of the meeting is to contribute directly to the Site Health and Safety Plan.

Please note that under these regulations we will not commence our on-site works until you provide us this information.

Appoint an electricity supplier

You are responsible for appointing an electricity supplier.

An electricity supplier will arrange the installation of any electricity meters. To make sure the process runs smoothly, please read the following points which explain what you need to do:

- 1. Obtain a Meter Point Administration Number (MPAN)**
To arrange the metering you will need a Meter Point Administration Number also known as an MPAN or a supply number. This is a 13 digit reference, used in the United Kingdom to uniquely identify every electricity supply point. We will send you the MPAN(s) once you have paid the connection charge and accepted the quote. Please note that we can only create MPANs if you have provided us with the full postal address (these need to be agreed by Royal Mail if it is a new development).
- 2. Choose an electricity supplier**
Once you have the MPAN, you need to choose an electricity supplier. The opening up of the electricity market has increased competition. This means that you have the freedom to appoint any electricity supplier of your choice. Once you have chosen your electricity supplier please get in touch with them to register as soon as possible. This registration normally takes at least 28 days.
- 3. Arrange the meter installation**
Once you have a confirmed date from UK Power Networks for the work to go ahead you should let your electricity supplier know so they can arrange the metering on the same day. They are likely to need at least ten working days notice so please allow plenty of time to ensure your project runs smoothly.

Trenches

You are responsible for the excavation and reinstatement of all trenches on-site from your site boundary as indicated on the enclosed drawing UKPN/400481769. The dimensions of the trench being as shown on drawings DUCTS LV and DUCTS HV.

Domestic supplies - flats

You are responsible for:

- installing all ladder racking or cable trays
- providing suitable chases, conduits, ducts and/or trunking of adequate capacity to accommodate the rising /lateral service cables and to the laid down specifications.
The system must be designed to facilitate the replacement of cables should this be necessary and must be routed in communal areas only up to the access point to each dwelling. Cables will not be installed beneath plaster, behind coving or in floor screeds.
- providing ducts that are to be of a continuous fire resisting construction or fire stopped at each floor and are to be provided with suitable fire resistant access panels. Where ducts are formed in concrete or similar materials, suitable means of fixing cable cleats should be provided at regular intervals.

The routes of all cables and the dimensions and specifications of ducts, holes, conduits, trunking, and/or cable trays shall be agreed in writing before the building work commences. Where multiple cable runs are to be installed, correct and adequate bending radii and space factors should be allowed in all ducts, holes, conduits, trunking and/or cable trays.

Distribution Equipment

You are responsible for:

- Customer to supply and install at his expense all distribution equipment beyond the supply terminals of the UK Power Networks Air Circuit Breakers sited in the new proposed phase 2 transformer chamber of this development.
- This includes:
 - supplying and installing all connections, to UK Power Networks' standard, from the individual dwellings to UK Power Networks' Air Circuit Breaker via the meter position.
 - the supply and installation of distribution fuse boards, to UK Power Networks' standard, for the dwellings and the landlord's connections to enable each customer to be connected to a separate fuse way. The distribution boards must be capable of accepting Henley series 7 type fuse carriers and type RH 100 amp fuses to BS 88 part 5. Please refer to drawings CAGP 4, CAGP 7, CAGP 8/13 and NCB G10.

If you require UK Power Networks to supply and install a Ryfield PLCT C.T.Chamber, please contact UK Power Networks Field Services on 0845-300-9121 for further details.

Rising mains

You are responsible for the installation of all rising mains.

Landlords supply

You are responsible for ensuring that Landlord supplies are allowed for in the electrical design for your installation.

Commercial or industrial supplies – 400Amps and below

You are responsible for:

- providing space to accommodate the service and metering equipment. Please refer to drawings CT100/400.
- ensuring that if you wish to make use of the earth terminal the electrical installation complies with the requirements of The Electricity Supply Regulations 1988. The cross sectional area (csa) of the main equipotential bonding conductor must be of stranded copper and must be related to the size of the service cable. The maximum prospective earth fault loop impedance for UK Power Networks network is also related to the size of the service cable and will be indicated on the accompanying letter.
- informing your electrical contractor that this development will be connected by Combined Neutral & Earth (CNE) cables to a PME system, unless the accompanying Offer letter indicates otherwise.

Service intake cupboards

Where services and/or distribution boards are installed in cupboards you must provide and install fire brigade FB2 mortise lock, model number CL1116 to the cupboard doors.

Commercial or industrial supplies - CT metering large low voltage supplies more than 400Amps

You are responsible for:

- the supply and installation of a suitable insulated enclosure for the metering current transformers (i.e. a CT Chamber) with removable links. This enclosure must be of a type approved by UK Power Networks, (typically, a Ryfield, all insulated, PLCT Type) and can be integral within the switch panel or separately mounted. The enclosure must be of a sealable type. C/T chambers within a switch panel should be lined with paxolin to provide an insulated environment. Please refer to drawing INT CT 800A.
- the supply, installation, and maintenance of single core cables PVC/AWA/PVC or XLPE/AWA/PVC of an approved type necessary to establish the connection between the supply terminals and the Customers switches. The maximum thermal rating under full load of these cables must not exceed 70 °C, as under normal circumstances, this is the maximum temperature rating of the associated LV switchgear and metering equipment. Company staff will carry out the jointing of these cables to UK Power Networks' supply terminals.
- ensuring that the electrical installation complies with the requirements of The Electricity Supply Regulations 1988. The main equipotential bonding conductors must be related to the size of the service cable, shall be copper stranded and in this case have a minimum cross sectional area (csa) of 50mm².
- informing your electrical contractor that this development will be connected by Combined Neutral & Earth (CNE) cables to a PME system.

If you require UK Power Networks to supply and install a Ryfield PLCT C.T.Chamber, please contact UK Power Networks Field Services on 0845-300-9121 for further details.

Substations: HV/LV Supplies

You must install lighting in the substation to an intensity of illumination of 100 lux. (In accordance with 'Recommendations for Lighting Building Interiors'). In general this will equate to a 1500mm fluorescent tube.

You are responsible for:

- the construction of a brick built substation located as indicated on the enclosed plan UKPN/400481769B.
- the supply construction of a building structure to accommodate a substation as indicated on the enclosed plan UKPN/400481769B.

This accommodation is to be constructed in accordance with UK Power Networks' specification as notified and agreed with the customer's representative. See plan already available. 24 hour unimpeded access will also be required for UK Power Networks staff.

- the accommodation is to be available to UK Power Networks with adequate access at least 16 weeks prior to commencement of supplies.
- testing the installation on completion and providing a test certificate to the UK Power Networks Field Engineer or Building Officer dealing with the site.

Plant will only be delivered to site when suitable hard standing is available from the public highway to the front of our substation. This should be adequate to support a 32 tonne road vehicle (crane lorry). Due to Health and Safety reasons the substation can not be energised until all substation civil works are complete. You will need to arrange for this work to be completed just prior to the high voltage shutdown date. This will be agreed with the 'on-site' Contracts Manager.

High voltage supplies

UK Power Networks will require lighting to be installed in their substation to an intensity of illumination of 100 lux. (In accordance with 'Recommendations for Lighting Building Interiors'). In general this will equate to a 1500mm fluorescent tube

An earth terminal will not be provided with High voltage service terminations. You will need to install your own earthing system. In addition you will need to install a single earthing conductor between your installation and UK Power Networks' earthing system. This must come direct from your main earth bar (fitted with a removable link) and be clearly labelled. The sizing of the conductor will be the responsibility of the customer.

You are responsible for:

- the installation of an emergency trip button, a 30v dc battery supply (complete with trickle charger) and multi-core cabling to UK Power Networks metering circuit breaker/relay panel. UK Power Networks recommends this, in order to comply with Regulation 12 of the Electricity at Work Regulations 1989.
- contacting the UK Power Networks Design Engineer to agree any CT specification and ratios and relay/TLF/fuse settings on your equipment. This is essential in order to ensure adequate discrimination/co-ordination between your equipment and UK Power Networks metering circuit breaker.
- appointing Authorised Persons to take control and responsibility for the supply in order to avoid danger. To enable procedures for the safe operation or work on UK Power Network's and the Customer's high voltage equipment to be formally established, Provide the name and designation of the person who is to take charge of the supply and the means of contact.
- completing the Site Responsibility Schedules (SRS) as requested by the UK Power Networks Project Designer or Project Manager.

Ducts

You are responsible for the provision and installation of ducts as indicated on the enclosed plan UKPN/400481769B.

Where ducts are to be installed in concrete or through a void, for any reason, prior agreement must be obtained from UK Power Networks and the use of steel pipes will be required. They will be 150mm internal diameter welded steel tube with no protruding seam internally; the internal weld must be smooth to the touch throughout. All joints to be screwed and socketed with ends of tubes finished smooth to the touch. Tubes to be Medium duty in red oxide or self colour finish, complying with EN10255.

Easy bends of 45° pitch are to be provided to service terminations.

5. Land Rights

Land rights required from the customer in connection with land within its occupation, ownership or control

Land rights required within the land under your customers ownership, occupation, control for the granting of a lease for the proposed UK Power Networks Substation on the Tesco Development Phase 2 site. Please refer to drawing 400481769L.

Please note that the completion of the legal work between your solicitors and ours associated with acquiring substation sites and easements can take in the order of six months to complete.

In order to minimise this time you need to carry out the following in a timely manner:

- Notify your UK Power Networks project designer of the details of your appointed solicitor.
- Confirm your agreement to the substation site/s and other rights as indicated on the enclosed plans.
- Provide all other information requested.
- The location of the substation and the position of the easements must be agreed at the earliest opportunity to enable the legal process to commence. You must provide UK Power Networks with the name and address of the owner of any affected land and the name and address of any solicitor acting on such owner's behalf.

The work requires the freehold/leasehold of the substation site as indicated on the enclosed plan access and cable rights and easements to be transferred to UK Power Networks for the nominal sum of £1.00, with each party bearing its own legal costs, subject to obtaining the Landlord's consent.

If the method of supply requires an UK Power Networks Supply substation, you will need to ensure that UK Power Networks is at all times provided with, at no cost to UK Power Networks, suitable accommodation on the relevant premises for UK Power Networks electric lines and apparatus to provide, control and meter the supply, subject to obtaining the Landlord's consent.

Access to the UK Power Networks' substation is required at all times and maintenance to the UK Power Networks' equipment may necessitate an interruption of the supply.

UK Power Networks will require easements, in perpetuity, for the underground cables along the routes marked on the accompanying plan subject to obtaining the Landlord's consent.

These cable easements will require a restriction upon the planting of trees and erection of structures, other than such as already exist or are shown proposed on the said plan, on or within 2.0 metres of the land shown coloured yellow. This should be taken into account when carrying out your landscaping proposal, subject to obtaining the Landlord's consent.

You are advised against disposing of your interest in any part of the development which might be subject to the easement before the same has been noted at Land Registry, as UK Power Networks will not bear any additional legal costs which might arise should this requirement be disregarded.

UK Power Networks will not make final connection on-site until all the legal consents and conveyances are complete. Where the installation work is undertaken by an accredited contractor the network will not be adopted until all the legal consents and conveyances are completed.

Land rights required from others for land in their ownership, occupation or control

There are land rights required for land outside the customer's ownership, occupation or control for the granting of a cable easement through Ministry of Defence Land in Ha Ha Road, Woolwich, SE18. Please refer to sections 4 & 5 of drawing 400481769T.

It will be necessary for you to obtain an agreement in principle from the relevant land owner.

Please note that Works cannot be scheduled in our programme of works until all of the Legal work associated with obtaining any required Legal Rights and Consents has been completed.

6. Drawing schedule

Below is a summary of the standard drawings that are referenced within this agreement

Drawing number	Description
UKPN/400481769T	Cable Route
UKPN/400481769B	Substation Building Drawing
UKPN/400481769C	Construction Drawing

7. Additional Information

About our network

The following information relates to each of the services and is supplied to meet the requirements of Regulation 27 of the Electricity Safety, Quality and Continuity Regulations 2002 and Regulation 312-03 and 313-01 of the Institution of Electrical Engineers Wiring Regulations 17th edition 1991 and should therefore be passed to the designer of the electrical installation.

Supply classification

TN-C-S

Supply characteristics at the Point of Supply for LV Metered and Un-Metered Customers

The Frequency: 50Hz $\pm$ 1%

Nominal voltage: 230/400 volts $\pm$ 10%, -6%

Table 1 – Values of PSCC for various supply arrangements and locations.

	Single phase Cut-out 100Amp off network cable	Three phase Cut-out 100Amp off Network cable	Three Phase Cut-out 200A off network cable	Three phase Cut-out 400A off network cable	Three phase Cut-out 400A Direct from Substation	Three phase Cut-out 600A Direct from Substation	Three phase Cut-out 800A Direct from Substation
2. PSCC at Point of Supply	16kA	24kA	28kA	30kA	46kA	46kA	46kA

All the quoted values of earth loop impedance are typical maximum values and the measured value of earth fault loop impedance will change depending on the network configuration due to alterations, faults, maintenance and any embedded generation.

Table 2 – Maximum Value of EFLI for New Single and Three phase Supplies at the Point of Supply

System	Service Capacity	Max EFLI (at the customers supply terminals)
230volt single phase	Up to 6Amp fused	13.5 Ω
230volt single-phase	Up to 100A	0.34 Ω
400volt three-phase	Up to 200A	0.34 Ω
	200-300A	0.34 Ω
	Greater than 300A	0.15 Ω

The above values are based on normal operational network running conditions

EFLI – Earth Fault Loop Impedance (max Ze) – the impedance of the earth fault current loop starting and ending at the point of earth fault.

The Point of Supply - is at the Customers Supply Terminals normally at the load side of the metering current transformers or of the meter for whole current metering as appropriate.

PSCC – Prospective Short Circuit Current - is the current that would flow in a circuit, in the event of a short circuit of negligible impedance, if the overcurrent protective device were replaced by a conductor of negligible impedance; it is measured as the RMS (root mean square) value of the ac component. The actual fault current will therefore be less if the protective device has a current limiting feature or appreciable impedance.

The maximum fault level is not expected to exceed 16kA at 11kV.

Please note that the values quoted above, are under normal conditions considered to be maximum for UK Power Networks' network. However while they are given in good faith, UK Power Networks cannot guarantee the values quoted will continue for all time.

Safety

- **A plan is enclosed**
The plan shows the approximate location of UK Power Networks plant within the development. This plan may not show existing services to individual dwellings or to street furniture or any National Grid plant which could possibly be present.
- **Accuracy of plan**
Whilst we believe that the position of the apparatus on the enclosed plan is correct, UK Power Networks cannot guarantee the accuracy of the enclosed plan and does not accept any responsibility or liability in the event of any inaccuracy.
- **Plan Provision Department**
Before any of your own excavation or building commences, a copy of our cable records should be obtained from our Plan Provision Department. You can contact them on 0800 056 5866.

Important notes

- Work must not be commenced on-site until UK Power Networks have attended and agreed the necessary precautions.
- In the interest of safety to personnel, equipment and UK Power Networks apparatus, it is imperative that the approximate position of underground cables is obtained by the use of electronic cable locators and this position confirmed by careful trial-holing, using hand held tools. UK Power Networks cannot undertake this work for you.
- All cables discovered must be considered LIVE and DANGEROUS at all times and must not be cut, re-sited, suspended or generally interfered with, unless specifically authorised on-site by an UK Power Networks Engineer. All the cables are UK Power Network's property and remain so even when made dead, and any such cable exposed should be reported to the UK Power Networks Project Manager for your Development, who will arrange for collection and authorised disposal.
- Any overhead equipment in the vicinity of your works should be considered live at all times. All work in the locality should be carried out in accordance with Document GS6, issued by the Health and Safety Executive, and the Electricity at Work Regulations 1989 must be observed.
- Please note that UK Power Networks plant, if damaged or interfered with, represents a serious hazard to life. You must ensure that any of your staff, agents or contractors who may work or survey in the vicinity are informed of and made fully aware of the possible dangers.
- The responsibility for site safety of your employees, your contractors and for other site visitors rests with your site manager. All works must be carried out in accordance with the Health & Safety at Works Act 1974 and its relevant Regulations, including the Electricity at Work Regulations 1989.
- It is recommended that you also obtain H.S.E. booklet HS(GS)47 which deals with safe digging practises.

Supply Disturbances

Distortion of the system voltage waveform caused by certain types of equipment may result in annoyance to users of the distribution system or damage to connected apparatus. UK Power Networks may suspend the supply in such an event.

In order to limit these affects the customers proposed load should comply with the following:

- Engineering Recommendation P28 is the national industry standard which applies for voltage fluctuations on the distribution network. This is generally caused by customer's equipment such as motors and welders.
- Engineering Recommendation G5/4 is the national industry standard which applies for waveform distortion and harmonics on the distribution network. This is generally caused by customer's equipment such as variable speed drives and thyristor controlled devices.

Private Generation

This Notice is issued on the understanding that any private generating plant which might be installed is to be reserved as standby to cater for the failure of UK Power Networks connection and not to be used to supply energy when UK Power Networks connection is available. Parallel operation with UK Power Networks connection is not permitted and suitable changeover equipment must be provided. Full details of any proposed private standby generating plant including kVA rating, changeover control and earthing arrangements, must be submitted to UK Power Networks for prior approval.

Should you decide to install generating plant on-site, you are required by Regulation 26 of the Electricity Supply Regulations 1988 to comply with Schedule III of the Electricity Supply Regulations 1988. Your attention is drawn to the requirements of the Electricity Association Engineering Recommendation G59 "Recommendations for the Connection of Private Generating Plant to the Public Electricity Supplier's Distribution System".

Post Acceptance Standards

Our delivery team will contact you to discuss and agree delivery dates within the timescales stated in our Guaranteed Standards of Performance set out on the 'Our Connections Standards of Performance' leaflet enclosed.

Standard leaflets and fact sheets

Copies of our standard leaflets can be read and downloaded from our website at www.ukpowernetworks.co.uk (navigate to Connection Services then forms and factsheets).

Contact Us

If you have reason to complain about your Connection please use our Complaints Procedure which can found at our web site at:

<http://www.ukpowernetworks.co.uk/products-services/networks/customer-services/contact-us.shtml>

Acceptance of Notice Form

Please complete and send this form back to:

Billing Finance, UK Power Networks, Metropolitan House, Darkes Lane, Potters Bar, Herts, EN6 1AG
cash.receipting@ukpowernetworks.co.uk

Site address: **Tesco Development, Grand Depot Road, London, SE18**

Designer: [REDACTED] Tel: [REDACTED]

Total amount payable: **£1,456,559.43**

Our reference: **400481769/QID109733**

1. Please state below where you would like us to send a 'paid' invoice to:

Company name: _____

Contact name: _____

Address: _____

Telephone: _____

2. Please provide the following details of the:

Person we should contact to schedule the work

Land owner or occupier (For GSOP payments see the 'Our Connections Standards of performance' leaflet)

Company name: _____ Company name: _____

Contact name: _____ Contact name: _____

Address: _____ Address: _____

Telephone: _____ Telephone: _____

Email: _____ Email: _____

3. Method of payment (please tick your chosen method)

- ☐ Cheque Please make cheques payable to 'UK Power Networks'
- ☐ Card Please call 01279 824 951. You will need to have your reference number to hand.
- ☐ BACS/ CHAPs HSBC Bank Plc, Sort Code [REDACTED] Account Number [REDACTED]. Please send this form back to us at the time of the BACS transfer to ensure that payment gets processed correctly.

4. Construction (Design and Management) (CDM 2007)

Please provide these details if you did not previously include them in your application form

CDM Coordinator	_____	Principal Contractor	_____
Contact name:	_____	Contact name:	_____
Telephone:	_____	Telephone:	_____
Email	_____	Email	_____

5. Acceptance

I accept the Notice dated 17th May 2011 for the carrying out of the Works at the above site for the Price of £1,456,559.43 inclusive of VAT. I understand that the Works and the Price are subject to the Notice by which I agree I am bound. I understand that the Price must be paid in full before a supply is provided. I also understand that where VAT has been charged a Tax Invoice for the Price will be issued by UK Power Networks on receipt of payment.

Signed: _____ Date: _____

Print name: _____

As a fully authorised agent acting on behalf of: _____

For Office Use Only:

Charge Type	Net	VAT charged	Gross
Non-domestic	£924,516.18	£184,903.24	£1,109,419.42
Domestic	£347,140.01	£0.00	£347,140.01
Total	£1,271,656.19	£184,903.24	£1,456,559.43

UK Power Networks (Operations) Limited Registered in England and Wales. Registered No. 3870728.
Registered Office: Newington House, 237 Southwark Bridge Road, London SE1 6NP

Acceptance of Notice Form (Customer Copy)

Please complete and retain for your records:

Billing Finance, UK Power Networks, Metropolitan House, Darkes Lane, Potters Bar, Herts, EN6 1AG
cash.receipting@ukpowernetworks.co.uk

Site address: Tesco Development, Grand Depot Road, London, SE18

Designer: [REDACTED], Tel: [REDACTED]

Total amount payable: £1,456,559.43

Our reference: 400481769/QID109733

1. Please state below where you would like us to send a 'paid' invoice to:

Company name: _____

Contact name: _____

Address: _____

Telephone: _____

2. Please provide the following details of the: Person we should contact to schedule the work

Land owner or occupier (For GSOP payments see the
'Our Connections Standards of performance' leaflet)

Company name: _____ Company name: _____

Contact name: _____ Contact name: _____

Address: _____ Address: _____

Telephone: _____ Telephone: _____

Email: _____ Email: _____

3. Method of payment (please tick your chosen method)

- ☐ Cheque Please make cheques payable to 'UK Power Networks'
- ☐ Card Please call 01279 824 951. You will need to have your reference number to hand.
- ☐ BACS/ CHAPS HSBC Bank Plc, Sort Code [REDACTED] Account Number [REDACTED]. Please send this form back to us at the time of the BACS transfer to ensure that payment gets processed correctly.

4. Construction (Design and Management) (CDM 2007)

Please provide these details if you did not previously include them in your application form

CDM Coordinator _____ Principal Contractor _____
Contact name: _____ Contact name: _____
Telephone: _____ Telephone: _____
Email _____ Email _____

5. Acceptance

I accept the Notice dated 17th May 2011 for the carrying out of the Works at the above site for the Price of £1,456,559.43 inclusive of VAT. I understand that the Works and the Price are subject to the Notice by which I agree I am bound. I understand that the Price must be paid in full before a supply is provided. I also understand that where VAT has been charged a Tax Invoice for the Price will be issued by UK Power Networks on receipt of payment.

Signed: _____ Date: _____

Print name: _____

As a fully authorised agent acting on behalf of: _____

For Office Use Only:

Charge Type	Net	VAT charged	Gross
Non-domestic	£924,516.18	£184,903.24	£1,109,419.42
Domestic	£347,140.01	£0.00	£347,140.01
Total	£1,271,656.19	£184,903.24	£1,456,559.43

UK Power Networks (Operations) Limited Registered in England and Wales. Registered No. 3870728.
Registered Office: Newington House, 237 Southwark Bridge Road, London SE1 6NP

Company's Annex 2 (Breakdown of charges provided by UKPN)



A breakdown of our charges

Project	Woolwich Town Centre – Phase 2 Grand Depot Road, London SE18
Job No.	400481769 / 60672004

Charges for 11kV cable works

Item	Amount (£)
Supply and install 2 x 3,414 metres of x 2 x 300mm² Triplex 11kV underground cable circuits in 125mm ducts from Farjeon Rd main substation to the site at Grand Depot Road. The cable route consisted of 3,414m of 2 x 11kV Triplex cables in ducts from Kellaway Rd substation to Farjeon Rd and then onto Grand Depot Rd and formed a new 11kV ring consisting of 2 x new circuits from Farjeon Rd Main substation and Kellaway Road substation to Grand Depot Rd. The 353m section from Kellaway Road to Farjeon Rd was laid with 11kV 300mm² Cu Triplex cable, the remainder of the route was laid with 11kV 300mm² Aluminium The total 11kV cable route from existing substations to the new site boundary was 3,414m. This consisted of: 68m excavated, laid and reinstated in unmade ground, 2,140m excavated, laid and reinstated in footpath, 1,044m excavated, laid and reinstated in road, 162m excavated, laid and reinstated as road crossings (consisting of 17 road crossings). A full drum of 11kV Triplex cable is 250m so there were 15 sets of in-line joints along the 3,414m route. 10 of these joints were undertaken with joint holes excavated and reinstated in footpath and 5 joint holes excavated and reinstated in road. A breakdown of the 8 different sections of the 11kV cable route identified on the proposal plan is shown in the table in Appendix 1.	
Total	

Charges for 11kV/LV substation works

Item	Amount (£)
Supply and installation of 2 x 800kVA unit transformer substations with 11kV ring main units, 1600A LV cabinets and connections to LV boards. Includes provision of crane for delivery of all plant and associated equipment. Includes 11kV cable terminations and 11kV jointing to connect the new 11kV switchgear to the 11kV network. Includes termination of customer LV cables into distribution boards. Includes Engineer's time to plan the work on the existing 11kV network and undertake 11kV circuit outages to connect the 2 x new HV/LV substations at the Grand Depot site.	
Replacement of existing 11kV switchgear at Kellaway Road substation with new 11kV 4-way extensible switchgear in order to create a dedicated circuit to each side of the Grand Depot site. Includes 11kV cable terminations and 11kV jointing to connect the new 11kV switchgear to the 11kV network. Includes Engineer's time to plan the work on the existing 11kV network and undertake 11kV circuit outages to replace the 11kV switchgear at Kellaway Road substation.	
Total	

Charges for 11kV metered connection works

Item	Amount (£)
Supply and installation of HV metered connection to Tesco Store with 11kV ring main unit and 11kV metering unit. Includes provision of crane for delivery, all 11kV cable terminations and the 11kV Jointing to connect the new substation to the 11kV cable network. Includes Engineer's time to plan the work on the existing 11kV network and undertake 11kV circuit outages to connect the new HV supply at the Grand Depot site.	
Total	

Charges for LV connection works

Item	Amount (£)
Provision and installation of LV current transformer metering equipment and accessories and the commissioning of current transformers.	
Total	

Other charges

Item	Amount (£)
Assessment and design charge	
Legal charges associated with freehold/leasehold rights for new substations.	
Total	

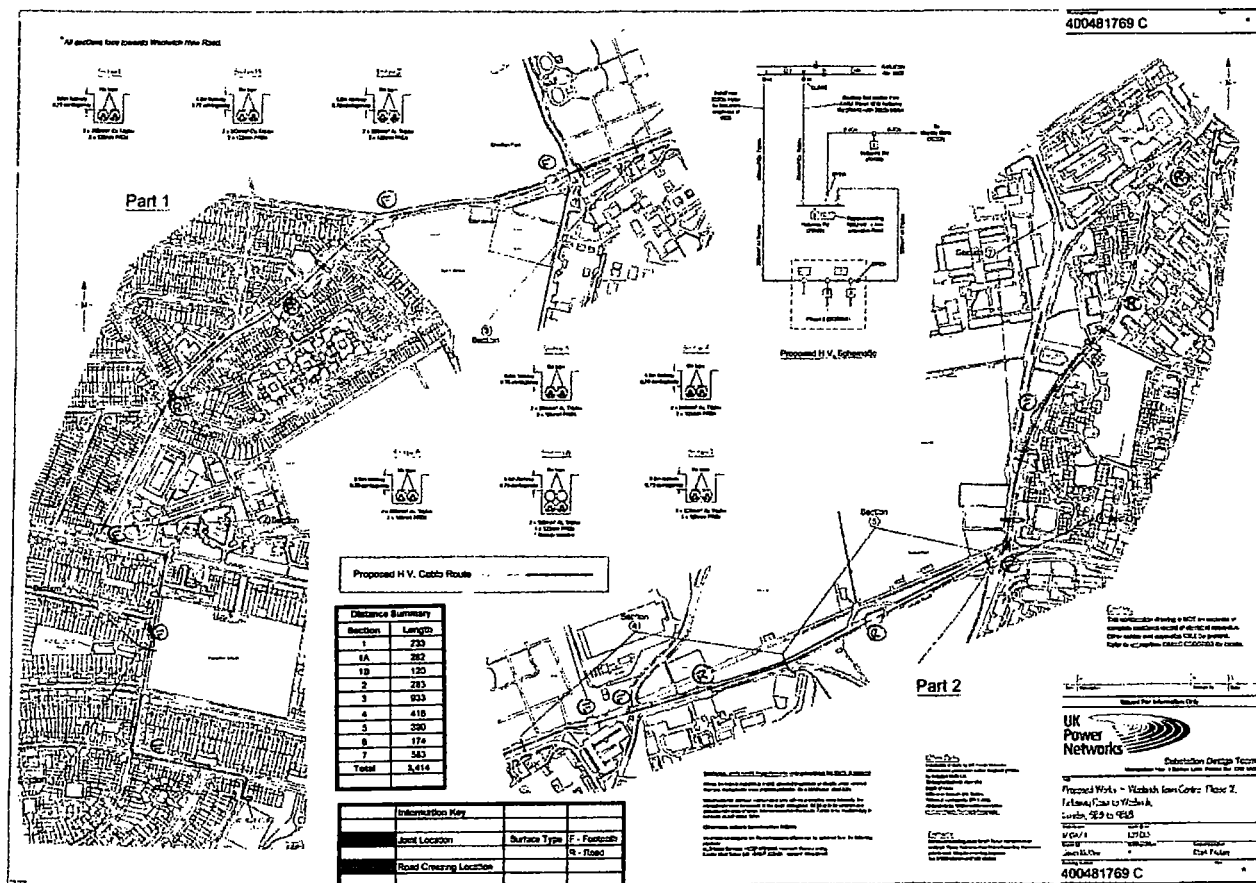
Item	Amount (£)
Total charges from above	£1,333,846
V.A.T.	£186,141
Total Connection charge	£1,519,987

Appendix 1:

Breakdown of the 11kV cable route in sections as shown on the proposal plan

Cable Route	Cable Laying						In-line Joints	
	Unmade (m)	Footpath (m)	Road (m)	Road Crossing (m)	No: of Road Crossings	Total	Footpath	Road
Section 1		180	53		1	233	1	
Section 1A		236	33	13	2	282	2	
Section 1B			120			120		
Section 2		272	2	8	1	283		1
Section 3	68	646	174	45	6	933	3	
Section 4		236	172	10	1	418	2	1
Section 5		57	333			390		1
Section 6		117	33	23	1	174	1	
Section 7		396	124	63	5	583	1	2
Totals	68	2,140	1,044	162	17	3,414	10	5

Company's Annex 3 (Annotated copy of proposal plan to support Breakdown of charges provided by UKPN)



Company's Annex 4 (Quotation acceptance)

LPN

430481769/QID109733/MS

Acceptance of Notice Form

Please complete and send this form back to:

1BR 91569472

Billing Finance, UK Power Networks, Metropolitan House, Darkes Lane, Potters Bar, Herts, EN5 1AG
cash.receipting@ukpowernet.co.uk

Site address: Tesco Development, Grand Depot Road, London, SE18

14-17759

Designer: [redacted] Tel: [redacted]

Total amount payable: £1,466,659.43

Our reference: 400481769/QID109733

1. Please state below where you would like us to send a 'paid' invoice to:

Company name: WILLMOTT DIXON CONSTRUCTION LTD

Contact name: NICHOLAS CLARK

Address: WILLMOTT DIXON SITE OFFICES, GRAND DEPOT ROAD, WOOLWICH, LONDON, SE18 6HQ

Telephone: 07896 253527

2. Please provide the following details of the:
Person we should contact to schedule the work

Land owner or occupier (For GSOP payments see the 'Our Connections Standards of performance' leaflet)

Company name: WILLMOTT DIXON

Company name:

Contact name: SABAH ABED

Contact name:

Address: GRAND DEPOT ROAD, WOOLWICH, LONDON, SE18 6HQ

Address:

Telephone: 02073 127095

Telephone:

Email: sabah.abed@willmott-dixon.co.uk

Email:

3. Method of payment (please tick your chosen method)

☒ Cheque Please make cheques payable to 'UK Power Networks'

☐ Card Please call 01279 824 951. You will need to have your reference number to hand.

☐ BACS/ CHAPS HSBC Bank Plc, Sort Code [redacted] Account Number [redacted]. Please send this form back to us at the time of the BACS transfer to ensure that payment gets processed correctly.

4. Construction (Design and Management) (CDM 2007)

Please provide these details if you did not previously include them in your application form

CDM Coordinator Rider Lavett Bucknall Principal Contractor Willmott Dixon Construction Ltd
Contact name: Peter Bean Contact name: Sabah Abed.
Telephone: 0121 503 1500 Telephone: 07973 127095
Email: Peter.Bean@uk.rlb.co.uk Email: sabah.abed@willmott-dixon.co.uk

5. Acceptance

I accept the Notice dated 17th May 2011 for the carrying out of the Works at the above site for the Price of £1,456,559.43 inclusive of VAT. I understand that the Works and the Price are subject to the Notice by which I agree I am bound. I understand that the Price must be paid in full before a supply is provided. I also understand that where VAT has been charged a Tax Invoice for the Price will be issued by UK Power Networks on receipt of payment.

Signed: N. S. Clark Date: 7/7/11
Print name: N. S. Clark
As a fully authorised agent acting on behalf of: Willmott Dixon Construction Ltd

For Office Use Only:

Charge Type	Net	VAT charged	Gross
Non-domestic	£924,516.18	£184,903.24	£1,109,419.42
Domestic	£347,140.01	£0.00	£347,140.01
Total	£1,271,656.19	£184,903.24	£1,456,559.43

UK Power Networks (Operations) Limited Registered in England and Wales. Registered No. 3870728.
Registered Office: Newington House, 237 Southwark Bridge Road, London SE1 6NP

Company's Annex 5 (Response to Customer request for interest payments 14 February 2014)



Registered Office:
Newington House
217 Southwark Bridge Road
London SE1 6NP

Registered in England and Wales No: 7296593

Company No:
London Power Networks plc
Eastern Power Networks plc
South Eastern Power Networks plc
UK Power Networks Operations Ltd
UK Power Networks Transport Ltd

Mr John Duncan
NRSWA Ltd.
The Rosery
Odiham Road
Riseley
Berks
RG7 1SD

Dear Mr. Duncan

Subject WITHOUT PREJUDICE – complaint re Refs 40081769 and 41197185 – Request for payment of interest on advanced payments

Thank you for your email dated 24 January (05:09PM) which, in accordance with UK Power Networks' complaints procedure, has been referred to me as Head of Projects to consider further.

From my reading of the correspondence on this matter it seems that, in short, your complaint is that UK Power Networks should pay your client interest on the sums paid by your client in connection with the above Notices as it is your view that such payments constitute security for payment and thus attract interest under section 20(3) of the Electricity Act 1989 (as amended). Please do let me know if you do not consider that this is a fair "distillation" of your complaint.

Your email below makes reference to an Ofgem determination (RBA/TR/A/DET/154: Housing Developer v Electricity Distribution Company and a case Norweb plc v Dixon [1995]). Whilst these references are certainly interesting they are not germane to whether or not the making of advanced payments constitutes a request for security for payment. These cases focus more on the relationship between the customer and the distributor and whether or not it is a relationship borne of statute or contract – a matter which, in this context, is not relevant. The matter in hand is essentially: has UK Power Networks requested security for payment from your client under section 20 of the Electricity Act.

UK Power Networks does not accept either that it has requested security from your client nor that it should pay your client interest on the sums that were returned to your client. The payments that were made to UK Power Networks by your client were not made as security for payment but were payments in advance of work being undertaken and, therefore, do not attract interest.

Section 16A(5) of the Electricity Act 1989 (as amended) anticipates that the Notice issued by the DNO to the customer will state:

- (a) The extent (if any) to which the customer's proposals to the DNO are acceptable and counter proposals made by him;
- (b) Any payment which the customer will be required to make under section 19(1);
- (c) Any security which that person will be required to give under section 20; and
- (d) Any other terms which that person will be required to accept under section 21.

Section 19 of the Electricity Act 1989 gives the DNO the right to require any expenses reasonably incurred in providing the connection to be paid by the person requiring the connection to such extent as is reasonable in all the circumstances. Section 20(1) then entitles the DNO to require reasonable security for the payment due to him under section 19 of the Electricity Act (as amended). From the above it is clear that legislation envisages that the payment for the provision of the connection and the payment of security are different things. By virtue of section 21(c) the DNO can require the customer to accept terms which are reasonable in all the circumstances. UK Power Networks is firmly of the view that the request for payment in advance constitutes a term which is reasonable in the circumstances (as is Clause 6.1.7 in the current Terms and Conditions (Clause 6.1.3 of the previous version of the terms and conditions) which states "The DNO shall not pay interest or give credit for interest received in any element of the Price paid by You in advance of the Works"). Further, one can infer from the above that if security was to be sought from a customer it would have to be made clear to the customer that such sum was being sought as security under section 20 of the Electricity Act 1989 and not as payment.

The Electricity Act 1989 (as amended) does not define "security". The dictionary definition of "security" is "... (6) the specific asset that a creditor can claim title to in the event of a default on obligation (7) something given or pledged to secure the fulfilment of a promise or obligation..." (Collins English Dictionary). To put it another way, security is something that can be called upon/is forfeited in the event of a breach of an obligation (usually a payment obligation) by the party providing the security. If there is no default the security is returned at the end of the relevant period. The making of an advanced payment, therefore, is not security as the making of the advance payment is the discharge of the obligation to make the payment itself.

It is not impossible to imagine a situation where a request for security of payment is made notwithstanding that advance payments have been made to the DNO. For example, if a customer has paid a DNO in advance for the works to be undertaken by a DNO to provide the connection but there is a concern that that the customer may not be able to pay for future anticipated variations to those works, the DNO could request that the customer pays to it a security deposit so that if the customer fails to pay for variations when requested the DNO could withdraw the appropriate sum from the security deposit. If such a security deposit was taken it would be covered by section 20 of the Electricity Act and the DNO would be required to pay interest on such a deposit in accordance with section 20(3) Electricity Act 1989 (as amended).

I trust that the above has clarified matters for you and that you agree that in this instance UK Power Networks has not received security from your client and is not obliged to pay interest to your client.

It should be noted that the final account and rebates due on the above projects were settled with Richard Nash of Wilmott Dixon Construction Limited on 10 October 2013 and it was agreed that interest was not payable in connection with those connections. A total of £160,345.74 + VAT was subsequently paid to Wilmott Dixon. Therefore, I should be grateful if Wilmott Dixon could confirm that this complaint has been explored to its satisfaction, that the request for interest is withdrawn and the complaint has now been resolved.

Yours Sincerely,



Head of Projects, Connections

@ukpowernetworks.co.uk

Cc Mr Richard Nash, Wilmott Dixon

UK Power Networks Barton Road Bury St Edmunds Suffolk IP32 7BG



Company's Annex 6 (Email to Customer 4 July 2014)

From: [REDACTED]
Sent: 04 July 2014 18:21
To: John Duncan; richardwheeler9@aol.com; Richard.nash@wilmott.dixon.co.uk
Cc: [REDACTED]
Subject: Tesco Development, Grand Depot Road, London SE18

Dear John,

Thank you for providing UK Power Networks with the opportunity to meet on Friday 27 June with you, Richard Nash, Richard Wheeler and Claire Duncan.

As we explained to you last Friday we are certain that the advance payment made by Wilmott Dixon does not constitute a "security" within the meaning of section 20 of the Electricity Act because:

- The term 'security' has a specific meaning and is a term usually applied to a deposit, lien, or mortgage voluntarily given by a debtor to a creditor to guarantee payment;
- Security (as defined and explained above) is plainly different from advance payment. The usual position is that the Customer's rights in relation to advance payments are limited to damages for breach of the obligation to carry out and complete the works;
- The context in which the words 'payment' and 'security' are used in EA are very different and consistent only with payments being for works to be undertaken and not being held as any form of security;
- The wording makes clear an intention for interest to be payable only in respect of security. Had it been intended for interest to be payable on all advanced connection charge payments the drafting would have made this clear; and
- Our policy is consistent with paragraph 6.3 of our Connection Charging Methodology Statement which is approved by Ofgem and published on our website.

We have also given serious consideration to all the comments that were made in response to the options that we put forward as a sincere attempt to resolve the dispute, which included an offer to obtain (at our expense) and share external QC advice with you

However, having taken into account all of your feedback and a number of other related factors, the conclusion that we have reached is that, regrettably, we are unable to progress any further.

Please note, however, that we are making arrangements to issue a cheque to Wilmott Dixon for £21,852 to compensate them for the interest that was lost as a result of UKPN failing to correctly apply its policy of staged payment to this particular project.

Regards,

[REDACTED]
Head of Commercial Services
UK Power Networks
Tel: [REDACTED]
Internal
email: [REDACTED]@ukpowernetworks.co.uk

Company's Annex 7 (Covering letter dated 17 July 2014)

**UK
Power
Networks**

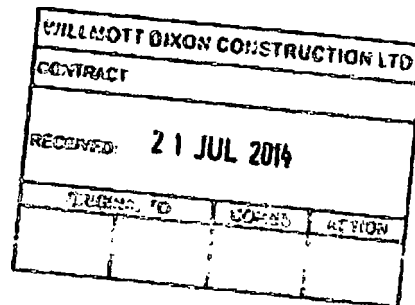
Delivering your electricity

Registered Office:
Newington House
237 Southwark Bridge Road
London SE1 6NP

Registered in England and Wales No: 3570728

Company:
UK Power Networks
(Operations) Limited

Willmott Dixon Construction Limited
Riverbridge House
Anchor Boulevard
Crossways Business Park
Dartford
Kent DA2 6SL



For attention of Richard Nash

17 July 2014

Dear Richard,

Re: 400481769 Woolwich Town Centre – Phase 2 Grand Depot Road, London SE18

Thank you for meeting with us to explore options to resolve the dispute. At the meetings we have entered into discussions and exchanged views but I am sorry that we have been unable to find common ground and still have some fundamental differences of opinion. As you are aware we have acknowledged that we should have applied staged payments to this project and have apologised for this omission. Further to an email from our [REDACTED] on 4 July 2014 (18.21hrs) and copied to you, please find enclosed a cheque made payable to Willmott Dixon Holdings Ltd for the sum of £21,852 which is paid as compensation for the loss of interest that Willmott Dixon Holdings Ltd would have earned had you been able to pay in stages.

For the avoidance of doubt, we do not agree that the taking of payment in advance constitutes the taking of security and, therefore, interest is not payable on payments made in advance.

If you have any questions in relation to this payment please do contact me as below.

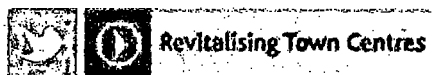
Yours sincerely,

[REDACTED]

Regulation Manager, Connections
UK Power Networks

Return Address:
UK Power Networks
Metropolitan House
Dartford Lane
Potters Bar
EN6 1AG
[REDACTED] enquiries@ukpowernetworks.co.uk

Appendix 3 - Customer comments on Company SoF and Cross Examination



Dear [REDACTED]

Further to your email below which also contains the OFGEM questionnaire attachment as submitted by UKPN. We also thank OFGEM for availing us of the opportunity to comment.

The Willmott Dixon Construction Limited (WDCL) response focuses on the UK Power Networks (UKPN) answer to Question No.4 wherein UKPN is invited by OFGEM to, "explain your justification on why interest is not due on the payment made"?

In its averment, UKPN provides, *"....UK Power Networks does not hold customers' money as security. It is entitled to charge for and be paid for connection works under s.19 of the Act. Typically charges for connection works are modest and will be paid for shortly before the works are undertaken. However, on occasions where connection charges are more than £250,000, UK Power Networks will request payment to be made in stages which are consistent with the commencement of different stages of the works. There are some occasions, for example when elements of the works are uncertain, where the price is described as 'provisional'. In this situation the Price will usually be 'firmed up' prior to the Works commencing or during the carrying out of the Works as the case may be."... [sic]*

If UKPN, as stated - "does not hold customers money as security", this begs the question as to where indeed does UKPN hold the money, prior to its expenditure within its in-house direct labour, materials and costs and its external contractors, and whether it receives interest or not, within that depository, whilst languishing for months prior to distribution payments.

As to the matter of the costs being "firmed up" we take this to mean the actual cost to be ratified. There is also an expressed uncertainty as to how the said preliminary costs can be "firmed up", "prior to the works commencing".

The aforesaid is interpreted, that the deposited monies initially placed by WDCL namely the initial £1,456,559 incl. VAT with UKPN were not fixed in tablets of stone – they were estimated costs for the undertaking of future connections works. In other words, no works had been undertaken by UKPN at the time of their requesting the deposit, nor at the time of UKPN receiving the payment. The costs were estimated (preliminary) costs which would

require reconciliation as to the actual costs solely on completion of the entire connections works and not before. In fact, the deposit placed by WDCL transpired as being excessive, thereby at reconciliation facilitated a UKPN refund of £174,138.

Continuing with Q 4, Page 4, UKPN make reference to caselaw in, Knox J, in re: A Debtor (No 310 of 1998). We are only able to locate, 'A Debtor [1997] Chapter 310'.

Much of the UKPN references to foreign case law have different meanings from those adopted by the applicable UK doctrines, the Electricity Act 1989/Utilities Act 2000 et.al. Seemingly in quoting the UK Insolvency Act 1986, UKPN draw comparisons and referral to Insolvency and Debtors. In such a case, WDCL were neither an insolvent nor a debtor to UKPN. Further, in the Canadian Appellate Court (as quoted) Treasury v Minister of National Revenue (1996) ISCR 963, concerned a judgment lien, WDCL is not comparable with a debtor or creditor. This similarly applies to the additional case law quotations furnished by UKPN.

With respect to UKPN acknowledging the viewpoint of the British Property Federation (BPF) strongly suggesting to be an expert in the field of statutory undertakers works in its publication, July 2011, "Guide for Developers to Utilities Connections" which enunciates:

"Developers may have to pay months in advance for a service". "The GDN/DNO will charge the developer an up front connection charge as a capital cost of installing the connection assets. The basis of that charge should be set out in its Licence Condition Charging Statement which all GDNs and DNOs should make available on their websites". [sic]

We are perplexed as to the value of this knowledge as is considered by UKPN, worthy to put this statement into this particular Determination in defence of its charging regime.

There appears no rationality in UKPN pleading its case by informing OFGEM that, "Developers may have to pay months in advance for a service". It serves no useful purpose except perhaps to enlighten the authority as to the current state of affairs of undue delay in the making of electricity connections. We surmise that the BPF article provides a perspicacious bolster to UKPN as to why UKPN ask for such a large sum – months in advance of any UKPN works commencement.

The introduction of the BPF article and inclusion of snippets gleaned from foreign bankruptcy, insolvency law, is unconvincing in its endeavour to invoke uncertainty over the OFGEM Determinations, Nos. S23/C/092(B) and S23/C/51(b) and relevant current UK legislation.

In conclusion, it is for the authority (OFGEM) to investigate the nature and effect of the request by licensed electricity distributors for connections payment deposits, whereby substantial sums of money are being asked for and retained by the undertaker months in advance of connection works being undertaken without interest payments and to determine whether it is equitable that such deposits should carry interest payments in conformity with that of the Electricity Act 1989 as amended, s.20(3).

Yours sincerely

John Duncan
Tel: 01189 884 884
for Willmott Dixon Construction Limited

Appendix 4 - Company comments on Customer Cross Examination

APPENDIX

UK Power Networks' response to Willmott Dixon's comments of UK Power Networks'

Statement of Facts and Reasons

For ease of reference we summarise the Customer's request for a determination as follows: It is the Customer's view that s.20 of the Electricity Act 1989 (as amended) requires UK Power Networks to pay interest on an agreed advance payment made to UK Power Networks by the Customer pursuant to the connection offer. UK Power Networks does not agree with the Customer's interpretation of s.20 of the Act.

The introduction of the word 'deposit' in the Customer's reply to our response dealing with advance payment may unintentionally lead to confusion. Principally this is because the word 'deposit' may have a different meaning depending on the context in which it is used. For example, 'deposit' can mean putting a sum of money into a bank, an instalment, a retainer, pledge or stake. To avoid confusion it is suggested that it is helpful to maintain the term 'security' which is used in the Act, or to use 'security deposit' and to use the word 'payment' as the counterpoint to 'security' and 'deposit'.

The Customer discusses the words "firmed up" in relation to UKPN's quotation. UKPN's position is that the words "Firmed up" mean 'confirmed' or 'finalised'. The context in which the words are used by UKPN is entirely consistent with the similar phrase 'provisional sum' that is commonly used in construction and engineering contracts and whose meaning has been considered, see for example the Court of Appeal in *Midland Expressway Ltd v. Carillion Construction Ltd* [2006] EWCA Civ 936 where it was held that:

"The term "provisional sum" is generally well understood in the construction industry. It is used in pricing construction contracts to refer either to work which is truly provisional, in the sense that it may or may not be carried out at all, or to work whose content is undefined, so that the parties decide not to try to price it accurately when they enter into their contract."

The context in which the phrase 'firmed up' was used is important. UKPN sent a Provisional Price Notice to the Customer with a provisional price for the work and explaining the mechanism whereby the price could change on it being firmed up. Therefore, the Customer knew that for the works in question there was insufficient information to price them accurately and that the price would be finalised at a later stage.

It is appropriate to emphasise the elements of work involved in carrying out and completing the work including (i) initial design (ii) procurement and (iii) investigating and dealing with land rights and related issues have to be undertaken prior to works commencing on site. It is incorrect to assume that works commence only when they physically started. This was not a situation where UKPN took money from a customer and then unreasonably delayed.

The Customer has indicated that it is perplexed by our reference to the BPF published guidance. To clarify the position, UKPN's point is that the understanding of the industry is most significant. It shows that the taking of an 'up-front' connection charge is standard market practice and that this is consistent with Licence Condition 13/14 and the Charging Methodology. This is not disputed by the Customer.

As to Ofgem Determination, No. S23/C/51(B), we have indicated previously that the facts show it is of no relevance to the present determination. However to assist we quote the relevant paragraphs of the Determination below:

7. As an alternative the Company offered the Customer the option of settling the current monthly account of £1,912.24 immediately and paying future accounts by a monthly direct

debit (£508 per month) providing that the Customer paid a lower security deposit of £866; equivalent to twice the average monthly usage between actual meter readings taken on 13 January 1993 and 13 January 1994.

8. The Customer objected to the Company's request for a security deposit and initially wrote to my Regional Office on 25 January 1994. The Customer subsequently elected to pay the lower security deposit (£866) and pay accounts by direct debit at £508 per month, but then withdrew from this arrangement..."

The Determination principally addressed the question of the appropriate form of security to be provided. However, in order to do so it had to draw a distinction between a request for payment and a request for security. The distinction in Determination No.S23/C/51(B) is entirely consistent with UKPN's approach. For example, in Determination No. S23/C/51(B) see the following paragraphs:

"27. The term "security" is not defined in the Act, nor is it defined in earlier Electricity legislation. I consider that the Courts would, therefore, interpret "security" having regard primarily to its normal meaning, although also taking into account any particular meaning that is given to it in the context of the electricity supply industry. ... If the purpose of security is to provide certainty that money due will be made available to the Supplier then a token prepayment meter is the means which offers greatest certainty. A cash deposit would provide complete certainty to the amount of the deposit."

"d) Alternative Forms of Security

39. Because the Company already holds a security deposit, I consider that in this case the security should initially take the form of a deposit of money. However, a deposit of money is not the only form of security available to the parties. Two other forms of security fall to be considered. First, the Company has indicated that I was willing to accept a direct debit arrangement, supported by the payment of a lower security deposit. Secondly, the Customer has offered her father as a guarantor.

40. The function of a guarantor is to pay any bill not paid by a customer he is guaranteeing. The guarantor must, therefore, be someone who is able to pay a customer's bills should he be called upon to do so and it is for the customer who proffers the guarantor to show, on reasonable grounds, that the guarantor is likely to be able to do this. Some private individuals will make excellent guarantors, whereas some limited companies will be most unsuitable. I consider that the Company's ground for rejecting the guarantor offered by the Customer is bad.

41. It would not be reasonable for a security deposit to be held and never returned to the Customer. In the normal case, I consider that a good payment record for a continuous period of 12 months constitute sufficient evidence that a security deposit is no longer required. I do not believe that it would be appropriate for me to define in any detail what a good payment record might mean, but clearly it would include prompt payment of the money due. Were the Customer and the Company unable to agree on whether a security deposit remained appropriate, the matter could be returned to me for determination.

42. However, in this case the full security deposit of £1,896 will cease to be appropriate if the Customer is willing to enter into either of two other arrangements. First, the Customer may offer a direct debit arrangement supported by a lower security deposit. If the Customer chose that alternative, the deposit should be reduced to that figure as soon as the direct debit arrangements had been properly put in place. Secondly, the Customer may offer a direct debit arrangement supported by a guarantee from a person (whether a private individual or otherwise) whose financial standing is established to the reasonable satisfaction of the Company. If the Customer were to choose that option, the full deposit would be repayable as soon as the direct debit arrangement was properly in place and a suitable guarantee entered

into by such a person. If the Customer wishes to pursue either of these options and a dispute arises on them, the matter may be referred to me for determination."

For the reasons explained above Determination S23/C/092 (B) is also not relevant as it deals with whether the amount of security that was requested was reasonable. However it also defined "security" in the manner as quoted above.

The Customer states that it cannot locate the case of *Re: A Debtor* (No 310 of 1998), we therefore attach a copy of the case. The Customer also refers to *Alberta Treasury v Minister of National Revenue* (1996) 1 SCR 963 and suggests that it is of limited significance. We would emphasise that the point being made by the Supreme Court of Canada is as to the legal definition of security, which is directly relevant to the meaning of security in English law, the relevant words being "*So long as the creditor's interest in the debtor's property secures payment or performance of an obligation, there is a "security interest" ...*" (emphasis added). The definition is consistent with market practice and the Ofgem Determinations referred to.

Annex 1 - In re a Debtor (No 310 of 1988)

The Weekly Law Reports 19 May 1989

452

[1989]

[CHANCERY DIVISION]

A

*In re A DEBTOR (No. 310 of 1988)

1988 Dec. 9

Knox J.

Bankruptcy—Debt—Statutory demand—Debtor liable under guarantee of company's debt—Benefit of company's claims against Export Credit Guarantee Department assigned to creditor—Assignment not referred to in statutory demand—Whether "security"—Insolvency Act 1986 (c. 45), ss. 383(2), 385¹—Insolvency Rules 1986 (S.I. 1986 No. 1925), r. 6.1(5), 6.5(4)²

B

The debtor, who had become liable under a guarantee of the obligations of his company to the bank, applied to have set aside a statutory demand served on him by the bank on the ground that it did not comply with rule 6.1(5) of the Insolvency Rules 1986 because it did not refer to the fact that the benefit of the company's claims against the Export Credit Guarantee Department had been assigned to the bank. The registrar dismissed the application on the ground that the assignment of the department's guarantee was not a security of the debtor within the meaning of the rule.

C

On appeal by the debtor:—

D

Held, dismissing the appeal, that "any security in respect of the debt" in rule 6.1(5) of the Insolvency Rules 1986 was to be construed as having the same meaning as in sections 383 and 385(1) of the Insolvency Act 1986; that, accordingly, the security that had to be referred to in the statutory demand was security "over any property of the person by whom the debt was owed" and, therefore, did not include security of third persons (post, pp. 455c-d, G-H, 456A).

E

No cases are referred to in the judgment or were cited in argument.

APPEAL from Mr. Registrar Dewhurst.

On 26 September 1980, the debtor entered into a guarantee with the respondent bank, Arab Bank Ltd., whereby he guarantee the indebtedness of a limited company of which he was a shareholder and director. That indebtedness arose in connection with certain bills of exchange, the payment of which was covered by a guarantee by the Export Credits Guarantee Department, dated 9 August 1974, the benefit of which was assigned to the bank by a letter of authority dated 12 December 1978, as security for the debt. By a compromise agreement recorded in a letter dated 18 December 1987 the debtor agreed to repay the bank the sum of U.S. \$227,580.28 by instalments. The debtor, after making the first payment of U.S. \$50,000, defaulted in regard to the balance of U.S. \$177,580.28 and the interest payable thereon. The total

F

G

¹ Insolvency Act 1986, s. 383(2); see post, p. 454E.

² s. 385(1); see post, p. 454D.

³ Insolvency Rules 1986, r. 6.1(5); see post, p. 454a-c.

R. 6.5: "(4) The court may grant the application if—(a) the debtor appears to have a counterclaim, set off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or (b) the debt is disputed on grounds which appear to the court to be substantial; or (c) it appears that the creditor holds some security in respect of the debt claimed by the demand; and either rule 6.1(5) is not complied with in respect of it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or (d) the court is satisfied, on other grounds, that the demand ought to be set aside."

H

1 W.L.R.

In re A Debtor (Ch.D.)

- A sum owed, including interest amounted to U.S.\$187,909.84, convertible into sterling at the rate of U.S.\$1.74 per £1. By a statutory demand, dated 9 August 1988, the Arab Bank Ltd. claimed against the debtor the sum of £107,994.16, which the debtor applied to set aside on the ground that the assignment of the benefit of the guarantee from the Export Credit Guarantee Department to the bank was a "security" for the debt, and that that security was not referred to in the statutory demand in breach of rule 6.1(5) of the Insolvency Rules 1986. That application was refused by Mr. Registrar Dewhurst on 11 October 1988, and from that refusal the debtor appealed.
- B

Andrew Munday for the debtor.*Hugh Tomlinson* for the Arab Bank Ltd.

C

Knox J. This is an appeal from a decision of Mr. Registrar Dewhurst, whereby on 11 October 1988 he dismissed an application to set aside a statutory demand.

D

The statutory demand was made by the respondent, Arab Bank Ltd. on the debtor and it claimed the sum of £107,994.16. The way the matter was set out in the statutory demand was that it was described as a debt arising out of the agreement evidenced by a letter of 18 December 1987. That is a reference to a letter by which a previous application to set aside a statutory demand by the same creditor against the same debtor was compromised. The letter is in fact in evidence. It is dated 18 December 1987, and it records the compromise. In paragraph 1 there was confirmation that the debtor, admitted that he was liable to the respondent bank under the terms of the guarantee dated 26 September 1980 in the sum of U.S.\$227,580.28, plus some interest. Paragraph 2 records an agreement between the parties' solicitors that that sum, together with interest, should be paid in instalments—the first one of U.S.\$50,000, which was in fact paid—and the balance to be paid on 18 June and 18 December 1988, of which the first was not paid. The second, of course, has not become due yet.

F

Then the letter provides that if any of the instalments are not paid the remaining balance becomes due and payable. Paragraph 4 disposes of the then existing statutory demand. Then paragraph 5 says:

G

"Subject to [the debtor] complying with his aforesaid obligations to make payment to our client, our client shall forbear from pursuing any legal remedies against [the debtor or against the company] in relation to the above indebtedness. In the event there is any default of any of the above obligations our client reserves the right to pursue any proceedings against [the debtor] or against [the company] which we may deem appropriate without giving notice to [the debtor] or [the company]."

H

In relation to that, it is said that the effect of this compromise was not to release all pre-existing claims, but rather to put a temporary stop on the rights that the creditor had under the status quo ante before the compromise was reached; and it seems to me that there is considerable force in that submission, because paragraph 5 does contemplate the survival of the original cause of action. Otherwise, it is difficult to see what rights to pursue proceedings there were that were being reserved as against the debtor.

Vol. 1

33

In relation to those antecedent rights it is claimed—and not as I understand it disputed—that the original liability of the debtor was under a guarantee of certain obligations of a company in which he evidently was interested as a director and shareholder; and in respect of those, there are claims outstanding against the Export Credit Guarantee Department which have been assigned to the bank, the creditor in this case. That raises the issue which it seems to me does arise for decision, namely, whether the assigned rights against the Export Credit Guarantee Department constitute “security” for the purposes of rule 6.1(5) of the Insolvency Rules 1986, which reads:

“If the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but (a) there shall in the demand be specified the nature of the security, and the value which the creditor puts upon it as at the date of the demand, and (b) the amount of which payment is claimed by the demand shall be the full amount of the debt, less the amount specified as the value of the security.”

That is what is to go into the statutory demand, rule 6 being headed, “Form and content of statutory demand,” a heading which is amply justified by the subsequent provisions of the rule which I need not read, except for rule 6.1(5).

The Insolvency Act 1986, itself, has definitions. Section 385(1) contains, *inter alia*: “Secured” and related expressions are to be construed in accordance with section 383.” That throws one back to that section, which contains in subsection (2) the following:

“Subject to the next two subsections and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of this Group of Parts to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.”

It is not disputed by Mr. Munday in his very clear submissions but that that definition, if it is applicable, does not extend to the export credit guarantee rights which were assigned to the creditor in this case, because it is self-evident that that was not over any property of the person by whom the debt was owed. The question is whether that definition is one which forms a guide to the interpretation that one should put on rule 6.1(5), because if it is not, and if a wider construction can be put on the provisions of rule 6.1(5), wide enough to let in the Export Credit Guarantee Department security—to use a prejudicial expression—then it would be a ground for setting aside the statutory demand, because, under rule 6.5(4)(c) of the Insolvency Rules 1986 it is specifically provided that the court may grant an application to set a statutory demand aside if it appears that *inter alia* the creditor holds some security in respect of the debt claimed by the demand, and rule 6.1(5) is not complied with in respect of it. So that a default in complying with rule 6.1(5) is, possibly, subject to the discretion of the court, a ground for setting aside the statutory demand.

It is to be noted that the definition in section 383(2) is subject to any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt. That seems to me to reflect forward to the

J.W.L.R.

In re A Debtor (Ch.D.)

Knot J.

- A provisions of rule 6, and in particular the one that I have already read in rule 6.1(5).

The other provision in the Insolvency Act 1986, as opposed to the rules to which it seems to me that it would be right to have regard in this context, is section 267(2), which, near the outset of Part IX, dealing with bankruptcy petitions states what are the grounds on which a creditor's petition must be made. In particular, one of the qualifications that a creditor's petition has to satisfy is:

- B "(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented . . . (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured."

- C I do not think Mr. Munday contended significantly to the contrary that "unsecured" in that particular context was something which was governed by the definition section in section 383, more especially with the assistance of section 385, which makes it clear I think beyond any sort of argument that "secured" is to be construed in much the same way as "unsecured," and vice versa.

- D So that so far as the petition is concerned—and this was accepted—it is clear that "security" and "secured" have the narrow sense which one derives from the definitions in sections 383(2) and 385. But what is urged upon me is that it is not exactly the same turn of phrase that is used in the Insolvency Rules 1986, and that in rule 6.1(5) the phrase is a wider one—"If the creditor holds any security in respect of the debt" then certain consequences follow. The submission is made that because a different and wider turn of expression is used, one should look for a different and wider meaning. That is the point at which I part company with the argument. It seems to me that one has to read the Insolvency Rules 1986 in the context of the requirements of the Insolvency Act 1986, and it does seem to me to follow that the word "security" and the conception of an "unsecured" debt all hold together, and that the requirement that value should be placed upon a security, and that the amount to be claimed shall be the amount less the amount specified as the value of the security, is closely tied to the way in which the grounds for a creditor's petition are set out in section 267(2).

- E It seems to me, therefore, that although the turn of phrase is not exactly the same, and although the definition is in the Act and not in the rules, the two ought to be read so that they mesh together and operate hand in hand. It was submitted to me that it might be a matter for the exercise of the court's discretion under the fourth of the grounds that are specified in rule 6.5(4) as the bases on which a statutory demand may be set aside, that there was security in the wider sense of the word—that is to say, a security from a third person and not on the debtor's property, and that to enable that to be taken into consideration it was desirable that there should be an obligation on the creditor when serving the statutory demand to put, in the phrase that was used, all the cards on the table, including any third party rights that the creditor was armed with.

- F I do not reach that conclusion on the terms of paragraph (d) of rule 6.5(4). Indeed, it looks to me, from that particular paragraph, that it is paragraph (c) of rule 6.5(4) that one needs to look at to see whether or

456

Knox J.

In re A Debtor (Ch.D.)

[1989]

not the creditor has done what he ought to have done under rule 6.1(5), and I do not see any space for implying a wider obligation than there otherwise would be in respect of paragraph (d) than is expressly stated in paragraph (c).

For those reasons, I have reached the conclusion that "security" in rule 6.1(5) of the Insolvency Rules 1986 is governed by the definition in the Insolvency Act 1986, and on that basis Mr. Munday accepts that this appeal must fail.

Appeal dismissed.

Solicitors: Brooke Blain Russell; Denton Hall Burgin & Warrens.

T. C. C. B.

[COURT OF APPEAL]

*HAYES v. BOWMAN

[1984 H. No. 367]

1988 June 30;
July 1;
July 27

Slade, Croom-Johnson
and Lloyd L.JJ.

Practice—Dismissal of action for want of prosecution—Long delay—Plaintiff claiming damages for personal injuries—Defendant admitting liability—Delay in prosecuting action increasing damages for loss of earnings—Whether delay so prejudicial that action to be struck out

In August 1981, the plaintiff, then aged 39, was injured when the motor cycle he was riding was in collision with a vehicle driven by the defendant. He had intended to build up a business as a self-employed carpenter but his injuries were such that he was unable to do any further carpentry. He issued a writ claiming damages against the defendant in April 1984 and served a statement of claim in July 1984. A defence was immediately filed and liability was admitted on 24 July 1984. Despite the defendant's requests, the plaintiff supplied little information of his loss of earnings in 1985 and nothing thereafter. In March 1987, the defendant applied to have the action struck out for want of prosecution. The registrar, finding inordinate and inexcusable delay, made the order. The plaintiff appealed and produced an accountant's report showing that the average earnings of a carpenter in 1981 had been £3,846 but earnings had increased each year by £500 to £600, which was more than the rate of inflation, so that by 1987 his loss of earnings would be £33,610 and his future loss of earnings assessed in 1987 would be over £110,000 and in 1988 over £120,000. The judge

Appendix 5 – The Company's response to our Minded-to Decision



Registered Office:
Newington House
237 Southwark Bridge Road
London SE1 6AP

Registered in England and Wales No: 5370723

Company:
UK Power Networks
(Operations) Limited

Ofgem
9 Millbank
London
SW1P 3GE

15 May 2015

Dear [REDACTED]

Willmott Dixon Construction v UK Power Networks determination – 'Minded-to' decision – UK Power Networks' Response

I am enclosing UK Power Networks' response to Ofgem's 'minded-to' decision. Thank you for the extended time to lodge it.

Advice from Leading Counsel confirms our opinion that the 'minded-to' decision is wrong at law. If the 'minded-to' decision is issued as a determination challenge by judicial review is a real likelihood. If for policy reasons Ofgem wishes distributors to pay interest on advance payments it should pursue changing the primary legislation.

It is our opinion that if advance payments have to carry interest the increased costs of providing the connections would be passed-on to customers.

As mentioned in our email dated 23 April 2015 we would be happy to discuss consultation on the determination once you have had the opportunity to consider our response to the 'minded-to' decision in detail. At consultation stage we can indicate whether any of the material provided to you ought to be treated as confidential.

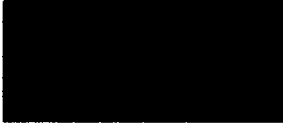
We are firmly of the opinion that UK Power Networks is not taking security upon which it is required to pay interest so, at this stage, we are not proposing a rate of interest for the Authority to approve. However, if having considered our response to the 'minded-to' decision and the risks of challenge Ofgem intends to confirm its 'minded-to' decision in the determination we suggest that we discuss an interest rate at that stage. In such circumstances we would recommend that the interest rate is agreed prior to issue of the determination.

I should be grateful if you would acknowledge receipt of UK Power Networks' response to the minded-to decision. In addition, please can you forward Ofgem's proposals for the remaining steps as Ofgem now intends to take them forward and the associated timetable?

Return Address:
Newington House
237 Southwark Bridge Road
London
SE1 6AP

If you have any questions on the above, please do not hesitate to contact me on 07875 112948 in the first instance.

Yours sincerely




Head of Regulation
UK Power Networks

Copy:  Regulatory Returns & Compliance Manager, UK Power Networks
Andy Burgess, Associate Partner, Transmission & Distribution Policy

**IN THE MATTER OF THE DETERMINATION OF A DISPUTE BY THE GAS AND
ELECTRICITY MARKETS AUTHORITY ("THE AUTHORITY")**

**AND IN THE MATTER OF A DISPUTE REFERRED BY WILLMOTT DIXON
CONSTRUCTION LIMITED ("THE CUSTOMER") UNDER SECTION 23 OF THE
ELECTRICITY ACT 1989**

**AND IN THE MATTER OF A MINDED-TO DETERMINATION BY THE
AUTHORITY DATED 10 APRIL 2015**

RESPONSE

BY UK POWER NETWORKS (OPERATIONS) LIMITED¹

("the Company")

PRELIMINARY

1. By letter dated 13 April 2015 the Authority issued a '*mined-to*' decision, also described as a '*draft decision*' in the covering letter, under section 23(1) of the Act containing provisional conclusions '*on the issues in dispute*' and informing the Company that it had an opportunity to comment on the decision by 1 May 2015.

¹ The company "UK Power Networks Ltd" which is referred to in the minded-to decision does not exist.

2. On 22 April 2015 the Company requested until 5pm on 15 May 2015 to provide its comments. By email on 27 April 2015 the Authority notified the Company that it agreed to extend time for receipt of comments until 5pm on 15 May 2015.

THE MINDED-TO DECISION

3. The Authority's '*minded to*' decision finds that:
 - a. Section 19(1) of the Electricity Act 1989 ("the Act") does not allow an electricity distributor to request advance payment for expenses reasonably incurred in making a connection under section 16(1) of the Act².
 - b. Section 20 of the Act allows a distributor to require a customer to give reasonable security for payments due under section 19 in relation to providing a new connection under section 16(1) of the Act³.
 - c. Due to the Authority's interpretation of section 19 the Company's request for advance payment must have been unlawful⁴ unless it was a request made under section 20 of the Act and, therefore, the Company must be taken to have requested advance payment from the Customer by way of security under section 20(1) of the Act⁵ and, therefore, is required to pay interest to the Customer on money paid to the Company in advance of the connection being provided pursuant to section 20(3) of the Act⁶.

² Paragraph 40 of the minded-to decision.

³ Paragraphs 4, 12 and 41 of the minded-to decision.

⁴ Paragraphs 43 and 44 of the minded-to decision.

⁵ Paragraph 47 of the minded-to decision.

⁶ Paragraphs 21 and 48 of the minded-to decision.

THE ISSUES

4. The dispute identified by the Authority is whether the Customer's advance payment to the Company constitutes payment by way of security⁷. More generally the issue is "*the extent of the Company's powers under section 19 and 20 of the Act to require an advance payment and whether interest is required to be paid in respect of any such payment in advance under section 20 of the Act*"⁸. The dispute can be divided into three questions:
 - a. Does section 19 prevent the Company from requiring advance payment for works⁹?
 - b. Is a request for advance payment for a connection properly to be categorised only as a request for payment of security¹⁰?
 - c. If payment of expenses in advance is to be treated as payment of security, must the Company pay interest on it¹¹?

OVERVIEW

5. The Company has reviewed the Authority's minded-to decision, as requested, and considers it to be wrong in law. In particular, the Company considers that it is not permissible for the Authority to interpret section 19 as preventing the Company from requiring advance payment from the Customer for a connection and, if advance payment can only be made as security, the Authority is wrong to categorise such payments as deposits requiring payment of interest.

⁷ Paragraph 33 of the minded-to decision states "*The dispute between the parties relates to whether the advance payment constitutes payment by way of security.*"

⁸ Paragraph 15 of the minded-to decision.

⁹ First sentence of paragraph 40 of the minded-to decision and second sentence of paragraph 43 of the minded-to decision.

¹⁰ First sentence of paragraph 43 of the minded-to decision.

¹¹ Paragraphs 39 and 48 of the minded-to decision.

6. The reasons expressed in the Authority's minded-to decision are misguided. In particular, the Authority's focus on the heading to section 19 of the Act for the purpose of interpreting the section is wrong and its interpretation of the section is erroneous. The words "*is provided*" and "*reasonably incurred*" in section 19(1) of the Act, that are relied upon by the Authority to refer to the past tense, in the context of this section are consistent with the use of the present tense and use of the present tense is also consistent with the whole of the wording of the section and the Company's interpretation of section 19. Further, the Authority's reasoning with respect to section 19(4) is incorrect, as section 19(4) does not purport to make provision for all circumstances in which expenses will be considered expenses reasonably incurred as the section uses the word "*includes*" to make plain that other expenses, including future expenses, may be included and not just those that have been incurred. Security under section 20 is not making payment in discharge of an obligation but the provision of a returnable deposit, which depending on the circumstances, may be required in addition to payment.

RELEVANT STATUTORY PROVISIONS

7. To the extent that it is relevant to the determination, the statutory provisions are as follows:

- a. Section 16(1) of the Act provides that a distributor is under a duty to make a connection between their distribution system and any premises when required to do so by either the owner or occupier of that premises or an authorised agent acting with the consent of the owner/occupier.

- b. Section 19(1) of the Act:

"Power to recover expenditure

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."

- c. Section 19(4) of the Act:

"Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it."

d. Section 20(1) of the Act:

"Subject to the following provision of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security to him under section 19 in respect of the provisions of any electric line or electrical plant."

e. Section 20(3) of the Act:

"Where any money is deposited with an electricity distributor by way of security in pursuance of this section, the distributor shall pay interest, at such rate as may from time to time be fixed by the distributor with the approval of the Authority, on every sum of 50p so deposited for every three months during which it remains in the hands of the distributor."

**ISSUE A. – DOES SECTION 19 PREVENT THE COMPANY FROM
REQUIRING ADVANCE PAYMENT FOR WORKS?**

Impermissible interpretation of section 19(1)

8. The Authority's minded-to decision that the Company's request for advance payment was necessarily unlawful unless it can be re-classified as a request for security under section 20 is wrong¹².
9. The Company is permitted to request advance payment of reasonable expenses under section 19(1). If the intention of the legislation was to prohibit the taking of advance payments, then express wording would have been included to that effect.
10. The Authority does not identify any express wording to this effect. Instead, the Authority relies upon three reasons as a result of which it says it can be inferred that

¹² Paragraph 43 of the minded-to decision.

section 19(1) of the Act only entitles the Company to receive from the Customer payments in respect of expenses that have already been incurred by the Company in providing a new connection and therefore, that advance payment is not permitted under section 19(1). The three reasons being:

- a. Focus on the heading to Section 19¹³.
 - b. Emphasis on the words "*is provided*" and "*reasonably incurred*" in Section 19¹⁴.
 - c. Distinguishing between advance payment of expenses and payment for expenses already incurred in Section 19(4)¹⁵.
11. Each of the three reasons justifying the Authority's interpretation of section 19 are wrong in law. The Company comments on the reasons below:

The First Reason: Focus on the heading to Section 19.

12. The Authority is misguided in focusing on the heading to section 19 of the Act¹⁶, on the basis the heading, "*Power to recover expenditure*", suggests that the power to obtain payment *only* exists '*after*' expenditure has been incurred, when the body of the section is inconsistent with that interpretation because it expressly refers to future expenditure (see paragraph 13 f below).
13. For six principal reasons the heading to section 19 of the Act is not to be regarded as having any significance:
- a. The correct focus for interpreting section 19 of the Act is with the meaning of the words of the section. The words of the section cannot be overridden purely

¹³ Paragraph 35 of the minded-to decision.

¹⁴ Paragraph 36 of the minded-to decision.

¹⁵ Paragraph 37 of the minded-to decision.

¹⁶ Paragraph 35 of the minded-to decision.

by reason of the section heading¹⁷ as, at best, the heading serves only as a brief, and necessarily inaccurate guide to the material to which it is attached¹⁸. Bennion on Statutory Interpretation at p 697¹⁹ summarises the position as follows:

"...the ... section heading is of very limited use in interpretation because of its necessarily brief and therefore possibly inaccurate nature. Lord Reid said:

'... a side-note [heading] is a poor guide to the scope of a section, for it can do no more than indicate the main subject with which the section deals.'²⁰

- b. Directly analogous provisions in the same legislation have no equivalent heading, such as Section 8 of Schedule 2ZA of the Act²¹. If equivalent sections in the same Act are to be interpreted without reference to relevant headings, it strongly suggests that to ensure consistency of interpretation, the heading to section 19 is not to be taken into consideration for the purpose of interpreting its meaning.

¹⁷ *Scottish Minister v Paice Trust Limited & Others* (Application RN SLC/110/06 – Order of 15 August 2007).

¹⁸ Bennion on Statutory Interpretation, sixth edition at Section 255 (p 696): "A heading within an Act, whether contained in the body of the Act or a Schedule, is part of the Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore necessarily inaccurate, guide to the material to which it is attached." (approved and applied in *ETI Euro Telecom International NV v Republic of Bolivia & Anor* [2008] EWCA Civ 880 at [70]).

¹⁹ See also Bennion at p697, "If the sidenote contradicts the text this puts the interpreter on inquiry; but the answer may be that the drafter chose an inadequate signpost, or neglected to alter it to match an amendment made to the clause during the passage of the Bill. Such facts are outside the knowledge of the interpreter, who must therefore adopt a rule not depending on them.

Example 256.2 While the Court of Appeal had 'full regard to the sidenote ...Stade LJ said that the sidenote was 'somewhat misleading'. He added that it was a brief précis of the section and was therefore 'a most unsure guide to its construction ... Upjohn LJ gave a precisely accurate indication of the role of the sidenote [now heading] when he said:

'While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind.'

The [emphasised] words accurately show the relationship of this component to the informed interpretation rule."

²⁰ *DPP v Schildkamp* [1971] AC1 at 10.

²¹ "8.—(1) Where a distribution exemption holder makes a connection under paragraph 7(2) any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder is under a duty to provide must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection.

(2) The reference in sub-paragraph (1) to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.

- c. Directly analogous sections in parallel legislation, such as Section 10(5) of the Gas Act 1986²², also have no equivalent heading. As referred to in paragraph 13 b. above, if the equivalent sections in analogous legislation are to be interpreted without reference to relevant headings it also strongly suggests that, to ensure consistency of interpretation, the heading to section 19 is not to be taken into consideration for the purpose of interpretation.
- d. Identical headings to repealed sections in the same legislation ought to be interpreted consistently. Section 18 of the Act, which was repealed on 1 October 2001, concerned charges for supply and was similarly headed "*Power to recover charges*". The headings to the consecutive sections 18 and 19 must be read consistently²³. If the Authority's construction of the heading to section 19 were to be correct, this would suggest that section 18 was concerned only with the collection of charges after they had been incurred. However, the Act, as originally enacted, allowed for the use of prepayment meters, by which charges are collected before they are incurred (see section 20(4) as originally enacted²⁴).
- e. Section 19(1) itself does not use the word "*recover*" but rather "*defrayed*". The latter word is not confined to describing reimbursement after the event. If "*defrayed*" in the section is replaced by the Oxford English Dictionary definition²⁵, the section reads, "*the distributor may require any expenses reasonably incurred in providing it to be [paid] by the person requiring the connection to such extent as is reasonable in all the circumstances.*" The

²² "[F4(5A)Where in pursuance of subsection (2)(b) a gas transporter connects any premises to a relevant main by a pipe supplied and laid by the owner or occupier of the premises, the cost of making the connection shall, if and to the extent that the transporter so requires and the conditions of his licence so allow, be defrayed by the person supplying and laying the pipe.] (emphasis added).

²³ *R v Monilla* [2004] UKHL at [37] the use of similar wording in the same statute is an aid to interpretation.

²⁴ "A public electricity supplier shall not be entitled to require security in pursuance of subsection (1)(a) above if—(a) the person requiring the supply is prepared to take the supply through a pre-payment meter; and (b) it is reasonably practicable in all the circumstances (including in particular the risk of loss or damage) for the supplier to provide such a meter." It is to be noted that Section 20(4) as originally enacted is consistent with an intention to maintain a distinction between "*advance payment*" and "*security*".

²⁵ To pay a financial claim.

context also requires the same meaning to apply to the word “met” in section 8 of Schedule 2ZA of the Act which has a similar purpose, (i.e. “any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder is under a duty to provide must, if and to the extent that the distribution exemption holder requires, be met [paid/defrayed] by the person requiring the connection.”). The use of ‘defrayed’ in section 19 is synonymous with the words ‘paid’ and ‘met’, and it is consistent with permitting the Company to require advance payment from the Customer for the reasonable cost of connection.

- f. Section 19(4) of the Act expressly provides that the power to require the customer to defray²⁶ expenses includes defrayment of the “capitalised value of expenses likely to be ... incurred” in continuing to provide line or plant (i.e. payment of future expenses is expressly referred to as being anticipated by the sub-sections covered by the section 19 heading).

- 14. Accordingly, the Authority has placed undue weight and significance on the heading to section 19 and the Authority is wrong in law to construe the reference to “recover” in the heading to mean that expenditure must have been incurred before the distributor is entitled to receive it from the Customer²⁷.

The Second Reason: Emphasis on the words “is provided” and “reasonably incurred”.

- 15. The Authority erroneously focuses on the words “is provided” and “reasonably incurred” in section 19(1) of the Act and states that these words “strongly indicate, through the use of the past tense, that the expenses would have been incurred by the distributor before being recovered from the customer²⁸”.

²⁶ Oxford English Dictionary meaning to “provide money to pay (a cost or expense)”.

²⁷ It is noted that the Authority has used the word “recover” rather than the relevant text in its guidance notes, for example see the Authority’s “Guidance on Third Party Access Charges For Electricity Distribution Networks” (10 November 2011).

²⁸ Paragraph 36 of the minded-to decision.

16. The Authority's reasoning is wrong for the following reasons:

- a. The text of the section is in the present tense and not in the past tense. In particular the "*expenses reasonably incurred*" in the context in which it is used is not to be interpreted as the past tense. The section should be read as follows (the underlined words are the Company's insertion): "*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 [which are] reasonably incurred in providing it to be [paid] by the person requiring the connection to such extent as is reasonable in all the circumstances.*"
- b. The Company's use of the present tense in the insertion is consistent with and mirrors the use of the words "*is provided*" in the first line of the section.
- c. If the Authority's interpretation were to be correct the reference to "*is provided*" in the first line of the section would have to be amended to be "*has been provided*" and the reference to "*reasonably incurred*" would need "*which have been*" added immediately before.

The Third Reason: Section 19(4) distinguishes between advance payment and payment for costs already incurred.

17. The Authority refers to section 19(4), which provides:

"Any reference in this section to any expenses reasonably incurred in providing an electric line or electric plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it."²⁹

18. The Authority considers that the existence of this subsection:

"...help[s] distinguish between when the Act permits payment before works have commenced (continuing provision of existing line or plant) from when it

²⁹ Paragraph 37 of the *reinded-to decision*.

*requires payment to be made after work has been completed (new connection under section 16(1)).*³⁰ (emphasis added)

19. The Authority's conclusion is not correct for three principal reasons:

- a. Section 19(4) does not purport to make provision for all circumstances in which future expenses will be considered "*expenses reasonably incurred*". In the first place the section uses the word "*includes*" to make plain that other expenses are included, including future expenses, and it is not limited to just those expense that have been incurred.
- b. The fact that section 19(4) also identifies future expenses (i.e. by the use of the words "*likely to be incurred*") as within the scope of the expression "*expenses reasonably incurred*" is consistent only with an interpretation that "*expenses reasonably incurred*" is not confined to expenses that have already been incurred by the time that payment is made³¹. The effect of the Authority construing section 19 as only permitting recovery of expenses 'already' incurred would be to ignore the clear, express and unambiguous wording of section 19, as stated in section 19(4).
- c. Regulations in a statutory instrument made subsequent to the Act may be used as a guide to the meaning of the Act, see by way of example, Lord Scarman in *Hanlon v The Law Society*³²,

"...when these regulations are so clearly relevant, it is pertinent to ask how far they are admissible for the purpose of construing section A study of the leading textbooks ... appears to me to warrant the formulation of the following propositions: ... (3) Regulations which are consistent with a certain interpretation of the Act tend to confirm that interpretation"
- d. Reference to subsequent regulations demonstrates the Company's interpretation is correct. For example the Electricity (Connection Standards of

³⁰ Paragraph 37 of the minded-to decision

³¹ Lord Sanderson at the committee stage of the then Electricity Bill (Hansard p11 of 35) "*Where those expenses include an allowance for the capitalised value of any expenses for future maintenance*"

³² [1981] A.C 124 at 194H.

Performance) Regulations 2015 (SI 2015/698), which came into force on 1 April 2015, is a relevant regulation for the purpose of interpreting section 19 of the Act. Regulation 8³³ addresses the situation where a “single LV service demand connection” or “small project demand connection” is made pursuant to section 16(1) of the Act and regulation 8(1)(b) expressly contemplates the possibility that payment may have been made on acceptance of the quotation or prior to completion of the works or a phase of the works whilst dealing separately at regulation 8(1)(c) with any security required by the distributor under section 20(1) of the Act.

- e. The statutory instrument is consistent with the Company’s interpretation of section 19 of the Act and inconsistent with the Authority’s interpretation.

ISSUE B. – IS A REQUEST FOR ADVANCE PAYMENT FOR A CONNECTION TO BE PROPERLY CATEGORISED ONLY AS A REQUEST FOR PAYMENT OF SECURITY?

Misinterpretation of section 20

- 20. Under the heading ‘jurisdiction’, paragraph 12 of the minded-to decision states that section 20 of the of the Act “allows for the collection of security from customers, an (*sic: as*) advance payment, ...” However, this is incorrect and indicates the Authority reached a conclusion as to the meaning of the section without proper consideration. Section 20 states that “where any money is deposited with [the Company] by way of security in pursuance of this section, the Company shall pay interest.” Section 20 does not provide that security is ‘advance payment’, which is one of the issues the

³³ “8—(1) This regulation applies to an electricity distributor where it receives—

- (a) a customer’s written acceptance of a quotation relating to a single LV service demand connection or a small project demand connection within the requisite timescale specified by the electricity distributor in that quotation;
- (b) payment of any amount due to be paid to the electricity distributor in accordance with the accepted quotation—
 - (i) in respect of paragraph (2), on acceptance of the quotation; or
 - (ii) in respect of paragraph (3), prior to completion of the works or a phase of the works (as applicable);” (*Emphasis added*)
- (c) any reasonable security required by the electricity distributor under section 20(1) of the Act;

Authority has raised, or that interest must be paid on all 'security' as suggested in paragraph 12 of the minded-to decision. It is only where money is 'deposited' with the Company by way of 'security' that the Company must pay interest.

21. Paragraph 41 of the minded-to decision states that "*Security could include those arrangements, but it could also mean an up-front payment, provided as "security" for a future payment obligation*" (emphasis added). This paragraph of the minded-to decision does not identify the future payment obligation that is being referred to, but it can only be a reference to the obligation to pay for the connection³⁴.

22. "*Security*" is not defined in the Act but it is an ordinary³⁵ English word, dictionary definitions, of which include:

a. Oxford English Dictionary:

"Property pledged (or, occas., a person held) to guarantee someone's good conduct, appearance in court at a specified time, or fulfilment of some other obligation."

b. (2) Jowitt's Dictionary of English Law:

"Something which makes the enjoyment or enforcement of a right more secure or certain. A security may be a personal security; or a security on a property (called in jurisprudence a real security); or a judicial security. A personal security consists in a promise or obligation by the debtor or another person, in addition to the original liability or obligation intended to be secured."

23. In the present case, the sums paid by the Customer and described by the Authority as "*advance payment*"³⁶ are themselves the consideration for the provision of the new connection. They are the payment under section 19 (or section 21(b)). They are not being transferred by way of security for some other payment obligation. Therefore, they cannot be described as "*security*" on either the conventional or any technical understanding of the meaning of that word.

³⁴ See paragraph 25 of the Response.

³⁵ To the extent that it has a technical meaning, it is consistent with the ordinary meaning. The technical meaning has been addressed in the Company's questionnaire.

³⁶ Paragraph 47 of the minded-to decision

24. Furthermore, in the usual case, "security" is forfeited if the primary obligation is breached, or returned if the primary obligation is satisfied. This usual approach is consistent with the references in section 20(3) to:

- a. the money paid by way of security being "deposited"³⁷ with the distributor, and
- b. the period during which "it remains in the hands of the distributor".

25. The sums paid by the Customer to the Company were not treated in this way³⁸. They were not "deposited" but "paid"³⁹. They were not intended to be returned⁴⁰ to the Customer after the discharge of a later payment obligation. They were intended to remain the distributors from the moment of payment.

26. The scope of section 20 (as originally enacted) was considered in Parliament during consideration of the (then) Electricity Bill. In Committee, Lord Sanderson explained:

"where the consumer pays for his supply in advance of the supply, as in the case where a prepayment meter is fitted, then there can be no doubt about

³⁷ When used in conjunction with "security" it is consistent with the example cited in the Oxford Dictionary of "a returnable sum payable on the hire or rental of something, to cover possible loss or damage".

³⁸ Clause 1.1.31 of the Company's Terms and Conditions: "'Price' means the price stated in the Notice".

Clause 3.2.1: "3.2.1. The DNO shall not be obliged to begin or continue the Works until: (i) it has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice in cleared funds ..."

Clause 6.1.1: "You shall pay the Price at the time(s) stated in the Notice"; there are also terms for varying the Price in Clause 6.

Clause 6.2: "Variations to the Price. The DNO may vary the Price: 6.2.1. if at the later of: (i) the date of your acceptance of the Notice; and (ii) the date upon which it places its order with its suppliers of materials or plant to be comprised in the Works, the price of those materials or plant shall have increased from those included in the Price, the Price may be varied by an amount equal to the increase or decrease (if any) in its suppliers' prices for such materials or plant to be comprised in the Works and that are required to be paid by the DNO by reason of the price of the relevant material or plant being less or more than the relevant."

³⁹ The Notice to the Customer under Section 16A (5)(c) of the Act refers to "The price", "The provisional price", "Independent Connections Provider (ICP)", "payment" and "terms and conditions". The Acceptance of Notice Form provided "billing" information, where a "paid" invoice should be sent, "the Works and the Price are subject to the Notice by which I agree to be bound" and "I understand that the price must be paid in full before a supply is provided. I also understand that where VAT has been charged a Tax Invoice for the Price will be issued by UK Power Networks on receipt of payment".

⁴⁰ In other words to give back to the consumer after having been held in a place of safe keeping.

*receiving the sums due. In such cases no security could be reasonably required.*⁴¹"

27. Accordingly, when the Electricity Bill was before Parliament the Government did not consider that advance payment could constitute security. It is clear that when the Electricity Bill was being considered by Parliament the distinction between advance payment and security was understood.

28. Section 20(3) only provides for interest to be paid on "*money deposited [with an electricity distributor] by way of security*", had Parliament considered interest should be payable on advance payments, then section 20(3) would have expressly referred to "*advance payments*" or replaced the reference to "*money deposited*" with "*money paid to*".

29. The distinction between an advance payment and security is reflected in subsequent legislation. As referred to in paragraph 19 d. above and footnote 33, in Regulation 8(1) of The Electricity (Connection Standards of Performance) Regulations 2015, by addressing advance payments in Regulation 8(1)(b) and security in Regulation 8.1(c) there is a recognition that not only is advance payment permitted under the Act but that payment is very different from security taken pursuant to section 20 of the Act.

ISSUE C. – IF PAYMENT OF EXPENSES IN ADVANCE IS TO BE TREATED AS PAYMENT OF SECURITY, MUST THE COMPANY PAY INTEREST ON IT?

No interest is payable on money that is not deposited

30. If the Company is wrong and advance payment by the Customer may only be construed as a request for security within the meaning of "*security*" in the Act, such advance payment would not be a form of security to which the obligation to pay interest would attach.

31. Section 20(3) is clear that interest is only payable on sums deposited with the distributor – a point that the Authority recognises - "*we note that subsection (3)*

⁴¹ Hansard (p13 of 35).

expressly refers to "money deposited" with the distributor and makes provision for interest to be paid on it".⁴² A deposit, by its nature, must be returned to the party providing it once the primary payment obligation has been discharged. To illustrate the point, under section 20(1) a distributor may choose to take a different form of security, such as a parent company guarantee or bond. Were it to do so, it would not be required under section 20(3) to pay interest.

Distinction between advance payment and deposit

32. The minded-to decision states as a reason that, *"If security may be required to be provided by a money payment in advance, then in our view it provides a confirmation that section 19 (by contrast) contemplates payment for the connection after the event. Otherwise, it is difficult to see why the legislature should have gone on to provide for security to be required"*⁴³.

33. However, as explained above, 'in principle' security (i.e. in this context a deposit) and advance payment (i.e. the discharge of an obligation) are different, and because they are different the mere fact that security may be provided by a money payment in advance, is not and cannot be interpreted as confirmation or support for the conclusion that section 19 contemplates payment for the connection after the event. In short, the reasoning confuses two distinct and separate concepts and the result is a *non sequitur*.

34. The Authority's hypothetical question, if a distributor can ask for payment in advance and such an advance payment is permissible under section 19, why would the Act also allow for the taking of security⁴⁴ is answered by (hypothetical) examples:

- a. It is possible for expenses the Company may incur in providing a connection to be difficult to ascertain (whether by reference to a provisional price or otherwise) or which may not be incurred at all. Two examples suffice⁴⁵:

⁴² Paragraph 41 of the minded-to decision

⁴³ Paragraph 42 of the minded-to decision.

⁴⁴ Paragraph 42 of the minded-to decision.

⁴⁵ It is likely that other distributors will have pertinent examples.

- i. First, where the provision of a connection means that there is substantial risk of encountering contamination, the Company may require security for prospective remediation costs.
 - ii. Secondly, in respect of 'contingent sums' e.g. in relation to spare duct under a major road and where the connection charge includes a 'contingent sum' that would be used if, after excavation, there is no duct available and the Company is required to 'open-cut' trench across the road.
- b. Both advance payment and provision of security may be required where works necessary to provide the connection are undertaken where there is a risk of the Company's plant and equipment being stolen or damaged by third parties. Liability for the risk is with the customer and the Company can recover its expenses from the customer. If the risk of theft is high and the customer may not be able to pay, the Company may require security for additional costs of the connection arising from a Customer's failure to provide adequate security.
- c. The power to take advance payments and require security enables a distributor to react to changes to market conditions and customer demand for innovation in the way that connections are paid for. For example, subject to agreement with the Authority, and any necessary changes being made to the Connection Charging Methodology Statement and the Use of System Charging Methodology, a distributor may wish to restructure charges for the provision of connections. Instead of taking the full cost of providing the connection as an advance payment a discount to this charge could be applied on the basis that some of the costs will be recovered through use of system charges. To ensure that such a discount is recovered the distributor may also require security. This hypothetical example is not dissimilar to the Tariff Support Mechanism which was in operation until 2005.
- d. Under certain circumstances the customer does not pay the full costs to the distributor of carrying out all the works undertaken to provide the connection.

Where upstream reinforcement works are carried out, through application of the "voltage rule" (where the customer does not pay for any works undertaken at more than one voltage level above that of the connection) and through application of the cost apportionment factor the customer may pay only a portion of the costs of providing the connection; the distributor or other customers being responsible for the balance. Whilst currently the Company does not take security in these circumstances it is possible that it would wish to do so to ensure that its other customers do not underwrite the costs of riskier developments being cancelled.

35. The question being essentially hypothetical, as the Company has not amended its Notice and the Authority has hitherto not set a rate of interest, as set out above, it is only capable of being answered by hypothetical example.

36. Section 19 does not require the Company to request payment in advance of connection; it merely gives the Company the right to be paid in advance. Subject to any necessary changes being made to the Connection Charging Methodology Statement and the Use of System Charging Methodology, it is therefore open to the Company to decide not to take payments in advance but to be paid in arrears (or indeed not to take payment specifically for carrying out of the works at all but instead recover the costs through use of system charges for the site) and to seek security (whether by the deposit of money or otherwise) to ensure that the payments required under section 19 are made. This is no reason to adopt a strained construction of sections 19 and 20 such that it provides the potential to result in higher connection charges for customers.

APPROVED CHARGING STATEMENT AND TERMS AND CONDITIONS

37. The Authority states in the minded-to decision that the statement "*We normally require payment in full in advance*" taken from the Company's Charging Statement "*is only lawful if this is a requirement for payment by way of security under section 20 of the Act*"⁴⁶....*The Charging Statement can be read consistently with the Act if, and*

⁴⁶ Paragraph 44 of the minded-to decision.

*only if, the advance payment constitutes security under section 20 of the Act.*⁴⁷

38. The Company's Charging Statement in relation to advance payment for connection costs, which has been approved by the Authority, is consistent with the Company's comments referred to above. As the Authority is wrong in law concerning its interpretation of section 19 and section 20 of the Act the strained interpretation of the Company's Charging Statement is unnecessary and wrong.

39. The section quoted from the Company's Charging Statement⁴⁸ is unambiguous. The customer is required to pay for the connection in advance. There is neither reference to the customer being required to provide security by way of deposit nor that the customer is entitled to receive interest. As section 19 of the Act does not prevent the taking of advance payment the Company's interpretation of the Charging Statement is correct. Furthermore, the Company understands that its position is the same in respect of other distributors and, as referred to by the Company in answer to the Authority's questionnaire, it is consistent with the understanding of the British Property Federation⁴⁹, who represent the views of a substantial body of commercial property owners.

SUMMARY

40. The minded-to decision is wrong in law in that it erroneously interprets sections 19 and 20 of the Act. Accordingly the Authority is requested not to confirm its decision.

⁴⁷ Paragraph 45 of the minded-to decision.

⁴⁸ Licence Condition 13 requires it to issue to the Authority for its approval a Charging Methodology, which once approved must be complied with when calculating the price of providing a connection to its distribution network (Licence Condition 14). Section 6.3 of the Charging Methodology states: "*We normally require payment in full and in advance. However, if major works are to be carried out over an extended period of time, the Company [UK Power Networks] may agree to payment being made in instalments; each instalment being paid before the next phase of the works has begun. Payment in advance is required for all of the following charge elements including Budget Estimate, Feasibility Study, Construction, Competition in Connection Charges, Other Charges and for Land Rights. Charges for Assessment & Design are to be paid on acceptance of any Connection Offer, or POC Offer as applicable.*"

⁴⁹ July 2011 Guide for Developers to Utilities Connections which states ".... Developers may have to pay months in advance for a service" and "The GDN/DNO will charge the customer an up front connection charge as a contribution towards the capital cost of installing the connection assets. The basis of that charge should be set out in its Licence Condition Charging Statement which all GDNs and DNOs should make available on their websites". In relation the position of competitors and in particular independent DNO's ("IDNO") "The IGT/DNO will charge the developer an up front connection charge as a capital contribution towards the cost of installing the assets."

41. The Company is entitled to request payment in advance for a new connection and such request is not properly to be categorised as payment of security. In any event if payment in advance is to be treated as payment of security, the Company is not required to pay interest on it.
42. The correct decision, which the Authority should make, is that the Company was entitled to require advance payment from the Customer and the Customer is not entitled to be paid interest on the advance payment. The Company's offer to compensate the Customer as a result of its failure to apply its policy of staged payment (in its Terms and Conditions) was appropriate.

Appendix 6 – Customer comments on Company's response to our Minded-to Decision

Willmott Dixon Construction Limited (WDCL) v UK Power Networks (Operations) Limited trading as UK Power Networks (UKPN)

Payment of interest

Comment on UKPN response to OFGEM "Minded-to" Determination

Dear [REDACTED]

Thank you for affording WDCL the opportunity to respond to the recital introduced by UKPN in its, second chance for critical reflection and to re-visit its original evidence with additional thoughts and comments.

We have thoroughly appraised UKPN's comments and interpret the missive as a discursive essay with no improvement in its persuasiveness in common or statutory law, nor to UKPN's originating submission as had been lodged with OFGEM in the first instance.

It is not about deliberating whether the relevant electricity Connections Charges are "reasonable" upon which UKPN persistently introduce, these are an aside that may be of sufficiency to warrant an enquiry in their own right as to the reasonableness of the UKPN charges, moreover the Connection Charges hold no tenancy for UKPN in WDCL seeking justifiable interest payment for its upfront funding in the matter of £1,478,965.84 ex VAT as was placed with UKPN on the 22 August 2011.

The £1.4m or thereabouts was imposed by UKPN based on an estimate of its purported reasonable connection charges. It was not a charge for actual works which could only be summarised with accuracy after the connections were completed. Only then, following the conclusion of the project works could it be eventually established as to whether the charges were reasonable or not.

Despite its second chance to make comment UKPN has lost sight of the principles of the case. UKPN misinterprets Section 19, Electricity Act 1989 as amended. For the benefit of removing the UKPN misunderstanding we provide guidance as to its statutory interpretation as follows:

Section 19 talks of "Power to recover expenditure." The power to recover the actual and reasonable expenditure that UKPN incurs for the relevant works can only be actionable after the works have been completed and not before. The reason being that the cost as estimated, or nearer the mark, suggestively "guessed" by UKPN, cannot be re-calculated as fair and reasonable until the completion of the works when claims are reconciled from the UKPN Contractor(s) for Stores, Direct Labour and Percentage Overheads plus credits for unused stores being returned as surplus to the works, with copy of the "as built" drawings. Only then can the true and reasonable cost be calculated with confidence. Any monies as UKPN insists upon to be deposited prior to completion and prior to the costs reconciliation process being undertaken can only be in the form of a security sum.

Therefore the Authority is one hundred per cent correct in enunciating that section 19, of the Electricity Act 1989 (as amended) payment exists only after the event (after reconciliation) – whereby reasonable expenditure as may have been incurred by the incumbent licensed electricity distributor may be ascertained.

Interspersed within its comments, UKPN relies on its Contract, terms and conditions, with a good measure of puff and window dressing, which play no part in the current dispute. No contract can oust that of statutory law under which the connections were made and to which WDCL enjoys statutory protection.

A contract that denies a customer of input to an agreement as is adopted by UKPN in this current dispute is a, "Standard Form" contract. This type of agreement is manifest for example where the public at large may agree to its terms and conditions without demur when purchasing white goods as may be offered for sale in High Street shops. The shop's customers have no input into the written contract, it is a, "take it or leave it" scenario and if they don't like it they can go elsewhere, which is also known as a Boiler Plate or Adhesion Contract. Our interpretation of the UKPN distribution connections, first offer to its customers is that it is invariably laid out and issued to its customers on the Adhesion Contract principle.

It is plain that under the dictatorial principle as is adopted by the UKPN Adhesion contract, that the "take it or leave it" principle suppresses the customer under a disparity in bargaining power, moreover the Connections customer may, depending on the prevailing constraints have nowhere else to turn to, to enable its statutory connection from being installed by others. The unfortunate electricity connections customer therefore is obliged to remain silent and accept the Adhesion deal or face onerous punishment in its proposed construction site works grinding to a halt.

Whilst UKPN promotes the Adhesion style contract for its new customer connection works, unlike an Adhesion contract the relevant UKPN electricity connections works are established as being statutory, falling within with the Electricity Act 1989, as amended, which affords statutory protection to customers seeking a section 16 connection, but in the alternative, with no statutory protection under the said Act for contractual works as undertaken within an Adhesion contract.

Statutory connection works bear little or no resemblance to an Adhesion contract to which UKPN seemingly favour for its customer connections and make referral in its "Minded to" ~~comments~~.

Despite WDCL having funded the UKPN operations in advance, no UKPN works of a substantial nature can be identified as having been put in place until some considerable time had elapsed, denying WDCL use of the money on promoting new construction works elsewhere and disadvantaging WDCL in having to meet finance borrowing charges as appropriate.

WDCL make no claim for heads of recoverable loss of trade but do claim for interest payment.

As we understand it, UKPN were granted a second chance by OFGEM, to make a cogent assessment with sensible commentary of the evidence placed before it – not traverse over the purported righteousness of UKPN's "reasonable connection charges" and its contractual Adhesion regime, but adhere to the matters afoot – that of interest charges. Our complaint is solely geared to our desire in assisting in a response to the UKPN comment on the OFGEM "Minded to" decision beyond all other consideration, on the subject matter of Interest Payment.

Conclusion

UKPN has been granted exceptionally commodious treatment in its consideration by OFGEM in the form of a second chance commentary which despite this opportunity UKPN fails to comment on anything new relative to the improvement of its case.

We concur with Ofgem's opinion in having reached the correct Determination in its "Minded to" decision in favour of WDCL as being insurmountably correct, on the basis of the failed UKPN advocacy statement of facts as was submitted in its first instance submission to OFGEM of 25 September 2014. Also in colloquial language UKPN being afforded a "second bite of the cherry" to which UKPN's response should be summarily dismissed by the reasoning of a combination of superficial verbiage with no improvement on UKPN's first adversarial submission.

John Duncan
for Willmott Dixon Construction Limited

17 July 2015

Appendix 7 – Company response to our letter of 11 December 2015



Registered Office:
Newington House
237 Southwark Bridge Road
London SE1 6NP

Registered in England and Wales No: 3870728

Company:
UK Power Networks
(Operations) Limited

Andrew Burgess
Associate Partner, Electricity Distribution
Ofgem
9 Millbank
London
SW1P 3GE

24 December 2015

Dear Andrew

Letter of 11th December regarding Willmott Dixon Construction

Thank you for your letter of 11th December addressed to [REDACTED] which has been passed to me. Please send any future correspondence to me, as I have recently taken over as Head of Regulation, replacing [REDACTED].

In his letter of 15th May [REDACTED] had suggested that, if having considered our response to Ofgem's 'minded-to' decision Ofgem intended to confirm its decision, we might discuss an interest rate at that stage. The stage to which [REDACTED] referred has not yet been reached, and as such we believe it is premature to address this detailed question.

Our view remains that the 'minded-to' decision is wrong at law. If the 'minded-to' decision is confirmed within the final determination it remains a strong possibility that UK Power Networks will seek to challenge the decision through judicial review.

When you have made your final determination, we would welcome an opportunity to understand and work with you on any necessary next steps that may be required.

May I take this opportunity of wishing you a happy Christmas and New Year.

Yours sincerely [REDACTED]

[REDACTED]
Head of Regulation
UK Power Networks



Appendix 8 – Customer response to our letter of 11 December 2015

Office of Gas and Electricity Markets (OFGEM)

By email

Date: 5 January 2016

Dear Andrew

Willmott Dixon Construction Limited (WDCL) v UK Power Networks (Operations) Limited (UKPN)

Thank you for your letter of 11 December 2015 with regard to the interest rates to which in Paragraph 6 (page 2) there are 4 bullet points to respond to.

In advance of the questions, there is a statutory requirement under the Electricity Act 1989 (the Act) section 20(3) as amended, which says:

'Where any money is deposited with [an electricity distributor] by way of security in pursuance of this section, the [distributor] shall pay interest, at such rate as may from time to time be fixed by the [distributor] with the approval of the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the [distributor].'

We recall that in item No.48 of the 'Minded-to decision' by the authority (10 April 2015) an invitation was sent to the Company (UKPN) saying:

'In accordance with section 20(3) we invite the Company to submit an interest rate for our approval. Once we have approved this, we will confirm the amount to be paid by way of interest to the Customer.'

Seemingly UKPN declined the invitation by remaining silent on the question of it submitting an interest rate and it is for WDCL to make a submission as to what it considers to be based on a reasonable offer.

We consider that the maximum interest should be paid in line with UKPN's own formulaic expression to be found in the UKPN standard Terms and Conditions, Clause 6.1.3 which seems reasonable and proportionate, as below:

Bullet point one:

'At the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly.'

Bullet point two:

This is a variable element. As we understand it, the genesis of the UKPN group of companies suggests that they are foreign-owned which may be based on offshore funds to which we would require expert opinion.

Bullet point three: talks of the scarcity value demand for new connections. WDCL paid for the provision of added electrical power in its contribution for the HV/LV cable distribution apparatus limbs to service the newly constructed supermarket environs.

The distribution, HV and LV apparatus was planned and designed by UKPN to cater for future development growth to which WDCL would be entitled to a refund via the 'betterment' system on any new customers being terminated to the relevant apparatus as is paid for by WDCL up to a period of 5 years.

Bullet point four: talks of a fact that WDCL may receive benefit insofar as UKPN are undertaking work on its behalf (without advance payment). We can only respond that the Parliamentary draughtsman undertook these thoughts with legal advice and concurred that which is enabled via the Electricity Act 1989, s.20.

It is to be remembered that UKPN illegally gained a substantial sum from WDCL in advance of the delivery of its statutory obligations as owed to WDCL, being funds that WDCL could have invested in seeking other construction works elsewhere and at a higher rate of profitability based on 15% profit or thereabouts than that substantially based on the said bank rate - but were denied that prospect by UKPN. This aspect would play an important part in the bullet points above.

Yours sincerely

John Duncan
for Willmott Dixon Construction Limited (WDCL)

Appendix 9 – Company response to our letter of 7 March 2016



Registered Office:
Newington House
237 Southwark Bridge Road
London SE1 6NP

Registered in England and Wales No: 3270728

Company:
UK Power Networks
(Operations) Limited

Ofgem
9 Millbank
London
SW1P 3GE

For attention of Andrew Burgess

21 March 2016

Dear Andrew,

Determination of Dispute – Willmott Dixon

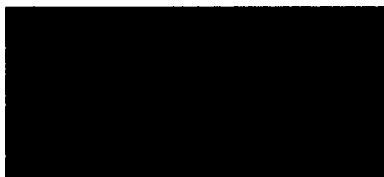
Thank you for your letter dated 7 March 2016. This letter and its attachment is London Power Networks plc's response.

Our view remains that Ofgem's 'minded-to' decision is wrong in law and if the 'minded-to' decision is confirmed by Ofgem's determination it remains a strong possibility that UK Power Networks will seek to challenge the decision through judicial review. This letter is written without prejudice to that position.

Please consider the responses in the context of the options expressed previously: specifically that payment of a connection charge in advance of commencement of work does not constitute 'security' and that interest payments are therefore not applicable.

If you have any further questions or require any further information please contact me as below.

Yours sincerely,




Head of Regulation and Regulatory Finance
UK Power Networks

Return Address:
UK Power Networks
Newington House
237 Southwark Bridge Road
London
SE1 6NP
 ukpowernetworks.co.uk

Attachment – UK Power Networks Responses

Q1. In your letter dated 11 December 2015 you asked:

"the rate of interest you believe is the maximum that UKPN should be entitled to charge WDC under section 20(3) of the EA 1989."

You clarified your question in your letter of 7 March with:

"For the avoidance of doubt, although our letter of 11 December 2015 referred to the maximum rate of interest that should be charged by UKPN under section 20(3) of the Act, we are seeking your views on the minimum rate of interest that Ofgem should be prepared to approve as payable by UKPN."

A1. The minimum rate of interest for the material times should be 0.05% on sums above £10,000 (0% below £10,000).

Q2. In your letter dated 11 December 2015 you asked:

"the factors that you believe we should take into account in approving any such maximum/minimum rate of interest that may be payable, if this issue were to arise following our determination."

A2. A key consideration should be the rate of deposit interest available to UKPN's connection customers from the main clearing banks. Those customers should not have an incentive to leave funds deposited with UKPN rather than with those banks.

The gross interest rates that leading clearing banks are currently offering on standard 'easy access business deposit accounts' are:

- Barclays Business Premium Account:
0.05% on balances up to £1m.
- Bank of Scotland Business Banking Instant Access Account:
0.05% on balances up to £5m.
- Natwest Business Reserve Account:
0.05% up to £250k; 0.15% up to £1m; 0.25% over £1m.

The vast majority of UKPN's connection charges are less than £250k.

UKPN is not a bank. UKPN would incur administrative costs in handling interest payments (including the costs of associated regulatory obligations), which need to be accounted for. Accordingly, UKPN's rate should be no higher than the bank deposit rates set out above.

A *de minimis* threshold should be applied to any payment of interest, such that costs of administering any payment do not exceed the interest payment itself. In other words, the minimum permissible interest rate for sums below a certain level (we suggest £10,000) should be much lower (and therefore in the present climate of low interest rates, nil).

Generally, UKPN's approach, which we invite Ofgem to endorse, should comply with the following regulatory principles. It should be:

- Simple to operate – for example to keep the costs of administration low and ensure no undue delay is introduced into the connection process.
- Cost reflective – the costs of administration should be borne by those customers who receive interest.
- Consistent for all connections providers – to avoid distorting competition, any system should be consistent across all connections providers (ICPs and IDNOs).
- Consistent as between customers – it would be complex and impractical to have bespoke minimum rates.
- Such that customers are not incentivised to deposit money with a connections provider rather than with a bank.

The following considerations are also relevant.

As we explained in paragraph 31 of our response dated 15 May 2015 to Ofgem's minded-to decision, security may take many forms, including for example, parent company guarantee, on which there is no obligation to pay interest. Should Ofgem maintain their minded-to position it is entirely foreseeable that customers will seek to secure significant network capacity without making any material commitment. As we have seen in the DG marketplace, significant 'capacity banking' has the potential to increase connection charges for subsequent customers and may drive DNOs to initiate significant load-related investment that otherwise would not be required. Taken to its logical conclusion, this has the potential to trigger a re-opener under the RIIO-ED1 settlement with consequential impacts for DUoS customers.

The rate should reflect that, in accepting the quotation and in paying the connection charge, customers secure capacity in the future. Such capacity is scarce. Securing that capacity is a return in itself on the payment of the connection charge.

The RIIO-ED1 scheme contains a net-to-gross true-up mechanism to reflect the mix of costs borne by individual connectees versus those borne by DUoS customers and funded *ex ante* within the price control. The introduction of a new interest payment administration mechanism and associated costs would, as outlined above, need to be borne by connectees. This could distort the ratios of net to gross given that additional costs would be 100% picked up by connectees. DNOs should not face a subsequent clawback at the end of RIIO- ED1 which would unwind the cost-reflective nature of such a mechanism.

In many cases, the customer may secure a connection offer early in their planning process, or alternatively may choose to delay or defer the construction phase of their scheme after they have accepted their connection offer. Accordingly, there can be a significant period between the acceptance of the connection offer and the start of construction. UKPN does not believe it is appropriate for interest to be paid for the period of any delay caused by action or inaction of the customer (or other circumstances beyond the control of UKPN). The interest rate should be set at a level which would discourage any such delay.

Q3. In your letter dated 7 March 2016 you asked:

"the date UKPN was paid by WDC for making the connection (putting to one side the moot status of that payment)."

A3. 27 July 2011.

Q4. In your letter dated 7 March 2016 you asked:

"the date that UKPN commenced (or substantially commenced) work in respect of the connection."

A4. Assessment and design work will have commenced well in advance of the payment date. Installation works for the connection were commenced in September 2011.

Q5. In your letter dated 7 March 2016 you asked:

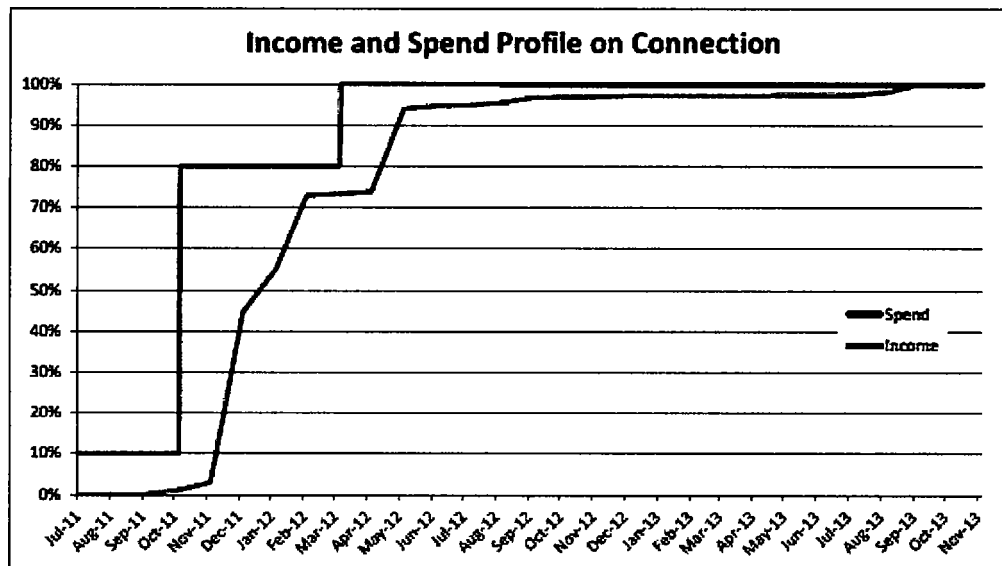
"the date that UKPN completed (or substantially completed) the work in respect of the connection."

A5. May 2012, with initial energisation of connections in October 2012. Please note that excavations along some of the cable route were required to take place at an early stage and be completed ahead of access restrictions for the London 2012 Olympics.

Q6. In your letter dated 7 March 2016 you asked:

"whether it would be a reasonable assumption that the rate at which costs were incurred by UKPN in connection with the work was approximately consistent between the dates at (2) and (3), or whether the costs incurred significantly departed from a "straight line" profile, and if so how."

- A6. The chart below shows an indicative spend profile (blue line) with a hypothetical income profile based on staged payment process if applied (red line).



- Q7. In your letter dated 7 March 2016 you asked:

"whether or not there was any significant demand for new connections in the part of the network where the connections were provided such that there was scarcity value associated with the grid capacity secured for WDC through their acceptance of your offer. If so, it would be helpful if this could be described or quantified so far as possible."

- A7. Yes. There was significant demand in the area of the connection. The site is in London SE18 which is one of our London areas with the highest volume of connections. London SE18 adjoins SE10 which in turn adjoins the River Thames which has very significant volumes of connections. At the time of the connection offer and continuing today there is limited capacity in the area. The capacity would have been taken up for other developments had the connection offer not been accepted for the Willmott Dixon project. A more expensive scheme would have been required if they had re-applied.

Appendix 10 – Customer response to our letter of 11 March 2016

From: John Duncan [mailto:john.duncan@nrswa.net]
Sent: 18 March 2016 14:31
To: [REDACTED]
Cc: Richard.Nash@willmott Dixon.co.uk
Subject: Willmott Dixon Construction Limited v UK Power Networks (Operations) Ltd [OFFICIAL]

[REDACTED]

Thank you for your letter of 11 March 2016 to which we provide you with the following information in response to the three questions:

1. the date UKPN was paid by WDC for making the connection (putting to one side the moot status of that payment);

WDC made payments on the following dates:

Date	Total Excl. VAT	VAT	Total
22/08/2011	1,271,656.19	184,903.24	1,456,559.43
21/12/2011	160,000.00	32,000.00	192,000.00
30/01/2012	47,309.65	-1,739.47	45,570.18
Total	1,478,965.84	215,163.77	1,694,129.61

2. the date that UKPN commenced (or substantially commenced) work in respect of the connection;

It is believed work commenced shortly after the first payment was made.

3. the date that UKPN completed (or substantially completed) the work in respect of the connection;

We were notified by UKPN on 10/10/13 that the works were completed at Kellaway Road Substation on 24th September 2013.

Regards

John Duncan
for Willmott Dixon Construction Limited

Tel: 01189 884 884

Appendix 11 – Customer comments on Company's letters of 24 December 2015 and 21 March 2016

Office of Gas and Electricity Markets (OFGEM)

By email

Date: 1 April 2016

[REDACTED]

Thank you for your email of 23 March below, with attachments of UKPN letters of 24 December 2015, 7 March and 21 March 2016.

We have no comment as to UKPN's imaginative thoughts, save for its proposed interest rates:

In fairness, the interest rate as might please be considered by OFGEM - should be on a parity or thereabouts with the UKPN adhesion (boilerplate) contract Terms and Conditions as is offered to the public at large within its standard Terms and Conditions, Clause No. 6.1.3, *'....at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly.'*

Regards

John Duncan
for Willmott Dixon Construction Limited

Tel: 01189 884 884

Appendix 12 – Company comments on the Customer's letters of 5 January 2016 and 18 March 2016



Registered Office:
Nesington House
237 Southwark Bridge Road
London SE1 6NP

Registered in England and Wales No: 3370723

Company:
UK Power Networks
(Operations) Limited

Ofgem
9 Millbank
London
SW1P 3GE

For attention of Andrew Burgess

6 April 2016

Dear Andrew,

Determination of Dispute – Willmott Dixon

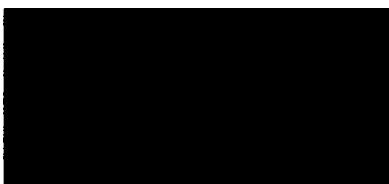
I refer to an email from [REDACTED] dated 23 March 2016 providing UK Power Networks an opportunity to comment on Willmott Dixon's responses to Ofgem's letters. This letter and its attachment is London Power Networks plc's response.

You will be aware that our view remains that Ofgem's 'minded-to' decision is wrong in law and if the 'minded-to' decision is confirmed by Ofgem's determination it remains a strong possibility that UK Power Networks will seek to challenge the decision through judicial review. This letter is written without prejudice to that position.

Please consider the responses in the context of the opinions expressed previously: specifically that payment of a connection charge in advance of commencement of work does not constitute 'security' and that interest payments are therefore not applicable.

If you have any further questions or require any further information please contact me as below.

Yours sincerely,



[REDACTED]
Head of Regulation and Regulatory Finance
UK Power Networks

Return Address:
UK Power Networks
Nesington House
237 Southwark Bridge Road
London
SE1 6NP

ukpowernetworks.co.uk

Page 2 of 2

Attachment – UK Power Networks Responses

Regarding Ofgem's file 'Response to WDC Interest letter' (email dated 5 January 2016 from John Duncan on behalf of WDCL to Andrew Burgess of Ofgem):

Bullet point one – reference to terms and conditions

The rate of interest under clause 6.1.3 of the terms and conditions is inapplicable and distinguishable. It serves a different purpose. It is intended to incentivise prompt payment of debts.

Bullet point two – foreign ownership

Foreign ownership is irrelevant. The rate should not be set by reference to such factors. As noted in our response A2 dated 21 March 2016, the rate should be consistent across connections providers, and simple to operate.

Bullet point three – scarcity value demand for new connections

Willmott Dixon has referred to the "*betterment system*". We assume that this is intended to refer to the Electricity (Connection Charges) Regulations 2002 that concern additional charges and refunds to be made (as applicable) where the benefit of a new connection is shared. Willmott Dixon do not say how they contend this ought to be reflected in the interest rate. We do not believe it should. The 2002 Regulations govern this aspect. This determination does not concern the 2002 Regulations.

Our position on scarcity value is, as set out in responses A2 and A7 dated 21 March 2016, that the interest rate should reflect that, in accepting the quotation and in paying the connection charge, customers secure capacity in the future. Demand is high in the SE18 area. Willmott Dixon secured capacity by paying the charge, which we believe is a fair return in itself, without any need for interest in addition.

Bullet point four – benefit in respect of timing of payments

Willmott Dixon has referred to its ability to invest funds elsewhere.

As set out in our response A2 dated 21 March 2016, the interest rate should not be customer-specific. It is not feasible for UK Power Networks to assess each customer's particular situation.

In any event, no evidence or detail is provided by Willmott Dixon justifying its alleged inability to earn profit of "15% or thereabouts". No transparency has been provided as to Willmott Dixon's cash flows, investment opportunities, investment risks or investment timeframes.

Item 1 – Willmott Dixon payments

The timing and value of the three payments referred to by the customer are broadly in line with our records. For completeness we would add that:

1. A refund of £160,345.74 + VAT was issued to the customer in October 2013 in respect of out-turn costs, and
2. A cheque for £21,852.00 was issued to the customer on 17 July 2014, paid as compensation including elements for inconvenience and goodwill. However, we are aware that the customer declined to cash this cheque.

Item 2 – the date UKPN commenced (or substantially commenced) work

As explained in our response A4 dated 21 March 2016, it is important to recognise that UK Power Networks will have commenced its assessment and design work well in advance of the payment date. Installation works for the connection were commenced in September 2011.

Item 3 – the date UKPN completed (or substantially completed) work

In our response A5 dated 21 March 2016 we gave the date as: *"May 2012, with initial energisation of connections in October 2012."*

We note Willmott Dixon stated: *"We were notified by UKPN on 10/10/13 that the works were completed at Kellaway Road Substation on 24th September 2013."*

We would like to explain that Kellaway Road Substation is an 'off-site' substation where works to make the full capacity available were completed after the initial connections were energised, and that the customer did not require the full capacity to be available between these dates.