



Office of Utility Regulation

Electricity in Guernsey

Licensing Framework

Consultation Paper

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Office of Utility Regulation
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1. Introduction

Around the world and particularly in Europe, the structure of electricity markets is changing. While core electricity network activities (conveyance or distribution and transmission) remain in their original monopoly structures, electricity generation and supply markets are being opened up to competition with the objective that prices in those markets will ultimately be controlled by competitive market forces.

However, while markets are still moving from old monopoly structures and where competition is not established, a need for regulation has been identified to ensure that the interests of customers are protected in respect of the prices charged for generation and public supply and the quality of service provided. Regulation also provides a mechanism to facilitate the development of competitive and sustainable electricity markets, while protecting reliability and continuity of supply.

In Guernsey the States has resolved to update the legislative framework for electricity provision and assign the function of regulation to the independent Office of Utility Regulation (“OUR”) so that regulation can be carried out in a fair, transparent way and is separate from the electricity company or its owners.

The new legal framework is due to be in place by 1st October 2001 when it is intended that the States Electricity Board will be commercialised, the regulatory legislation and electricity legislation will come into force, and the Director General of Utility Regulation will be appointed. On that date the old electricity legislation will be repealed.

In order to prepare for 1st October, the Director General (Designate) of the OUR (“the Director General”) is developing a proposed framework for electricity regulation which is described in this and a number of related papers. These are being published for consultation with a view to assisting the Director General in arriving at final decisions on key elements of the framework by 1st October.

This paper describes those activities that fall within the electricity regulatory regime and, by exception, those that do not and proposes a number of measures to develop the regime, including exemptions of certain activities in the market.

The following consultation papers address related issues and may be of interest to respondents to this paper:

- Document OUR01/08: Electricity Licence Conditions – Consultation Paper
- Document OUR01/09: Proposed Decisions under the Electricity (Guernsey) Law, 2001

This consultative document does not constitute legal, commercial or technical advice. The Director General is not bound by it. The consultation is without prejudice to the legal position of the Director General or her rights and duties to regulate the market generally.

2. Structure and Comments

2.1. Structure of this Paper

The rest of this paper is structured as follows:

Section 3: Gives an overview of the legislative and policy background to the issues addressed in this paper.

Section 4: Describes the scope of the regulatory framework and sets out those elements of the electricity market that the Director General considers should be exempted from the requirement to hold a licence.

Section 5: Concludes the paper.

Appendix 1: Contains definitions from the Electricity (Guernsey) Law, 2001

Appendix 2: Contains a draft direction exempting certain classes of persons from the requirement to hold a licence.

2.2. Submission of Comments

The consultation period will run from Thursday 16th August to Thursday 6th September 2001. Written comments should be submitted before 5.00pm on September 6th to:

Office of Utility Regulation
Suites B1& B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

Email: info@regutil.gg

All comments should be clearly marked “Comments on the Licensing Framework for the Guernsey Electricity Market” and should arrive before 5pm on Thursday 6th September 2001.

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In line with the policy set out in Document OUR01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a report on the consultation in September 2001 which will describe her decisions.

3. Background

3.1. Legislative Framework

The States of Guernsey has approved a new package of legislation governing the regulation of the utility sectors in Guernsey, including the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”) and the Electricity (Guernsey) Law, 2001 (“the Electricity Law”). The new legislation, which is expected to come into force on 1st October 2001, sets out the principles that are to be followed in the regulation of the sectors in Guernsey and assigns functions and duties to both the States of Guernsey and the Director General.

In exercising those functions both the States and the Director General are required to balance, amongst other things:

- the interests of consumers and users in the Bailiwick in relation to cost, quality and availability of services;
- the need to satisfy demand for relevant services;
- the economic and social development and well-being of the Bailiwick;
- the introduction and promotion of effective sustainable competition;
- the introduction of innovation and new services and the improvement of services; and
- the environment and any effects on the environment.

This is designed to ensure that the best interests of the Bailiwick are central to the regulatory regime.

3.2. States Directions

The legislation also provides that the States of Guernsey may issue Directions to the Director General in relation to:

- the scope of the universal service (or public supply obligation in electricity – “PSO”) to be provided in each sector;
- the identity of the person to whom the first licence with a public supply obligation is to be granted;
- any exclusive rights that may be granted in each sector; and
- requirements imposed to meet international obligations.

The Director General understands that States will consider and issue Direction in relation to these matters in the electricity market at its meeting in September 2001.

3.3. Implementation of States Directions

In order to meet the timetable for the implementation of the new regime, the Director General has prepared this consultation paper based on the assumption that the States will agree to direct the Director General as follows:

- that there is sufficient clarity as to the public supply obligation in the Electricity Law and there is no need for further directions in relation to this matter at this time;
- that the first licensee with a PSO shall be the States Trading Company that the States proposes to set up to take over the functions of the States Electricity Board on 1st October; and
- that there shall be :
 - no exclusive privilege in the generation market;
 - ten years exclusive privilege in the conveyance market; and
 - one year exclusive privilege in the supply market pending further States Directions.

This and related consultation papers are prepared on this basis, but this is without prejudice to the nature of any confirmed States Directions and the Director General will adjust any final decisions to accord with States Directions.

4. Scope of the Regulatory Framework

This section considers various categories of electricity generation, conveyance and supply, the legal provisions applying to those categories, and the appropriate types of licences or exemptions for each category.

4.1. Licenseable and Non-Licenseable Activity

The Electricity Law provides that it is an offence to:

- generate electricity for the purpose of giving supply or enabling a supply to be given to a premises;
- convey electricity for that purpose; or
- supply electricity to any premises,

without a licence.

By omission therefore, the production of electricity as a by-product of any activity where it is not for the purpose of supply is not an offence and does not require a licence.

The Law includes various definitions that assist in describing the three activities of generation, conveyance and supply and these are reproduced in Annex 1 for ease of reference. Anything falling within these definitions must be licensed or exempted from the requirement to have a licence.

The Director General has the following powers:

1. To exempt an activity from the requirement to hold a licence: This option allows a light handed approach, where few or no conditions are imposed and parties are free to engage in the exempted activity with no further administrative requirement. The power to make such exemptions by direction gives the flexibility to amend and adjust the scope of exemptions as required to meet the needs of the market and consumers in a speedy and efficient manner.
2. To issue a class licence for an activity or a group of persons: This option may be used where it is not necessary to control the individual players in the market but it is necessary to ensure compliance with certain common conditions that would apply to everyone operating under a class licence, for example, consumer protection conditions.
3. To issue an individual licence or licences: This option is appropriate to be used where there is only one or very few players in the market and/or where the activity being licensed is essential to customers, e.g. in the case of the public supply licensee, where customers may have to rely solely on the licensee for their electricity supply.

In this paper the Director General sets out proposals for how these options may be applied in the marketplace.

4.2. Exemptions

4.2.1. Principles

In considering what activities should be exempted from the requirement to be licensed, the Director General has considered international practice and the types of activities that are particular to Guernsey, for example the use of generators to power greenhouses or other facilities. It is proposed to exempt activities wherever possible so as to avoid unnecessary licensing activity. However, the Director General is aware that in other jurisdictions there has been a need to adjust exemption orders quite frequently in order to keep pace with changes in the market¹, and she intends to keep this matter under review on an ongoing basis.

4.2.2. Proposed Exemptions

The following are the categories of activity which the Director General has considered could be exempted:

¹ In the UK, the first exemption order made under the Electricity Act 1989 was made in 1990 and was changed five times between 1994 and 1997.

Private Generation and Supply

The first category includes situations where a single consumer in a single premises generates electricity for the purpose of supplying himself only, and he consumes all of the electricity produced on the same premises.

This would include individuals using small generation facilities to supply their own needs who are not reselling electricity to third parties. The Director General proposes to exempt these types of persons from the need to hold a licence for either generation or supply. The Director General does not propose to include any specific conditions in this exemption.

Q 4.2.1 Do respondents agree with the proposal to exempt this type of activity and not to impose specific conditions at this time? Please explain your answer.

Generation and Supply by Companies

Where the “person” generating and supplying electricity on a single premises is a company, the Director General proposes to include this in the exemption order. In addition, the Director General suggests that this should be extended to associated companies such as subsidiaries etc, where they occupy the same premises. This would permit companies to provide backup or other generation capacity for their own use.

Q 4.2.2 Do respondents agree with the proposal to exempt this type of activity? If not please explain why and suggest alternative approaches.

Backup Generation and Supply

Where a person generates electricity as a “backup” facility in order to supply power where there is an interruption to his main supply of electricity. This includes circumstances where companies operate backup generators to use in times of power cuts. The Director General proposes to exempt this type of activity from the need to be licensed. Insofar as this activity comprises generation and supply to one premises by a party for his own use, it would be encompassed by the first class of exemption described above.

Q 4.2.3 Do respondents agree with the proposal to exempt this type of activity? If not please explain why and suggest alternative approaches.

Small Generators and Associated Supply

A more complex issue is where a company is capable of generating electricity and wishes to resell the electricity to third parties where those third parties occupy the same or adjacent premises. The Director General notes that in larger jurisdictions it has been the practice to exempt generation facilities that produce power below specified limits, and to exempt the supply of such electricity, which would include some of these types of activities. This allows small generators to enter the market without a need for licensing, thus facilitating the development of competition. This would involve generation and supply of electricity directly without using the conveyance network and normally carries

with it conditions to ensure that the consumers of such electricity are protected in terms of price and safety.

The Director General believes that this issue is central to the question of the introduction of competition into both the supply and generation markets. In relation to supply therefore, she expects to consider this within the overall context of the introduction of competition into the supply market and will be guided by States Directions on this matter.

In relation to generation, the commercial generation of electricity raises a number of issues that may be appropriate to be addressed by specific conditions, including conditions in relation to price control, technical standards etc. Therefore the Director General believes that such generation facilities should be considered within the context of the licensing regime rather than the exemptions.

Q.4.2.4: Do respondents agree with this position? If not what alternative route would you propose and why?

A draft direction exempting a number of classes of persons and activities is at Appendix 2 for comment.

4.3. Licensing Framework

In licensing the generation, conveyance or supply of electricity in accordance with the Electricity Law and States Directions, the Director General may use Class Licences or Individual Licences. This section describes the various licensable activities and asks questions about the nature of the licences that might apply in each category.

4.3.1. Generation

The Director General anticipates that the States may direct that there should be no exclusive privilege in the generation of electricity and therefore this market should be open to competition. If this is the case, the Director General intends to publish application procedures and draft licence conditions for consultation after 1st October. In preparing these the Director General will consider whether all generation licences should contain the same conditions or whether there is sufficient reason to differentiate between generation stations and provide for Class Licences for generation below a certain level and individual licences for those above this level. Document OUR 01/08; Electricity Licence Conditions – Consultation Paper, sets out the terms and conditions that the Director General proposes to include in the first generation licence and may be of assistance to respondents in replying to this paper.

Q.4.3.1 Do respondents consider that there should be different categories of generation licence? Why and on what basis should they be differentiated?

4.3.2. Conveyance

The Director General expects that the States will direct that an exclusive privilege be granted to one operator to convey electricity in Guernsey. Given the crucial nature of the

conveyance of electricity and the fact that there will only be one licensee, the Director General considers it appropriate to issue an individual licence for this activity. Document OUR01/08 sets out the conditions that the Director General intends to include in such a licence.

4.3.3. Supply

The Director General anticipates that the States may direct that there should be an exclusive privilege to supply electricity (with the exception of the exemptions set out above) for a period of one year during which the possibility of introducing competing suppliers into the market should be considered. Given the reliance of customers on the public supply licensee the Director General considers that an individual licence is appropriate in this case also. Document OUR01/08 sets out the conditions that the Director General proposes to include in the first public supply licence.

5. Conclusion

This paper sets out the approach that the Director General proposes to take to licensing of electricity undertakings in Guernsey and the views of interested parties are invited.

/END

Appendix 1 – Definitions

Extracts from the Electricity Law

Section defining what requires a licence

“1. (1) Subject to the provisions of subsections (2), a person shall not-

- (a) generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;*
- (b) convey electricity through an electricity network for that purpose; or*
- (c) supply electricity to any premises,*

in the Island of Guernsey except under the authority of and in accordance with the conditions of a licence granted by the Director General under this Part of this Law; and a person who contravenes any provision of this subsection shall be guilty of an offence”

Associated Definitions

“convey”, in relation to electricity, means the transportation of electricity by means of an electricity network;”

“electricity network” means a system which consists of electric lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another;”

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires:-

- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;*
- (b) any apparatus connected to any such line for the purpose of carrying electricity; and*
- (c) any wire, cable, tube, pipe or other similar assembly (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;*

“electrical plant” means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, conveyance or supply of electricity, other than:-

- (a) an electric line;*
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or*
- (c) an electrical appliance under the control of a consumer;*

“supply”, in relation to electricity, means supply through electric lines otherwise than to premises occupied by a licensee for the purpose of carrying on the activities which it is authorised by its licence to carry on, but shall not include the supply of electricity from a portable battery;

Appendix 2 – Draft Direction

The Director General in exercise of the powers conferred on her by section 1(2) of the Electricity (Guernsey) Law, 2001², hereby directs:-

Exemption

1. The persons specified in paragraph 3 are exempt from the requirement to hold a licence under section 1(1)(a) of the Electricity (Guernsey) Law, 2001 and,
2. The persons specified in paragraph 4 are exempt from the requirement to hold a licence under section 1(1)(c) of the Electricity (Guernsey) Law, 2001.

Generation

3. Persons (other than licensed generators) who do not at any time provide electrical power from a generation station except for
 - a. the purposes of supply to themselves, or
 - b. where the person is a company, for the purpose of supply to that company and associated companies,

where the person or the company and associated companies are situated on the same premises as the generation station.

Supply

4. Person (other than licensed suppliers) who do not supply any electricity except for
 - a. electricity which they generate themselves; or
 - b. electricity which they generate themselves together with electricity which is supplied to them by a licensed supplier.

²

Order in Council No. ** of 2001.