



Office of Utility Regulation

**Proposed Decisions under  
The Electricity (Guernsey) Law, 2001**

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Consultation Paper

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**Office of Utility Regulation**  
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# **Proposed Decisions under the Electricity (Bailiwick of Guernsey) Law, 2001**

## **Consultation Paper**

### **Contents**

1. Introduction.....	2
2. Consultation Procedure and Timetable.....	2
3. Proposed decision as to whether a person has a dominant position in a relevant market. ....	3
3.1. Relevant Market.....	3
3.2. Dominant position.....	4
4. Proposed decision to include conditions in a licence in relation to control of dominant positions. ....	5
5. Proposed decision to regulate the prices, premiums and discounts of a dominant operator. ....	5
6. Proposed decision to include quality of service conditions in any licence.....	5
7. Proposed decision to Apply the Code in Schedule 1 of the Electricity Law .....	6

# 1. Introduction

In preparing the regulatory framework that will apply in the electricity market in Guernsey from 1<sup>st</sup> October 2001, the Director General of Utility Regulation (“the Director General”) is required to publish notice of certain proposed decisions under the Electricity (Guernsey) Law, 2001 (“the Electricity Law”). This paper sets out a number of proposed decisions and invites comments on those decisions. Parties responding to this paper may also wish to comment on the following related public consultation documents:

- Document OUR01/07: Electricity Licensing Framework – Consultation Paper
- Document OUR01/08: Electricity Licence Conditions – Consultation Paper

The Decisions that the Director General is now addressing are:

- (a) a proposed decision as to whether a person has a dominant position in a relevant market ;
- (b) a proposed decision to include conditions in the licence to be granted to that person in relation to the control of that dominant position, and what those conditions are;
- (c) a proposed decision to regulate the prices, premiums, discounts that may be charged or allowed by a licensee which has a dominant position in a relevant market,
- (d) a proposed decision to include quality of service conditions in any licence, and
- (e) a proposed decision to apply the Code, as set out in Schedule 1 of the Electricity Law, to a Licensee.

Section 5 of the Electricity Law requires publication of notice of proposed decisions (a) to (d) above, and Section 9 of the same Law requires publication of notice of proposed decision (e) above.

*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. Consultation Procedure and Timetable

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

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

Email: [info@regutil.gg](mailto:info@regutil.gg)

All comments should be clearly marked “Comments on Proposed Decisions under the Electricity (Guernsey) Law, 2001 - Consultation Paper”

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 along with final decisions in September 2001.

### **3. Proposed decision as to whether a person has a dominant position in a relevant market.**

While there is a considerable amount of international literature and experience in the matter of defining relevant markets in other sectors, and determining whether there is dominance or market power in those markets, there is little precedent in Guernsey. The Director General proposes to develop further a body of analysis of markets that will assist in discharging this function in the future and will consider practice elsewhere as well as the specific conditions of the Bailiwick.

#### **3.1. *Relevant Market***

For this present decision the Director General has considered the relevant market having regard to the geographic area and the product and services provided and then considered the position of the main or sole player in those markets – the States Electricity Board (“Guernsey Electricity”). The Director General notes that it is proposed to establish a States Trading Company on 1<sup>st</sup> October 2001 to take over the functions of Guernsey Electricity. As this will not change the position of the company in the market, for the purpose of this paper the term “Guernsey Electricity” will apply to the current States Board and the new entity when it is established.

**Geographic extent of the market:** The Director General intends to define the geographic markets for electricity with reference to the area in which relevant parties are authorised to operate and, where relevant, the geographic extent of the electricity network. Therefore the Director General will consider the island of Guernsey as the geographic market in this case.

**Products and Services in the market:** There are various ways of identifying markets using tests such as demand and supply side substitutability for products and services. However, in the current climate in the Bailiwick of Guernsey, there exist markets for electricity generation, supply and conveyance in which Guernsey Electricity has a specific legal right to operate and in certain cases a legal monopoly. Therefore these tests are redundant because there is a legal impediment to any

supplier other than Guernsey Electricity providing those services or products, and a similar legal barrier to any customer receiving the services from an alternative supplier.

With the introduction of new legislation in the form of the Electricity Law, this legal monopoly will be removed. However the new legislation specifically identifies three markets;

- Generation of electricity;
- Conveyance of electricity; and
- Supply of electricity.

The Laws and associated States Directions are framed in the context of these three markets, and deal with exclusive rights in each market, and it is sensible therefore for the Director General to consider these three markets in the first instance.

### **3.2. *Dominant position***

Once again, there is considerable international experience in determining if an undertaking has a dominant position in a relevant market. A generally accepted principle is that an undertaking can be considered dominant if either individually or jointly with others it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

There is a variety of matters that can be considered when making such a decision, including the market share of an undertaking, barriers to entry into the market and price rivalry. However, in the markets under consideration, not only does Guernsey Electricity have a legacy monopoly, but the Director General expects that in certain markets this legal monopoly will continue. The Director General understands that the States of Guernsey intends to consider certain draft directions in relation to the exclusive privileges in the electricity markets at its September 2001 meeting. It is further understood that the States may direct the Director General that:

- that there shall be no exclusive privilege in the generation market;
- there shall be ten years exclusive privilege in the conveyance market; and
- there shall be one year exclusive privilege in the supply market pending further States Directions.

This paper is 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.

Where there is an exclusive right in the licence, the situation described above is unchanged, i.e. Guernsey Electricity has a legal monopoly in the market for conveyance and supply. In those circumstances Guernsey Electricity is free to act independently of competitors (as there are none in these markets) and of customers and consumers because the customers and consumers have no choice and cannot switch to alternative suppliers. Therefore the Director General proposes to decide that Guernsey Electricity has a dominant position in the supply and conveyance markets.

With regard to generation, notwithstanding the prospective removal of the legal monopoly in this market, Guernsey Electricity's legacy monopoly will mean that it is initially the largest generator in the market and, given the effort required to build alternative generation capability, is likely to remain so for some time. The Director General considers it is appropriate to find Guernsey Electricity dominant in the generation market.

*Q.3 Respondents are invited to make any comments on this proposed decision.*

#### **4. Proposed decision to include conditions in a licence in relation to control of dominant positions.**

Given Guernsey Electricity's position in the market, the Director General proposes to include a number of specific conditions in the licence that it is proposed to grant to Guernsey Electricity in order to control its dominant position. These conditions are set out in section II of the Draft Electricity Licence at appendix 2 to document OUR01/08; Electricity Licence Conditions – Consultation Paper. A description of the conditions is in Appendix 1 of that document. While this particular consultation relates to Guernsey Electricity, it should be noted that the Director General currently considers that similar conditions should apply to any other licensee where that licensee is dominant in a relevant market. This is without prejudice to the outcome of future consultations.

*Q.4 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/08.*

#### **5. Proposed decision to regulate the prices, premiums and discounts of a dominant operator.**

The Director General proposes to include conditions relating to the prices, premiums and discounts that dominant operators charge or allow. The relevant condition is Condition 20 in the licence that it is proposed to grant to Guernsey Electricity (see OUR01/08). Without prejudice to the outcome of future consultations, the Director General currently considers that these conditions would be appropriate to be included in the licence of all operators who are determined to be dominant in a relevant market.

*Q.5 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/08.*

#### **6. Proposed decision to include quality of service conditions in any licence.**

The Director General proposes to include specific conditions relating to quality of service in the licence that it is proposed to grant to Guernsey Electricity (conditions 22, 26 & 37 Appendix 2 of Document OUR01/08). Without prejudice to future

consideration of licence conditions for other operators, the Director General currently considers that these conditions would be appropriate to Guernsey Electricity at this time.

*Q.6 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/08.*

## **7. Proposed decision to Apply the Code in Schedule 1 of the Electricity Law**

Section 9 of the Electricity Law requires the Director General to publish notice of her intention to apply the Code, as set out in Schedule 1 of the Electricity Law. The code sets out certain rights, powers duties and obligations that are applicable to the licensee in relation to access to land.

The Director General may apply the code where in her opinion it is not technically or economically feasible for the network of that licensee to be established, operated or maintained without the Code. The rights in the code are designed to allow the continuation of the provision of an electricity network that covers the entire Bailiwick and is capable of meeting the public supply obligation. In addition, notwithstanding the application of the code, the licensee is still subject to the planning laws of the Bailiwick.

With the repeal of the Loi relative à la Fourniture de l'Electricité par les Etats, 1933, certain rights and entitlements that Guernsey Electricity had under that Law will be removed. The rights in the Code are intended to replace those former rights. The Director General considers it reasonable to expect that Guernsey Electricity will continue to require the rights in the Code to continue to establish, maintain and improve its network which is capable of delivering the required level of service and therefore she proposes to apply the Code to Guernsey Electricity.

*Q.7 Respondents are invited to make any comments on this proposed decision.*

**ENDS/**