



# ELECTRICITY SECTOR (GUERNSEY)

## 2020 WORK PROGRAMME

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## INTRODUCTION

The overarching aim of the Channel Islands Competition and Regulatory Authorities (CICRA)<sup>1</sup> is to ensure markets work.

CICRA's prioritisation principles, values, strategic objectives together with the annual work programme for 2020 are set out below. Given a number of uncertainties around policy in the energy sector, it is important to emphasise that effective and efficient delivery of the annual work programme in the Guernsey electricity sector must necessarily assume that the role of CICRA as the regulator of the electricity sector will continue and that the pending States of Guernsey energy policy will substantively and coherently inform a number of important aspects of CICRA's decision making where they are relevant to this work programme.

## Background

CICRA (including its predecessor body the Office of Utility Regulation) has been the economic regulator of the Guernsey electricity sector since 1st October 2001. During the previous parliamentary term, the States of Deliberation made Resolutions concerning the oversight of Guernsey Electricity Limited ("**GEL**"), and the regulation of the electricity sector. The States made the Resolution on the basis of propositions submitted by the former Commerce & Employment and Treasury & Resources Departments, as set out in Billets d'Etat VI of 2015 and III of 2016.

The approach agreed by the States at that time is summarised below in terms of how it applied to the electricity sector :

- GEL should be made exempt from the licensing and regulatory provisions of the Electricity (Guernsey) Law, 2001;
- the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, should be amended so that the Guernsey Competition and Regulatory Authority is no longer responsible for regulation of the electricity sector;
- what is now the States' Trading Supervisory Board, as successor to Treasury & Resources, should develop its role as a more active shareholder of GEL;
- responsibility for carrying out regulatory functions under the sector laws should be transferred from the Authority to what is now the Committee *for* Economic Development, as successor to the Commerce & Employment Department ;
- the States should direct the Committee, acting as 'regulator', to issue no new licences in the electricity sector, to maintain the monopolies held by GEL in the electricity market ; and

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<sup>1</sup>The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. For the purposes of this document, the JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

- that the legislative framework for regulation should be preserved in the event that future market or other changes within the sector requires the reintroduction of some form of independent regulation.

The draft legislation has not to date been laid before the States. CICRA has therefore continued in law to be the regulator of the electricity sector but for some time has out of practical necessity curtailed its activity given the expectation of imminent formal removal from this role.

Given the time period elapsed, issues have however arisen which, given their smaller scale, could be accommodated within CICRA's resources, namely the licence application by the International Energy Group, assessment of pass through costs incurred by GEL, and resolution of a complaint about standby charges. CICRA has also supported the Guernsey Department for Environment & Infrastructure in the development of its energy policy.

Over 2019 it has however become likely that the Resolution may not be effected while a number of significant matters are likely to arise. CICRA therefore proposes to address those within the capability and resources it has available to it in uniquely difficult circumstances. These matters are set out in this draft work programme for 2020.

## PRIORITISATION PRINCIPLES

The Authority will weigh up several factors when prioritising how it allocates its resources with the aim of ensuring markets work well in the Channel Islands. This is important because improving how markets work brings many benefits to the economy such as lower prices, increased choice and innovation.

Before taking action, in particular, it will consider whether the matter can be resolved in a manner that is **actionable, realistic and meaningful**.

### **Actionable**

This prioritisation principle looks at whether CICRA has the necessary legal powers to properly assess and address the nature of the concerns that have arisen. The nature of the powers given by legislation as well as the absence of powers are all relevant in considering whether the Authority has the legal means to proceed when considering matters that may arise whether it is acting in its role as an economic regulator or a competition law enforcement body.

In its role as an economic regulator, the Authority has certain legal powers that allow it to intervene in a proactive way in certain specific sectors of the economy to prevent harm to customers caused by a lack of competition where choice then tends to be limited. Telecoms, ports, electricity and post sectors are all subject to economic regulation in one or both Islands. In these situations, the Authority "stands in the gap" as a proxy for the competitive pressures that would otherwise be present. Examples of such forward looking action by the Authority include setting price controls and imposing service standards on companies within those sectors.

Outside of these specific sectors, the Authority does not have the power to impose this type of forward looking measure. Instead it may be able to use its competition law enforcement powers to put a stop to harmful behaviour by businesses, although certain sectors are excluded from competition law (for example the Guernsey airline sector). Competition law can be used to address issues such as anti-competitive agreements between organisations, price fixing, measures designed to exclude competitors from the market, and abuse of a dominant market position.

The Authority will not consider action outside these areas defined by law.

### **Realistic**

Small market economies such as Guernsey and Jersey are often subject to international commercial forces and developments with limited ability to make a meaningful impact on those.

CICRA is a small competition and regulatory authority and as such certain types of investigations are of a scale and complexity that are better undertaken by competition authorities in larger jurisdictions. European Commission investigations into the behaviour of firms like Google or Amazon demand a combination of capacity and capability simply not available to the Channel Islands. In these circumstances, even where it has the legal powers to do so, the Authority is likely to rely on the decisions of larger jurisdictions rather than carry out its own independent investigation.

The Authority will take into consideration the practicalities of carrying out large and complex investigations before deciding whether to take a matter forward.

### **Meaningful**

Ultimately the Authority wants to be confident that the actions it takes have a net positive contribution to the functioning of local markets, mindful of the fact that any intervention will have some cost. When the Authority contemplates whether to proceed with a matter brought to its attention, it considers both tangible and intangible costs and benefits.

Many of the duties placed on the Authority are essentially about protecting principles of fairness to consumers and/or fair play in commercial behaviour between firms. In terms of being meaningful, such benefits do not always lend themselves to measurement in terms of monetary value but require a more subjective assessment of their value.

Clearly, parties affected by an investigation will also experience its cost and benefit effects differently. Businesses under investigation will generally bear a greater burden of the cost of investigation whereas consumers or competitors may be impacted positively as a result of an intervention – for example through

greater choice or ability to serve consumers – and therefore they will generally have a greater share of the benefit.

An example of where tangible costs and benefits can be identified was the reduction in conveyance fees after price fixing was abandoned by law firms, where the direct cost to consumers reduced as a result. The monitoring of mast emissions on the other hand involves fairly significant costs and delivers no apparent financial benefit. On the basis of immediate financial costs versus benefits this would not be undertaken. However, the benefits of providing assurances to the public are considerable ; objections to planning applications based on lack of information will contribute to delays and a decline in mobile service quality as a result. When mobile mast emission monitoring gives appropriate oversight and assurances to the public the intangible benefit of greater confidence contributes to opportunities and enhancement to our quality of life through access to modern services even if not amenable to financial quantification.

## Values

CICRA ensures that its team works with principled pragmatism in the forefront of their minds. We promote 3 key values and encourage our stakeholders to reciprocate :

- **Integrity** - Maintain and expect high standards of integrity and respect
- **Openness** - Maintain appropriate level of confidentiality, encouraging a culture of openness where possible
- **Accountability** - We take responsibility for resolving issues in a constructive manner

## ECONOMIC REGULATION OF ELECTRICITY (GUERNSEY) - STRATEGIC OBJECTIVES

The objective for the economic regulation of the electricity sector in Guernsey is **to protect consumers of electricity services through oversight of charges and promotion of competition where appropriate, consistent with policy.**

### 2020 Work Programme

There are several developments that require a consideration of prices, including the recent Guernsey to Jersey interconnector project, a longer term standby charge control, recovery of the capital cost of a potential new interconnector to France from Guernsey and investigation of complaints between competitors. Support for the Department *for* Environment & Infrastructure in the development and implementation of a Guernsey energy policy will also feature in CICRA's priorities in this sector.

The work programme items for the electricity sector for 2020 are therefore :

#### 1. Guernsey to Jersey interconnector

CICRA anticipates receiving an application for a price increase to meet the costs of the recently completed Guernsey to Jersey interconnector. At the present time the scope of that work and extent of assessment required is unclear. It will in any event represent a significant outlay by GEL and the

expectation is that GEL will request a further price increase to cover those costs. This will require a price control assessment.

## **2. Review of standby charges**

In April 2019 CICRA concluded its assessment of a category of GEL's charges, referred to as the Standby charge. The standby charge is a monthly charge levied by GEL on customers with embedded generation capacity based on their installed capacity. When CICRA concluded its interim decision in 2019 it signalled its intention to undertake a more comprehensive review of this charge at a future date. This work stream is therefore included in the 2020 work programme.

## **3. Pass through cost assessment**

The failure of the interconnector between Guernsey and Jersey gave rise to a more expensive cost of providing electricity. Imported electricity was reduced as a result and had to be substituted for on-Island generated electricity which was more expensive. In circumstances where those costs were outside of GEL's control there is a case that they qualify for what is termed 'pass through costs'. CICRA will evaluate the nature and extent of such costs to establish whether they are justified and support a tariff increase request.

## **4. Pass through cost assessment**

GEL has indicated that its current tariff structure requires rebalancing.

Given the form of the existing price control on GEL it could, of its own initiative, rebalance its tariffs based on its commercial priorities with due regard to consumer interests and other duties placed on it through licence conditions and legislation, but we understand GEL has made a decision to await the outcome of the Guernsey energy policy before doing so. CICRA therefore undertakes this work stream on the basis that GEL will, of its own initiative, undertake and implement a tariff rebalancing exercise after the first quarter of 2020. It will expect that GEL will be mindful of the functions and duties placed on CICRA by the States of Guernsey through the relevant legislation. Subject to the availability of a Guernsey energy policy it would be the intention of CICRA to consider whether GEL's tariff structure is consistent with relevant legislation, licence conditions, general economic regulatory principles and in particular reflects the ambitions of Guernsey's energy policy.

## **5. Guernsey to France interconnector**

Depending on the conclusion of the Guernsey energy policy, there is the possibility that GEL will need to commence a significant investment into an interconnector to France. In the event it considers the need to do so, the investment would probably be the largest undertaken by GEL since the late 1990s. As such, the cost implications for consumers required to meet those costs through their tariffs is likely to be significant. It is therefore a matter CICRA includes in its 2020 work programme.

## **6. Addressing complaints from licensees**

As the electricity market in Guernsey now has two licensees, CICRA is likely to have a greater role in protecting and/or promoting competition. The scale and number of such investigations is not

foreseeable but it anticipated that CICRA will be called on to address disputes between licensees and has factored that into its work programme going forward.

## **7. Supporting energy policy**

The Department *for* Environment & Infrastructure is in the process of finalising an energy policy. This will identify a number of priorities and considerations that will inform priorities in the energy sector. CICRA is expected to have a role in meeting those ambitions through its regulatory duties and functions.

## **NEXT STEPS**

CICRA will continue to engage with key stakeholders in adapting these work streams where the case is made and progressing its strategic objectives in the Guernsey electricity sector.

**END**