



Office of Utility Regulation

# **Electricity in Guernsey**

## Licensing Framework

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## Decision Notice and Report on the Consultation Paper

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**Office of Utility Regulation**

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## **Licensing Framework – Decision Notice and Report on the Consultation Paper**

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# 1. Introduction

In August 2001, the Director General of Utility Regulation published a series of consultation papers in relation to the introduction of a new regulatory framework for the electricity sector in Guernsey. This report deals specifically with the issues addressed in the consultation paper OUR 01/07 entitled “Electricity in Guernsey – Licensing Framework”. That paper described the activities that fall within the electricity regulatory regime and, by exception, those that do not and proposed a number of measures to develop the regime, including proposals to exempt certain activities from the requirement to be licensed.

This report sets out the Director General’s conclusions following detailed consideration of the responses received.

This report is structured along the lines of the consultation document and each section summarises the matter consulted upon, the responses received, the Director General’s consideration of the matter and her conclusions and decisions.

Three organisations/individuals responded to the consultation, as listed below:

- Board of Administration
- Guernsey Gas Limited
- Deputy Roy Bisson

The Director General wishes to thank those who have responded to this consultation document for their contributions in helping to shape the regulatory regime. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR’s office.

There were two related consultation papers issued at the same time as Document OUR 01/07 and the following documents which are published in response to those consultations are now available on the OUR website:

- Document OUR 02/03: Electricity Licence Conditions – Report on the Consultation Paper
- Document OUR 02/04: Electricity Licence Conditions
- Document OUR 02/05: Decisions under the Electricity (Guernsey) Law, 2001

## 2. Developments Since the Consultation Paper

At the time of the publication of the original consultation paper in August 2001, it was anticipated that the laws necessary to enable the commercialisation of the States Electricity Board and the establishment of the new regulatory regime would be commenced with effect from 1<sup>st</sup> October 2001. A delay in this process led to the extension of the response periods for this and related consultation papers as well as the deferral of the publication of reports on those consultations.

The States of Guernsey has now confirmed the commencement of the relevant laws with effect from 1<sup>st</sup> February 2002 and has issued States Directions to the Director General at its meeting in September 2001<sup>1</sup>. Therefore the legislative framework for the new regulatory regime is now governed by (*inter alia*):

- The Electricity (Guernsey) Law, 2001;
- the Electricity (Guernsey) Law 2001 (Commencement and Amendment) Ordinance 2001; and
- the States Directions to the Director General adopted by the States of Guernsey in September 2001.

In particular the States of Guernsey has directed the Director General to grant the first licences for electricity generation, conveyance and supply to Guernsey Electricity Limited and has directed that the conveyance licence be granted on an exclusive basis for a period of ten years, the supply licence be granted on an exclusive basis for one year and the generation licence be granted with no exclusivity. The States has also requested the Director General to review the introduction of competition into the retail market over the coming twelve months.

Along with these measures the States has resolved that the States Electricity Board (“SEB”) will cease to exist on 1<sup>st</sup> February 2002 and the company Guernsey Electricity Limited (“GE Ltd”) will take over all of the functions of the former SEB on that date. For simplicity, this paper refers to both the current Board and the new Limited company as Guernsey Electricity or “GE”.

### **3. Overview of Responses**

#### **3.1. Overview**

Respondents generally agreed with the Director General’s proposals. Some specific comments or suggestions on the matters raised in the paper were received and they are addressed in detail later in this document. Based on the Director General’s further consideration of these issues, and such other information as is available to her, she now intends to proceed to introduce a licensing framework as set out in this report.

While this report sets out the Director General’s decisions at this time, the development of the regulatory regime is an on-going task and all matters will be kept under review so as to ensure that the regulatory regime adapts to meet the challenges facing the electricity sector in Guernsey going forward.

#### **3.2. Matters Outside the scope of the Consultation**

Some respondents raised issues that the Director General acknowledges as relevant to the electricity market and the regulation of that market going forward, but which are outside the scope of the original consultation paper. There were also some specific drafting points which are not commented on in this document but have been considered in the context of a separate legal review of the texts.

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<sup>1</sup> Billet d’Etat No. XVIII 2001, pages 1263 to 1264

### 3.2.1. Tariffs charged by GE

One respondent raised the issue of the “standby tariff”, the “buy back tariff” and the “use of system charge” levied by Guernsey Electricity, commenting generally on the need for transparency, non-discrimination and cost-orientation in relation to such charges. In consultation paper OUR 01/08 the Director General set out a range of proposed licence conditions to address these matters, including conditions requiring dominant operators to act in a non-discriminatory fashion (proposed condition 18), empowering the Director General to set a maximum level on prices charged by such operators (proposed condition 20.2), and setting out a mechanism for the setting of charges for connection to and use of the conveyance system (proposed condition 31). These conditions provide for the further regulation of the dominant operator’s charging levels and mechanisms once the relevant licences have been issued and therefore this matter will be addressed as part of the ongoing regulatory work of OUR.

### 3.2.2. Environmental Policy

Another respondent raised the question of the States of Guernsey’s environmental policy in relation to energy and suggested that certain specific matters should be addressed in the licensing framework at this time in order to explicitly favour the development of a waste-to-energy plant in Guernsey as the respondent considered that this was consistent with States of Guernsey policy and the principles of the Regulation Law.

While the specific licensing points raised by the respondent are addressed in more detail in document “OUR 02/03: Electricity Licence Conditions: Report on the Consultation Paper”, it is appropriate to address the general principle of States Policy in this paper.

The Director General and the States of Guernsey are both required to take account of, and where appropriate balance, a range of potentially conflicting principles set out in the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. To achieve this it is necessary to assess the impacts and effects of certain decisions and actions and to ensure that the policies that are implemented are consistent and achieve the States of Guernsey objectives. In relation to the construction of a waste-to-energy plant, the Director General welcomes the introduction of competition into the generation market and looks forward to accommodating the facility within the licensing regime. However, she believes it is essential that there is greater visibility of the proposals for the plant, the requirements in relation to electricity generation capability and the cost of electricity generated by the plant, before consideration could be given to affording it preferential treatment over other forms of electricity generation. In particular the cost implications of such preference would have to be identified and made explicit so that the States can be clear on the impacts of any policy decision and how this fits in with the general requirements of the Laws for efficient and economic purchase of electricity.

As part of her ongoing work the Director General is engaged in the development of a plan to implement States explicit and stated energy policy and to clarify the impacts of existing States policies. When the proposals for the development of a waste to energy plant are sufficiently developed, she looks forward to considering how it should fit within

the regulatory regime in a manner that is consistent with States Policy and the relevant legislation. The Director General believes it would be imprudent and contrary to the principles set out in the Regulation Law for her to take some of the actions recommended by the respondent at this time without a thorough consideration of their impacts and clear endorsement by the States of Guernsey of the policies that the States wishes to see followed, along with an acknowledgement of the impacts of those policies.

## **4. Scope of the Regulatory Framework**

This section of the consultation paper considered various categories of electricity generation, conveyance and supply activities in the Guernsey market and the legal provisions applying to those categories, and suggested appropriate types of licences or exemptions for each category.

### **4.1. Private Generation and Supply**

The Director General proposed to exempt, without conditions, the generation of electricity by a single consumer in a single premises for the purpose of supplying himself, where he consumes all of the electricity produced on the same premises.

#### **4.1.1. Comments Received**

One respondent expressed agreement in general to the use of exemptions but no comments were received on this specific proposal.

#### **4.1.2. Director General's Position**

The Director General will exempt the generation of electricity by a single consumer in a single premises for the purpose of supplying himself, where he consumes all of the electricity produced on the same premises. However, the Director General will impose an upper limit on the size of any exempted generation facility for the reasons set out in section 4.4 below.

#### **Decision 4.1**

The Director General shall exempt the generation of electricity by a single consumer in a single premises for the purpose of supplying himself, where he consumes all of the electricity produced on the same premises and the generation facility does not have the capacity to produce more than 2 megawatts of electricity.

### **4.2. Generation and Supply by Companies**

The Director General proposed that companies generating electricity on a single premises and supplying that for own use would also be exempted from the requirement to hold a licence, and that the exemption would extend to the supply of that electricity to subsidiaries and associated companies on the same premises.

#### **4.2.1. Comments Received**

Respondents welcomed this exemption, but one suggested that the exemption should be extended beyond a single premises.

#### 4.2.2. Director's Position

The Director General noted in the consultation paper that this is a complex area and has taken some considerable time to address in other jurisdictions where this aspect of exemptions has undergone several iterations. The adoption of a blanket exemption for persons generating and supplying electricity to themselves and all associated persons irrespective of geographical location, could lead to an organisation or person effectively running a large generation and supply business to multiple locations without a licence. This may not be appropriate, for example where a generation facility is of a size that could impact on the conveyance network, which is an essential part of Guernsey's infrastructure.

Therefore the Director General does not believe it would be practical to extend this exemption as suggested. Instead, she considers that this matter can be addressed in the context of the exemption or licensing of small generation facilities and associated supply, where the question of limits on levels of production and supply are addressed (see section 4.4 below).

In addition, for the reasons set out in section 4.4. the Director General will impose an upper limit on the size of any exempted generation units.

#### **Decision 4.2**

The Director General will exempt companies who are generating and supplying electricity on a single premises from the requirement to hold a licence, where the supply is to the company itself and/or its subsidiaries and associated companies, and the generation capacity of the generation facility is below 2 megawatts.

#### **4.3. Backup Generation and Supply**

The Director General proposed that 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 would be exempted from the need to hold a licence.

#### **Comments Received**

One respondent who commented welcomed this proposal.

#### **The Director General's Position**

#### **Decision 4.3**

The Director General will exempt the generation of electricity as a "backup" facility in order to supply power where there is an interruption to main supply of electricity.

#### **4.4. Small Generators and Associated Supply**

The consultation paper noted that in larger jurisdictions it has been the practice to exempt generation facilities that are capable of producing power below specified limits, and to exempt the supply of such electricity. As mentioned above in section 3.2 this is a

complex issue and impacts on the development of wholesale generation competition and the Director General proposed in the original consultation paper to address this further in the context of the licensing regime.

#### 4.4.1. Comments Received

One party commented that there should be an exemption of small generating facilities but did not provide any suggestions as to what should be considered “small”. Another respondent also suggested that the exemption regime should be expanded and listed a number of existing small generation units that it considered should be exempted along with any similar developments in the future. The respondent acknowledged that the units listed all varied in their characteristics and were not consistent, suggesting that individual exemptions of these facilities might be required. However, the respondent also suggested that it should be possible to categorise exemptions or licences based on definitions of capacity or use.

The same respondent commented that the need for applications for licences to operate such small units would be administratively onerous, could impose a delay in planning and building, and could act as a barrier to the development of such facilities.

#### 4.4.2. Position of the Director General

The Director General agrees that exemptions should be put in place wherever feasible, particularly if this were to reduce unnecessary administrative burdens on operators. However, where there may be issues of safety or network security to consider, she believes it will be necessary to use the licensing regime.

In developing the exemption regime, the Director General strongly believes that it is less onerous on the market, on individuals and on the OLR, to exempt *classes* of operators rather than specific cases because where individuals must apply for exemptions on a case by case basis, they are likely to incur an administrative overhead that is just as onerous as that involved in applying for a licence.

For this reason she has adopted the exemptions based on use set out in sections 4.1, 4.2 and 4.3. In addition to these exemptions, she now proposes to include an exemption for certain generation units based on their capacity.

The definition of limits for such exemptions is a matter that is of significant importance for two reasons;

- First, it is essential that the integrity and safety of the core conveyance network is protected as any disruption to that network could affect all users of electricity on the island.
- Second, where a generation unit is not connected to the conveyance network, but is of a size that could impact on the social or economic environment of the island, it is appropriate that there is regulatory control through licence conditions.

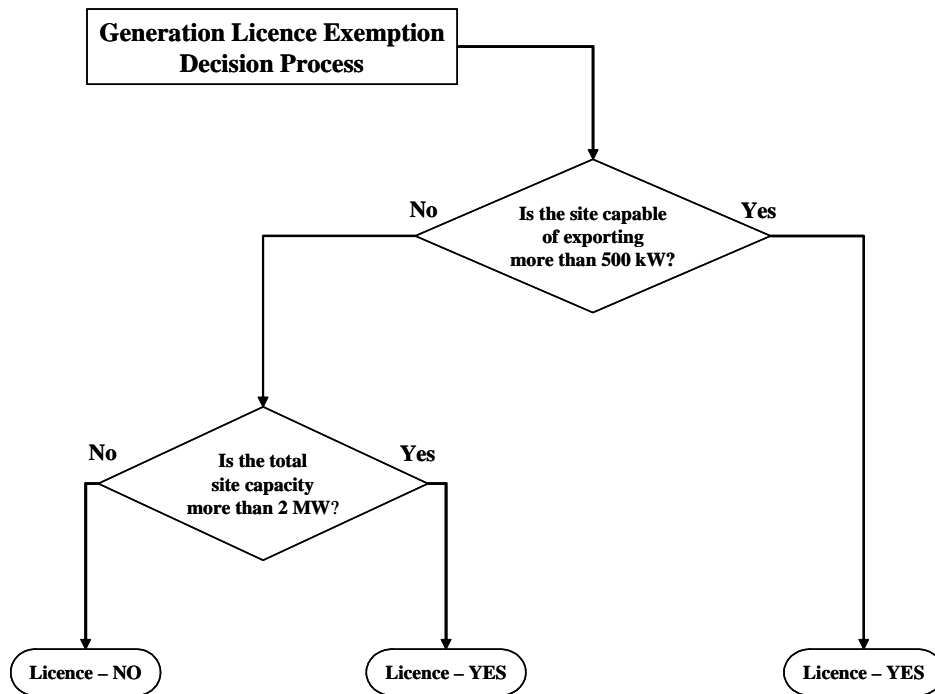
The Director General has considered the overall size of the network in Guernsey, practice in other jurisdictions and has consulted with Guernsey Electricity on this issue, and has



now drawn up proposals for a wider set of circumstances where she believes generation facilities should not require a licence. The Director General therefore intends to apply the following exemptions:

- If the generation facility is not capable of exporting more than 500KW of power it will not require a licence. (To be capable of exporting, the facility must be connected to the conveyance network)
- If the generation facility is capable of exporting more than 500KW of power but its total capacity is less than 2MW it will not require a licence. This threshold will apply whether or not the facility is connected to the conveyance network.

This decision is summarised in the following diagram



The Director General will put in place an exemption with the above limits on 1<sup>st</sup> February 2002 and proposes to keep these limits under review in the light of experience in the market. The Director General would be happy to consider comments from interested parties on the levels set for these exemptions. If there are any views on alternative thresholds, the Director General would be pleased to accept suggestions and reasons for alternative levels.

#### **Decision 4.4**

The Director General will exempt from the requirement to hold a licence any generation facility with a total generation capacity of less than 2 megawatts which is not capable of exporting more than 500 kilowatts of power.

## **4.5. Licensing Framework**

This section of the consultation paper described the various licensable activities of generation, conveyance and supply and asked questions about the nature of the licences that might apply in each category. The more detailed licence terms and conditions proposed by the Director General were consulted on in document OUR 01/08.

### **4.5.1. Comments Received**

One respondent suggested that different licences should be developed for generation facilities based on the generation capacity or the type of use, but preferred that exemptions be used wherever possible. This respondent's comments have been addressed in section 4.4 where the Director General has incorporated the proposals made into the exemption regime. No other comments were received on this section.

### **4.5.2. Director General's Position**

The Director General believes that, with the extension of the exemption regime as described above, there is currently no reason to develop a variety of classes of generation licences that differentiate between generation facilities, other than the differentiation already provided for by the inclusion of specific conditions where a licensee has a dominant position in the market place. Thus as new generation facilities are licensed they will all be subject to the same set of conditions, except where a licensee has been deemed to be dominant in a relevant market, in which case, some additional conditions will apply. She will keep this matter under review as the market develops.

In relation to conveyance, the Director General notes that the States of Guernsey has directed that an exclusive privilege be granted to Guernsey Electricity for ten years in this licence, and therefore there is no question of alternative licences being developed at this time.

In relation to supply, in accordance with States Directions, the Director General will issue an exclusive supply licence to Guernsey Electricity for a period of one year pending a further consideration of the impacts of competition in this part of the market.

#### **Decision 4.5**

The Director General will proceed with the development of a licensing framework that is based on the proposals set out in Document OUR01/08, where all licensees will be subject to the same basic set of conditions unless they have been deemed to be dominant in a relevant market, in which case some additional conditions will apply.

## **5. Conclusion**

The Director General would like to thank those who responded to the consultation paper for their input to the development of the regulatory regime. She will now proceed to develop the licensing regime for electricity and address a range of further regulatory issues based on that regime, including wholesale and retail tariffs.

**/END**