



Office of Utility Regulation

Electricity Licence Conditions

Report on the Consultation Paper

Document No: OUR 02/03

January 2002

Office of Utility Regulation

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: (0)1481 711120, Fax: (0)1481 711140, Web: www.regutil.gg

Electricity Licence Conditions

Report on the Consultation Paper

Contents

1. Introduction	3
2. Developments since the Consultation Paper	3
3. Overview of Responses	4
4. Proposed Licences - Structure	4
5. Significant Terms and Conditions	5
5.1. Conditions to be included in licences to be granted to Dominant Operators.	5
5.2. Service Levels and Quality of Service Conditions	6
5.3. Comments on additional conditions	7
6. Conclusion	8

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 01/08 entitled “Electricity Licence Conditions – Consultation Paper”. That paper set out proposed licence terms and conditions that would apply in the Guernsey electricity market when all relevant legislation had been introduced. 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 decision.

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

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

In this report the Director General does not propose to comment on respondents’ views on the specific legal text of the licence documents. A legal review of the text has been carried out in parallel with the consultation process and, where appropriate, legal drafting points raised in the responses have been incorporated into the revised texts. The final licence texts are published in document OUR 02/04: Electricity Licence Conditions, which is available on the OUR website.

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 01/08 and the following reports on these two consultations are now available on the OUR website.

- Document OUR 02/02: Electricity in Guernsey: Licensing Framework – Report on the Consultation Paper
- 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 1st 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 1st February 2002 and has issued States Directions to the Director General at its meeting in September 2001¹. 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 1st 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

While the consultation paper provided some explanatory text on the conditions of key importance in the proposed licences, respondents were invited to comment on all of the proposed terms and conditions as set out in the detailed text provided in annex 2 to the consultation paper. The Director General appreciates the efforts made by respondents to address those conditions they considered most relevant.

Some respondents raised issues that are appropriate to the development of the regulatory regime going forward, including issues related to the passing on of the costs of investments, the activities of the dominant operator in the retail and white goods market, the issue of capital investment in electricity infrastructure and certain consumer related matters. These matters will be addressed in the ongoing work programme of OUR.

4. Proposed Licences - Structure

This section described the general intent of the licence conditions and asked whether respondents considered the structure of the licences were appropriate having regard to the need to ensure that the licensing regime was flexible enough to develop over time.

¹ Billet d’Etat No. XVIII of 2001, pages 1263 to 1264

Respondents were also asked whether they considered that the range of conditions was appropriate, taking into account the historical development of the market to date, the strong position of Guernsey Electricity in the market and the need to protect consumers and new entrants from any potential abuse of that position. Finally, respondents were asked if they believed there should be any other conditions included.

Comments received

One respondent considered the range and types of conditions to be comprehensive and adequate to control the dominant operator, to protect new entrants, non-dominant operators and customers. The other two respondents commented on specific conditions, and these issues are addressed in the following sections.

Director General's Position

The Director General will proceed to implement a licensing regime along the lines of the conditions set out in document OUR 01/08 having regard to the changes arising from the more detailed comments submitted, and a final legal review of the texts.

5. Significant Terms and Conditions

This section of the consultation paper described in some detail some of the more complex terms and conditions that it was proposed to include in the draft licence. In particular, it explained certain conditions in relation to control of a dominant position (Section 5.1), regulation of prices of dominant operators (Section 5.1) and quality of service (Section 5.2), and requested comments on these matters, although as mentioned earlier, respondents were invited to submit comments on any of the proposed conditions in the draft licence.

5.1. Conditions to be included in licences to be granted to Dominant Operators.

The consultation paper set out the Director General's proposals to include a group of conditions which would apply to operators who were designated as being dominant in a relevant market. Those conditions were designed to ensure that the advantages enjoyed by any such operator are not abused or used unfairly to the detriment of competition or of customers.

Comments Received

One respondent commented that the requirement on dominant operators not to discriminate unduly or unfairly (condition 24), whilst acceptable in principle, should be amended and the licensee should be required to give preference to "an electricity generating company which is generating electricity through renewable or other sources, such that fossil fuels are conserved". The respondent believed this is consistent with States Policy.

The same respondent also suggested that condition 34 of the licence which relates to the prioritisation of dispatch of generation units, be amended to include “recognition [of] the environmental benefits of particular generation plants when prioritising the dispatch of generation units”, and finally, that condition 35 also be amended to require the licensee to “take due account of environmental benefits of brown energy from a Waste to Energy facility or other energy from renewable sources”.

Director General’s Position

The general thrust of these comments is to suggest that the Director General amend the licences at this time to require the conveyance licensee to prefer the energy produced by the proposed waste-to-energy facility over other sources of energy and the respondent believes that this approach is necessary to ensure consistency with States policy and the Laws.

In document OUR 02/02 the Director General addressed the broad issue of States Policy and noted the reasons why the Director General does not believe it is appropriate to adopt a licensing regime that requires the conveyance licensee to prefer a specific type of generation facility without further assessment and investigation. The implications that would require further consideration include, but are not limited to:

- The cost implications of the proposed preferential treatment for the conveyance network, for other generation units and for consumers of electricity in Guernsey; and
- The additional implications raised by setting a precedent for similar treatment for any similar generation unit, including the economic signals to additional private investors.

Until further information is available on the proposals to build a waste to energy plant, this assessment is not fully feasible.

The Director General does not therefore intend to amend these conditions at this time.

5.2. Service Levels and Quality of Service Conditions

Service Levels (Conditions 22, 26 & 37)

This section described conditions in each of the three cases of generation, conveyance and supply, that require the licensee to prepare explicit plans and statements of service levels so as to ensure that the operation and maintenance of the network and services of the major player in the market continues at a sufficiently high level to meet the reasonable needs of the users of the service.

Consumer Protection (Conditions 40 - 51)

The consultation paper also described conditions 40 to 51 in which it was proposed to require the public supply licensee to develop a range of codes that are designed to address customer needs, including service quality, meter reading, rectifying service in the event of disruption, and dealing with complaints from users in a speedy and efficient manner.

Comments Received

One respondent commented on the conditions insofar as it suggested that not all the conditions should apply to all operators in the market, and there should be less onerous conditions for smaller operators.

Another respondent commented on the conditions in relation to the possibility of the Director General requiring the licensee to establish a Consumer Council or Councils, and suggested that a single Energy Consumer Council should be established funded by the licensee and other licensees.

Director General's Position

The Director General believes that where it is considered necessary for operators to be licensed, it is appropriate that conditions on service levels and consumer protection be included. However the implementation of those conditions will take account of the practical operations of the licensed operator. In addition, by expanding the exemption regime to cover smaller operators (as described in document OUR 02/02), the Director General believes that the concerns raised by the respondent on this matter have been addressed.

In relation to Consumer Councils the Director General intends to address this matter more fully in the context of the day-to-day work of the Office and does not believe it appropriate to be more prescriptive on this matter in the licence conditions at this time.

5.3. Comments on additional conditions

Comments Received

One respondent commented particularly on condition 12, which it considered inappropriate as the condition requires the licensee to comply with all applicable environmental laws, which the respondent pointed out was an obligation on all parties in any case. The respondent suggested that the condition should be amended to require the licensee to carry out an environmental audit of the impacts of their operations and to require the adoption of best practice to minimise this impact.

Director General's Position

The Director General is aware that relevant environmental laws must be complied with by all parties, not just licensees. However, by including this condition in the licence it places an additional obligation on the licensee not to breach this condition in its licence. Therefore a failure to comply with an applicable law could for example lead to the imposition of a penalty under the licence for failure to comply. This should act as a further incentive to licensees over and above the general public to comply with environmental laws.

In relation to the proposal that the licence condition include a requirement that the licensee carry out an environmental audit of the impacts of its operations, the condition as currently drafted already provides that the Director General may require the licensee to

provide reports on its compliance with environmental laws, thus ensuring that the environmental standards that the States of Guernsey sees fit to set can be monitored and enforced through the licence. Thus, if there are any impacts or limits that are considered appropriate to be reported on in environmental laws, the Licensee will be required to gather data and report on those. This ensures that environmental standards are set in an appropriate forum by the States of Guernsey and the regulatory regime assists in the enforcement of those decisions.

The Director General does not therefore intend to change this condition at this time.

6. Conclusion

The Director General welcomes and has noted the comments of respondents in relation to the specific text of the licence documents.

Comments on significant conditions have been reported on in this document and wherever appropriate the licence text has been amended. Legal and drafting comments are not reported on in this document but have all been considered in parallel with a legal review of the texts and taken on board wherever they were considered correct. The Director General is grateful for the input of respondents on this matter. Finally, comments in the form of questions on the detailed implementation of the regulatory regime have been identified and will be considered as the regime develops and the texts that have been finalised are designed to set out the framework within which that detail can be addressed.

The final licence texts can be found in document OUR 02/04.

/ENDS