



Office of Utility Regulation

Publication of Guernsey Electricity Limited's Regulatory Accounts

**Direction to Guernsey Electricity Limited
in accordance with condition 16 of Guernsey Electricity's
Licence and Section 5 of the Regulation of Utilities
(Bailiwick of Guernsey) Law, 2001**

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1 Introduction

Guernsey Electricity Limited (“GEL”) is required to submit Regulatory Accounts to the OUR in accordance with condition 16 of its Electricity Licence.

GEL submitted its first set of Regulatory Accounts for the 12 months ending 31 March 2002 to the OUR in confidence in September 2002. The company submitted its 2002/03 Regulatory Accounts in August 2003 and the Director General decided it was appropriate to consider whether it would be in accordance with her duties to require the publication of GEL’s Regulatory Accounts. Consequently, a consultation paper was published in September 2003¹ addressing what level of information should be in the public domain. This report sets out the Director General’s conclusions following consideration of the responses received to the consultation.

The Director General received a response from GEL to the consultation. The Director General wishes to thank GEL for responding to the consultation document and their contribution in helping to inform the Director General’s consideration of the issue. In line with OUR standard practice, with the exception of any responses marked as confidential, written comments are available for inspection at the OUR’s office.

This paper is structured as follows:

Section 2 sets out, for ease of reference, the Director General’s proposal presented in Document 03/26 upon which she was seeking comments;

Section 3 presents the response received and, in light of consideration of those comments, the Director General’s position on the appropriate level of disclosure of GEL’s Regulatory Accounts; and

Section 4 contains a Direction to Guernsey Electricity requiring the company to publish its Regulatory Accounts.

This report and Direction should be read in conjunction with the original Consultation Paper (Document 03/26), which is available at www.regutil.gg.

2 Summary of Director General’s Proposal

In Document OUR 03/26, the Director General explained the purpose of accounting separation and the preparation of Regulatory Accounts and its importance as means of regulating a dominant incumbent operator.

Regulatory Accounts provide an analysis of information derived from financial records to reflect as closely as possible the performance of parts of a business as if they were operating as separate business units. The information in turn is a valuable tool in demonstrating that there is no undue discrimination between the dominant operators’ own downstream arm and competing operators or between one competitor and another when providing similar services. This is relevant in the Guernsey

¹ Document OUR 03/26: Publication of Guernsey Electricity Limited’s Regulatory Accounts: Consultation Document

electricity sector insofar as it is possible for there to be new entrants into the generation market, for example the proposed Waste-to-Energy plant.

Furthermore the information in the Regulatory Accounts also assists in demonstrating the existence or absence of any unfair cross-subsidisation of competitive or non regulated services from the monopoly part of the business. This is of importance to a wider group of stakeholders including customers and players in those non-regulated sectors.

Finally the information underpins prices charged by the regulated entity – a matter of interest to all electricity customers.

The Director General believed that making GEL's Regulatory Accounts publicly available would provide stakeholders other than the OUR with the information to assess these issues and, insofar as new entrant generators are concerned, it will assist in demonstrating the absence (or detecting the presence) of anti-competitive behaviour at levels of disaggregation appropriate to the relevant retail and wholesale markets, thus supporting and promoting the development of a competitive regime in the generation market.

Furthermore the Director General noted that the publication of GEL's Regulatory Accounts is in line with international best practice and will also assist in demonstrating that GEL's charges are cost based, transparent and non-discriminatory, and reasonable for a monopoly operator.

The Director General recognised the need to balance disclosure of GEL's Regulatory Accounts with commercial confidentiality. However experience in other jurisdictions shows that Regulatory Accounting information has been published and is not considered commercially confidential. The Director General commented that she was not aware of how the situation with regard to commercial confidentiality in Guernsey would differ from those situations, although the Director General invited comments on this issue.

In conclusion therefore, the Director General was minded to require GEL's annual Regulatory Accounts to be made publicly available.

3 Consideration of Responses

3.1 Respondents Views

GEL disagreed that its Regulatory Accounts should be made publicly available. GEL argued that the format of the Regulatory Accounts was agreed with the OUR on the basis of disclosure to OUR, the Auditors and the Shareholder representatives. GEL contended that the "global" disclosure of its Regulatory Accounts would be anti-competitive in the market and environment within which it operates. GEL's arguments for not disclosing its regulatory accounts are based on two main points: (a) the scope and purpose of the accounts and (b) issues of commercial confidentiality. Each of these arguments are summarised in turn below.

GEL concluded that if the Director General required GEL to publish its Regulatory Accounts the company should remove financial information relating to its non-core businesses.

Scope and Purpose of Regulatory Accounts

GEL argued that Regulatory Accounts focused on its regulated businesses and therefore its Regulatory Accounts should be concerned solely with GEL's core, regulated, licensed businesses (i.e. generation, conveyance and supply). As such the non-core information, whilst needing to be examined, is not needed for reporting purposes.

GEL was firmly of the opinion that the "global publication" of Regulatory Accounts would not prevent potential abuses of dominant positions by an operator. GEL recognised that it has a duty to ensure no cross subsidy between businesses and given that the Regulatory Accounts are checked by the OUR for compliance, and the independent auditor's terms of reference are confirmed by the OUR, GEL concluded that this invalidated the need to share non-core, non-licensed activities with any other parties other than the OUR, the Auditors and its Shareholder representatives. Allied to this GEL noted that in introducing Regulatory Accounts the OUR has dictated some different methods of identifying costs and income to each business section. Whilst acknowledging that information collated in a certain way may be required for specific purposes to allow the OUR to perform its duties, GEL contends that this same information and the manner in which it is presented in report format is not appropriate for a different purpose, i.e. public disclosure.

Consequently GEL expressed the view that if its Regulatory Accounts need to be published then that should be for core licensed activities only, with a reconciliation to the Statutory Accounts.

Commercial Confidentiality

GEL believed that the publication of its Regulatory Accounts was only necessary if it assisted the Director General in discharging her statutory duties. If they did not assist with the fulfilment of those duties then commercial confidentiality should be respected. In this regard, GEL notes that Guernsey Company Law does not require public disclosure of company accounts and the few Guernsey companies who are quoted on a recognised stock exchange also do not need to disaggregate their business in the manner in which Regulatory Accounts have been formulated to date. In this regard GEL publishes its Statutory Accounts on its website and hard copies are available to interested parties.

GEL also referred to the Guernsey Financial Services Commission ("GFSC") and noted its mode of operation clearly requires the publication of statutory accounts covering the whole business, with certain other returns of information, but respecting information that is confidential.

GEL further contended that within the Guernsey Energy Market its competitors' accounts are not disclosed either at all or in a manner which disaggregates their consolidated business into its various business divisions. Consequently GEL considered that any requirement to force GEL to disclose information publicly when its competitors do not is unreasonable and inappropriate.

As a result GEL believed that Profit and Loss, Balance Sheet and Cash Flow Summaries which include line by line detail of non-core businesses, are not required for accounts of core / licensed / regulated activities and that the Non-Core Profit and Loss account, Balance Sheets, Cash Flow and the detail of non-core in the Notes to the Accounts should not be disclosed in its Regulatory Accounts.

3.2 Director General's Position

This section sets out the Director General's position in relation to the arguments made by GEL that its Regulatory Accounts should not be published and the company's position with respect to its non core activities.

3.2.1 Scope and Purpose of the Regulatory Accounts

The Director General agrees that the primary focus of GEL's Regulatory Accounts is the company's regulated businesses (i.e. generation, conveyance and supply). In this sense the non-core business financial statements comprise residual figures which reconcile the Regulatory Accounts to the company's financial statutory accounts.

Consequently as a vertically integrated company with a monopoly in Guernsey's electricity market, the disclosure of its Regulatory Account will assist in demonstrating the existence or absence of any unfair cross-subsidisation of competitive or non regulated services from the monopoly part of the business. In other words GEL should not be charging prices to its electricity customers in its monopoly businesses to subsidise its activities in its non-core activities.

The public availability of GEL's Regulatory Accounts, and in particular the information on non-core activities, provides transparency as to whether or not GEL is cross subsidising its non core activities with its monopoly revenue which the Director General considers to be important to a wider group of stakeholders than just OUR and GEL's shareholder. The availability of such information to those wider stakeholders assists the OUR in carrying out its functions, including the protection of interests of consumers and other affected parties, and enables the OUR to carry out those functions in a transparent manner.

3.2.2 Commercial Confidentiality

The Director General is already aware that there is no legal requirement for the disclosure of GEL's statutory accounts under Guernsey Company Law, even though as a States owned entity its annual report is published in the Billet d' Etat and the company chooses to publish its Annual Report and Accounts in a separate document. Therefore given that this information is published it is clear that any information contained therein is not considered by GEL to be commercially confidential.

The DG does not accept that GEL's Regulatory Accounts are comparable to the confidential reports and statements submitted by licensed financial companies to the GFSC. The GFSC's primary objective is to regulate and supervise financial services in Guernsey with integrity and efficiency, and in so doing help to uphold the international reputation of Guernsey as a finance centre. Not only does the GSFC serve a different purpose to OUR, it regulates a competitive market with over 800 licensees. Any comparison with the regulatory reporting requirements of the OUR and GSFC is therefore fundamentally flawed and is not considered to comprise evidence of commercial confidentiality.

With regard to the suggestion that there would be commercial damage to GEL arising from the publication of its Regulatory Accounts, the OUR understands that GEL wants OUR to exercise its judgement on fundamentally qualitative grounds as the company has not provided or pointed to any quantitative evidence to support its position. The OUR does not consider that GEL has provided any evidence that the information in the Regulatory Accounts is commercially confidential or will cause commercial damage to the company.

3.2.3 Conclusion

The OUR notes that publication of Regulatory Accounts brings a number of benefits including;

- demonstrating transparently to all stakeholders, the overall costs and revenues for the core electricity business and contributing towards an understanding of what costs are covered by current and future prices. This helps to ensure that only appropriate costs are being covered by revenue from electricity sales as this information underpins prices charged by the regulated entity – a matter of interest to all electricity customers;
- demonstrating that there is no undue discrimination between the dominant operators' own downstream arm and competing operators or between one competitor and another when providing similar services. This is relevant in the Guernsey electricity sector insofar as it is possible for there to be new entrants into the generation market, for example the proposed Waste-to-Energy plant; and
- assisting in demonstrating to interested parties the existence or absence of any unfair cross-subsidisation of competitive or non regulated services from the monopoly part of the business. This is of importance to a wider group of stakeholders including customers and players in the non-regulated markets.

Furthermore, the OUR does not consider that GEL has provided any supporting evidence or argument as to why GEL would suffer any commercial damage or why the information is commercially sensitive. The DG further notes that similar information is published in other markets. Therefore, the DG has decided that GEL should be required to publish its annual Regulatory Accounts on its website and to make hard copies available to interested parties. GEL may charge an administrative fee for providing hard copies of its Regulatory Accounts to interested parties.

4 Direction to Guernsey Electricity Limited

In accordance with condition 16 of Guernsey Electricity Limited's Licences issued under the Electricity (Guernsey) Law, 2001, the Director General, and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 hereby Directs Guernsey Electricity Limited to publish its 2002/03 Regulatory Accounts and all future Regulatory Accounts on its website and also make hard copies available on request.

The 2002/03 accounts should be published and made available to interested parties no later than 15th January 2004 and in future years the company's Regulatory Accounts should be published within two months of the publication of the company's Annual Report. Guernsey Electricity Limited may charge an administrative fee for providing hard copies of its Regulatory Accounts to interested parties which shall reflect the costs to Guernsey Electricity Limited of providing the hard copies.

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