



Statutory Notice of a Proposed Decision

Standby Charge for Embedded Electricity Generation

Channel Islands Competition & Regulatory
Authorities

Document No: CICRA 19/13

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Introduction

- 1.1 On 14 March 2019 the Guernsey Competition and Regulatory Authority (the **GCRA**) published its Final Decision (CICRA 19/11) (the **Pre-Statutory Final Decision**) on standby charges for embedded electricity generation applied by Guernsey Electricity Limited (**GEL**). The Pre-Statutory Final Decision was the third and final stage of the pre-statutory process as described in the Information Notice, CICRA 18/29 “Regulatory Consultation Process” published in July 2018 (the **Regulatory Information Notice**).
- 1.2 A copy of the Pre-Statutory Final Decision can be found at the following link - <https://www.cicra.gg/cases/2018/e1362g-guernsey-electricity-ltd-standby-charge/e1362g-final-decision-standby-charges-for-embedded-generation/>. The Pre-Statutory Final Decision contains an assessment of the responses received from interested parties to the Draft Decision (CICRA 18/54), together with the GCRA’s reasoning for making its final decision, in the pre-statutory process. Whilst the GCRA considers the decision made as part of the pre-statutory process to be the starting point for later parts in the process and as a statement of its current expectations, the Pre-Statutory Final Decision is not binding until such time as it has been included in the Statutory Notice of a Final Decision.
- 1.3 This document is the Statutory Notice of a Proposed Decision on standby charges for embedded electricity generation applied by GEL. It is the first stage of the statutory process as identified in the Regulatory Information Notice.
- 1.4 The wording of the Proposed Decision is set out at **Section 4** of this document. Interested parties are invited to make written representations or objections in respect of the Proposed Decision, such comments to be taken into account by the GCRA before it makes its Final Decision in the statutory process. Full details of the process for submitting comments to the GCRA are contained in **Section 2** of this document. The relevant legislative and licensing background is set out at **Section 3**.

2. Next Steps

- 2.1 This **Statutory Notice of a Proposed Decision** is the start of the statutory process on the review of standby charges for embedded electricity generation applied by GEL. The GCRA considers any Decision made as part of the pre-statutory process to be the starting point for later parts in the process.
- 2.2 Interested parties may submit comments in respect of the Proposed Decision to the GCRA in writing or by email to the following address:

Guernsey Competition and Regulatory Authority
Suite 4, 1st Floor, Plaiderie Chambers
La Plaiderie, St Peter Port
Guernsey, GY1 1WG

Email: info@bicra.je

- 2.3 All comments should be clearly marked '*Statutory Notice of a Proposed Decision – Standby Charge for Embedded Electricity Generation*' and should be submitted before 5pm on **Friday 29th March 2019**.
- 2.4 In line with the consultation policy of the Channel Islands Competition and Regulatory Authorities (**CICRA**), CICRA intends to make responses to the consultation available on the CICRA website, this being the combined website of the GCRA and the Jersey Competition Regulatory Authority. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.
- 2.5 The GCRA will consider any representations or objections received from any interested party before making its Final Decision in the statutory process. The issuing of the Statutory Notice of a Final Decision will be the fifth and final stage of the regulatory consultation process as set out in the Regulatory Information Notice.

3. Legislative and Licensing Background

- 3.1 The States of Guernsey has issued a number of States Directions in relation to the licensing of electricity activities in Guernsey. In accordance with those Directions the GCRA (formerly the Director General) issued the first licences for electricity generation, conveyance and supply to the incumbent electricity company – GEL - on 1st February 2002.
- 3.2 The market for generating electricity is, in principle, open to competition. In terms of conveyance, under the current regime no other operator could lay electricity cables until 2012 and anyone generating electricity must therefore use the existing electricity network of GEL to convey that electricity from their generation plant to customers. Until 2012 only GEL was entitled to sell electricity to end customers.

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Legal background

- 3.3 Under The Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the **Utilities Law**), the objectives that the GCRA has a duty to promote (and, where they conflict, to balance) must be achieved in a way that gives equal regard to the interests of the residents of all islands of the Bailiwick. They include protecting the interests of consumers and other users in Guernsey in respect of the prices charged for utility services.
- 3.4 Detailed provision for the regulation of electricity in Guernsey is contained in The Electricity (Guernsey) Law 2001 (the **Electricity Law**). Section 5 provides that the GCRA may include in licences such conditions as appear to the GCRA to be appropriate having regard to the nature of the application for the licence, the objectives set out in the Utilities Law, and the enforcement of the Utilities Law and the Electricity Law. The Electricity Law specifically provides that such conditions can include (but are not limited to):
- Conditions intended to prevent and control anti-competitive behaviour; and
 - Conditions regulating the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.

3.5 These provisions allow the GCRA to regulate standby charges, should there be a need for regulatory intervention.

3.6 The GCRA is obliged¹ to publish notice:

- Of a proposed decision as to whether a person has a dominant position in a relevant market and of the conditions, if any, proposed to be included in the licence granted to that person in relation to the control of that dominant position;
- Of a proposed decision to regulate the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market; and
- Of a proposed decision to include quality of service conditions in any licence.

Licensing Framework

3.7 In a previous GCRA document (OUR03/07), proposed findings of market dominance in Guernsey were set out following a review of the market. The GCRA considered that GEL was dominant in generation, conveyance and supply of electricity.

3.8 The licence of GEL includes conditions in respect of Price Regulated Services (licence condition 20) and Fair Competition (licence condition 13).

3.9 In respect of Price Regulated Services, Condition 20.2 of the Licence provides that:

“The Director General may determine the maximum level of charges the Licensee may apply within a relevant market in which the Licensee has been found to be dominant. A determination may;

(a) provide for the overall limit to apply to such charges;

(b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or

(c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.”

¹ Section 5(4) of the Electricity Law

3.10 This condition allows the GCRA to regulate the prices that GEL charges for its services in a way and for a time that it deems appropriate, provided GEL has a dominant position in the relevant market.

3.11 As set out in OUR03/07, Guernsey's retail electricity market possesses a monopolist/dominant operator that also has a dominant position through the electricity supply chain. This position of economic strength is unlikely to change in the near to medium future.

3.12 In respect of Fair Competition, Condition 13.1 of the Licence provides that:

“Subject only to the Licensee’s exclusive rights as described in Parts IV and V of this Licence, the Licensee shall:

(a) Not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the Generation Business, Conveyance Business and/or Supply Business; and

(b) Comply with any direction issued by the Director General for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting such competition.”

3.13 Condition 13.1 of the Licence thus provides that GEL must comply with any Direction issued by the GCRA for the purpose of preventing any market abuse.

3.14 It follows that, before it can make a decision for the purpose of preventing market abuse under Condition 13.1 of the Licence, the GCRA must have made a determination that GEL holds a position of significant market power (dominance) in respect of the generation, conveyance and supply of electricity.

4. Final Decision

4.1 The GCRA is inclined to find that GEL continues to be dominant in all the activities that constitute the electricity supply chain under the current legislative framework.

These are:

- the generation of electricity;
- the conveyance of electricity across the electricity network; and
- the supply of electricity directly to homes and businesses.

4.2 These terms are referenced in the Electricity Law and govern the current licensing framework as outlined above.

4.3 The GCRA will issue a direction to GEL under Condition 20.2 of GEC's licence as follows:

- i. The rate charged by the relevant licensee for standby charges for embedded electricity generation shall be no more than £3.07/kW/month. This only substitutes the current standby charge with the revised level as applied to the same category of use or scope of the existing standby charge;
- ii. This is a flat rate (i.e. no time of day or weekend distinction);
- iii. This rate is only applicable where the parties agree to reimburse the other should a subsequent regulatory decision (or of comparable legal standing) set a different rate. The wording for that agreement is as follows:

*"In consideration of [customer's name]'s accepting the rate as set by the Guernsey Competition and Regulatory Authority (the **GCRA**) in Final Decision [Ref], the [customer's name] undertakes to reimburse Guernsey Electricity Limited (**GEL**) to the extent that over the relevant period the GCRA determines that a higher rate for standby charges should have been set following the GCRA's receipt of a full review on the same tariff.*

GEL further agrees to reimburse the [customer's name] to the extent that over the relevant period the GCRA determines that a lower rate for standby charges should have been set following the GCRA's receipt of a full review on the same tariff.

In either case the amount to be reimbursed is the difference in the charges which would have been applied if the finally determined rate had been applied over the relevant period and that which was actually charged in the relevant period in accordance with Final Decision [Ref].

For the purposes of this agreement, the relevant period shall be defined as the date from which the rate as set in the Final Decision [Ref] is charged to [customer's name] until the new rate as set by the GCRA is charged to [customer's name]."; and

- iv. For the avoidance, nothing in this direction is intended to preclude GEL from entering into an arrangement with any customer or other party which sets a charge to cover the provision of a standby service at any lower or higher rate, fixed for any period, if the parties were to agree to such a charge between themselves.

4.4 The directions shall be deemed to have come into effect on specified calendar days after the Statutory Notice of a Final Decision is issued, and shall expire following further direction on the rate to be applied.

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