



19 November 2020

Our ref: E1473G

Alan Bates
Guernsey Electricity Limited
Electricity House
Northside
Vale
Guernsey GY1 3AD

Dear Sirs

Guernsey Electricity Limited - Compliance with Licence Conditions 20.1 and 20.3

We write further to your letter of 6 October 2020 which sets out Guernsey Electricity Limited's (**GEL**) response to the Authority's Notice pursuant to section 29(3) of the Electricity (Guernsey) Law, 2001 (**Electricity Law**).

Having considered the evidence before it, the Authority has taken the decision to issue a Direction in line with the initial Notice. The Direction is appended at **Annex 1**.

To assist Guernsey Electricity in understanding the basis for its decision, this letter sets out the Authority's views on the matter. Included at **Annex 2** is the Authority's more specific reasoning for rejecting GEL's legal submissions on its justification for not complying with the obligations in those Licence Conditions.

Electricity Regulation

Visibility of prices and discounts offered by Guernsey Electricity to electricity customers is necessary for the Authority as the regulatory body, to carry out its particular role in this sector. Consumers and other stakeholders are also entitled to know what regulated prices Guernsey Electricity charges. The regulated business is held to account through licence obligations on transparency of the prices it offers given the features of this market where Guernsey Electricity also has a monopoly. The Authority has been faced with a situation where Guernsey Electricity's decision not to be transparent has removed visibility of its pricing behaviour as a States-owned commercial business, arguing that the use of 'Special Agreements' removes its obligation to be transparent about the prices it charges to some commercial customers. Despite being informed that its conduct breaches its Electricity Licence, Guernsey Electricity has not accepted this obligation.

The Authority has now come to the view that without that information and with Guernsey Electricity refusing to act transparently regarding the price it charges its customers, the checks and balances that the regulator, customers and potential competitors are able to provide is absent and needs to be remedied as soon as possible.

If it would assist, the Authority is open to a joint meeting between the Chairpersons of the two organisations and that invitation is therefore extended with this communication of the Authority's final decision.

Conclusion

The Authority Direction requires the publication and provision of the required information within three weeks of publication. In order to assist Guernsey Electricity the Authority offers a meeting with its Officers to discuss the format in which that information will be provided to comply with this Direction.

This letter enunciates the Authority's position and we look forward to working constructively with Guernsey Electricity to ensure that key stakeholders can be confident that all electricity prices charged are transparent.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Harrington', with a stylized flourish at the end.

Richard Harrington
In-House Counsel
Guernsey Competition and Regulatory Authority

Annex 1 – Direction to Guernsey Electricity Limited

Notice pursuant to section 29(1) of the Electricity (Guernsey) Law, 2001.

The Guernsey Competition and Regulatory Authority (**Authority**) gives the following Direction to Guernsey Electricity Limited pursuant to Section 29(1) of the Electricity (Guernsey) Law, 2001.

1. As required in Licence Condition 20.1, Guernsey Electricity Limited publish and provide full detail of any new prices, any discounts to published prices or any special offers in relation to the supply of electricity, which are included in the section 16 special agreements as has been agreed with commercial customers; and
2. As required in Licence Condition 20.3, Guernsey Electricity Limited provides the Authority with full details of the section 16 special agreements that demonstrate they comply with the obligation that all its published prices, discount schemes and special offers are transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable;

Guernsey Electricity Limited shall comply with the Direction within three weeks from publication of this Notice.

END.

Annex 2 - Response to GEL Submissions

GEL's objections to the Notice of the Authority's proposed Direction under section 29(3) are summarised in paragraphs 4.1 (a), (b) and (c) in its letter of 6 October 2020. Those objections are as follows:

1. Special Agreements under section 16 of the Electricity Law do not come under the terms of Condition 20 of GEL's Licence;
2. Further and in the alternative, Licence Condition 20.1 does not require full details of the process contained in special agreements under section 16 of the Electricity Law to be published by GEL to the public;
3. Further and in the alternative, Licence Condition 20.3 does not require GEL to provide any information to the Authority in relation to any matters falling within Licence Condition 20.1.

The Authority responds to those points as follows.

4. The Authority does not accept GEL's submission that the prices included in section 16 Special Agreements are exempted from the obligations in Licence Condition 20.

The Authority accepts GEL's submission in paragraph 5.7 that section 15(2)(a) only relates to the publication of the terms and conditions of section 12 tariffs. The Authority also accepts GEL's submission that section 16 special agreement are separate from section 12 tariffs. Therefore, on a strict reading of GEL's own submissions, it is axiomatic that the obligations in section 15(2)(a) only apply to section 12 tariffs and not section 16 agreements.

Further, for the avoidance of doubt the Authority does not accept all of GEL's submissions that seek to assert that the prices in section 16 agreements are removed from compliance with the Licence Condition 20 obligations.

For those reasons, the Authority does not accept GEL's submissions that the requirement to publish the terms of the Special Agreements under Condition 20 are *ultra vires* or inconsistent with the Electricity Law.

5. Licence Condition 20.1 (c) requires GEL, when it intends to introduce any new prices, any discounts to the published prices or any special offers in relation to the supply of electricity, to publish notice of those offers and prices at least one month prior to them coming into effect and shall also provide full details of those offers to the Authority at the same time as the publication of the notice is required.

At paragraph 5.9 of its letter, GEL submits that Licence Condition 20 "only" applies to "section 12 Fixed Tariffs". That statement incorrectly and misleadingly reads additional words into Licence Condition 20 which are simply not there. The Authority did not limit the scope of Licence Condition 20 to "only" section 12 tariffs. It could have done so if it was considered appropriate for proper regulation of GEL's electricity prices. Clearly, it was not.

6. Licence Condition 20.3 requires all published prices, discounts schemes and special offers introduced by GEL to be transparent and non-discriminatory, all discount schemes shall be cost justified and all special offers shall be objectively justifiable. This is a natural extension and explanation to GEL on the evidence it is required to provide to the Authority, as per the requirements in Condition 20.1 (c) to provide full details of the new offers and discounts to the Authority at the same time that publication is required.

The Authority consider GEL's submissions in relation to Licence Condition 20.3 are incorrect and they are not accepted.

Investigation procedure

7. The Authority notes GEL's comments in relation to the conduct of the investigation but respectfully disagrees with GEL's submissions. The Authority's position in relation to Condition 20 was adequately explained in the Notice and it was for GEL to provide its written representations and objections in response to the proposal in the Notice, to assist the Authority in making its decision.
8. In compliance with section 29 of the Electricity Law, the Authority has considered the evidence provided by GEL in reply to the Notice. GEL is legally represented, and will have taken advice which informed its decision not to develop or make any submissions on matters raised in previous correspondence. As a result, such matters have not been considered by the Authority.
9. On 12 June 2020, the Authority confirmed that it had instructed the Law Officers to provide a legal opinion specifically to advise on whether GEL's use of Section 16 Special Agreements was compliant with the requirements of the Electricity Law and indicated that it would provide a copy of the legal opinion when it issued its decision on IEG's complaint. That legal opinion did not address the matters subject to the Notice and is therefore not relevant to GEL submissions in reply to the Notice. We accept that it would have been courteous to have made this point when the provisional notice was introduced. In any event, the Authority has been advised by independent Counsel that it should not provide its legal opinions to GEL as a general policy.

END.