



22 November 2010

M [REDACTED]
Department of Energy and Climate Change
Area 4C
3 Whitehall Place
London
SW1A 2HD

Dear Sirs

**Consultation on the provision of third party access to licence exempt
electricity and gas networks**
Reference Number: 10D/818

Dover Harbour Board has been reviewing the Government's proposals for new legislation to provide third party access to licence exempt gas and electricity networks. We understand that the purpose of the proposed legislation is to ensure that all gas and electricity consumers are able to benefit from a competitive market by being able to choose their energy suppliers, in line with EU law. While we understand the premise behind the proposals, we have a number of concerns about the practicalities of implementing the proposals in their current form.

Background Information

The Board operates the Port of Dover, the busiest roll-on, roll-off ferry port in Europe. As part of its operation, the Board currently supplies electricity to the ferry operators, contractors and licensees operating within the Port as well as tenants occupying premises and associated operational land.

The Board's private distribution network is currently licence exempt under the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001.

We have noted that the Electricity Directive (2009/72/EC) requires licence exempt distribution networks to offer third party access and that, in light of the European Court of Justice's ruling in *Citiworks AG*, there is very little scope for introducing derogations or caveats to the obligations under the Directive. However, working through the consultation documents has led the Board's technical experts to express concerns that the proposals will place very onerous administrative and financial burdens on the organisation. As such, the Board is of the view that the current proposals are disproportionate to the overall aim of the Directive.

Furthermore, the proposed timing for implementation of this legislation is tight and does not give the Board sufficient time to properly deal with the issues raised in terms of the potential impact on tariffs and additional costs of compliance.





The consultation deals with a technically complex issue and there appear to be gaps in the information provided, notably in terms of guidance on how OFGEM intends to deal with the setting of tariffs. However, based on what is contained in the consultation document, set out below are the Board's key areas of concern and some questions which we would appreciate your feedback on.

- *Existing Contractual Arrangements*

The Board's current contract for electricity supply is based on a minimum level of energy consumption. The rates obtained are highly competitive and have been brokered based on minimum levels of use, which ensures that those connected to the Board's network benefit from the best possible rates. The Board is currently in year 1 of a 3-year deal.

Given the projected implementation date for the new legislation of 3 March 2011, when there will still be more than half of the supply contract term to run, the Board is concerned that if sufficient of its existing users opt to be provided by a third party, the Board will have to bear the contractual consequences of failing to reach the required minimum usage levels.

- *Third Party Meters*

Once an existing user opts out to being supplied by the Board, the utility company supplying "opted-out" user will have their meters located within the Board's network. This will give rise to a number of issues for the Board:

1. During a power outage, the Board's standby generators would take over the supply and feed the "opted-out" user through the utility company's meter. The utility company will charge the "opted-out" user for the supply, but there appears to be no mechanism whereby the utility company will be obliged to pay the Board for the electricity it has supplied during the outage.
2. The monitoring of the Board's supply content will be rendered more difficult where users opt out. Currently, the Board's consumption is derived by deducting the sum of all other users' meters from the Board's main incoming meter. However, without knowing the supply details from "opted-out" users' meters, it will be not be as straightforward to calculate going forward. It will also make billing more complex for the Board's main provider, as they will need the information from the "opted-out" meters.
3. When an "opted-out" user vacates an office/premises, the utility company's meter will remain in situ and presumably they will continue to levy a standing charge. This would result in the Board paying two standing charges – one for the main supply and another for the metered supply that the previous occupier had requested. In these circumstances, would it be lawful for the Board to require the user to re-connect to the Board's supply prior to vacation such that no further charges are incurred?



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- *General Administration Issues*

There are a number of other issues that the Board feel need to be considered in more detail prior to the implementation of any legislation:

1. The Board currently spends a lot of money undertaking regular maintenance on its network infrastructure. Where there are third party suppliers operating on the Board's network, will the Board be obliged to inform the potentially affected electricity supplier(s) prior to undertaking such works? Will there be a procedure for this? What about emergency works?
2. If an "opted-out" user loses supply due to a failure of the Board's network, could the Board be liable to claims from the utility company and the tenant?
3. It would appear that the Board will need to keep and maintain a separate account for network operation under the new proposals. The extent of the Board's "network" would need to be clearly defined in order to achieve this and the initial building up of these costs could take a lot of time. Is there any possibility of introducing a simpler system for calculation, for example, a standard nominal per metre charge?

I appreciate that some of these issues will have already been considered and appropriately dealt with, but given the significance of these issues and the potential adverse impact it is likely to have on the Board's operation - and no doubt the same can be said of other port operations - until the detailed text of the proposed legislation is available, I felt it necessary to flag the matters now.

I look forward to receiving your response.



