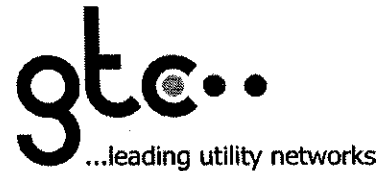


26 November 2010



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Dear [REDACTED]

DECC Consultation on the Provision of Third Party Access to licence Exempt Networks

GTC is the parent company of the licensed gas transportation and electricity distribution businesses of GTC Pipelines Limited (GPL) and the Electricity Network Company Limited (ENC) respectively. We write to provide input to DECC's consultation on the provision of third party access to licence exempt networks.

In principal we support the government proposal; however, we do have some concerns. As operators of small licensed network businesses, the key concern for us is that private network operators should not receive an undue advantage that distorts ownership model away from licensees. Such an approach would not be in the long term interests of consumers. Below we also make comments in respect of issues that need to be addressed in facilitating open access to competition in supply.

Licensed electricity and gas network operators are required to comply with regulatory duties and obligations which, inter alia, are in place largely to protect the interests of consumers. The interests of consumers connected to private networks do not receive the same level of protection. Whilst we recognise that arrangements need to be proportionate for small network owners, we are concerned at the apparent significant disparity between the duties and obligations placed between unlicensed private network operators and relatively small independent licensed operators such as ourselves. We question why it is perceived that this is reasonable. This is important since we believe there may be a significant number of private network owners who are in breach of the 2.5MW limit for licence exemption and therefore in breach of provisions under the Electricity Act 1989.

This is even more likely to be the case following Gas and Electricity Markets Authority's ('the Authority') recent determination in respect of the City of Westminster, the London Borough of Camden and the London Borough of Islington¹. The consequence of this aggregate

¹ **Determination of Disputes under section 23 of the Electricity Act 1989 between the City of Westminster, London Borough of Camden, the London Borough of Islington and EDF Energy Networks (LPN) plc; Ofgem ref No. RBA/TR/A/DET/159.** In that dispute Ofgem determined that the internal wiring of the flats in question (often described as risers and laterals) were under the ownership or operation of EDF networks but under the ownership of the landlord. Such risers and laterals comprise a distribution system¹. The determination on boundary ownership is likely to apply to other premises owned by these local authorities and as

maximum demand for these local authority sites is likely to exceed the 2.5MW limit prescribed in licence exemption regulations. (2.5MW equates to circa. 2500 domestic properties).

If licence exemption limits are to be meaningful it is important that they are applied with rigour. Currently, this does not appear to be the case. If this is to continue to be the case we question why any new entrant would seek a licence. Also, we note that networks with their own generation have 1 MW demand limits on a per site basis. This means that an organisation operating an ESCO could legitimately operate many such private networks with no limitation on the aggregate demand.

Part of the DECC proposals is to widen the scope of the term 'Designated Networks' to include private networks. We understand that this will mean that private networks will be subject to the special administration regime in instances of insolvency. ENC and L, as small licensed businesses, do not have a long term debt rating (licence requirement is for this to be a minimum of BBB-). In lieu of this, the Authority requires us to place amounts into escrow (or some equivalent arrangement) equivalent to six months operating costs. This, it is argued, is to ensure that sufficient funds are available in the event of insolvency. It would appear that such requirements would not apply to private network operators; therefore, we feel that IGTs and IDNOs will be discriminated against unduly (particularly since licensees have financial ring fencing obligations and private network owners do not). Whilst, we recognise arrangements for IDNOs and IGTS fall under the auspices of the Authority (whereas private networks do not – at least not yet), such disparate treatment needs to be addressed.

Notwithstanding the potential breach of licence exemptions identified above, we understand that competition in supply already exists on many private networks already. In the Authority determination² the incumbent DNO (EDF) provides metering registration services in respect of consumers' metering points connected to the private network and that suppliers have presumably been willing to connect metering to the private network at the consumers' premises for many years (in ignorance or otherwise). Whilst we note that EDF do not appear to have levied a separate charge for this service, we also note that EDF have not offered the local authority a discounted DUoS tariff (i.e. they have charge suppliers on exactly the same basis as though EDF owned the private network). Clearly, if the local authority is to recover its costs of operating, maintaining and eventual replacing its private network, it would need to make an additional charge to the customer or to the supplier.

We also note that contractually private network owners do not have any contractual relationship with suppliers (under current arrangements they cannot be party to DCUSA) and they do not have any contractual arrangements with upstream licensed distributors for use of system. In cases such as blocks of flats, we are not sure whether all such operators have a connection agreement with the upstream distributor since the national terms of connection terms will only be in place with end consumers. This is an area that will need further review. (Therefore, it may be that liability, for example, between the DNO and private network owner is unlimited).

If consumers on private networks are to have unfettered access to competition (in the same way that they do on domestic licensed networks), arrangements need to be in place to

such it is likely that such local authorities are in breach of the Electricity Act 1989 requirement to hold a licence (as are many other local authorities).

² ibid

ensure that consumers are not unduly penalised. Whilst suppliers have a licence obligation to offer a supply contract to domestic consumers, the same is not true for non domestic consumers. As an IGT and IDNO we note that some suppliers choose to not offer contracts to non domestic premises connected to IGT/IDNO systems. This, they argue, is because they do have the systems in place to manage such customers. Additionally, for domestic consumers, some suppliers levy 'IGT surcharges' on consumers connected to our networks, even though the equivalent average 'all the way charge' levied in respect of IGT connections is, in the majority of cases, lower than that levied by the GDN. If such surcharges to consumers on private networks are to be avoided (both in gas and electricity), then the systems and processes used to facilitate competition in supply must follow the same requirements as those used on licensed networks (i.e. the commodity price offered to consumers should not be impacted by the type of network they are connected to).

Changing existing industry systems and processes (those operating under the BSC and the MRA for example) to facilitating competition on private networks could place a significant additional burden and cost on existing market parties and private network owners. The devil of facilitating this really is at the detail level not considered by this consultation. Therefore, we believe a more pragmatic approach may be for consumers connected to private networks to be registered in the same way as those on licensed networks and for there to be a 'provider of last resort' licence obligation on licensed distributors with a distribution services area to offer licence exempt services certain services to facilitate competition. As described above distributor already do this in many circumstances, perhaps unconsciously. Such last resort obligations would not prohibit other licensed distributors offering such services. In providing such services such distributors should be entitled to recover their reasonable costs. In addition consideration should be given as to whether there should be a licence obligation on suppliers to offer supply to all customer types (on request).

We note that the proposal is to give the Authority certain powers in respect of private networks. We support this approach. However, to facilitate this approach we believe it may be appropriate for private network owners to register their networks (along with the notional maximum demand) and for Ofgem or perhaps each relevant distributor to maintain such register. This would at least facilitate communication and assist in assuring compliance with licence exemptions. We recognise that not all network owners would register initially, but going forward it could evolve and develop to provide a useful source of information (of which there is a total absence at present).

I hope the above comments assist in the development of appropriate solutions. If there are any points you wish to discuss further please contact me

Yours sincerely



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