

[REDACTED]
Department of Energy & Climate Change
Area 4C
3 Whitehall Place
LONDON SW1A 2HD

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4th Floor
Carthusian Court
12 Carthusian Street
London
EC1M 6EZ

Telephone: 020 [REDACTED]
Facsimile: 020 [REDACTED]
Email: [REDACTED]@ukmajorports.org.uk
www.ukmajorports.org.uk

Dear [REDACTED]

CONSULTATION ON THE PROVISION OF THIRD PARTY ACCESS TO LICENCE EXEMPT ELECTRICITY AND GAS NETWORKS

The UK Major Ports Group welcomes the opportunity to comment on the consultation document published in mid October.

The UK Major Ports Group is one of the two associations representing ports in the UK. UKMPG's nine member groups operate over 40 ports in all parts of the UK and handle around 70% of the UK's international trade by volume. UKMPG member ports are all privately financed and do not seek financial help from the taxpayer. Annual investment in upgrading and developing ports facilities has been running at £200 – 300m a year and this will increase as several large development projects are taken forward. Moreover, a recent independent study has shown that UK ports directly and indirectly employ some 360,000 people and contribute around £18bn annually to UK GDP.

The third party access proposals set out in the consultation document affect UKMPG ports significantly. This is because many ports operate business estates on their land with tenants supplied with power through private supply networks which ports have installed and maintained. Ports also supply power to other customers who are not formally tenants, but use power as part of their day-to-day operations (e.g. shipping lines, cargo handling and maintenance support contractors). Depending on how 'customers' are defined for the purposes of the proposed legislation, these groups may also be within the scope of the DECC proposals.

For the reasons given at the workshop held on 26 October and as set out further below, UKMPG considers that the consultation proposals could have a serious financial and operational impact on port businesses. In addition to this letter, several of our member groups (e.g. Associated British Ports, Hutchison Ports UK, Bristol Port Company and Forth Ports PLC) are setting out their specific concerns in separate responses to this consultation.

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General

We are very concerned at the rushed way in which the consultation is being conducted. Ports are probably the business sector that is most affected by these consultation proposals. Yet we were not invited to the February 2010 workshop referred to at 1.1 in the consultation. Despite repeated requests for a workshop session to be held for ports, this only finally took place on 26 October, several days after the consultation period started. We are also very surprised that the consultation period has been reduced to five weeks, which is three weeks less than the normal minimum. This means that we have not been able to give as much detailed consideration to the proposals as we would have wished despite their potential significance and complexity.

We understand that it is DECC'S intention to introduce legislation early in 2011 alongside legislative changes required by the Third Energy Package to take effect from March 2011. This timetable is extremely challenging particularly as there is no indication as yet of how Ofgem intend to proceed with a common methodology for the setting of tariffs. This is a vital area for ports as these tariffs will need to reflect both the investment which ports have put in so far in providing private supply networks, and the additional costs which may be necessary to allow them to be used for third party access. Without some clear idea of how this methodology will operate, the consultation package being put forward is seriously deficient. This is inevitably creating great uncertainty for ports not least in their dealings with their current electricity suppliers. And this is against a background of further uncertainty caused by the government's recent decision to switch the Carbon Reduction Commitment from a revenue neutral mechanism to a new energy tax.

While we understand the Government's wish to be fully compliant with European law, we are not aware from our contacts with ports in other EU countries that other administrations are acting on a similar time scale to implement the European Court of Justice's judgment in the 'Citiworks' case. This leads us to question whether the UK has reached a correct judgement about the implications of Citiworks and about the speed of implementation given the complexity of the issues involved. For example we question whether DECC has looked sufficiently closely at existing UK port practice where contracts for supplying power through private wires are regularly re-tendered to secure the best available price on behalf of tenants. Tenants also have the choice of putting in their own access to the national grid. Our understanding is that these arrangements may already be compliant with the requirements of Citiworks and we have to date received no contrary view from DECC.

The need for an alternative approach

We have several specific points of concern about the proposals which as they stand certainly do not meet the stated objective of implementing the European Court's Citiworks judgement with the minimum impact on UK business.

- As mentioned above we consider that the combination of regular re-tendering of overall supply contracts, plus the opportunity for tenants to arrange their own connections to the national grid, may already meet the terms of the Citiworks judgement. In this case no further action would be necessary though we accept that

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Ofgem may wish to give guidance on the frequency of market testing and the associated operational arrangements;

- If despite the above it is concluded that tenants have to be offered direct access to third party suppliers, arrangements need to be put in place which adequately safeguard the investment which ports have put in to supply power to tenants and other users. This also needs to take account of additional costs which may have to be incurred in order to upgrade the private wires in order to meet the requirements of third party suppliers. It is not appropriate that such additional costs should be borne by other existing users of private wires or by ports themselves;
- Arrangements also need to take account of forward supply purchase contracts which many ports have entered into. Some of these can be long term, with other parties involved and may have been designed to help develop the business case for renewable energy (off shore wind, biomass etc.) and for combined heat and power. Contracts have been negotiated in order to pass on the benefits of bulk purchase agreements to tenants and normally involve commitment by the ports to guarantee the purchase of a minimum level of power. It is essential that ports and tenants are protected against the extra costs involved if this guaranteed minimum threshold is not achieved as a result of tenants opting to purchase power from another provider but still using the port's own private supply network. Alternatively, the arrangements need to be phased in over a period which takes account of the extent and duration of the existing advance purchase contracts;
- The time limits for responding to tenants agreeing to third party supply contracts need to be realistic and recognise the amount of work which may be required, for example to upgrade a port's private supply network which is not compatible with the requirements of a new third party supplier. They also need to take account of the likely pressure on Ofgem's resources in agreeing proposals for the setting of tariffs. The proposal in 2.26 for third party access to be granted within three weeks of the customer's contract agreement with the new supplier is likely to be totally unrealistic in other than the most straightforward of cases.

Conclusion

In light of these concerns and those expressed by our members' individual responses, we hope that DECC will agree to rethink these consultation proposals. The first stage is to reflect on whether existing port practice of regular re-tendering bulk agreements plus the choice that tenants can already exercise to be directly connected to the national grid outside the port's private wires meets the terms of the Citiworks judgement. If further regulation is required to provide for third party access, Ofgem need to discuss with ports and other sectors involved how arrangements can be drawn up which address the investment and forward supply purchase contracts issues set out above, containing appropriate transitional and timing proposals. The overall time table for bringing in Citiworks legislation should be revised to allow proper discussion of these issues.

UKMPG would be pleased to participate in such further discussions. We would also be happy to arrange visits to port estates so that DECC and Ofgem officials can see at first hand the very real practical issues involved.

I am copying this letter to [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]
[REDACTED], UKMPG

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