



**ASSOCIATED
BRITISH PORTS
GROUP ENGINEERING &
SAFETY**

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Our Ref: IHS/AJC



Department of Energy & Climate Change
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Dear Sirs

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

I am responding on behalf of Associated British Ports to the consultation on the provision of 3rd party access to licence exempt electricity and gas networks. ABP is the UK's largest ports group, operating 21 ports in England, Scotland and Wales. Our ports collectively handle around a quarter of the UK's seaborne trade, and with our tenants and terminal operators, we invest in and manage many ports and terminals which are critical to the national economy and security.

We understand from the recent UKMPG/DECC/Ofgem consultation meeting held on 26 October 2010 that arrangements for the implementation of the 2009 EU Electricity and Gas Directives must be in place in the UK by 3 March 2011. We do not yet know what form this UK regulation will take, or indeed the methodology that Ofgem will apply to the approval of ports use of system charges (due to be consulted upon in January 2011). From this knowledge we offer the following comments that reflect the position of ABP, and which, from the meeting it was clear will be reflected by other UKMPG member companies.

- We support the proposal that networks that are currently exempt from licensing under the Electricity (Class Exemptions from the Requirement for as Licence) Order 2001 should remain exempt from licensing.
- We support the approach suggested by Ofgem to ensure that the "generic methodology" for the application of distribution use of system charges should be simple and flexible, and as mentioned by Ofgem in the meeting on 26 October, be likely to gain approval if they are based upon "reasonable and transparent" costs. However, as indicated above, it is impossible for us to assess the full impact on our business without first having access to the proposed generic charging methodology from Ofgem. If this is indeed made available for consultation in January 2011, this does not allow sufficient time for affected network operators to respond in a meaningful manner before the 3 March implementation deadline for the directives.
- Ports have invested in extensive distribution systems, for the benefit of the port owner/operator, terminal operators and tenant companies, over many years, and continue to plan for future expansion. Any methodology for applying use of system charges must fully reflect the value of this asset in real terms, and should not simply be based on net book value. In developing these private networks, ports have been able to attract both UK and

foreign investment, in our case through deploying private sector capital, for the benefit of UK trade in general. This investment in infrastructure has been possible by reflecting a whole range of revenue streams in the business case for such investments, including revenue from the resale of energy. The potential loss of this revenue could seriously undermine many existing long-term agreements, and potentially inhibit future development.

- Port customers have historically preferred certainty in charges, at least projecting forward into the next budget year. For this reason, most port companies buy energy on the forward market for a fixed term at a fixed price. ABPs own bulk purchase arrangements mean we have in most cases fixed a forward supply of a known quantity of power through to the end of 2011, and in the case of Southampton, 2018. Such forward purchase contracts include consumption variation tolerance clauses, which are effectively "take or pay" penalties. If either a large tenant or indeed a number of smaller tenants take 3rd party supplies within this contract period, the port will become liable for penalties from its contracted supplier. Any charging system, at least for a transitional period until new contracts can be arranged, must allow the port to levy exit charges to cover the potential liability from the suppliers variation tolerance charges. Such a transitional arrangement is essential in circumstances where ports have entered into forward purchase arrangements with suppliers - in some cases tolerance charges could amount to several million pounds if all tenants opted for 3rd party supply.
- Comment has been made that "bundled" services, where energy supply is one of a range of provisions within an overarching agreement or lease, would be unaffected. In most cases, it would be difficult if not impossible to move to this arrangement where many investments have been made subject to agreements of 25 years or more.
- From our contacts with European ports and trade associations, we are not aware of a similar approach currently being taken in other member states. Given that the proposals you have put forward are designed to meet obligations under a European Directive, we would be very concerned if the UK was to implement changes which as we have indicated will have potentially significant implications for the UK ports industry (amongst others), if such changes are not also planned on a similar basis and timescale in other European countries. If this were to be the case, once again the UK ports industry would find itself at a material disadvantage to its European competitors.
- Following on from this, it is our understanding that the "Citiworks" case is fundamentally about access to the competitive electricity market. The existing practice in our business is to offer customers the choice of either their own private wire connection, or connection and supply through the port network. In the case of connection and supply through the port network, we source energy through contracts which are advertised to licensed suppliers through the Official Journal of the European Communities, tendered via an independent energy specialist and have always been awarded to the lowest tenderer. We also have evidence to support energy rates decreasing as well as increasing as a result of this tender process. In this we contend that our port network customers have access to the competitive electricity supply market.
- The supply of electricity is one of a wide range of supplementary services offered by ports, but is not its core business. Ports will inevitably be faced with increased costs relating to the administration of more complex infrastructure, metering and charging arrangements, which again will have to be fully reflected in any use of system charging structure. In addition to the increased administration, the requirement to grant 3rd party access within 3 weeks of a 3rd party supply offer is likely to be completely impractical for technical reasons in many cases

and, even in those cases where this is technically feasible, adds further complication and risk for both the network owner and end user.

This proposed change comes at a time when the industry is facing other major challenges in managing its energy demand. In our own case, the recent change to the Carbon Reduction Commitment Energy Efficiency Scheme made as part of the Comprehensive Spending Review, has added c. 10% to the cost of energy, through withdrawal of the recycling payments, and added £1-2m to our tax burden. This cost will obviously have to be reflected in the rates we charge to our customers, many of whom are not eligible for CRC in their own right, therefore increasing the risk that more tenants will move towards 3rd party supply. When this is coupled with the lack of clarity in overlapping carbon and climate change schemes, e.g. Climate Change Agreements, Climate Change Levy, Carbon Reduction Commitment, EU Emissions Trading Scheme, changes to the Renewable Obligations Certificate regime, the whole energy landscape becomes unfathomable for many businesses.

In conclusion, we would urge the Department to consider extending the consultation period in order that the Ofgem consultation on generic network charging methodology can be fully and properly assessed, alternative ways of accessing the competitive electricity market can be considered (such as regular tendering of bulk energy purchase arrangements) and that this exercise is considered alongside other current consultations and regulation changes which impact energy use and carbon management.

Yours faithfully

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