

Forth Ports PLC

RESPONSE TO "CITIWORKS" CONSULTATION

DECC 2010 Consultation on the provision of third party access to licence exempt electricity and gas networks: 10D818

Introduction

Forth Ports PLC welcome opportunity to comment on this consultation, we found the London workshop with DECC, OFGEM and DfT on the 26th of October very useful. However, clearly there are many issues that arise from this proposed legislation that have not been considered and Forth Ports remain deeply concerned of the unintended consequences of this legislation especially in relation to the questions raised on the day, which have still not been answered.

Timescales and comprehensiveness

We welcome the Government's intention of implementing ECJ Citiworks judgement with minimum impact on UK business. However as they stand the proposals would have significant adverse effect on ports with private supply networks and our customers.

We are particularly concerned by the ridiculously short 5 weeks consultation, which is totally insufficient for a complex subject. Furthermore, the consultation fails to tackle the majority of issues that arise from this proposed legislation. Indeed, it is unacceptable that the OFGEM consultation on potential charging aspects is not to be issued until January, by which time this consultation will have closed. Even when this and the OFGEM consultation are considered together, following the discussions at the October workshop, it is clear that many relevant issues associated with this legislation will not have been covered by the two consultations.

Overall, the substantial pace of the timetable for implementation (March 2011) is completely unacceptable; the duration of these consultations and their proximity to the implementation date means that there is clearly not enough time to get sensible clarity on a number of outstanding issues or the way forward. As a result businesses will not have a secure basis on which to plan ahead. This is a critical issue as we are on the verge of agreeing parameters for future years with suppliers. These agreements have (at best) a plus or minus 10% tolerance on a take or pay agreement.

Through discussions at a UK Major Ports Group level, we are not aware of other EU countries rushing to implement the Citiworks judgement. Why is the UK pushing ahead with this?

Financial impact

If we are not to lose a significant amount of working capital, OFGEM must allow for systems charges to reflect historic investment and direct costs. The costs of reinforcing the port networks must not be underestimated – this is currently ignored in the regulatory impact assessment. The cost of metering is a fraction of the network reinforcing cost which is anticipated to exceed tens of millions in the case of each port network.

OFGEM also need to take account of forward supply purchase contracts which a number of our ports have entered into. These range from a 25 year power purchase agreement to 2-5 year take or pay deals. We are trying to negotiate some of these at the moment in a very competitive marketplace, delay is unpalatable given expected future electricity prices, however, signing up now on a competitive rate if we loose our customers and have to cover the cost of the power not drawn is even less palatable. At the workshop it was made clear that this was at our risk. But clearly this is unacceptable; we have forward purchased energy at competitive rates for the benefit of our customers as well as ourselves. The uncertainty caused by this consultation means that both we and our customers cannot benefit from the current low cost of electricity.

The proposals will be a very burdensome process for ports, tenants, and OFGEM from an administrative perspective, creating an uncertainty, particularly for budgets and energy forecasting (which is critical for good energy management and carbon reduction). This essentially ties the ports into annual electricity deals (where they are not tied into multi-year deals).

Selling off private supply networks is not a viable option as there is unlikely to be a market and ports might well be required to upgrade networks before any sale. The cost of such will be prohibitive without a significant return. Feedback from ports that have looked into this is that the district network operators do not see the value in taking ownership of port networks as the number of customers does not warrant the cost of maintaining the networks to grid standard.

Administrative issues

The draft legislation requires that the private network operator must facilitate a switch of supplier within three weeks of receiving written notification. However, we have to give our suppliers 90 days written notice (which is standard); it is often challenging to change supplier within this timescale. This is again completely disproportionate; it is a ridiculously short period which again leaves us in an impossible position when a customer leaves part way through an existing agreed supply (on take or pay). At the October workshop it became obvious that there is uncertainty about when the 3 weeks starts.

If a tenant/customer wishes to swap to a third party electricity supply, requiring upgrade of the network to 'grid' standard to allow 3rd party access to our networks, then that customer will surely have to pay the many millions to upgrade the network – where is their incentive to swap suppliers? If the port is expected to cover the upgrade cost, then everyone's electricity bill will have to rise substantially to cover the upgrade cost, even though only one customer is swapping. This does not appear fair.

How will OFGEM's resources cope with the flood of applications for network charges to be agreed? We cannot see that OFGEM will be able to turn such applications round promptly enough to allow the 3 week swap period. Will OFGEM be increasing their staffing?

The consultation refers to a number of exemptions. One is to have the network designated as a 'Closed Distribution System'. This appears a logical step for ports. However, at the October

workshop we were told that even if our networks had been designated, the requirement to facilitate third party access remained. So why have the exemption?

We regularly tender our electricity supplies (usually every two years), and where there are options to secure longer term deals at excellent prices we take these opportunities (for example the 25 year power purchase agreement for on-site generated renewable energy). Our customers therefore have access to the market through our ability to regularly competitively bulk purchase. Furthermore, the diversity of energy users within each site and across our sites smoothes our energy use profile, making us collectively more valuable to suppliers. If each of our customers negotiated their own deal, they (and we) would look less attractive as customers and all of our rates would go up. We would each have a take or pay clause and there would be additional network reinforcing and maintenance costs. The only winners would be the utility companies. As the current arrangement stands we and our customers benefit from regularly competitively tendered supplies, minimised network costs, smoothed demand profile and our customers are insulated from the take or pay clause by the community of energy use they are within. Therefore the *status quo* is the best scenario for both us and our customers regarding competition and access to the market to maximise value to the end user.

Conclusion

Given the difficulty and complexity, we firmly believe that the government should consider an alternative option whereby regular testing of the market by ports (and other network owners) on behalf of customers meets the requirements of the Third Package Directive and the ECJ "Citiworks" judgment. Clearly the current arrangements are a better solution for our customers when compared to the cost of operating with the proposals in the consultation.

The government should also consider deferring implementation of the access to private supply provisions until mutually satisfactory arrangements have been agreed between the industry and OFGEM. There is no chance of this happening under the present timetable which is completely unacceptable. It is worth noting that the Port industry has been trying to meet with DECC since March on this topic and the October workshop was the first such meeting.

Future business in the ports may become hindered by unnecessarily and disproportionately expensive energy costs when compared to locations outwith the port estates. This legislation creates a disbenefit for forward looking companies who have begun locating within port estates to minimise their logistics carbon footprints and reduce onward land transport distribution costs, particularly where they are reliant on importation or export of product.

Forth Ports would like to offer both DECC and OFGEM officials the opportunity to visit our port estates to understand the very real practical issues arising from this consultation.

We trust our comments are informative and can be used to significantly alter the proposals and delay their implementation on an appropriate timescale.

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