

**COMPETITION IN ELECTRICITY
METERING SERVICES**

INDUSTRY GUIDANCE – V1.1

March 2003

Summary

Some participants in the gas and electricity industries have requested that Ofgem provide clarification on aspects of the regulatory framework regarding 'commercial arrangements' in relation to electricity metering. Ofgem considers that reducing regulatory uncertainty by providing such guidance is in the interests of consumers and consequently has produced this document.

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1. Rationale

- 1.1. Ofgem must carry out its functions in a manner best calculated to meet its principal statutory objective¹ to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the electricity industry. Ofgem considers that competition in electricity metering will promote choice, innovation, new investment and has the potential to reduce costs in the provision of electricity metering services. Ofgem's metering strategy² has outlined how Ofgem consider the benefits of electricity metering competition will be achieved.
- 1.2. In Ofgem's view, the existing regulatory framework, provided for under the Electricity Act 1989 (the Act) (as amended by the Utilities Act 2000), statutory instruments and licences granted under this Act, as well as competition and consumer law more generally, is sufficiently robust to support metering competition. Legislation provides for suppliers and consumers making their own metering arrangements. Ofgem's metering strategy is aimed at facilitating their exercise of those rights.
- 1.3. However, some participants in the industry have requested that Ofgem provide clarification on aspects of the regulatory framework regarding 'commercial arrangements' in relation to electricity metering. Ofgem considers that reducing regulatory uncertainty by providing such guidance is in the interests of consumers and consequently has produced this document.

¹ In relation to electricity, Ofgem's principal objective and general duties are set out in section 3A of the Electricity Act 1989 (as amended).

² Ofgem's original metering strategy document can be found at www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2105_28_metering.pdf and the latest update can be found at www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1994_40metering_strategy.pdf

2. Timetable

- 2.1. Ofgem intends that this is a working document and, after publication, will update it from time to time. Consequently we would welcome views at any time which should be emailed (metering@ofgem.gov.uk) or faxed (020 7901 7196) to the metering team.
- 2.2. Specifically we would appreciate views on this guidance document by Friday 25 April 2003. Comments should preferably be sent by email to david.howdon@ofgem.gov.uk. However if desired hard copies can be sent to:
- David Howdon
Deputy Head of Metering
Ofgem
9 Millbank
London
SW1P 3GE
- 2.3. If you want to discuss anything contained in this document, please contact either David Howdon (020 7901 7420) or Claire Edmunds (020 7901 7331).
- 2.4. Ofgem will generally publish responses by placing them on our website. Respondents should therefore clearly mark as confidential any parts of a response they do not wish to have published.

3. Provisions relating to electricity metering competition

- 3.1. This section sets out the background of the legal framework in which electricity metering competition will develop and provides a summary of some relevant legislation. These discussions are not a substitute for understanding relevant provisions of the Electricity Act 1989 as amended by the Utilities Act 2000, competition³ or consumer law.
- 3.2. This document provides guidance on matters Ofgem would have regard to when considering potential breaches of an obligation. This guidance should be regarded as neither definitive nor comprehensive and Ofgem may take other issues into account, or consider a different treatment of the issues raised here, as circumstances dictate.
- 3.3. Throughout this section the term ‘incoming supplier’ refers to a supplier who is taking over supply to a customer’s premises. The term ‘outgoing’ supplier refers to a supplier that is losing the contract to supply a customer’s premises.

The Electricity Act (1989)

Schedule 7, paragraph 1

- 3.4. This paragraph provides that the supplier is, where no other arrangements have been made, responsible for making metering arrangements on behalf of a customer. However it also provides for the customer to make their own metering arrangements subject to the consent (which may not be unreasonably withheld) of the supplier. Schedule 7 applies to ‘authorised’ suppliers, that is, those authorised by licence or by exemption. Under section 23 of the Electricity Act 1989 Ofgem determines any dispute arising under Schedule 7 paragraph 1 between an ‘electricity supplier’ (authorised by licence) and a customer. In

³ Guidance on the application of the Competition Act 1998 can be found in “The application in the Energy Sector” which is available on the OFT’s website www.oft.gov.uk or can be requested from the OFT.
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determining any disputes under schedule 7 paragraph 1, Ofgem would consider the reasonableness of withholding consent on a case-by-case basis. This is in line with section 3D of the Electricity Act 1989 which states that Ofgem's principal duty does not apply in relation to the determination of disputes. Therefore, Ofgem would act as an arbiter and have regard to the requirements given in paragraph 3.5 below.

- 3.5. Ofgem would not anticipate that there should be reasonable grounds for a customer being refused permission to make their own metering arrangements if the customer's arrangements for meter provision and associated meter maintenance comply with industry standards. These provide that any person can own the meter, but that the meter must be fit for the purpose it was intended and will be used for. The meter must satisfy certain criteria. Firstly, it must be of a pattern or construction approved by Ofgem. Secondly, it must be installed in a manner approved by Ofgem. Further, where the meter is a domestic meter, then it must also be certified by Ofgem. To install or perform maintenance on the meter, the person must be accredited by Elexon.⁴ A copy of the list of approved meter types is available on the Ofgem website.

Schedule 7, paragraph 10(1) & (2)

- 3.6. Obligations relating to the maintenance of a meter fall on either the customer (if that customer provides, or has made arrangements for the provision of, the meter) or on the supplier if the supplier has provided the meter. Ofgem determines any disputes arising under paragraph 10 between an electricity supplier and a customer. In determining any disputes Ofgem would have regard to whether actions had been taken to ensure that the meter continued to register accurately the energy used, through, for example, the certification process, whether the maintenance was carried out by an Elexon accredited person and whether the maintenance was carried out in accordance with industry standards.

⁴ Elexon's website is www.elexon.co.uk
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The Electricity Supply Licence (General Conditions)

Standard Licence Condition 1

- 3.7. This condition explains that the word “owned” “in relation to an electricity meter includes leased and cognate expressions shall be construed accordingly”. This definition is relevant to standard licence condition (SLC) 7 because it means that SLC 7 applies to the supplier even when the supplier is providing the meter through a third party.
- 3.8. A licensee’s decision to procure services from a third party rather than provide services itself does not in any way reduce its responsibility to meet its licence obligations. Neither can it be held up in mitigation in the event of a licence breach.

Standard Licence Condition 3

- 3.9. This condition obliges the licensee to comply with the requirements of section D (Supply Services Obligations) in its Supply Services Area. Section D takes effect in the licence of each ex-PES supplier pursuant to a provision by the Secretary of State in a scheme made under the Utilities Act 2000. This means that the standard licence conditions discussed in paragraphs 3.21 - 3.23 relating to the provision of a prepayment infrastructure service apply to each ex-PES supplier.

Standard Licence Condition 7

- 3.10. This condition places an obligation on a supplier that owns⁵ a meter at any supply point. Upon application made by any person, the supplier shall offer to enter into an agreement for the provision of such relevant metering equipment. “Where the terms offered are acceptable to the person making the application, [the supplier shall] sell, hire or loan the relevant metering equipment in accordance with the terms offered.”

⁵ Bearing in mind the definition of owned given in paragraph 3.7.
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- 3.11. The supplier is obliged to make any offer “as soon as practicable after the receipt by the licensee of an application containing all such information” as the supplier may reasonably require to formulate the terms of the offer. Ofgem is likely to consider that, if a supplier has meters, it would be unlikely to be able to comply with this condition unless it had in place, or was able to provide within a reasonable time following the request, a published set of terms on which it would base an agreement. Ofgem is likely to consider that the greater the number of meters a supplier has the more quickly they should be able to provide a set of terms for the provision of metering equipment. Where the supplier had contracted with a third party, Ofgem would consider that the supplier should take all reasonable steps to ensure that any third party had in place a published set of terms that it would also base an agreement on. As noted above, a licensee’s decision to procure services from a third party rather than provide services itself does not in any way reduce its responsibility to meet its licence obligations.
- 3.12. The condition also prohibits the licensee from entering into any agreement in respect of the provision of metering equipment which is intended or is likely to restrict, distort or prevent competition in the supply of electricity. We would therefore expect that any agreements for the provision of metering equipment would be such that the supplier does not breach this requirement.
- 3.13. In considering whether a licensee had complied with this condition, Ofgem’s prime consideration would be that metering arrangements should not make the process of transferring a customer more costly or slower to any significant degree.
- 3.14. We would therefore consider whether the supplier had taken actions that significantly raised the costs of supply for other licensees. An example of such action is if the outgoing supplier or any third party enters into unduly expensive contracts with incoming suppliers for metering provision. In considering whether any charges for the meter are such that they do not restrict, distort or prevent competition Ofgem would have regard to, among other things, compensating customer benefits provided by the metering equipment, the technical specification of the metering equipment and whether there is bulk

provision, which may give rise to economies of scale. Within the technical specification of the meter, it may also be relevant to consider the charge in relation to the age and condition of the metering equipment. Ofgem would also have regard to the approach in calculating the regulatory charge and any regulated prices which have been determined by Ofgem. In addition, Ofgem would expect that all charges should be transparent and should not bundle meter asset provision with other metering activities if the incoming supplier requires only meter asset provision from the licensee.

- 3.15. Ofgem would also expect that processes for transferring ownership of the meter (or for dealing with any leasing of the meter) should not require the incoming supplier to make significant changes to its systems.
- 3.16. In addition, contracts for the provision of metering equipment must not unduly lock in the incoming supplier. If the incoming supplier subsequently wishes to de-appoint the licensee as provider of their metering equipment then any penalties for doing so should not be unreasonable, having regard to the value of the metering equipment.

The Electricity Supply Licence (Domestic Supply Obligations)

- 3.17. Conditions in Section C of the Electricity Supply Licence currently apply only to those suppliers who by virtue of a scheme made by the Secretary of State under the Utilities Act, or a domestic supply direction issued by Ofgem, may supply domestic customers.

Standard Licence Condition 47

- 3.18. The definition given of “owned” in standard licence condition 1, and explained at paragraphs 3.7 and 3.8 of this document, is relevant in respect of standard licence condition 47.
- 3.19. This licence condition prevents an outgoing supplier from recovering a meter that it owns. This applies where the incoming supplier has undertaken to give the licensee appropriate compensation, having regard to the value of the meter.

In considering the level of appropriate compensation Ofgem would be likely to have regards to the same issues as set out in paragraph 3.14. These issues include, among other things, compensating customer benefits provided by the metering equipment, the technical specification of the meter, whether there is bulk provision, which may give rise to economies of scale, the age and condition of the metering equipment, the approach in calculating the regulatory charge and any regulated prices which have been determined by Ofgem.

- 3.20. This condition also requires that when a customer changes supplier and the customer requires a new meter, the outgoing supplier will remove the meter from the customer's premises as soon as reasonably practicable following a written request from the incoming supplier.

The Electricity Supply Licence (Supply Services Area Conditions)

- 3.21. Conditions in Section D of the Electricity Supply Licence only apply in specified "Supply Services Areas". Currently only the ex-PES supply companies have Supply Services Area obligations in relation to their former PES regions⁶.

Standard Licence Conditions 53-53C

- 3.22. This condition obliges the 'in area' ex-PES supply company to make available a prepayment meter infrastructure service to anyone who requests it. The 'in area' company is obliged to have a statement of charges for these services and to accept offers to enter into contracts in accordance with it.
- 3.23. In the event that the 'in area' supplier is unable to reach an agreement with any person for the provision of a prepayment meter infrastructure service either party can refer the matter to Ofgem for determination. In determining the dispute Ofgem may "settle any terms of the agreement in dispute ... in such manner as appears to the Authority to be reasonable having (in so far as relevant) regard in

⁶ With the consent of the licensee Ofgem can switch on Section D of the Electricity Supply Licence in a particular company's licence.

particular to” those considerations listed under SLC 53C 1(a)(iii), (b) and (c).

That is that:

- The person should pay to the licensee the whole or the appropriate proportion of such sum as is determined in accordance with paragraph 9 of standard condition 53, which relates to the requirement not to restrict, distort or prevent competition;
- the performance by the licensee of its obligations under the agreement should not cause it to be in breach of those provisions referred to at sub-paragraph 6(a) of standard condition 53B; and,
- the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the licensee pursuant to a request under standard condition 53B should be, so far as circumstances allow, in as similar a form as is practicable.

The Electricity Distribution Licence (General Conditions)

Standard Licence Condition 2

- 3.24. This condition obliges the licensee to comply with the requirements of section C (Distribution Services Obligations) in its Distribution Services Area. Section C takes effect in the licence of each ex-PES distributor (distribution services provider) pursuant to a provision by the Secretary of State in a scheme made under the Utilities Act 2000. With the consent of the licensee Ofgem can switch on Section C of the Electricity Distribution Licence in a particular company’s licence. This means that the standard licence conditions discussed in paragraphs 3.26 to 3.29 apply to each ex-PES distributor operating ‘in area’.

The Electricity Distribution Licence (Distribution Services Area Conditions)

- 3.25. Conditions in section C only apply in a company's Distribution Services Area. Currently only the ex-PES distribution businesses operating 'in area' have these obligations.

Standard Licence Conditions 36-36C

- 3.26. These conditions oblige the 'in area' distribution companies to offer to enter into an agreement to provide, amongst other things, Meter Asset Provision (MAP), Meter Operation (MOp)⁷, or both of these services to any person who requests those services. The charges for the services should be referable to those statements published in a form approved by Ofgem⁸. Ofgem welcomes the agreement of all but one ex-PES distribution company to continue to provide an "urgent metering service" on a commercial basis to suppliers who have chosen to contract with an alternative provider for MOp. However, Ofgem currently considers that standard licence condition 36B does not oblige an 'in area' distributor to offer to enter into an agreement to provide the separate elements of the MOp service listed in paragraph 1(b) of standard condition 36B on an ad-hoc basis.
- 3.27. Should the arrangements with regard to "urgent metering services" fail to be adopted or not be sufficient, Ofgem will review the electricity distribution licence with a view to consulting on licence modifications.
- 3.28. An 'in area' distributor should offer to enter into a contract for MAP services, MOp services or both services with any person. If the distributor and any party are unable to reach an agreement in relation to these services they can refer the matter to the Authority for settlement of the terms of the agreement.
- 3.29. In deciding whether, and how, to settle the terms of an agreement Ofgem would have regard to the efforts already made by the parties to seek agreement. In

⁷ Standard condition 36B 1(a) relates to MAP and standard condition 36B 1(b) relates to MOp.

addition to considering whether the licensee has complied with the conditions specified above, Ofgem would have regard to the effect of any settlement of terms on competition in metering, meter reading, supply, generation and distribution of electricity and the current conditions in those markets.