

Electricity supply licensees, electricity distribution network operators, charge point operators, consumers and their representatives and any other interested parties

Promoting choice and value for all gas and electricity customers

Our Ref: 180/12 Dial: 020 7901 7000 Email: electric.vehicles@ofgem.gov.uk

Date: 20 December 2012

Dear Colleagues

### Consultation on the application of the Maximum Resale Price to the resale of electricity for use by electric vehicles – request for views and evidence

This letter consults on our proposal to clarify that the Maximum Resale Price (MRP) provisions should not apply to the resale of electricity for use by electric vehicles (EVs). We welcome views on any of the issues or questions set out in this letter, and responses should be emailed to <u>electric.vehicles@ofgem.gov.uk</u> by 28 February 2013.

# Introduction

The Maximum Resale Price sets the limit that can be charged for the resale of gas or electricity that has been purchased from an authorised supplier. The Authority has the power to set the MRP through direction<sup>1</sup> and currently the MRP is set on a cost passthrough basis (for both unit charges and standing charges) plus VAT at the appropriate rate. Whilst the Authority sets the regulatory model of MRP, there is no formal role for the Authority in determining individual MRP disputes, which are, if necessary, resolved by the civil courts. However, the rules outlining the level of MRP are determined under the relevant direction, and therefore we would expect them to form the basis of any claim.

The government considers that plug-in EVs have an important role to play in reducing greenhouse gas emissions,<sup>2</sup> and has determined that to facilitate the take up of EVs there must be charging points available in public spaces. In June 2011 the Office of Low Emission Vehicles (OLEV) published a strategy document<sup>3</sup> setting out the framework for the development of recharging infrastructure to support the growth of EVs in the UK. Part of this strategy is the rollout of public charge points that can be used to recharge EVs. Government are supporting the roll out of charge points through 'Plugged-in-Places' (PiP) schemes in eight areas of the UK, which offer match funding for installing and trialling recharging infrastructure until March 2013.<sup>4</sup>

The government is keen to see a commercial market develop and a network of publically accessible charge points would help to address concerns such as range anxiety.<sup>5</sup> For this to

<sup>3</sup> Making the Connection: the Plug-In Vehicle Infrastructure Strategy <u>http://www.dft.gov.uk/publications/plug-in-</u> vehicle-infrastructure-strategy <sup>4</sup> Further details of the Plugged-in Places schemes can be found at:

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<sup>&</sup>lt;sup>1</sup> This decision document can be found on the Ofgem website:

http://www.ofgem.gov.uk/Consumers/Documents1/1837-mrpdecision07.pdf

The Climate Change Act targets are to reduce greenhouse gas emissions by 34% by 2020 and 80% by 2050.

http://www.dft.gov.uk/topics/sustainable/olev/recharging-electric-vehicles. OLEV intend to publish an evaluation of the PiP schemes in 2013.

<sup>&</sup>lt;sup>5</sup> Range anxiety is the fear that a vehicle has insufficient range to reach its destination and could strand the vehicle's occupants. It is particularly relevant to EVs.

happen, it is necessary for there to be sufficient financial incentives to drive further expansion and development of charge point infrastructure. It follows that, to provide this investment, allow consumer choice and prevent excessive profits, competition could have a positive role to play in protecting the interests of consumers.

We are working with OLEV and the Department of Energy and Climate Change (DECC) in considering how a competitive market may be encouraged to develop for public charge points, how these will be funded and how they will interface with the existing industry systems and processes in the electricity market.

Implicit in the provision and use of a charge point is the resale of electricity; and therefore the concept of MRP may be relevant. As a result we consider that it is necessary to clarify Ofgem's position on the application of MRP to the resale of electricity for use by EVs.

# Do MRP rules apply to EV charge points?

Currently the direction provides that the MRP will apply where electricity is supplied by an authorised supplier and then subsequently resold by any person for domestic use, or for use in any form of accommodation.

Under the current drafting the running of an electric vehicle could fall within the scope of domestic use, and therefore the MRP would apply to electricity resold for use in the propulsion of an electric vehicle.

When the current MRP provisions came into force in January 2003, EVs were not considered to be relevant as technology was not at a stage to make general ownership viable. In contrast, the resale of gas for use as fuel for the propulsion of a motor vehicle is already excluded from the MRP controls by Section 37 of The Gas Act 1986.<sup>6</sup>

## Are the current MRP rules a barrier to commercial expansion?

The public charge point market has grown considerably in the last few years. As of September 2012, over 2,500 have been provided through the eight PiP schemes, 70 per cent of which are publically accessible. It is estimated there are another 5,000 charge points nationwide installed by non PiP organisations.

Whilst the expansion of charge point infrastructure does not appear to have been hindered by the uncertainty with the application of the MRP rules, we would welcome stakeholders' opinion on whether a clarification in the case of electric vehicles would be a positive one.

# Should MRP rules apply to EV charge points?

MRP provisions were designed to protect consumers living in domestic premises that are unable to choose their service provider for gas and/or electricity. For example, a tenant who is charged for their consumption of gas and electricity by their landlord may be unable to choose a different supplier for a period of time due to the terms of their rental agreement. In this instance there is the potential for the landlord to overcharge. MRP is designed to ensure that landlords charge on a cost pass-through basis (for both unit charges and standing charges), plus VAT at the appropriate rate. This aims to protect consumers from being locked into paying prices which the consumer in question could avoid if purchasing directly from a supplier.

<sup>&</sup>lt;sup>6</sup> <u>http://www.legislation.gov.uk/ukpga/1986/44</u>

Electricity re-sold<sup>7</sup> from charge points for use in the propulsion of EVs differs from a landlord and tenant situation, as the final consumer will have a choice as to the location and provider for the charging of their vehicle. In a fully competitive market if a consumer does not accept the terms of a particular charge point provider, they should be able to move to an alternative provider, placing pressure on companies to offer competitive prices and services.<sup>8</sup> We have seen evidence of a number of private initiatives providing freely accessible maps of charge point locations, thereby helping customers to identify alternative points if they deemed the price of a particular charge point to be too high. Many consumers will also have the opportunity to charge their vehicles at home or at work and OLEV anticipate that the majority of recharging will occur here, rather than from a publicly accessible charge point.<sup>9</sup>

We would expect that clarifying our view that MRP should not apply to electricity resold from charge points for the propulsion of EVs would alleviate concerns that the MRP may act as a potential barrier to the expansion of charge point infrastructure.

As with any emerging market, there is little certainty with the way in which it will develop. We note that there are already a number of different charging models in the market, some of which do not link their charges to the electricity provided. For example, some providers charge a flat parking fee with no additional cost for electricity. We will therefore seek to monitor its development, particularly in relation to the impact of our proposals. If concerns arise that there are elements of this market that are harmful to consumers or otherwise not in their best interests, then we may consider future intervention.

### Treatment of electric marine craft

At the time of the last amendment to the MRP provisions in January 2002 it was considered that there was insufficient justification for regarding marine craft as a special case in light of the flexibility built into the then new MRP regime. For example, additional infrastructure costs and overheads incurred by marina operators could be recovered via mooring fees. This was because it was understood that there were only a small number of houseboats using electricity as a means of propulsion and so this, in practice, did not justify the distinction between houseboats and vehicles such as leisure caravans.

Our current view still reflects this, despite the proposed clarification for EVs. However, we are interested in stakeholder views on this point.

### Conclusions

For the reasons set out above, the Authority takes the view that the uncertainty regarding the application of the MRP to electricity re-sold for use in EVs may inhibit market development and competition within the EV charging market. This view relies upon the assumption that consumers will have sufficient choice to maintain competitive pressure on providers, and that any charges are clear upfront. If we have concerns that this is not the case, we may consider future intervention.

We therefore propose to clarify that MRP should not apply to the resale of electricity from charge points used exclusively for the propulsion of EVs and we seek views from respondents. The proposed drafting of the amended direction is provided in Annex 1.

<sup>&</sup>lt;sup>7</sup> Whilst the term "sold" may be appropriate in a number of the existing charging models, we note that there are schemes where the cost to the consumer is not directly linked to the electricity consumed.

<sup>&</sup>lt;sup>8</sup> Many operators currently use a membership type business model that requires the use of a swipe card to gain access to their charge points. This could pose a barrier to a competitive market if users are not easily able to move to an alternative provider.

<sup>&</sup>lt;sup>9</sup> Page 8, Making the Connection: the Plug-In Vehicle Infrastructure Strategy.

### Wider MRP policy

Stakeholders will note that this consultation relates to a fairly narrow area of the application of the MRP provisions. We are aware of a number of other issues that have arisen in relation to the MRP rules and we will be looking further at the MRP guidance. Accordingly, we invite stakeholders to respond to the issues raised in this letter only.

#### **Next Steps**

We invite stakeholders to comment on our proposal and provide views on the specific questions below.

**Question 1:** Do stakeholders consider that uncertainty over the current MRP provisions is a barrier to the commercial growth of charge point infrastructure?

**Question 2:** Do stakeholders agree that charge point providers should be free to set prices for the electricity resold from charge points?

**Question 3:** Do stakeholders consider that the proposed amendment to the MRP direction would provide sufficient clarity?

**Question 4:** Could there be any unintended consequences to the above proposal, or proposed drafting?

**Question 5:** Do stakeholders agree that the current MRP provisions should continue to apply to marine craft, including electric marine craft?

Responses to this letter should be sent (preferably in electronic form) by no later than 5:00 p.m. on 28 February 2013 to:

<u>electric.vehicles@ofgem.gov.uk</u> Or alternatively to:

Jonathon Lines Retail Markets and Research Ofgem 9 Millbank London SW1P 3GE

Unless marked confidential, all responses will be published on our website at <u>www.ofgem.gov.uk.</u> You may request for your response to be kept confidential. Ofgem shall endeavour to respect this request in so far as this would be compatible with Ofgem's statutory functions and any obligations to disclose information, for example, under the Freedom of Information Act 2000. Respondents who wish to have their responses remain confidential should clearly mark their document(s) to that effect and include the reasons for confidentially.

Yours sincerely

#### Colin Sausman Partner, Retail Markets and Research

# <u>Annex 1</u>

## Draft Modification of Maximum Resale Price of Gas and Electricity Direction

## Copy of direction issued on 29 January 2002

## Modification of Maximum Resale Price of Gas and Electricity Direction

Under section 37 of the Gas Act 1986 and section 44 of the Electricity Act 1989, the Gas and Electricity Markets Authority ("the Authority") may from time to time fix maximum resale prices at which gas and electricity may be resold ("maximum resale prices"). The Authority hereby makes the following direction:-

1. <u>Subject to paragraph 2,</u> a maximum resale price shall apply where gas or electricity supplied by any authorised supplier is resold by any person for domestic use, or for use in any form of accommodation (including that used for holidays).

# **Exclusion**

2. This direction does not apply where electricity supplied by an authorised supplier is resold by any person from a charge point for use by an electric motor vehicle.

## Definitions

9. In this direction

"charge point" means any equipment, apparatus or appliance used for, or for the purpose connected with the supply of electricity solely to provide motive force for an electric motor vehicle.

<u>"electric motor vehicle" means a motor vehicle that uses electric drive to power or assist in the propulsion of the motor vehicle, other than an electric marine craft.</u>

<u>"marine craft" includes a vessel, boat, hovercraft or any other description of water</u> <u>craft.</u>