

This document is Ofgem's Front End Document with EDF and the London Borough of Camden's amendments shown in track change format

Determination No. RBA/TR/A/DET/

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING WHO IS RESPONSIBLE IN LAW FOR RENEWING RISING AND LATERAL ELECTRICITY MAINS AT THE PREMISES AND WHO SHOULD BEAR THE COST OF RENEWAL.

1 INTRODUCTION

- 1.1 The Gas and Electricity Markets Authority ("the Authority") has been asked by EDF Energy LPN plc ("EDF"), an electricity distributor, to determine a dispute between the London Borough of Camden and EDF in relation to (i) who is responsible in law for renewing rising and lateral electricity mains ("R&Ls") installed in the multi-occupancy residential building known as Dorney House Chalcots Estate, Adelaide Road, London NW3; and (ii) who should bear the cost of renewal.
- 1.2 This dispute has been referred to the Authority for determination under Section 23 of the Electricity Act 1989 ("the Act") which requires the Authority to determine disputes arising under sections 16 to 21 of the Act when so requested by an electricity distributor or a person requiring a connection.
- 1.3 EDF's request for a formal determination of the dispute under section 23 of the Act was received by Ofgem on 3 December

2007. Ofgem is the office set up to assist the Authority to discharge its statutory responsibilities.

2 BACKGROUND

- 2.1 The determination concerns a dispute about a request for a connection to be maintained at Dorney House, Chalcots Estate. Details of this property are set out at Appendix 1.
- 2.2 Camden is the freehold owner of Dorney House and of many other multiple occupancy dwellings throughout the borough. Dorney House was constructed between 1965 -1970 and contains residential flats on each level and a basement and communal areas. There are 76 individual flats in Dorney House. The details of residence and tenure are set out in the Appendix 1. **In summary the flats are let on long lease or secure tenancies and each lessee or tenant has a direct contract with EDF for their metered supply of electricity from EDF's distribution system. The supply to the common parts is metered separately and the consumption for those areas are also separately contracted, metered and paid for; the contracting party being Camden.**
- 2.3 The supply arrangements are as follows. Electricity is introduced into the sub-station in the basement. A step-down transformer converts the electricity to single phase 240 volts and 2 phase 415 volts. From the sub-station there are 8 separate service cables that take the electricity to each of 8 service cut-outs: 4 on the 5th floor and 4 on the 15th floor. Downstream of the service cut-outs on each of those floors was originally a Ryefield distribution board. These are in the process of being replaced by Camden. Each flat is served by R&Ls downstream of the distribution boards. For further details see the Appendix 1.

- 2.4 This arrangement is not untypical of other blocks in Camden although in many blocks the service cut-outs are to be found in the basement. The history of the electrical infrastructure is also set out in the Appendix.
- 2.5 **Camden's position with regard to the works required is at paragraph 3.13 below. EDF asks for it to be assumed by the parties only for the purpose of this determination of the principles involved that the R&Ls need or needed replacement. As a result of investigations into the actual state of the relevant cables in respect of all the properties now chosen for the purposes of the determination EDF's position is that it cannot agree that they did in fact require replacement. In those circumstances EDF has asked that the determination should deal with matters of principle in order to obviate the need to make detailed findings of fact and that this determination will not in fact (as opposed to principle) set out to decide which party should pay for the replacement of the cables in the sample blocks chosen. EDF Energy's case is that it is not in a position to agree that assertion by Camden as to what is required as set out for example in paragraph 3.13 below.**
- 2.6 Through correspondence Camden has requested renewal of R&Ls, but the parties are unable to confirm whether they did so specifically in relation to Dorney House. The parties are prepared to proceed as if they did.
- 2.7 On December 3 2007, EDF sent to the Authority a request for a determination of the dispute with Camden. EDF has also requested determinations in relation to similar disputes with the City of Westminster Council ("Westminster") and the London Borough of Islington ("Islington"). In this determination, where appropriate, Camden, Westminster and Islington are collectively referred to as "the Councils".

2.8 Provisions relating to statutory obligations relevant to this dispute are set out in Section 5 to this Statement of Facts.

3 VIEWS OF CAMDEN

3.1 EDF's is prepared to contract with individual owners or occupiers of flats within blocks but not to accept that the lines used to supply the respective flats pursuant to the individual contracts are part of its distribution system for the purposes of the legislation. Its case is that those lines belong to the owner of the block of flats and the statute is to be construed accordingly. That approach neither fits the current legislation nor any of the preceding legislation.

3.2 The position under statute started (1882) with anyone within the relevant area being able to contract for a supply and then (1899) moved to the owner or occupier of any premises being able to do so. So in respect of a block of flats, it is not just the owner of the block but also the occupiers of the individual flats who can contract for a supply. Once a contract is made, the duty has always been for the supplier to provide lines to the terminals of the consumer on that contracting party's premises (*A-G v Leicester Corp*). Statute (irrespective of property or contract law) then defines the lines provided for that connection as being the (current terminology) distribution system of the distributor. The distributor (as with the supplier before) is responsible for its distribution system and in addition must on request maintain the existing connection at the terminals of the consumer on that contracting party's premises. It can only charge insofar as there are costs concerning the connection itself.

3.3 That summary is derived from the following submissions, each of which is substantiated by the legal analysis at Appendix 2:

- (A) Since *the Electric Lighting Act 1882* the duty to supply and now to distribute electricity has always arisen once (and not before) a contract is entered into between the supplier/distributor has been agreed.
- (B) The person who may request the supply and enter into the contract as consumer has always been the owner or occupier of any premises since the granting of Provisional Orders upon the terms of the Schedule to the *Electric Lighting (Clauses) Act 1899*.
- (C) Parliament has never chosen to restrict the right to request the supply and the ability to contract to the freehold owner of a building where that building has been divided into different, self-contained residential units. And in that scenario the tenants will clearly be persons occupying residential units entitled to contract for the connection of and supply to their respective flats.
- (D) If the phrase "any premises" was restricted in the cases of buildings divided into self-contained residential units to the owners of the building, tenants of the flats could not in the past have contracted for the supply of electricity to them and cannot now contract to be connected for the purposes of its distribution. That obviously has never been and is not the case.
- (E) Necessarily the duty to supply (i.e. before distribution) has always included the obligation to provide electric lines to the consumer terminals on the contracting party's premises (i.e. in this case upto and indeed into flats) (see *Attorney-General v Leicester Corporation* [1910] 2 Ch 359, Neville J.).
- (F) The amendments to the *Electricity Act 1989* by the *Utilities Act 2000* required section 16 to provide for distributors. It did so by creating a duty to connect. That duty also arises upon request and after agreement is reached with the owner/occupier of any premises making the request. It is a duty which includes either the first laying of lines to form/extend the distribution system or the maintaining of the connection of the respective premises (i.e. individual flats) to the distribution system (a term defined by statute).

- (G) The distribution system is defined within section 4 to mean the lines and plant used to convey electricity to "any" premises. Therefore once lines are laid to "any premises", whether to a detached freehold property or to flats within a building, those lines are part of the distribution system for the purposes of the Act in accordance with that definition.
- (H) Section 16 includes the right of an owner or occupier of any premises including a flat to request that the existing connection be maintained. That is the connection between the distribution system and the premises at the consumer terminals on the contracting party's premises.
- (I) The distributor cannot charge the person making the request for the cost of maintaining its distribution system leading to the connection made at the consumer terminals on the contracting party's premises.

[Appendix 2 should be read before referring to the following paragraphs.]

- 3.4 Camden's submission refers to the following questions which it considers to be pertinent to this case:
- Where the "distribution system", as that term is used in section 16 of the Act, terminates?
 - From which point the distributor's statutory duty to connect pursuant to section 16 of the Act (meaning making the connection and maintaining it by replacement or repair as appropriate) starts?
 - From which point the above mentioned distributor's statutory duty pursuant to section 16 of the Act ends?
 - Who is responsible for the costs of any replacement or repair?
- 3.5 The answers to those questions are to be found within the legal submissions above. Once lines have been laid to the premises of a contracting party (owner or occupier as appropriate on the facts), the distribution system (as

defined by section 4) ends at the connection with the consumer terminals. This is the connection between the distribution system and the premises to which section 16 refers within the context of maintenance of the connection.

- 3.6 The precise end of the distribution system will be a matter of fact based upon where the connection to the premises is.
- 3.7 The customer's terminals may or may not directly connect with an installed meter at the premises. Where, as here, the meter is away from the premises themselves, there will be further lines leading to the premises and to (in this case) an isolating switch at the premises. The interconnecting wiring between the meter and the isolating switch will also be part of the distribution system.
- 3.8 Responsibility for costs lies upon the distributor insofar as the distribution system is concerned (i.e. upto the individual connection). Section 19 only applies to maintaining the connection "between" the distribution system and the premises.
- 3.9 In producing a statement of facts Camden has also relied on a document entitled 'Electricity Metering Protocol' produced by the Review of Electricity Metering Arrangements (REMA) and states that the purpose of the REMA document is to provide a protocol for existing and future providers of metering services. This document is consistent with the submissions above and is referred to further below.

- 3.10 There are (of course) separate provisions concerning the meters themselves within Schedule 7 to the Act, supply licence requirements and the Meter Operation Code of Practice Agreement). The distinction between the meters and the distribution system is not understood to be in issue.
- 3.11 Camden's case resulting from the legal submissions at paragraph 3.3 above and the legal analysis within Appendix 2 is that the 'distribution system' to which each flat is connected ends at the connecting terminals for each flat, namely in this case at the isolating switch.
- 3.12 This is in accordance with the definition of "distribution system" within section 4(4) of the Act: "A system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system."
- 3.13 Camden believes EDF does not dispute that, at the time of construction, the supply authority the London Electricity Board ("LEB"), would have installed the cable connections from their main cable network to the block's sub-station, as well as the step-down transformer, main fuse carriers, primary distribution risers. Camden submit that it is likely that LEB also installed the laterals and consumer units although this may have been done by an electrical contractor working on behalf of the main constructor.
- 3.14 Camden claim that those facts are wholly consistent with the distribution system ending with the connecting terminals for each flat. However, it does not matter because of the statutory definition of a distribution system which includes all lines once laid to the premises (see paragraph 3.3 at (G) above). Therefore by statutory

definition and provision the elements of the system up to that point of connection between the system and the premises are the responsibility under section 16 of the electricity distributor and it is for the distributor to replace or renew items which fall into a condition which require work.

- 3.15 Camden claim that a distributor would not require a house holder to replace and repair or to pay for the replacement or repair of the transformer and cabling to the house itself and nor can a distributor require the owner or occupiers of the flats to do so. They should be treated no differently and the Act does not permit then to be treated differently.
- 3.16 Therefore, under section 16(1)(a) of the Act, Camden submits that the distributor is under a duty to make and maintain a connection "between" its system and any premises when required to do so by the owner or occupier of the premises (or an authorised supplier acting with the consent of the owner or occupier) for the purpose of enabling electricity to be supplied to the premises. Camden asserts that the premises are the individual flats and the system to which there will be a connection is the distribution system up to the flat..
- 3.17 Camden's case concerning discretionary charges permitted by section 19 is that those charges can only relate (once lines have been laid to the premises concerned) to work required to maintain the connection itself not the distribution system. The submission at paragraph 3.3, sub-paragraph 1, applies and the legal analysis supporting that case and submission is set out at paragraphs 25-35 OF Appendix 2

EDF's claims

3.18 Camden explains that EDF has categorically stated that the meters are theirs and EDF continues to exercise absolute authority in respect of mains fuse carriers and secondary (Ryfield board) fuse carriers. EDF prescribes that no works can be undertaken on any of the mains, Ryfield boards or meters other than approved by contractors attended on by them and EDF has confirmed to Camden that it retains responsibility for risers up to the service heads. Camden accepts that this is the case because it is EDF's distribution system and therefore its responsibility pursuant to statute.

Works required

3.19 Camden believes that there is agreement that the distribution system from the step-down transformer unit and fuse carrier to the individual meters now requires replacement. That is, the elements of EDF's distribution system. In particular, the works that are required are:

- The renewal of mains infrastructure from the mains intake fuse to the consumer unit – this includes the renewal of mains risers, the renewal of Ryfield boards and renewal of lateral mains between meter position and consumer unit
- The Health and Safety Executive has also imposed an obligation on Camden to relocate meters to within residential flats or to otherwise introduce a single management process, e.g. permit to work to ensure that appropriate controls are in place to regulate and manage the inspection of meter positions. A management system would be service charged to EDF as they are the only entity that require access to meter positions. The most cost effective solution is to relocate the meters.

The Electricity Metering Protocol

- 3.20 Camden refers to the Electricity Metering Protocol ("the Protocol") and refers to an excerpt containing several sketch drawings which illustrate responsibilities for elements of installation in a number of scenarios. The relevant sketches are attached as an appendix to this front end document.
- 3.21 Camden submits that the excerpt shows that REMA recommend that the split of **Distribution/Metering/ Further Distribution (where customer installation is not directly connected with the installed meter)/Customer Installation** relate to: Main Cable into the premises/ Primary Metering/ Customer distribution/**Customer installation**.
- 3.22 The cabling and installation after (in this case) the main isolating switch is the responsibility of the customer. The **statutory duty of the distributor is to maintain the the connection that is made at this place "between the distribution system and [the] premises"**.
- 3.23 Camden adds that the consumer is only responsible for the system or fixed wiring after the connection to the safety disconnection device by the **distributor**. The consumer being responsible for the safety disconnection device but not for the **distribution system nor for maintaining the connection between the two at the connection terminals**.
- 3.24 The distributor has responsibility for all mains cables, all transformer units, primary and secondary distribution and associated fused connections, meters and connections to the consumer unit.
- 3.25 Camden concludes that the "*distribution system*" in this case (where the customer's installation does not directly connect with the installed meter) terminates at the connection with the premises concerned which is at the isolating switch.

4 VIEWS OF EDF

PART 1 – EDF ENERGY'S FIRST SUBMISSIONS

- 4.1 EDF points out that the principles to be applied in this case appear to be no different depending on whether the R&Ls are owned by a local authority or a private landlord or developer, or on whether they are in premises which are residential, commercial or mixed. The disputes turn on responsibility for renewing R&Ls in any multi-occupied building.
- 4.2 EDF states that, for some 120 years, Parliament has been engaged in devising and refining a scheme whereby everyone in the country is entitled to receive a supply of electricity and the burden of that process is fairly and transparently distributed.
- 4.3 EDF adds that it is not attempting to divest itself of any responsibility placed upon it, also it is not seeking to maximise profit by claiming that it can pass the costs of renewing R&Ls elsewhere. It currently makes no charge in its present pricing structure for renewing R&Ls. Therefore, if it is determined that it is responsible, EDF concludes that it must be entitled either:
- To charge individual developers/landlords or property owners for doing so; or
 - To add the renewal costs to its general charging structure and accordingly charge more to all of its consumers for the general costs arising from the distribution of electricity.
- 4.4 EDF adds that the principal point is whether the cost of renewing the internal electrical infrastructure inside private property (i.e the R&Ls inside multi-occupied buildings) should

fall on the owner of each such building or be borne by all consumers of electricity in the London area.

4.5 According to EDF the issues to be determined by Ofgem quasi-judicially are:

- Can it be shown that EDF owns the R&Ls as part of its distribution system and/or how can Camden allege that Camden does not own them?
- Does EDF have a statutory obligation to offers terms to renew the R&Ls?
- If so, can those terms include the cost to EDF of carrying out the work?

4.6 EDF states in its submission that the answers to these issues are:

- EDF does not own the R&Ls and they are not part of its distribution system, rather they are, and have been treated by Camden as being in Camden's ownership.
- EDF does not have a statutory obligation to offer terms to renew the R&Ls but, if it does, that obligation is set out in section 16 of the Act.
- If EDF has any obligation to renew then it can include the reasonable costs of doing so in the terms it offers and it will be reasonable for Camden to pay those costs.

Separate units and the risers and laterals serving them

- 4.7 EDF explains that each multi-occupied block is served by a high voltage (HV) main which runs into the basement service or intake room. Such a room may house other services as well. Typically, the main electricity cut-out will be located in the basement service room but can also be on the ground floor in some buildings.
- 4.8 From these cut-outs the electricity serves the landlord for the common parts and any spaces in the block which are from time to time used or occupied by the Landlord and also the individual units in the building. Electricity cables, known as R&Ls, are used to reach all parts of the block (whether occupied by the freeholder or by lessees or tenants).
- 4.9 EDF submits that any building constructed in the last 80-90 years was built with wiring and cabling as part of the construction process carried out in all probability by the builder or main contractor, or by a specialist sub-contractor. It submits that it is very unlikely that any distinction was drawn between cabling that was intended for common parts or R&Ls, and cables intended for the exclusive use of one flat. The building would be wired when constructed. If the electrical installation was installed or renewed subsequently, then it would be commissioned by the freeholder, who might decide to combine it with other works of renovation and reinstatement. It would be possible for any such freeholder to have invited the old London Electricity Board (LEB) or its statutory predecessor to carry out those works on a contracting basis. EDF adds that it is unlikely that there would be a distinction drawn between different types of wires serving different purposes within the building.

- 4.10 The metering of the electricity may take place in the individual flats, or in various parts of the common parts. It is commonly the case that metering is positioned next to the multiway board on the ground or basement floors leading to wiring that feeds each unit thereafter, or that it is outside rather than inside individual units. This is particularly convenient for meter readers who do not then require access to individual units.
- 4.11 EDF adds that one of the arguments that has been put forward on behalf of the Councils is that EDF is responsible for everything up to the upstream side of the meter. As the decision to move a meter from the basement or another communal part to a position inside the individual flat is one made by the supplier/meter operator and the customer, it is difficult for EDF to see how its responsibility can be enlarged by that decision.
- 4.12 At the time of installation, as now, installation of R & Ls was not an activity over which the undertaker had any monopoly. That position has not changed with statutory changes brought about by the Act or the Utilities Act 2000.
- 4.13 LEB always maintained a contracting division which did not carry out statutory works but competed for business along with other electrical contractors. The R & Ls in this case could have been installed by a private electricity contractor, or by LEB (if post-1947) or by LEB's predecessor (if pre-1947). EDF is the statutory successor in title to London Electricity (LE) and LEB.
- 4.14 EDF submit that this position is confirmed by letter dated 5 June 1987 signed off by solicitor and secretary of LEB, Gordon Rees. Although the letter was not sent to any of the Councils, EDF produce an extract from it as, EDF submit, it

makes a number of points helpful to EDF's general submission that it is not liable to replace the risers and laterals and to the particular submissions that (i) seals on equipment is there to prevent unsafe public access and illegal abstraction and does not denote control, (ii) the cable between the cut-outs and the meters are not under EDF's control, (iii) no responsibility to replace the R&Ls is placed on EDF by the Regulations, (iv) if EDF and its successors have carried out installation of R&Ls it was not as statutory undertaker but as private contractor: These points are set out below:

- 'As will be evident from a closer inspection of the supply arrangements in an installation of such as a high rise block of flats, the supply cable terminates at a cutout unit which is invariably situated in a room to which the public have access. The mere fact that the cutout has a piece of the LEB sealing wire open upon it is irrelevant to the question of who controls the cable between cutout and meter, since the cable is accessible to the public as it leaves the cutout and makes its way through the Building to the meters. At the point where the cables enters the meters it remains accessible to the public ...

- Not only does the factual situation clearly demonstrate that the cable between cutout and meter is not under the LEB's control, but the 1937 Electricity Supply Regulations make plain that the legislature does not impose responsibility upon an *Electricity Board in circumstances such as apply here*. Regulation 25(a) ...makes it plain that for responsibility for electric lines and apparatus to be placed upon a Board two requirements must be satisfied:
 - The lines must have been placed by the Board on the consumer's premises, and

- o The lines must either belong to the Board or be under its control.
- As the wording of regulation 25(a) makes clear, it is concerned with the position where the lines are placed by the "undertakers." In the high rise installations which are material to the contents of your letter, the Board as "undertaker" has not in fact placed any of the cables between the cutouts and meters (although, in some cases, the Board has submitted Tenders in competition with other Contractors and subsequently placed the cables simply as Contractor, and not as an "undertaker").

The ownership of blocks of flats

- 4.15 The freehold of the blocks has always been in the ownership of the Camden or its statutory predecessors in title.
- 4.16 EDF adds that the flats would no doubt have been originally occupied by council tenants but that now the majority of flats are occupied by lessees who have purchased leases following the "right to buy" changes post-1984. Some current occupants may never have been council tenants, having purchased their flats in the open market. Other flats are subject to rental agreements and others are subject to shared ownership schemes (part buy/ part rent) or other local authority variants.

Camden's standard lease

- 4.17 EDF refers to relevant terms of Camden's standard lease for Dorney House:
 - By clause 2 Camden demised the Premises together with the easements, rights and privileges set out in the Second

Schedule, except and reserving as set out in the Third Schedule.

- By the First Schedule the Premises include "all wires...cables...and other conducting media serving exclusively the Flat".
- The easements in the Second Schedule include "the free and uninterrupted passage of ... electricity from and to the flat through the ...cables...and wires...in under or passing through the Estate."
- The reservations in the Third Schedule are easements over and along and through the premises equivalent to the Second Schedule.
- By clause 4.2.2 (incorrectly numbered as the second clause numbered 4.2.1) Camden covenants to renew the electric cables in under and upon the Block save and except where such items exclusively serve the flat.
- The service charge includes in the Fifth Schedule paragraph 2 "the cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the....electricity... cables serving the Block."

Camden's approach to R&Ls and the dispute

- 4.18 EDF understands that Camden has carried out some renewals of R&Ls throughout its property estate and it is in the middle of a complete refurbishment of the electrical infrastructure at Dorney House. Camden has sold leases consistent with its ownership of the R&Ls in question.
- 4.19 By letter dated 11 January 2007, Camden wrote to EDF in respect of responsibility for renewing R&Ls in the five blocks built between 1965 and 1968.

- 4.20 EDF submits that Camden's arguments do not deal at all with the statutory regime but only with the Electrical Safety Quality and Continuity Regulations 2002. EDF are not clear whether Camden state that these regulations altered the previous position.
- 4.21 EDF believes Camden's argument then appeared to be that: EDF is the distributor; therefore it owns the distribution system; that the R&Ls must be part of the distribution system; there is no evidence that ownership was ever transferred to Camden; in any event EDF operates the R&Ls; as it owns or operates the R&Ls "it follows that under the 2002 Regulations [EDF]...is responsible for the works necessary to ensure that the electrical infrastructure complies with the regulations and hence for the cost of replacement of the electrical infrastructure, including the risers".
- 4.22 EDF believes this argument will require Camden to prove that EDF owns the R&Ls or operates them (though Camden has not set out any basis upon which it asserts such operation has occurred). Camden would also need to prove that an obligation to "maintain so as to prevent danger" necessarily requires complete renewal and that the statutory regime of sections 16 to 21 of the Act cannot apply.

EDF's Charging Structure

- 4.23 EDF explains that EDF, and its predecessors LE and LEB, have never included any sum or provision on account of the cost of renewing R&Ls in their authorised charges. There is no mention of any capital replacement of R&Ls in EDF's pricing strategy.
- 4.24 EDF states that Ofgem and its predecessor Offer knew that EDF was not making any provision within its charges for R&L renewals. They add that R&Ls are not calculated as part of

the kilometre length of EDF's distribution system reported to Ofgem.

Regulatory and Government approach

4.25 EDF has provided past correspondence with Offer, Ofgem and the DTI that indicate views of regulators and government previously expressed on multiple occupancy situations:

4.26 Offer Correspondence 1 June 1993:

- Normally LE has responsibility up to and including the service head and for the meters to individual premises.
- In buildings where the meters are in an intake room with the service head, R&Ls would take supply to the consumer units of individual premises. Such R&Ls would be the responsibility of the owner/occupiers of the building as they form the wiring installation of the building.
- In situations where customers have the meter measuring their supply usage within their premises alongside the consumer unit, the sub main distribution system would remain the responsibility of the owner/occupier. To prevent any illegal abstraction of electricity it would be reasonable for LE to place their seals on the various connections but this does not imply ownership (as the company would be complying with Regulation 25(3)).
- LE would not be responsible unless there a written agreement in place to the effect that LE had taken over responsibility for the sub-main system.

4.27 Offer correspondence 10 June 1998:

- To prevent any illegal abstraction of electricity (and not to protect the cables) LE may place their seals on the various

connections but this does not imply or transfer ownership of the cables.

4.28 Ofgem correspondence 16 October 2000:

- There is not one rule that can be applied to all blocks of flats. Responsibility for maintaining the internal system lies with ownership. If LE owns the cabling, it forms part of their public distribution network and becomes subject to the Electricity Supply Regulations 1988 which cover operation and maintenance. If the cables are not owned by LE then the responsibility lies with the owners and occupiers of the property.

4.29 DTI correspondence 30 July 2002:

- Regarding the cutout and sealing apparatus up to and including the meter, the seal would not itself denote either control or ownership of the item. For safety reasons, and to prevent any illegal abstraction of electricity, LE may place their seals on all possible points of isolation
- Ownership of rising services remains a grey area and unless documented agreements can be found, it is a matter for the civil courts to decide ownership on a case-by-case basis.

The Stance of Local Authorities

4.30 EDF has provided minutes from the London Councils Forum on 6 June 2007 showing that the Forum councils believe that, prior to EDF, the LEB took responsibility for maintenance and renewal of the R&Ls.

4.31 EDF is of the view that LEB did not accept responsibility for renewing R&Ls and their position does not represent any change of policy or stance. EDF suggests the minutes

display a serious lack of understanding of EDF's position and of the historic and present position on R&Ls.

4.32 EDF add that the issue of R&L renewal is unrelated to the issue of meter renewal which is the responsibility of electricity suppliers.

Ownership of the R&Ls

4.33 It is clear that there is no evidence as to who installed the R&Ls in Dorney House. Even if EDF's predecessor installed them, there is no evidence that they did so as part of a statutory function, there is no reason to assume that they were installed as part of a statutory function and indeed it is highly unlikely that they would have done so. There is no evidence that EDF entered an agreement with Camden that EDF would own the R&Ls. In any event, whether or not they are shown to be owned by EDF they are not part of EDF's distribution system.

4.34 From Camden's leases for Dorney House, Camden has:

- proceeded on the footing that it owned the R&Ls;
- purported to sell the cables within each demise even if upstream of the meter, which it could not do if it did not own them and would not have done unless it thought it owned them;
- granted rights over the cables outside the demise but elsewhere in the block;
- undertaken to their lessees the obligation to maintain and renew the cables and reserved the right to charge their lessees for doing so; and

- conducted itself for many years in accordance with the above.

The sources

4.35 EDF submit there are six sources which should be considered in order to determine the dispute: property law; contract law; statute; regulations; licences; and policy.

Property law

4.36 EDF argues that chattels fixed to the land become fixtures and fittings and will pass with the land (*Melluish v BMI (no. 3)* [1996] 1 AC 454); the drafting of schedule 6, paragraph 11 to the Act is only explicable on the basis that R&Ls are not necessarily always owned by the undertaker; and Camden has granted leases on the basis that it owns the R&Ls and has an unqualified obligation to renew them.

Contract law

4.37 EDF submits that contract law does not have to be considered. Although EDF and Camden as building owner could have entered into a private law agreement for EDF to carry out work on R&Ls and for Camden to pay for that, they have not done so.

Statute law

4.38 Previous legislation did not distinguish between suppliers and distributors; statutes referred to supply, which included both functions.

4.38A The 1899 Schedule, the 1989 Act and the 2000 Act all have two central features namely that work carried out to make a connection includes work to continue or maintain

such a connection and that the undertaker can offer terms and charge for that work

4.39 EDF refers to sections 16(1) and 64 of the Act. EDF questions whether section 16(1) entitles the owner of a unit in a block to make an individual demand for a connection to the distribution system or whether it only applies to connecting the whole block to the system. EDF submit that Parliament could not have intended that a developer/ owner would build a block but that the electrical infrastructure in it would be installed as a result of many different requests each coming from an individual flat owner or occupier. It is common sense that a developer/owner would require the distributor to connect the building to the system i.e. take the distribution system to the cut-out in the intake room. From there the owner would install electrical infrastructure to as many units as he wished to create.

4.40 EDF submit that the word "premises" in section 16(1) is not intended to refer to individual units: premises is defined in section 64 by reference to any land building or structure. The distributor is required to make "a connection" (ie one connection) to the premises owned or occupied by the person making the request (or by an authorised supplier acting with the consent of that owner) for the purpose of enabling electricity to be conveyed to or from the same premises. The language of the statute assumes one connection to one owner of a building or premises.

4.41 Parliament would not have intended different regimes for making a connection under section 16(1) and maintaining it under section 16(4). Section 16(4) only makes sense if it requires the connection first made under section 16(1) to be maintained.

- 4.42 Section 16 is not drafted to provide for multiple requests for connections in the same building by multiple owners where none can be actioned without the consent of the freeholder/owner of the common parts. It cannot be read to permit one owner (the freeholder) to demand multiple connections.
- 4.43 Therefore no distributor can be required to offer terms for installation of internal electrical structure within a building under section 16(1) or to continue it under section 16(4).
- 4.44 Even if, in principle, section 16 meant that a distributor could be compelled to install the internal infrastructure of a building, it is not reasonable in all the circumstances to do so under section 17(1). The work would involve removing old cables from the fabric of the building and would require wayleaves to be compulsorily obtained.
- 4.45 Even if sections 16 and 17 do permit freeholders or unit owners to demand connections, the distributor is required to offer terms under section 16A(1) and 16A(5) which may include charges under section 19. Section 19 clearly allows the distributor to charge the reasonable costs of renewing electrical infrastructure inside a building (especially where that will enhance or maintain the capital value of the building to the advantage of the owner(s)) unless the distributor would receive that money through some other mechanism.
- 4.46 EDF submit that it would still be entitled to charge for renewal of R&Ls if EDF had become the owner of them, whether or not the R&Ls had become part of the distribution system. If section 16 does apply to multi-occupied buildings, EDF must provide electric lines if that is necessary to create or maintain the connection. The notice mechanisms of sections 16A and

19 entitle EDF to charge to make and maintain the connection.

4.47 In summary, section 16(4), read with section 16A and section 19, specifically provides for EDF to offer terms and charge for providing wires to maintain the connection. It would make no sense if this was negated because the R&Ls that EDF was required to install to make the connection under section 16(1) were to fall into EDF's ownership. The ability to charge at renewal should not depend on the vagaries of ownership in the meantime (this conclusion should be the same even if, contrary to EDF's primary case, the R&Ls became part of the distribution system).

Regulations

4.48 EDF refer to the Electricity Supply Regulations 1937, stated to be "For Securing the Safety of the Public and for Insuring a Proper and Sufficient Supply of Electrical Energy". EDF submits that such subordinate legislation (as well as any subsequent subordinate legislation such as the 1988 and the 2002 Regulations) designed to deal with the safety and security of electricity could not have been intended by Parliament to transfer ownership of privately owned assets forming part of a freehold property or to change the way in which such assets were funded or to impose significant new costs on undertakers. Regulation 25(a) provides that the undertakers would be responsible for all electric lines "placed by them on the premises of a consumer and either belonging to the undertakers or under their control". EDF submit that in the case of Dorney House there is no evidence that EDF placed the lines originally and they have certainly not been involved in their subsequent replacement. Accordingly, they are not owned by EDF and they are not under the control of EDF.

- 4.49 Sealing is done for purposes of safety and to prevent illegal abstraction of electricity and does not denote ownership or control.
- 4.50 EDF submit that the undertakers' responsibility extends to the lines "being installed and maintained in a safe condition and suitable for their respective purposes". It does not extend to renewal of lines as the law does not include renewal within a maintenance obligation (Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] 1 QB 12).
- 4.51 The Electricity Supply Regulations 1988 replaced the 1937 Regulations. By then, in the case of Dorney House the R&Ls had been originally installed. In 1988 Parliament would have known that new buildings were constructed with electrical infrastructure and that council flats were being sold on the open market. Yet Parliament only introduced conventional and up-dated safety regulations.
- 4.52 The Electricity Safety, Quality and Continuity Regulations 2002 provide for a similar liability to maintain but based upon "operated" not controlled and they still have to be placed in situ by EDF and then owned or operated by EDF. The R&Ls were not operated by EDF.

Licences

- 4.53 Licences are granted to regulate the carrying out of a function. They cannot alter rights of ownership or create primary obligations inconsistent with the statutory framework. EDF submits that its licence does not impose on it an obligation to renew the R&Ls and that nothing in the public electricity licence or the distribution licence or published pursuant to EDF's licence obligations invalidates its arguments in this case.

4.54 However, EDF state it is clear from the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 that the Councils can properly own the R&Ls without requiring any licence.

Policy issues

4.55 In terms of regulatory consistency, EDF has relied on statements made by Offer about these issues in the past which have been broadly supportive of EDF's position.

4.56 There may be no difference between a multi-occupied office or commercial block and a residential block, or between a block that is publicly or privately owned.

4.57 A freeholder/ developer builds a block to make a profit. To do so he must install infrastructure that includes power cables, water pipes and possibly digital television and broadband cables. Installing these is part of the cost of the building. It could not be argued that the distributor should pay for the cost of the electrical part at the expense of all London consumers.

4.58 Each flat owner has to maintain his flat's value by keeping the building infrastructure up to date. Renewal of the electrical infrastructure is no different to maintenance of the windows, the roof, the broadband cables or the plumbing. Parliament is unlikely to have agreed to legislation that would have resulted in all electricity consumers in London paying for capital profits for wealthy mansion flat owners in Knightsbridge, for example.

4.59 The propositions of the Councils rely on implications from subordinate legislation and licences rather than on interpretation of primary legislation. The regulations are

neutral about ownership and certainly did not set out to transfer ownership.

- 4.60 EDF query what cables it must replace if Camden's arguments are correct: If it is all the cables between the cutout and the meter, what about the case when the meters are positioned remotely from the flat? EDF presume that it would only replace cables up to the meter, but notes that the meter-owning company and the freeholder decide between them where meters are positioned.
- 4.61 What about the case where the landlord's meter for supply of common parts is in the basement but downstream of that are R&Ls carrying power to the common parts of each floor? EDF presume it is not obliged to renew those even though they may be in the same ducts as the R&Ls feeding the flats.
- 4.62 EDF claim that, if Camden is correct, EDF could never be required to install the original R&Ls because it could never be required to do so by each flat owner and the freeholder would not be able to insist on 500 separate connections. Logically, EDF or its predecessors could never be required to install the R&Ls in its statutory capacity. Therefore there is no machinery by which the R&Ls could come into the ownership of EDF.
- 4.63 EDF's next question is why the situation at renewal is any different from when the building was constructed. EDF submits that the only possible difference is that in place of one consumer (the freeholder) when the connection was established there are now multiple consumers (freeholder plus lessees/tenants). What would happen if some of the consumers refused to demand a continued connection as they would be entitled to do?

4.64 EDF aver that Camden's case requires Camden to accept that it has imposed and collected service charges unlawfully for years and has drafted its leases incorrectly.

4.65 If EDF is not required to undertake the work under section 16, then it is entitled to charge if it agrees to carry out the work on a contractual basis. If it is required to undertake the work under section 16, section 19 specifically makes it clear that EDF is entitled to make a reasonable charge for the costs of making or continuing the connection.

4.66 EDF asserts that the legislature had in mind these circumstances when it passed the legislation:

- The undertaker is not obliged to make a connection for free.
- The work involved in making a connection is the provision of the physical R&Ls and the work involved in fitting them.
- What then is involved in continuing this connection when those R&Ls are no longer able to perform that function? The answer is identical to (2) plus possibly the cost of ripping out the old R&Ls.
- If the flat owner decided to move and purchase a new flat being constructed next door in the same block, he would have to pay a price for the flat that reflected the fact that a new electrical infrastructure had been provided and clearly EDF would not have had to provide it at all (and if it was required to provide it, then it would not be free as EDF would be able to charge under section 19). Not all lessees are ex-council tenants as the flats/lessees are bought and sold on the open market with buyers and sellers enjoying the benefit of full market values.

- The flat owner has paid nothing towards the cost of replacement of the R&Ls (i.e. via his charges for electricity).
- He chooses to stay in the old flat and renew the R&Ls.
- He asks EDF to do the work (the result would be the same whether he asked EDF or any other contractor).
- EDF is entitled to charge for the reasonable costs of making or continuing to make such a connection.

Conclusion

4.67 EDF concludes that it is clear EDF has no obligation to renew Camden's R&Ls and, if it does, it is entitled to charge Camden the reasonable cost of carrying out that work.

PART 2 (Responses to Camden's views dated 29 February 2008 using their sub-headings and paragraph numbers from their original submissions)

The Property

4.68 While the facts of the property have been agreed, it is still necessary to comment on Camden's general statement of the layout of the electrical infrastructure in paragraph 6 of their submissions. Generally, the supply will be taken into the basement to a sub-station where the electricity is converted to 240 volt single phase and 415 volt between two phases. The electricity is then taken to a service cut-out which is generally in the basement but might (as in Dorney House) be on a higher floor. Downstream of the service cut-out will be cable, normally a riser, that will take the electricity to a local distribution board(s) (often Ryefield Boards) through a 240 volt fuse and after that R&Ls will take the electricity to individual flats.

Installation

4.69 At paragraph 11 Camden also makes certain factual assumptions about the installation of the R&Ls but their assumptions are not complete and are therefore misleading. LEB would have brought the electricity into the basement with the sub-station and would then have been asked to provide service cut-outs. In Dorney House they were not in the basement, but typically they are in the basement. That was the extent of LEB's statutory work. LEB *may* have installed the R&L system in the building but would have done so as LEB Contracting and would have supplied a different quotation for that work.

4.70 EDF takes issue with Camden's assertion in paragraph 12 that the (on their part, wholly assumed) installation facts "are wholly consistent as must inevitably be the case, with the fact that the distribution system ends with the individual meters". That is completely wrong.

4.71 At paragraph 12 Camden go on to assert what the position would be in the case of a "householder" by which it is assumed they mean the owner/occupier of a house rather than a flat. That is not relevant. As EDF has already made clear, it recovers nothing in its cost models for replacing R&Ls in blocks of flats.

EDF's Claims

4.72 Under this heading Camden assert that EDF has "categorically stated that the individual meters are theirs". This is not understood. In all installations the meter will be owned by the meter supplier/operator. That may or may not be EDF and will not be LPN. It is wholly irrelevant to the issues in this Reference.

4.73 Camden goes on to say that EDF continues "to exercise absolute authority in respect of the mains fuse carriers and secondary (Ryefield Board) fuse carriers". This is also irrelevant. Units are sealed for safety reasons and as required by the Regulations and has been fully explained in EDF's submissions above. In any event, Camden's contractors have carried out work on the installations without any reference to EDF: see Appendix 1, in particular paragraphs 6, 7 and 10.

4.74 Camden finally asserts that EDF has "confirmed to Camden that [EDF] retain responsibility for risers up to the service heads". This statement demonstrates Camden's lack of understanding of the installations. The service heads are typically in the basement close to the substation/transformer. In Dorney House and some other Camden properties the service heads are (unusually) on upper floors (in the case of Dorney there are 4 service heads on the 5th floor and another 4 on the 15th floor). The service cables that run to the service head/cut-out are not risers and do not form any part of the system of R&Ls that this form the subject of this Reference.

4.75 Paragraph 15 of Camden's submissions is not understood. Camden makes a general assertion that "this" is because "it" is EDF's distribution system but it does not specify what "it" or "this" is. Accordingly, if by its paragraph 15 Camden asserts that EDF's retention of responsibility for the service cables to the service heads is because they are part of their distribution system then EDF agrees. If on the other hand Camden is trying to say that the assertions set out in their paragraph 14 demonstrate that all the equipment mentioned in paragraph 14 is part of the distribution system then that is plainly wrong. For example, if it be the case that EDF owns the meter, it is undoubtedly not the case that the meter forms

part of the distribution system. EDF's case is clear that the distribution system ends at the service head cut-outs and nothing in paragraphs 14 and 15 provide any material to challenge EDF's case on that issue.

Works Required

- 4.76 This is now dealt with under paragraph 2.5 above.
- 4.77 Paragraph 17 of Camden's views also call for comment as they continue to demonstrate a total lack of understanding. EDF understands that the HSE has been discussing with meter operators that they would wish to see meters moved into flats but it is not an imposition. This may in some cases have the effect of lengthening the distance between the cutouts and the meter and between any distribution board(s) and the meter. Plainly, that demonstrates why those cables are not part of EDF's distribution system and also why the position of the meter neither determines nor alters ownership of electrical equipment. It would be for the building owner to resolve this. Camden goes on to state that an alternative to moving the meters would be the introduction of a suitable management system "that would be service charged to EDF". This is not understood. EDF has brought this Reference in the name of "LPN" as the distributor/DNO. It has nothing to do with the meters and in its capacity as distributor cannot be described as "the only entity that require access to meter positions".
- 4.78 EDF refers now to the points made at Camden's paragraphs 18 to 20. The Metering Protocol is irrelevant to this Reference. It is the product of the Emergency Services Expert Group. It does not analyse or represent the legal position and it has nothing to do with distributors. It is concerned with metering and with what will be the

responsibility of the metering company and does not purport to have the authority to lay down the position in respect of R&Ls. So far as concerns what it calls "High Risers and Laterals" it astutely states that "the situation is complex and needs consideration that is more detailed" and states that "one 'rule' emerges" namely that "where the metering is situated within a communal metering area the risers are normally privately owned. Where the metering is situated in the individual flats then the risers are normally owned by the Distribution Business." No source is given for this so-called 'rule' and it begs so many questions relevant to this Reference that it is unhelpful in the extreme. It appears to suggest that *ownership* is to be guided by reference to the position of the meters which as is known from Camden's own paragraph 17 is a matter of mere chance and can be influenced by outside parties. In any event, distributor or distribution business in this context only means someone other than the meter operator and is therefore no guide to the position as between the building owner and the licensed distributor. Whatever the writers of REMA thought they were doing they were not laying down any rule about ownership or extent of distribution network, they had no authority to do so in any event.

Conclusion

4.79 Camden's whole/sole case is based upon the *assertion* that the R&Ls are part of EDF's distribution system but no arguments are set out as to why that is so.

5 STATUTORY OBLIGATIONS

5.1 Under section 16(1)(a) of the Act, an electricity distributor (such as EDF) is under a duty to make a connection between a distribution system of his and any premises when required

to do so by the owner or occupier of the premises for the purpose of enabling electricity to be conveyed to or from the premises.

- 5.2 Under section 16(4)(a) of the Act, a reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electric plant). Under section 16(4)(b), a reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electric plant). Under section 16(4)(c), a reference to the provision of any provision of electric line or plant is a reference to provision of such a line or plant either by the installation of a new one or by the modification of an existing one.
- 5.3 Section 17(1) provides that nothing in section 16(1) requires a distributor to make a connection if and to the extent that- (a) he is prevented from doing so by circumstances not within his control; (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or (c) it is not reasonable in all the circumstances for him to be required to do so.
- 5.4 Under section 64(1) of the Act, "premises includes any land, building or structure".
- 5.5 Section 19(1) of the Act provides that: "Where any electric line or electrical plant is provided by an electricity distributor in pursuance of section 16(1) above, the distributor may require any expenses reasonably incurred in providing it to

be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.”

- 5.6 Under section 19(4) of the Act, “any reference in section 19 to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.”
- 5.7 Any dispute arising under sections 16 to 21 of the Act, between an electricity distributor and a person requiring a supply of electricity may be referred to the Authority under Section 23 of the Act for determination.

Appendix 1

DISPUTE FOR DETERMINATION UNDER SECTION 23 ELECTRICITY ACT 1989

ISSUE: Responsibility for maintenance and the cost of maintenance of rising and lateral mains at Dorney House, Chalcot's Estate, Adelaide Road NW3

Between:

The ground service head and the individual flats connected

A plan of the connections at Dorney House is attached

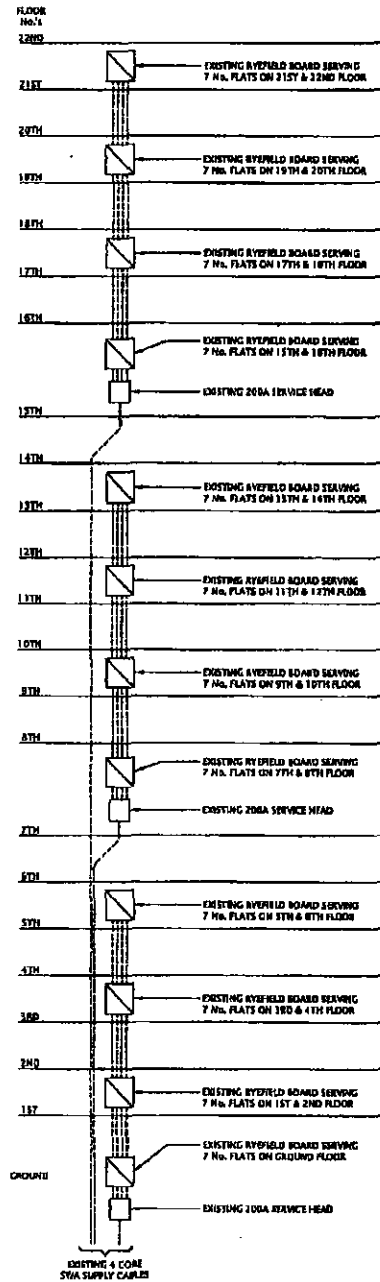
- TYPE OF CABLING:**
1. Between the ground floor service head and service heads on floors 7 and 15
 - Steel Wired Armoured supply cables – 4 core
 2. From Ryfield board to Ryfield board
 - Single core 35mm pvc cable
 3. From customer meters to internal connection within the flats
 - Single core 16mm pvc cable

REQUIREMENT FOR REPLACEMENT: Age & Condition
Previously insisted upon by EDF on grounds of age.
- 45 years +

Attached are photographs showing the risers and a Ryfield board at Dorney House.







EXISTING ELECTRICAL RISER
BRAY & DORNEY

**This document is APPENDIX 2
to Ofgem's Front End Document with EDF and the London Borough of
Camden's**

APPENDIX 2

(paragraph 3.3 of Front End document)

Legal Submissions for the London Borough of Camden

(A) Since *the Electric Lighting Act 1882* the duty to supply and now to distribute has always arisen once (and not before) a contract is entered into between the supplier/distributor has been agreed.

1. From *the Electric Lighting Act 1882*¹, which first regulated the industry and introduced the duty to supply, to the *Electricity Act 1989* prior to its amendment by the *Utilities Act 2000*, Parliament has always provided that the duty to supply arises after a request for the supply has been made and terms have been agreed.

2. Thus in regard to the 1882 statute:-

2.1. Section 19 of the 1882 Act provided a right to apply for a supply to anyone within the relevant area without limitation:

"Where a supply of electricity is provided in any part of an area for private purposes, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply"

and

2.2. Section 19 by requiring an "application" made clear that the duty would arise once the application had resulted in a contractual agreement for the supply as explained by the Court of Appeal in the case of *Husey v London Electric Supply Corporation* [1902] 1 Ch. 411, CA and succinctly put by Cozens-Hardy LJ as follows:-

"I prefer to base my judgment rather, as Vaughan Williams L.J. has done, upon s. 19 of the Act of 1882. I think that section contemplates an arrangement or a contract between the occupier and the undertakers, and that the words "entitled

¹ Amended by the Electric Lighting Act 1888 but not so as to effect these submissions.

to a supply" mean entitled to a supply under and by virtue of a contract made between the occupier and the undertakers. (Cozens Hardy LJ at p.424)²

3. This continued to be the case under section 16 of the Electricity Act 1989 prior to its amendment by the Utilities Act 2000. Thus section 16 provided:

(1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supplier shall, upon being required to do so by the owner or occupier of any premises-

(a) give a supply of electricity to those premises; and

(b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both ...".

and after including notice of requirement to be given and received in accordance with sub-sections (2) and (3),

section 16 also provided within sub-section (4) and sections 20 - 23 for the terms or special agreements which were to be agreed before the duty arose:

4. Section 16 as amended equally provides for the duty to arise following request by and agreement of terms with the owner or occupier of any premises.

4.1. It reads as follows:-

16 Duty to connect on request

(1) An electricity distributor is under a duty—

(a) to make a connection between a distribution system of his and any premises, when required to do so by—

(i) the owner or occupier of the premises; ...

for the purpose of enabling electricity to be conveyed to or from the premises;

(2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

² Details of the Case:

The issue was whether the supply company was entitled to disconnect for non-payment when the "new" person in possession was a receiver of the company that had contracted for the supply. The Court of Appeal set aside an interim injunction that had restrained the supplier from disconnecting the premises concerned, St. Ermin's Hotel, Victoria Street, Westminster. The basis for the decision was that the new occupier, the receiver, had to enter into a contract with the supplier before he was entitled to a supply.

(3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.

4.2. The duty starts from this point, the existence of an agreement, and lasts for so long as the connection is required. That duty to connect includes for that period a duty to maintain the connection as prescribed by the provisions of sub-section (4).

(4) In this section and sections 16A to 23—

(a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);

(b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and

(c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

(5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.

4.3. It is apparent from the wording of sub-section (4) that the duty to connect includes a duty to maintain the connection. The duty within section 16(1) to making a connection is to be read as including a duty to maintain it.

- (B) The person who may request the supply and enter into the contract as consumer has been the owner or occupier of any premises since the granting of Provisional Orders upon the terms of the Schedule to the Electric Lighting (Clauses) Act 1899.
- (C) Parliament has never chosen to restrict the right to request the supply and the ability to contract to the freehold owner of a building where that building has been divided into different, self-contained residential units. And in that scenario the tenants will clearly be persons occupying residential units entitled to contract for the connection of and supply to their respective flats.
- (D) If the phrase “any premises” was restricted in the cases of buildings divided into self-contained residential units to the owners of the building, tenants of the flats could not in the past have contracted for the supply of electricity to them and cannot now contract to be connected for the purposes of its distribution. That obviously has never been and is not the case.
5. As can be seen from paragraph 2 above, the original duty was drawn in the widest of terms by providing that “... every company or person within that part of the area shall, on application, be entitled to a supply ...” without even expressly restricting it to the owner or occupier of any premises.

6. The wording of section 16(1)(a)(i) of the Electricity Act 1989, "*the owner or occupier of the [which refers back to "any" in paragraph (a)] premises*" originates from the Electric Lighting (Clauses) Act 1899 and the insertion after the Act's commencement of the terms of its Schedule into the Provisional Orders made by the Board of Trade when authorising the supply of electricity. It remained the wording used throughout the numerous statutes enacted afterwards, including *the Electricity Act 1947* which nationalised the industry.
7. It is apparent from that wording that there has never been any attempt to restrict the right to request supply/connection to the freehold owners of premises divided into self-contained residential units. Section 64(1) of the Electricity Act 1989 defines "premises": the word "includes any land building or structure". There is no limitation and no exception given in respect of individual premises within buildings. The word "includes" applies and this is required in order to enable tenants of flats within premises to contract.
8. Indeed, if that had been the law, the supply would always have to be a contractual supply to that owner. No contracts could have been entered into directly with long leaseholders, tenants or other occupiers. In this case, the contracts are entered into with the tenants of the respective flats not with the freehold owner in respect of those flats whose contract applies to the common parts only. In this regard it is to be noted that this is consistent with the powers of entry within paragraphs 7-9 of Schedule 6 to the Act. Entry to the building but not the flats would be insufficient.
- (E) **Necessarily the duty to supply (i.e. before distribution) has always included the obligation to provide electric lines to the consumer terminals on the contracting party's premises (i.e. in this case upto and indeed into flats) (see *Attorney-General v Leicester Corporation* [1910] 2 Ch 359, Neville J.).**
9. From *the Electric Lighting Act 1882*³ to the *Electricity Act 1989* prior to its amendment by the Utilities Act 2000 Parliament has always distinguished between the supply of electricity and the use of the electricity supplied within the premises supplied. The former being the duty of the relevant undertaker, the latter being for the consumer.
10. Thus in the case of *Attorney-General v Leicester Corporation* [1910] 2 Ch 359 Neville J. heard argument upon the issue whether Leicester Corporation as an undertaker empowered under the provisions of the 1882 statute and a provisional order made by the Board of Trade pursuant to the Electric Lighting (Clauses) Act 1899 (see paragraph 6 above) in the exercise of its statutory powers could also supply electrical fittings and apparatus to the consumer for use inside the premises being supplied.

³ Amended by the Electric Lighting Act 1888 but not so as to effect these submissions.

11. It was decided that the statutory powers of the undertakers ceased with the delivery of electrical energy at the terminals, i.e., the meter, on the consumer's premises and was complete at that point. As a result the supply of electrical fittings and apparatus for the use of consumers inside their premises was ultra vires. Thus Neville J. said this:-

"Sect. 18 [of the Electric Lighting Act, 1882], already referred to, plainly discriminates between supply of electricity and its use, and gives the undertakers no authority with regard to the latter. When we turn to the Provisional Order the interpretation, in my opinion, becomes still plainer; "consumer's terminals" is there stated to mean "the ends of the electric lines situate upon any consumer's premises and belonging to him at which the supply of energy is delivered from the service lines."

12. This remained the position under the *Electricity Act 1989* prior to its amendment by the *Utilities Act 2000*. Section 16 (see paragraph 3 above) created a main duty to give a supply to the premises of the contracting owner or occupier (section 16(1)(a)) and an ancillary duty to provide such electric lines and/or plant as may be necessary to perform that main duty (section 16(1)(b)).
13. As stated above (see paragraphs 5-8) the lines are being supplied to the premises themselves, the individual flats, and the main duty remains a duty to take those lines to the terminals of the specific flat concerned which is owned or occupied by the consumer who contracts with the supplier.
- (F) **The amendments to the Electricity Act 1989 by the Utilities Act 2000 required section 16 to provide for distributors. It did so by creating a duty to connect. That duty also arises upon request and after agreement is reached with the owner/occupier of any premises making the request. It is a duty which includes either the first laying of lines to form/extend the distribution system or the maintaining of the connection of the respective premises (i.e. individual flats) to the distribution system (a term defined by statute).**
14. Paragraph 4 above sets out the current section 16 following amendment by the *Utilities Act 2000*. As stated within the sub-paragraphs of paragraph 4, the duty arises on request and includes a duty to maintain the connection when required to do so. The connection to be made or maintained is a connection of the premises (i.e. the ends of the electric lines situate upon any consumer's premises and belonging to him at which the supply of energy is delivered from the service lines) to the distributor's distribution system.
- (G) **The distribution system is defined within section 4 to mean the lines and plant used to convey electricity to "any" premises. Therefore once lines are laid to "any premises", whether to a detached freehold property or to flats within a building, those lines are part of the distribution system for the purposes of the Act in accordance with that definition.**

15. Identification of the "distribution system" for the purposes of construing the statute, and in this case section 16, does not depend upon ownership of the lines and plant concerned but upon statutory definition. Ownership is immaterial.
16. Section 4 of the Act, as amended⁴, provides as follows:-

(4) In this Part [Part 1, ss 3A - 64], unless the context otherwise requires—

"distribute", in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;

"supply", in relation to electricity, means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;

"supply", in relation to electricity, means its supply to premises in cases where—

(a) it is conveyed to the premises wholly or partly by means of a distribution system, or

(b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,

but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;

17. The definition of "*distribution*" is therefore achieved by reference to a "*distribution system*" which is in turn defined as consisting of the low voltage lines and electrical plant used to convey the electricity to "*any premises*".
18. It follows that a connection to premises (upon request and following agreement with the owner/occupier concerned) from the existing distribution system for the first time will require a connection using electric lines and such plant as may be necessary to take the electricity to the premises from where the distribution system currently end.
19. Once those lines are laid and plant is provided, however, the lines and plant are "*low voltage lines and electrical plant and is used for conveying electricity to any premises*". In other words the distribution system has been extended and the distributor can then use that system to extend the distribution system further by making connections with other premises in respect of which a section 16 duty arises.

⁴ The definition of "distribute" and the first definition of "supply" were introduced by substitution by the Utilities Act 2000, whilst the second definition of "supply" was introduced by the Energy Act 2004 and only partly in force.

20. For the purposes of the Act, the distribution system now ends at the electric lines situate upon any consumer's premises and belonging to him at which the supply of energy is delivered from the service lines of the distribution system.
21. The Act's definition therefore makes all EDF's submissions concerning property and contract law otiose. The statute also prevails over any terms of the licence, terms of leases and over arguments of policy. This is not a transfer of ownership but a statutory scheme assigning duties and responsibility for a distribution system.
- (H) Section 16 includes the right of an owner or occupier of any premises including a flat to request that the existing connection be maintained. That is the connection between the distribution system and the premises at the consumer terminals on the contracting party's premises.**
22. The duty to connect under section 16(1) of the *Electricity Act 1989* as amended by the Utilities Act 2000 includes a duty to maintain the connection between the distribution system, which will include the electric lines that bring the electricity into the flat, and the flat itself. This simply continues the approach applied by Parliament since 1882. The connection is at the consumer's terminals, namely the ends of the electric lines situate upon the consumer's premises at which the supply of energy is delivered from the service lines (see paragraph 11 above).
23. The duty to maintain the connection when read into section 16(1) is a duty to do so upon request. Section 16A specifies the procedure to be followed in order to require a connection and "*requiring a connection*" includes (pursuant to section 16(4)(b)) maintaining the connection and the continued provision of the necessary electric lines and electric plant. That continued provision is specified by section 16(4)(c) to include the installation of a new electric line or plant or the modification of an existing one.
24. Those electric lines and plant are defined by section 16(2) not as the lines and plant of the distribution system (see paragraph 20 above) but specifically as the lines and plant needed to make the connection between the existing distribution system (which now runs to the consumer's terminal) and that terminal.
- (I) The distributor cannot charge the person making the request for the cost of maintaining its distribution system.**
25. The distribution licence granted by the Department of Trade and Industry pursuant to section 6(1)(c) of the *Electricity Act 1989* to London Power Networks Limited relied upon by EDF Energy (LPN) plc includes Standard Condition 4 of the standard conditions of electricity distribution licences⁵.

⁵ Page 34 of the licence in File 2 of EDF's bundle of documents.

26. Accordingly there should be a statement setting out the basis of charges for the provision of connections to the licensee's distribution system (paragraph 1) including (paragraph 2(e)):

"a schedule of charges (if any) which may be made for the provision and installation of any electrical plant at entry or exit points, the provision and installation of which are ancillary to the grant of use of system, and for the maintenance of such electrical plant" (paragraph 2(e))".

27. The underlining shows that the charges are limited to the costs of maintenance of electrical plant at entry or exit points.
28. The same applies to the maintenance, repair and replacement of electric lines. Paragraph 3(a) of the licence concerns connection charges which may be made or levied in respect of items of "*significant cost liable to be required for the purpose of connection at entry or exit points*" including "*the carrying out of works and the provision and installation of electric lines or electrical plant*". It requires those items to be listed and for indicative charges to be given where practicable with "*an explanation of the methods ... and the principles*" of calculation.
29. Paragraph 3(d) provides that those "*methods and principles*" for charges for significant costs "*liable to be required for the purpose of connection at entry or exit points*" will include charges for "*maintenance, repair and replacement required of electric lines or electrical plant provided and installed for making a connection to the licensee's distribution system*" and will include any capitalised charging.
30. The reason why the charges are limited to the "*entry or exit points*" of the connection from the distribution system to the premises concerned is because of section 19 of the *Electricity Act 1989*.
31. Section 19 confers a power to recover expenses reasonably incurred in providing any electric line or electrical plant in pursuance of section 16(1) of the Act. Two matters fall to be considered: first, the section 16(1) duty; and second the meaning of providing.
32. The section 16(1) duty to make or maintain a connection refers expressly to the connection between the distribution system and any premises. The distribution system itself is excluded from the power to recover expenses. This power only relates to the connection between the distribution system and any premises.
33. As explained above (paragraphs 15-20), the lines to the premises are part of the distribution system once laid and therefore those lines are excluded from the power should an owner or occupier require the connection to be maintained.
34. Insofar as the connection between the distribution system and the premises themselves is concerned, the meaning of "providing" does not include repair.

Section 16(4)(c) refers to either installing a new (not replacement due to disrepair) line or plant or by modifying an existing one. Modifying is defined in section 111(1) as including: "additions, alterations and omissions". The absence of any reference to repair is clear.

35. The distributor cannot charge one consumer who requires the connection to his premises (i.e. as owner or occupier) to be maintained for the cost of the maintenance and repair of the distribution system to which the premises are connected. If that was otherwise, the consumer would have to pay all the costs even though others who had not made the request for maintenance of a connection will benefit from the maintenance and repair of the distribution system.

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