

Determination No. RBA/TR/A/DET/102

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 CONCERNING THE CHARGES FOR ELECTRICITY CONNECTIONS TO PREMISES

1 INTRODUCTION

- 1.1 The Gas and Electricity Markets Authority ('the Authority') has been asked by [REDACTED] ('the Customer') to determine a dispute between the Customer and [REDACTED] ('the Company'). The dispute concerns the cost of reinstating an electricity supply connection to domestic premises at [REDACTED] ('the Premises').
- 1.2 The dispute has been referred to the Authority for determination under section 23 of the Electricity Act 1989 ('the Act'). The Authority is required to determine such disputes once a customer has requested that it do so.

2 BACKGROUND

- 2.1 The Company is the Licensee and was previously known as [REDACTED] [REDACTED] act as the Company's agent and provide connections services as part of a wider operating contract. Prior to this [REDACTED] acted as agent for [REDACTED] and issued quotations to the Customer.
- 2.2 The premises were disconnected by the Company. The disconnection occurred in two parts, the initial disconnection (removal of fuses) and the subsequent removal of the overhead line, the date on which the disconnection occurred is in dispute.
- 2.3 The Customer first applied for a re-connection in December 2005. Since this time he has received three different connection quotes from the Company's agent. The Customer accepted and paid the third quote on 10 October 2007 and it is the reasonableness of this charge the Customer wishes the Authority to determine.

2.4 The Customer first approached energywatch regarding the dispute in April 2007 and energywatch sought informal advice from Ofgem. Ofgem's informal advice at this stage was that the Company should reduce the quotation by £250. The Company has provided a copy of the letter they sent to the Customer reducing the quotation but the Customer maintains they did not receive this correspondence from the Company. The Customer raised a formal determination on 10 October 2008.

3 VIEWS OF THE CUSTOMER

3.1 The Customer states that the premises were originally disconnected prior to September 1993. The premises were owned by the Customers late grandmother and at the time of the disconnection his grandmother's solicitor had taken responsibility for the day to day running of the estate. The disconnection took place at the request of his grandmother's solicitor. He believes that the overhead line remained connected and ran into the property to a fuse board and meter fixed to the wall and that this portion of the infrastructure was removed in April 2005. The Customer states that due to the time span involved, the solicitors who dealt with the disconnection no longer have a written record of it. The Customer states that the premises were an existing dwelling that enjoyed services including electricity, mains water and foul waste water. The Customer also states that he considered the electricity meter to be in good condition for its age and that it was attached with the fuse board, cut out, etc to a plywood sheet which in turn was fixed to the internal wall and covered with plastic to protect it from the elements. The Customer believes that it is unfair and unreasonable for the Company to charge him hundreds of pounds for something (the connection) he already had.

3.2 The Customer states that he had numerous telephone conversations with different employees of the Company's agent trying to ascertain why the connection to the premises had been removed. He explains that for many weeks the Company's Agent denied that they had removed the service at all. The Customer explains that on 20 March 2006 the disconnection team stated that there had been no instruction/job number for the disconnection and that the overhead team had been simply working in the area and removed the connection. The Customer states that a member of the Company's agent's overhead team explained that the service was removed because it was live and

dangerous. The Customer refutes this claim stating that all the wiring had been tested by a local National Inspection Council for Electrical Installation Contracting (NICEIC) registered electrician prior to the internal lighting and socket wires being stripped out. The Customer adds that you could physically see that the supply cable was disconnected at the pole, folded back and taped up.

- 3.3 The Customer states that the first quote received from the Company's agent (D62528A) was for £3543.84 (Inc VAT) and was for an underground service based on a new connection basis. The second quote received (F00381A) was for £3109.69 (Inc VAT) and was to reinstate the overhead connection also on a new connection basis. The Customer states that the final quote received (N00265A) was for £2341.55 (Inc VAT) and that this quote was for an underground connection.
- 3.4 The Customer states that he feels he was forced and bullied by the Company's agent to pay for the infrastructure to be improved via an underground connection. The Customer states that the Company's agent explained that the third quote was for an underground connection because the neighbours had declined an overhead proposal. The Customer has submitted the party wall agreements for the premises which he believes would have allowed for any maintenance work to be carried out on the adjoining walls including any repairs etc, to be carried out to the original supply. The Customer states that it was a staff member of the Company's Agent who originally suggested that the party wall agreement would have covered his original supply.
- 3.5 The Customer states that he paid the connection charge on 10 October 2007. The Customer explains that he was informed that the work would take 6 weeks to schedule. The Customer states that the work did not commence until March 2008, nearly six months later.
- 3.6 The Customer explains that he had to bear the cost of installing underground ducting to the property boundary. His share of the works comprised of:
- supplying and fixing the meter box
 - digging a trench from the meter box to the premises land boundary
 - supplying and fixing a hockey stick and laying red ducting with a draw cord in the trench
 - covering the ducting with clean sand

- back filling the trench and making it good

The Customer states that these works incurred the following costs:

- ducting £18.74
- mini digger hire £107.02
- mini skip hire £58.75
- labour £158.62
- sand £41.12
- three days loss of earnings

3.7 The Customer explains that the works detailed in paragraph 3.6 (above) were completed well in advance of the Company's agent's contractors arriving at the site. The Customer explains that he was informed that the Company's agent's contractors would complete their section of ducting on 19 March 2008. The Customer states that he informed the neighbours of this date as it would allow them restricted access to their properties. The Customer states that the contractors arrived a day earlier on 18 March 2008 whilst the Customer was not on site causing the Customer's neighbours inconvenience.

3.8 The Customer states that his electricity supplier was booked to fix the meter on the morning of 27 March 2008 and that the Company's agent had provided assurances that the service cable would be installed by that date. The Customer explains that when their electricity supplier arrived at the site on 27 March 2008 no supply had been fitted. The Customer states that nobody at the Customer's agent could tell them why the supply had not been fitted or where the overhead team were.

3.9 The Customer states that an inspector from his insurance underwriter also arrived at the premises at 10:30am on 27 March 2008 expecting the Company's agent to have completed the work. The Customer states that after a very stressful morning the overhead team arrived to fit the supply at 1:30pm, the Customer states that they "helped themselves to the surplus ducting the Customer had purchased." The Customer states that once the works were complete the Customer was then able to reschedule their electricity supplier to fit the meter.

3.10 The Customer states that he received a letter dated 4 April 2008 from energywatch stating a recommendation that the Company should reduce its price by £250. The Customer states that he has not received any response

from the Company. The Customer understands that the Company have claimed in section 4 that they offered a gesture of good will to the Customer. The Customer would like to state that they have never received any gesture of good will from the Company.

4 VIEWS OF THE COMPANY

- 4.1 The Company states that one of the Company's agent's linesman discovered that the cut-out and meter at the premises had been left in an "open access" situation in a building that was neither secure nor weatherproof. They explain that the linesman ascertained that this constituted a potentially dangerous situation and disconnected the premises on safety grounds. The Company believes that this occurred on 15 August 2005 but they are unable to conclusively validate this date. The Company notes that the supply may have actually been de-energised at the pole in 1993 but they are unable to confirm this. The Company explain that a de-energisation would have involved the fuse being removed but the meters etc remaining in situ, they go on to explain that the wiring would all be dead but the incoming cable would be live.
- 4.2 The Company states that a request to connect the premises was received on 20 February 2006 and an initial quotation for £3,543.84 (Inc VAT) was issued on the same day. They state that this quotation was subsequently updated on 20 October 2006 to £3,109.69 (Inc VAT) with this quotation being based on a new overhead supply to the property.
- 4.3 The Company states that the Company's agent's planning engineer attended the site in October 2006 and that he took a picture of the extensive renovation work that was being undertaken and noted that at that time the roof was not in place. The Company explain that the planning engineer discussed with the Customer's neighbours what would be needed to allow the new overhead connection to be made. The Company states that both neighbours in the adjoining properties refused to give permission to have an overhead line on or passing over their properties. The Company add that no specific wayleaves or easements were in place and therefore this meant the planned overhead line was not feasible and an underground supply would be required. The Company explain that the quotation was conditional on wayleaves being granted and therefore a new quotation was required.

- 4.4 The Company state that a third quotation was issued on 13 September 2007 for £2341.55 (Inc VAT). The Company explain that this quotation was to lay a new single phase connection from the nearby pole and that this quotation was also conditional on the gaining of a wayleave from a third party to carry out the underground works from the pole to the public footpath. The Company add that this wayleave was subsequently granted.
- 4.5 The Company state that the Customer accepted the third quotation for £2341.55 (Inc VAT) on 13 October 2007 and that they received payment for that amount. The Company state that at the time the Customer accepted the quotation the Customer was still carrying out renovations to the property and the connection could not be made as the Customer was not ready. The Company state that the Customer confirmed via telephone on 7 February 2008 that the trench would be excavated and the ducting would be installed. The Company explain that the work order was released to the Company's agent's subcontractor on 15 February 2008. The excavation work was carried out on 18 February and the cable laid on 19 February and the Connection was made on 27 March 2008.
- 4.6 The Company acknowledge that the Customer suffered some inconvenience when the connection was being made and offered a £100 reduction as a gesture of goodwill. The Company was not aware of the issue of the surplus ducting as this was the first time it had been raised. The Company's agent's subcontractor has no record of this being taken, however it is conceivable that this was removed to tidy the site and in the belief it had been provided by the Company.
- 4.7 Following the reference of the issue to energywatch by the customer, and the advice from Ofgem's Technical Advisor, on 8 April 2008, [REDACTED] wrote to [REDACTED] explaining that they were in receipt of this advice and that as a result were reducing the quotation by £250 plus an additional £100 as a gesture of goodwill. Confirmation from the Customer that this was acceptable was requested but has not been received.
- 4.8 The Company state that all of the new assets installed in the connection of the Customer's premises are for the provision of a supply to the premises and are not general infrastructure.

- 4.9 The Company note that the Customer has raised the issue of whether the connection of the Customer's premises was classed as a new connection or a re-connection. The Company state that whether the connection was classed as a new connection or a re-connection is immaterial; they explain that the costs would be determined in the same manner, by establishing the works needed to connect the property. The Company go on to explain that in the circumstances of this connection the refusal of the Customer's neighbours to grant wayleaves meant that a re-connection of any sort was not possible. The Company state that the only feasible way to supply the Customer was by means of an underground cable and therefore the quotation was for a new connection.
- 4.10 The Company state that distribution companies have a large number of statutory obligations to fulfil under different legislation but in particular the Electricity Act 1989 and the Electrical Safety, Quality and Continuity Regulations 2002. The Company explain that health and safety provisions are designed to protect the general public and Company employees attending such situations. The Company state that it should be remembered that under Schedule 6 (6) of the Electricity Act 1989, an owner or occupier of premises also has obligations to keep the meter in a good condition or that person can be subject to criminal prosecution. The Company state that for these reasons they believe that the Company's agent's operative acted correctly in disconnecting the property when he discovered an exposed cut-out.
- 4.11 In summary, the Company state that the original connection to the property was disconnected on the grounds of safety. The Company explain that the refusal of both adjoining neighbours to have an overhead line connection on or over their property meant that a new underground connection was the only feasible way to connect the premises. The Company state that the quotation for £2341.55 (Inc VAT) was accepted by the Customer and the connection was made. The Company state that subsequently a reduction of £350 (£250 reduction plus a £100 gesture of goodwill) was offered but not accepted by the Customer on 8 April 2008. The Company believe that the cost of £2341.55 is justified and have provided breakdowns of the second and third quotes issued to the Customer.

5 STATUTORY OBLIGATIONS

- 5.1 Under section 19(1) of the Act, an electricity distributor may require any expenses reasonably incurred in providing any electric line or electric plant to be defrayed by the person requiring the connection to such an extent as is reasonable in all the circumstances. Under section 19(4) of the Act, such expenses include the recovery of the capitalised value of any expenses likely to be incurred in continuing to provide the electric line or electric plant.
- 5.2 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.
- 5.3 The works undertaken constitute a connection that falls within the statutory obligations set out above.

6 CONCLUSIONS / DISCUSSIONS

- 6.1 Both parties have agreed that their arguments are reasonably reflected in sections 3 and 4 of this determination.
- 6.2 The Authority has carefully considered the arguments set out in sections 3 and 4. In considering all these arguments the Authority has set out its findings and conclusions below. The Authority has determined on whether the charges levied are reasonable for the works undertaken by the Company.
- 6.3 The Authority also discusses the Customer's concerns as set out in paragraphs 3.1 to 3.4, i.e. whether the original connection should have been removed, whether the Customer should have been charged for the new connection and whether the connection should have been undergrounded.

SHOULD THE ORIGINAL CONNECTION HAVE BEEN REMOVED / SHOULD THE CUSTOMER HAVE BEEN CHARGED FOR A NEW CONNECTION

- 6.4 The Customer has expressed concerns about whether the electricity service to the premises should have been removed at all and whether they should have been charged for a new connection given that the Company had removed the original connection.

- 6.5 From the Customer's submission it appears that the solicitor of the previous owner of the premises (acting with power of attorney) requested that the Company disconnect the premises. Therefore the Authority does not see that there can be any concern as to whether this should have taken place.
- 6.6 The Customer also disputes the Company's removal of the overhead line making the physical connection to the property which the Company state was carried out on safety grounds. This is not an issue that the Authority is able to determine under the Act. The Company have referred to provisions of the Act concerning disconnection by a distributor when a person has committed the offence of allowing electric lines or meters to be damaged. The Authority also notes the right of a distributor to disconnect without notice a customer's connection on safety grounds as set out in The Electricity Safety, Quality and Continuity Regulations 2002¹. The distributor must write to the owner of the premises explaining the reasons for the disconnection and, if applicable, the remedial measures to be taken before re-connection can take place. Disputes in relation to disconnection in these circumstances may be referred to the Secretary of State.
- 6.7 Given that the completed works are solely for the premises use and that the works do not benefit any other network users it the Authority's view that the cost of connecting the premises should be borne by the party requesting the connection (the Customer) rather than it being recovered in any other way. The fact there was a previous connection to the premises does not alter this view.

SHOULD THE CONNECTION HAVE BEEN UNDERGROUNDED

- 6.8 The Customer has expressed concerns that he was forced to pay for existing infrastructure to be improved via an underground connection. However it is the Company's view that the Customer's neighbours declined their overhead proposal. It is not possible for Ofgem to determine on this issue, however, as it appears the original connection had been removed and it seems that there was no existing infrastructure to be improved. Also having read the party wall agreements submitted by the Customer as evidence it is not clear that any part of these agreements includes agreement for an overhead connection to be installed.

¹ Regulation 26(3), (4) and (5), Statutory Instrument 2002 No. 2665 - <http://www.opsi.gov.uk/si/si2002/20022665.htm>

THE REASONABLENESS OF THE COMPANY'S CHARGES

6.9 The costs for the provision of the new connection to the Customers premises along with the plans and photos provided by the Company have been examined

6.10 It is the Authority's view that the contestable costs (service installation) are considered to be reasonable for the task, given the cable length and the nature of the surface to be excavated and reinstated.

6.11 It is the Authority's view that the non-contestable costs levied by the Company (jointing, point of connection (POC), design approval, monitoring) are more difficult to justify. The charges for monitoring in respect of service cable installations/service cable jointing and service termination do not seem appropriate since the Company's agent or their contractors undertook the entire job. The charges levied for jointing do not seem appropriate as the connection of the service was by means of a pole termination as identified in the POC part of the quote.

7 DETERMINATION

7.1 Having due regard to all of the points outlined above. The Authority has concluded that the reasonable cost of the actual works undertaken (pole termination and the appropriate level of monitoring for the job) should have resulted in a Customer charge of £2016 (inc VAT).

7.2 The Authority determines that the Company should refund the Customer the difference between £2342 (inc VAT) and £2016 (inc VAT) which amounts to a refund of £326 (inc VAT). The Authority's breakdown of the costs is set out below:

Contestable	
Service Installation	£1753
Non-Contestable	
Point of Connection	£153
Design approval	£110
Total	£2016

7.2 This document constitutes a notice stating the reasons for the Authority's decision for the purpose of section 23 of the Act.

Rachel Fletcher (27 February 2009)

A handwritten signature in black ink, appearing to read 'Rachel Fletcher', with a stylized flourish above the name.

Director, Distribution

Duly authorised on behalf of the Gas and Electricity Markets Authority

