

Determination no RBA/TR/A/DET/154

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

Introduction

- 1 1 The Gas and Electricity Markets Authority (the Authority ¹) was asked by [REDACTED] (the Customer') to determine a dispute between the Customer and [REDACTED] (the Company) The dispute concerns the cost of a service alteration at a housing development at [REDACTED] (the Premises)
- 1 2 The dispute was referred to the Authority for determination under section 23 of the Electricity Act 1989 (the Act) The Authority is required to determine such disputes under section 23 (1A)(b) of the Act if a customer asks it to do so
- 1 3 Copies of the statement of facts by the Customer and the Company in relation to this dispute are attached as Appendices 1 and 2 (respectively) to this Determination The responses to the parties' statement of facts and further comments are attached as Appendix 3 and 4

Statutory obligations

- 1 4 Section 16 of the Act provides that

(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

(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) 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

¹ In this document the use of we or us means Ofgem or the Authority

1 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

1 6 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

1 7 Section 23(1c) of the Act provides that

No dispute arising under sections 16 to 21 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made

Background

1 8 The Customer is constructing a major housing development of 400 houses. To enable this development to proceed and the statutory connections to be made it was necessary to divert the existing 33kV overhead line circuits which traversed the development site by replacing them with underground circuits. The project is at an advanced stage with a number of properties awaiting connection. The dispute relates to this diversion work.

1 9 On 8 February 2007 the Customer received by email an initial estimate for the cost of undergrounding the two 33kV overhead line circuits and a separate cost for the alteration and diversion of an 11kV overhead supply and installation of a new 11kV infrastructure ring circuit in order to provide electricity supplies to the new houses. This was followed by four fixed price quotations. The first dated 14 March 2007 was for the new electricity connections at the development site. This quotation was made subject to the completion of the high voltage overhead cable diversion. This quotation is not in dispute.

1 10 A further quotation followed dated 2 May 2007 for the 33kV diversion and this is the subject of this dispute. The Customer paid the initial installment so that the diversionary works could be undertaken at short notice. However due to site specific issues it had not been possible to install the underground cable circuits at the north easterly end of the development site. As a temporary measure an alternative approach was taken which was to retain a short section of the existing overhead line and connect the new cables onto this. The final part of the diverted circuits between the Customer's site and the substation remain as overhead lines.

1 11 The Company has stated that the project involved diversion works only and no connection was made. Although the original planned works have not yet been completed the works for the alternative approach were completed in January 2008.

1 12 The Customer raised a complaint about the reasonableness of the costs with the Company on 13 October 2009 and as a result of this a meeting was convened on 19 November 2009. At that meeting the Company agreed to review the charges for the diversionary works but made no statement that a refund would be provided. Following this meeting the Company failed to provide the Customer with a document reviewing the charges as agreed at the meeting.

- 1 13 On 18 March 2010 the Company concluded that these works were quoted at a fair price and on a fair basis and that since the first phase of the works had been energized in January 2008 the complaint by the Customer was outside of the 12 month statutory time period defined to refer a *dispute* for determination

FACTS IN DISPUTE

- 1 14 The Customer is challenging the costs quoted by the Company for carrying out the works to place underground the two 33kV overhead lines that traversed the Customer's site. The Customer believes that they have made excessive payments for ordering materials in advance of the works and they do not believe the Company's quotation is based on the minimum scheme.
- 1 15 The Company believes these works were offered and contracted on the basis of a fixed price contract which was entered into voluntarily by the Customer. The Company stated that these are the normal arrangements for such works in its area. Quotations for such works based on time and material rates have generally been rejected by customers in favour of fixed price contracts.
- 1 16 The Company believes the quotation is based on the minimum scheme since the cable route was based on the Customer's proposed road layout which was designed to avoid their new and future construction work. They state that the quotation follows the shortest practicable route whilst ensuring an accessible and practical route for long term access. According to the Company the Customer opted to pay the additional cost of higher rated cable to secure early delivery and avoid delaying the building of several plots of houses situated near the overhead line. The Authority notes that the Customer asked the Company by an email dated 9 February 2007 whether it would be possible *to pay a bit extra and get the cables on to site quicker*.
- 1 17 The Company contends that the works were carried out as Excluded Services (ES) as defined in Appendix 1 of Charge Restriction Condition 15 of the Company's distribution licence. Specifically ES3 states that *Works required by any alteration of premises includes the moving of any electric line or electrical plant that forms part of the licensee's distribution system to accommodate the extension, redesign or redevelopment of any premises on which the assets in question is located or to which it is connected*.
- 1 18 As the project involved diversion works only and not any new connection the Company has maintained that the works do not fall under sections 16 to 22 of the Act and as such the Authority does not have the vires to determine disputes concerning diversionary works. The Company suggests that it provided a quotation to the Customer using its standard template for a new connection in error. This included a clause stating that the quotation *serves as a counter notice under clause 16A (5) of the Electricity Act 1989 the Act allows for any unresolved disputes relating to the provision of this quotation to be determined by the Gas and Electricity Markets Authority*.
- 1 19 The Company has also disputed the Customer's right to refer this dispute to us based on expired timelines in relation to the original connection offer. It has stated that since the works were energized in January 2008 and the Customer's query about the project was referred to it on 13 October 2009 the time limit for escalating a dispute to us had expired.
- 1 20 The Customer contends that the quotation concerns the modification of a connection and that it was necessary to place the cables underground in order to facilitate the housing construction. In reliance on the Company's section 16

counter notice the Customer claimed that the works were carried out on a statutory rather than a contractual basis and as the works have not yet been completed the 12 month limitation claimed by the Company is incorrect

CONSIDERATION OF EVIDENCE

- 1 21 We have carefully considered the statements of facts and comments from both parties (which are set out in Appendices 1 2 3 and 4 and summarised in this Determination) and the evidence provided by both parties in support of their factual accounts
- 1 22 We find that the undergrounding of the existing 33kV overhead line connection which traversed the development site was provided by the Company in pursuance of its obligations under section 16(1) of the Act and its duty to enable electricity to be conveyed to or from the Premises
- 1 23 It should be noted that even if works are classed as Excluded Services this would not prevent us from determining whether the costs of such works have been reasonably incurred if the works fall within the Company's duty to make a connection under section 16 of the Act
- 1 24 We also consider that the Customer is entitled to rely on the statement provided by the Company in its quotation as to their right to refer any dispute relating to the provision of the quotation to the Authority
- 1 25 We understand that most of the diversionary work has been completed and was energised in January 2008 but that no connections at the Premises have been made since the housing development has not been completed We note that the Company has implemented a temporary solution which allowed the finalisation of the first phase of connection to the housing development The Company acknowledges that there are outstanding works still to be completed due to wayleave issues and that the overhead lines from the north west corner of the site into the substation will be undergrounded in due course
- 1 26 As the works quoted for have yet to be completed we consider that the 12 month statutory time period (beginning at the time when the connection is made) referred to in section 23(2) of the Act does not apply to this dispute The Authority is therefore able to determine this dispute under section 23 of the Act
- 1 27 We have reviewed the evidence provided by the Company and the Customer in relation to the costs of the works undertaken and has engaged an external consultant to review the costs quoted by the Company to the Customer for the work that was initially planned to be undertaken
- 1 28 We consider that the works quoted by the Company are non contestable and should have been provided according to the minimum scheme acceptable to the Customer Under the Act the Company is allowed to recover its reasonable expenses which we have estimated to be a sum well below the charges quoted by the Company In this case we consider the Company has overcharged the Customer for diversionary works required to make the requested connections at the Premises and we expand on this assessment in the discussion below

- 1 29 We acknowledge the Customer's attempts to resolve the dispute informally by engaging with the Company directly through emails and through the organisation of a meeting in November 2009. We have reviewed the available evidence detailing communications between the parties for the period between October 2009 and March 2010 and we have established that despite the Customer's efforts to achieve a resolution to the matter the Company has appeared to delay the proceedings by refusing to provide the agreed information and stating that the timelines for resolving the matter through regulatory recourse had been exceeded.

DISCUSSION AND CONCLUSIONS

- 1 30 In this section we assess the merits of the parties' statement of facts and comments on the reasonableness of the connection charges levied upon the Customer on the basis of the facts set out in the facts in dispute section of this document. The parties' representations are set out fully at Appendices 1, 2, 3 and 4 to this Determination.
- 1 31 The Authority considers that the works requested by the Customer gave rise to a duty on the Company to make a connection under section 16 of the Act. This is because the original request from the Customer was for new connections to the houses that had yet to be built. Before they could be built and energised the overground cables crossing the development site had to be moved and repositioned underground. This is evidenced by the Company's email to the Customer of 8 February 2007 which provided two cost estimates: one for the diversion works and the other for the new supplies. The Company's quotation to the Customer of 14 March 2007 makes clear that the quotation for new electricity connections is subject to the completion of the overhead cable diversions which crossed the site. It is also clear therefore that the purpose of moving the overhead lines was to facilitate a connection to the new houses that would in due course be built and can therefore be regarded as the making of a connection under section 16 of the Act.
- 1 32 Specifically, section 16(4) (a) of the Act provides that *any reference to making a connection includes a reference to maintaining the connection*. The duty to make and to maintain a connection includes a duty to provide and continue to provide the electric lines or electrical plant that may be necessary for the connection (sections 16(2) and 16(4) (a)). The duty to provide includes both a duty to install new electrical apparatus and to modify existing ones (section 16(4) (c)). Therefore the making and maintaining of a connection requires that electric lines or plant must be provided or replaced as necessary. Clearly the moving of the overhead cables to a position underground in order to facilitate a connection of the new houses to the Company's distribution system would fall under this section.
- 1 33 The works undertaken therefore constitute the making of an electricity connection that falls within the statutory obligations set out above.
- 1 34 We consider that section 19 of the Act allows a Company to recover from a Customer expenses associated with the provision of an electrical line or plant where
- (a) the electrical line or plant is provided by the distributor in pursuance of its section 16(1) EA 1989 duty to make and maintain a connection.

(b) the level of the expenses that the distributor seeks to recover is reasonable and

(c) it is *reasonable in all of the circumstances* for the distributor to recover the said expenses from the person requiring the connection

Reasonableness of charging the Customer for the undergrounding of the existing 33kV overhead line connection

1 35 In assessing the reasonableness of the charges for the undergrounding of the existing 33kV overhead line connection we have considered the circumstances outlined below

1 36 The Company stated that the diversionary works carried out for the Customer entailed the erection of two new 33kV terminal H poles at the edge of the site complete with stays 33kV surge arresters and associated earthing to terminate both of the existing overhead lines The following works were contracted by the Company

Installation of 660m of double circuit 33kV cable in a 660m trench excavated by the Customer

installation of 200m of single 33Kv cable in a trench excavated by the Customer

installation of 100m of double circuit in a 100m trench excavated by the Distributor

installation of 120m of single circuit in a trench excavated by the Customer and

Additional works included the dismantling of 1 130m of 33kV overhead line modifying structures at Cowes substation to accommodate new cables and safety management activities at the site

1 37 In order to establish the reasonableness of the costs quoted by the Company we submitted the information to an external consultant to perform a cost assessment exercise on our behalf The consultant's report estimated that the quoted work could have been carried out for an estimated price of £187 788 while the Company quoted a price of £254 182 The Customer was given a credit of £100 000 for pre payment and paid £154 182 in advance of the works commencing Had they been given a credit based on the consultant's estimated price of £187 788 he would have paid £87 788 rather than £154 182 We conclude therefore that there is potentially an overcharge of £66 394 or some 35% of the total project cost

1 38 In particular the consultant identified a significant difference between the benchmark cable laying prices and those provided by the Company The consultant's report states that where two or more circuits are laid coincidentally there should be provision for a proportionate reduction in the cable laying costs due to the availability of equipment already being on site For example cable drum jacks cable rollers and pulling equipment coupled with fewer transportation/journey charges The consultant would normally expect a dual circuit to cost approximately 1.7 to 1.8 times that of a single circuit The Company's breakdown of costs shows a cost of £58 per metre for single circuit and £117 per metre for dual circuit i.e. fractionally over twice the cost of the consultant's benchmark cost

- 1 39 We have performed our own high level desktop analyses based on the invoices submitted by the contractor to the Company and the orders issued by the Company. We consider that the Company did incur the costs that it quoted to the Customer for cable laying and other related activities. However, we agree with the consultant that the quoted cost of laying single or double circuit cable exceeds the reasonable costs for this type of work. We note the point made by the Company that the overhead cost of contractors and materials were not identified explicitly in the breakdown of costs provided as evidence.
- 1 40 The difference between the consultant's estimate of the cable laying costs and those quoted by the Company make up over 75% of the difference between the two estimates for the complete diversion works. Our consultant broke down the costs of the total work into its key components and calculated the variance from the benchmark price:
- works involving erection of the overhead line (erecting H poles, earthing and re-regulating conductors) – 30% overcharged
 - jointing and cable termination – 25% undercharged
 - project management, safety management, risk and assessment, testing and commissioning – 20% overcharged
- 1 41 We note that the Customer agreed to pay a premium price to purchase a specific size cable in order to obtain a fast delivery and progress the works quickly. However, no evidence has been provided by the parties regarding the value of this premium or the terms of the agreement. In our assessment, we have considered the value of the cable at the price quoted by the Company and have not sought to establish the market price for this cable.
- 1 42 We acknowledge that independent estimates for work of this kind can differ but shall not vary to the extent demonstrated in this case. We are therefore satisfied that the Company's quotation was significantly above the reasonable costs of the works carried out.

DETERMINATION

- 1 43 We find that the Company's expenses in this matter were not reasonably incurred and that it should refund the Customer the difference between the estimated benchmark cost as calculated by our external consultant and their overall cost for the works as quoted by the Company, i.e. £66,394.
- 1 44 This document constitutes a notice stating reasons for the Authority's decision for the purpose of section 49A of the Act.



ANDREW BURGESS
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Duly authorised on behalf of the Gas and Electricity Markets Authority

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19 December 2011