

Freedom of Information Request

Date of receipt: 15th March 2022

Date of response: 24th March 2022

Freedom of Information request regarding Guernsey Electricity Commercial Supply Agreements

Request for information:

Please can you obtain this information under the act?

Note: The applicant appended to the question an exchange of email correspondence with the Guernsey Competition & Regulatory (GCRA) concerning a request for information on the level of discount offered by Guernsey Electricity to some of its commercial customers and the identity of those customers.

Response provided by the President, States' Trading Supervisory Board:

You have not specified in your email to the States exactly what information it is you are requesting. However, on the basis of the email exchange appended to your request and your references therein to discounts and preferential rates offered to GEL's commercial customers, I assume you are seeking pricing details of the "bespoke" Commercial Supply Agreements that GEL has agreed with a number of those customers under the provisions of section 16 of the Electricity Law, 2001 (section 16 agreements). Before addressing that request, I would like to explain how and why such agreements are used and, in doing so, hope to correct some of the misunderstanding that has arisen around them.

Section 16 agreements are put in place between GEL and its larger commercial customers. Their purpose is to give those customers the freedom and choice to negotiate and enter into a private and bespoke agreement with GEL for the supply of electricity, rather than adopting fixed public tariffs.

As background to the use of such agreements, it is helpful to understand a structural problem that GEL currently has with its public tariffs. GEL's cost base is split almost 50:50 between fixed and variable costs, but this is not reflected in its tariff structures, where approximately 5% of its revenues are generated through fixed charges and 95% through its variable charges. That balance needs to change so that GEL is generating sufficient

revenues through its standing charges to maintain the secure and resilient grid on which the Island will become increasingly dependent as part of the energy transition. Doing so will provide much greater transparency to all electricity customers of both the fixed costs of providing reliable and secure electricity for the Island and the true variable costs of generating that electricity from different available resources, including renewables.

Addressing the above will require a fundamental restructuring of GEL's public tariffs. Whilst work on that is underway, the necessary changes will likely be phased in over a period of years. In the interim, the use of section 16 agreements with some of its largest customers has enabled GEL to start mitigating the risks that the current tariff structures are creating. GEL's view is that these agreements represent a positive step towards a fairer pricing system because they enable it to work with the customers involved to ensure the price they are paying better reflects both the actual fixed and variable costs involved in supplying them with electricity. Importantly, it means that those larger customers are making an appropriate contribution to the fixed costs of the infrastructure they require and that the remaining smaller domestic customer base is not unfairly subsidising them.

In GEL's case, its section 16 agreements have thus far either been offered as a result of a customer request or as part of open tenders issued to GEL and other local energy suppliers by larger customers, who subsequently decided to contract with GEL. Each CSA is necessarily bespoke to the specifics of the customer and the installation in question - all customers consume energy, utilise their grid connection and deploy supplementary energy technologies that effect their consumption in subtly different ways. It is important to stress that no unit rates are being sold below the costs as they are known at the time of entering the agreement and the rates do include a profit margin element. I am sure you will appreciate that publication of those agreements would substantially prejudice GEL's ability to compete in the market for such business in response to any future tenders or the like.

Agreements of this nature are not unique to Guernsey. For example, they are used by electricity suppliers in England and France. In those jurisdictions, there is no requirement to publish the commercially sensitive prices and other contractual information they may contain. However, safeguards do exist, as dominant market players in the French and UK markets are prohibited under legislation from behaving anti-competitively and from abusing their dominant market position.

The same applies in Guernsey, where GEL is subject to the provisions of the Competition Ordinance. Furthermore, whilst the States has recently agreed that the STSB should assume responsibility for the approval of GEL's public tariffs, the Company is still subject to regulation and continues to be licensed by the GCRA. The regulator has not been removed. I make this point because there are substantive provisions within GEL's licence¹ that: firstly, protect competition; secondly, preclude GEL from unfairly cross subsidising the generation, supply or conveyance of electricity; and, thirdly, preclude GEL from showing undue preference to or discriminating against any person. The GCRA retains the statutory

¹ Conditions 13, 17 & 18 – GEL Licence ([cicra1211-gel-licence-renewal-and-conditions-2012.pdf](https://www.gel.gv.gg/cicra1211-gel-licence-renewal-and-conditions-2012.pdf) ([gcra.gg](https://www.gel.gv.gg)))

authority to require GEL to provide it with such documents and information as it may require to monitor its compliance with those licence conditions.

In response to earlier requests, GEL has previously provided the GCRA with copies of and information about all the agreements it has entered with these larger customers. You may be aware that the GCRA subsequently issued a Direction to GEL for it to publish and provide full details of any new prices, discounts or special offers relating to electricity supplies included in the agreements. That Direction was subject to a successful appeal by GEL to the Royal Court. I mention this point because, in quashing the Direction, the Bailiff's Judgment² included a number of findings, including:

- There is a distinction between a section 16 agreement, which is a contract between the supplier and the consumer, and those who are tariff customers. For a tariff customer, the terms and conditions upon which electricity is supplied are those that are published, thereby giving notice to the customers. The distinction is between tariff customers, who are not in a contractual relationship with GEL, and other customers who enter into a section 16 agreement, where the rights and liabilities between the parties are governed by the terms of the agreement;
- The obligation on GEL to publish any new prices, discounts or special offers related only to where those applied to the statutory regime for tariff customers;
- The purpose of a section 16 agreement is that it is tailored to that particular customer. He did not believe that the terms of such agreements constituted GEL introducing any new price and, in his view, they are not discounts to published prices or special offers in the sense of being available to others.

The Bailiff found that GEL's obligation to publish can only properly be read in reference to tariff customers and does not extend to section 16 agreements.

Within the context of all the above, I should now like to address your request for information about the agreements under the States' Freedom of Information Code. There are two elements of the Code³ to consider here:

- Firstly, the Code applies to States' service areas and Committees;
- Secondly, the Code does not require States' service areas and Committees to acquire information that they do not possess.

As you will be aware, GEL is not a States' service area or Committee; it is a separate legal entity and falls outside the scope of the Code. In addition, the STSB does not hold records of the agreements that GEL has agreed with its customers. The terms of those agreements

² Judgment – 30th July 2021 [CHttpHandler.ashx \(guernseylegalresources.gg\)](http://www.guernseylegalresources.gg)

³ Sections 1.11 and 1.14 – Freedom of Information Code ([CHttpHandler.ashx \(gov.gg\)](http://www.gov.gg))

are confidential between the parties. Accordingly, the STSB cannot provide you with information about them.