

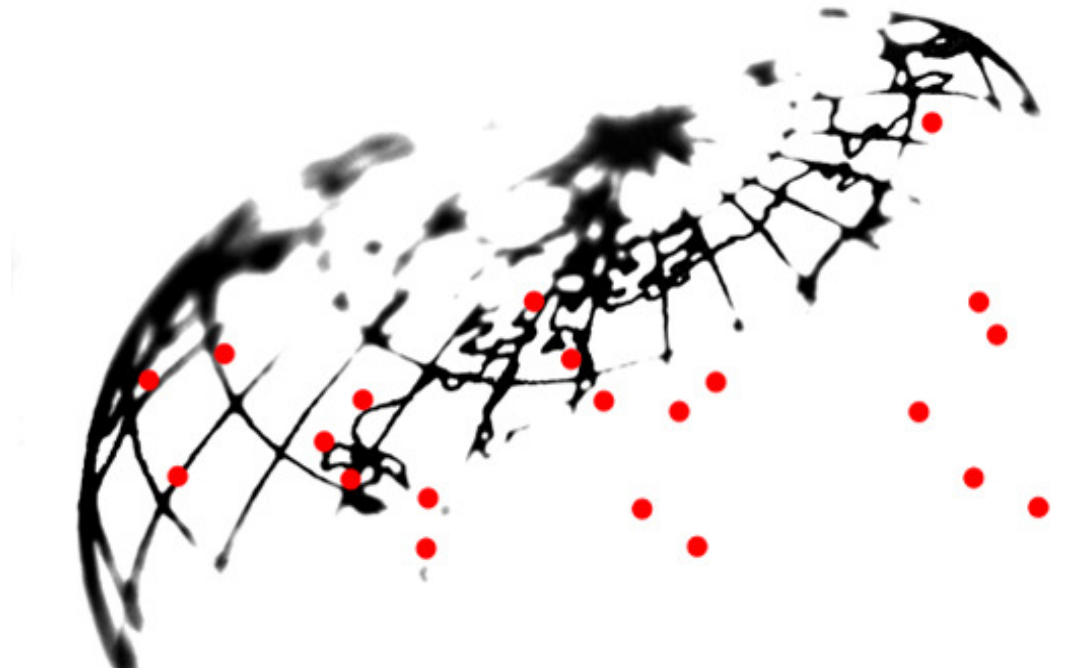
Legal Frameworks to Delivering Low Carbon Networks

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What do we need from a legal framework?

- Appropriate financial support
 - Sufficient, but not excessive
 - Targeted where needed
 - Integrated with broader policy framework (EU ETS, Carbon Reduction Commitment, ROO, etc.)
- Facilitation through the planning system
- No unnecessary burden of regulation, while still providing appropriate protection to domestic consumers
- Long term vision
- Low risk of change in law / regulatory framework

Key issue – There is a strategy, but we still need a proper legal framework

- Electricity generation, transmission, distribution, supply and interconnectors all regulated by Electricity Act 1989
 - Focused to large-scale facilities and operations
- No current legal framework for heat (although “Call for Evidence: Heat”, sets out consultation and Government aspirations for a heat market and consumer protection)
- General competition law applies
 - Anti-competitive agreements
 - Abuse of a dominant position

How does this affect long-term agreements?

Benefits and support package

- CHP may be biomass and qualify for ROCs:
 - Energy from waste with CHP = 1 ROC/MWh
 - Co-firing of biomass with CHP = 1 ROC/MWh
 - Co-firing of energy crops with CHP = 1.5 ROCs/MWh
 - Dedicated biomass with CHP = 2 ROCs/MWh
 - Dedicated energy crops with CHP = 2 ROCs/MWh
- Grandfathering – is it reliable?
What is UK's record on change of regulation?
- CHP (or Scheme) qualifies for CHP LECs if GQCHP
- Feed In Tariffs (50 kWe for gas & 5MWe for biomass, subject to consultation)
- Heat – nothing yet, but plans for RHI (implementation 2011)

Sections 18 - 30 LTA 1985

Key issue: Can long-term charges for heating and electricity be agreed in advance of dwellings being sold to tenants?

- Service charges include amounts which vary according to the costs incurred by the landlord
- Applicable to:
 - Qualifying Works >£250; and
 - Qualifying Long-Term Agreements (>12 months) if tenants contribution will be >£100/year
- Exception for agreements <5 years duration entered into before there are any tenants
- Consultation requirement, involving at least two quotations

How can major infrastructure be financed with these requirements?

Electricity (Class Exemptions from the Requirement for a Licence) Order 2001

- Main issue: why are the rules so complex? What policy objectives are they trying to achieve?
- Generation licence exemptions
 - clear and generally not too restrictive
 - up to 50MW maximum export from any one generating station if declared net capacity less than 100MW

Distribution exemptions

- Uncertain due to Citiworks case
- As they stand:
 - Class A: small distributors up to 2.5MW, but aggregated across all schemes including those operated by associated, connected or related companies
 - Class B: on-site distribution from an embedded generator supplied to domestic consumers up to 1 MW max.
 - Class C: distribution to non-domestic consumers
- Exemptions can apply in parallel, but wording is ambiguous (how do you reconcile “persons who do not at any time distribute electrical power for the purposes of giving a supply to domestic consumers” with a parallel exemption under which you do?)
- Generally may avoid DUoS and TNUoS charges and distribution and transmission losses

Supply Exemptions

- Small suppliers
 - Own generation only
 - Up to 5 MW, of which 2.5 MW to domestic consumers
- Resale
 - From a licensed supplier (unlimited); or
 - From another exempt supplier, subject to a 10% cap; or
 - Back-up supplies of own generation or either of the above
- On-site supply: Subject to complex conditions
 - Own generation + electricity from a licensed supplier only
 - If not on same site but supplied over private wires –
 - cap of 1MW to domestic consumers and 100MW total; or
 - receives at least $\frac{1}{3}$ of output of generating station
- Exempt supplies generally avoid RO and CCL

Supply Licence Modifications

- Introduced in March 2009
- Introduced “light touch” licence conditions
 - Ofgem discretion to issue directions to disapply requirement to sign MRA, DCUSA, BSC, CUSC
 - Must have alternative arrangements with a licensed electricity supplier
 - Does not relieve supplier of panoply of other licence conditions

The Citiworks AG Decision

- Ruling of European Court (Third Chamber) on reference from German court – effectively says UK regime is in breach of EU law
- Article 20(1) of Electricity Directive on Third Party Access (TPA) has no exceptions for small private wires
- Requires:
 - non-discriminatory TPA
 - published tariffs (approved by regulator)
- UK implements Art.20(1) through distribution licence conditions - will need to apply these to private wire networks
- UK government will be consulting this year on possible solutions, e.g. light touch licensing

Strategy: Meeting customer requirements whilst complying with legal rules

- Work within Electricity Act and Class Exemptions
 - through scheme design; and/or
 - use of an intermediaries with licenses
- Comply with competition law:
 - Quasi Customer Charter (Output Specification)
 - Transparency in determining/declaring energy tariffs:
 - Agreed cost benefit analysis
 - Agreed indexation/escalation methodology
 - Term of Agreement
- Joint cooperation philosophies (easier to say than do...)
- Flexibility in plant operation and consumer certainty
- Create bankable assets to raise finance

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