

<b>Health and Safety Executive</b>		<b>Sector Information Minute</b>	
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All Inspectors

## THE OFFICE OF GAS AND ELECTRICITY MARKETS (OFGEM) AND ITS PERCEIVED INFLUENCE ON SAFETY STANDARDS IN THE ELECTRICITY INDUSTRY

The electricity industry has expressed concern that financial burdens imposed by Ofgem encourage live working, and can inhibit capital expenditure on safety related projects. HSE has discussed these complaints with Ofgem and from the information provided, it would appear they are ill founded. This Minute summarises the industry's concerns, and provides an agreed HSE/Ofgem response to them.

### INTRODUCTION

1 Regulation 4 (3) of the Electricity at Work Regulations 1989 states that "Every work activity, including operation, use and maintenance of a system and work near a system, shall be carried out in such a manner as not to give rise, so far as is reasonably practicable, to danger."

2 Regulation 14 addresses the particular issue of live working, and it adopts a hierarchical approach. The presumption is that work should normally be done with the conductors made dead. It states that "No person shall be engaged in any work activity on or so near any live conductor... unless-

- a. it is unreasonable in all the circumstances for it to be dead; and
- b. it is reasonable in all the circumstances for him to be at work on or near it while it is live; and
- c. suitable precautions ...are taken to prevent injury.

Although these regulations are under review, there is nothing to suggest this standard will be relaxed.

3 When determining what is reasonable/unreasonable in all the circumstances, Solicitors Office believe any decision by an electricity company is not limited to health and safety considerations, although the latter would be of major importance. Other considerations may include inconvenience, loss of profit, and adverse effects on those whose supply was to be interrupted. (If the supply was to a hospital, and no alternative or temporary source available, this may be the major determining factor.) However, Solicitors Office advises that any possible **subsequent** financial penalty imposed for failing to meet targets set by

Ofgem, (see below), whether making lines dead for safety or any other purpose, cannot be considered when making a justification for live work.

#### THE WORK OF THE OFFICE OF GAS AND ELECTRICITY MARKETS (OFGEM)

4 Ofgem sets continuity of supply targets for all Distribution Network Operators (DNO's), and if the target is not met then a financial penalty applies. Clearly some DNO employees believe this means that live working is the preferred option.

5 Ofgem also sets a cap on prices charged by DNO's, based on a five-year planning cycle, known as the price review. The individual investment needs of the various DNO's are taken into account during the planning round, provided that the associated business case is sound. Safety improvements requiring long-term capital investment would be addressed in this way. However, Ofgem does not generally approve, specify or preclude individual investment projects.

6 Where additional requirements arise between reviews that would have a material financial impact on the DNO, it is open to the DNO to request from Ofgem additional comfort on the funding of necessary investments and Ofgem may provide such comfort if the request is justified. One example where this may apply is if there is a need to carry out expensive alterations to plant highlighted by the investigation into an accident/incident.

#### BACKGROUND

7 A Principal Electrical Inspector visited a site where contractors were digging up live electricity cables buried in concrete. When interviewing a senior engineer from the DNO, (formally known as the Regional Electricity Company, REC, or Electricity Board), he was told that they could not make the cable dead because this would be in contravention of Ofgem's legal requirements. There was nothing to suggest that the engineer was just using this as an excuse, even though there is no such "Ofgem legal requirement".

8 The Utilities Section has heard of similar incidents where DNO's have been reluctant to de-energise live lines, usually referring to the threat of financial penalties. The incidents have covered a wide range of work activities including digging in close proximity to live cables, construction activities where plant and materials may come into contact with overhead lines, tree clearance as well as tree harvesting, installation and maintenance of street furniture, (two employees were electrocuted last year when a lighting column they were replacing contacted an overhead line), and building maintenance work on houses etc with an overhead uninsulated supply.

9 The work may involve the DNO's own employees, but in many instances the request to make dead will come from contractors. The electricity industry has expressed particular concern over the latter, saying it is unfair that planned shut downs, solely for ensuring the safety of a third party, are included in the Ofgem target formula.

10 There is also the separate concern relating to large capital expenditure items. Ofgem's targets do not take such matters into account as a matter of course, so companies believe they are inhibited from doing this work. In some instances the work will be purely safety related, but in others it will involve improvements that have related safety benefits e.g. improving network resilience. The type of projects involved include putting overhead lines underground, and replacement of uninsulated lines with ones which are insulated.

#### AGREED HSE/OFGEM POSITION

11 Ofgem acknowledges that safety related matters are important, and does take these into account when setting targets. Performance targets are based on historic performance and thereby take into account safe working practices. If individual companies feel that the data is no longer valid, they can ask that it be reviewed.

12 Large capital investment projects should be built into submissions made for the five-year review. In the event of a situation arising unexpectedly and giving rise to costs that would have a material impact on the finances of the company, for example problems identified following the investigation of a serious incident or fatality, there is the option of requesting Ofgem to make adjustments to price control allowances at any time.

13 This overall regulatory framework for electricity companies requires and enables them to deal effectively with safety related matters, be they routine isolation, large-scale capital projects or one off emergencies

**14 HSE/Ofgem are agreed that any decision about working live must satisfy the requirements laid down in the Electricity at Work Regulations. HSE's legal advice is that the electricity industry should not take any possible financial penalty imposed by Ofgem into account when assessing safety related matters. It is not, and never has been, Ofgem's intention to encourage DNO's to compromise on health and safety issues.**

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