



**Decision 001/10/ED of the 1<sup>st</sup> of June 2010  
in virtue of the Malta Resources Authority Act (Cap. 423)  
on the Complaint by Mr. John Mary Gatt against Enemalta Corporation**

**I. Determination**

**Whereas**

- I.A.** The MRA has received a complaint as stated in Section II. of this Decision by Mr. John Mary Gatt (I.D. No. 0856052 M), residing at Nashville, Plot 22, Triq 1-10 ta' Frar, Qawra (hereinafter to be referred to also as 'the complainant'), regarding an application (No. 4922/07), submitted to Enemalta for the provision of an electricity service in a Rural Room at tal-Qadi l/o Burmarrad.
- I.B.** MRA has taken note of the complaint and has investigated the matters raised in it.

**II. Considerations**

**II.A. Facts**

1. The complainant is contesting the fact that on submitting the above mentioned application, Enemalta has refused him a service connection from an overhead line near his property, requiring that he should instead be served by an underground cable, with the meter to be fixed at a location not being his premises and at a higher expense than would be the case should the complainant be served from the nearest point of supply, in this case being the overhead line.
2. In a letter to the complainant dated 15 February 2008, Enemalta explained that the reason for such a request was that "... the room was situated next to a fireworks factory" and justified its action "... as a measure in line with current safety regulations."
3. On 3rd October 2008, MRA had informed Enemalta by means of an email of the abovementioned complaint and also because of the fact as stated by the complainant that Enemalta "...has acted differently with another applicant in the vicinity of the fireworks factory providing him with a service from the overhead line. While it is appreciated that Enemalta has the duty to safeguard the safety of its personnel on the other hand there has to be a consistency in the practice."

4. Enemalta responded to MRA's communication also by another email on the 3rd October 2008 by stating that "...we normally retain the 183 m safe distance established by law, from fireworks factories i.e. we are refraining from providing a supply point closer than 183 m. We do provide a supply point at 183 m closest, then it is up to the customer to extend to the factory. This is the guiding principle.", and promising to return with details with regard to the issue of giving preference to the installation of underground cables instead of overhead lines in such situations.
5. On the 27th October 2008, MRA received an email from Enemalta, containing further details with reference to the case in question stating that "This is a request for electricity near a fire works factory (FWF). As such we are retaining a distance of 183 m from the FWF to the metering point. It happened that in the past this distance was not retained and customer rightfully is objecting that since there are another 2 services within the 183 m he should be provided with electricity like them. Our proposal is to have the other 2 meters together with this applicant to the safe distance of 183 m. For this reason an estimate was worked out for the placing the existing 2 meters and the new one at 183 m. This worked out to Euro 1916 excluding trenching works. His share amounted to Euro 1008. The cost of trenching and laying worked out to Euro10, 527 to be carried out by the customer."
6. By means of a letter dated 18<sup>th</sup> December 2009 to Enemalta, the Authority while recapitulating the facts as known to it and as already stated above stated that:

"Enemalta is insisting that the meter should be located at a distance of not less than 183 metres from a fireworks factory which is within a 183 metres radius from where the service is requested to be provided by the complainant.

Enemalta has justified this course of action as a measure which is in line with current safety regulations, presumably referring to the Explosives Ordinance. The Ordinance however provides for such a measure to be taken only in the case of the establishment of gunpowder or other similar factories, which is not so in this particular case.

Enemalta has previously acted differently by providing electricity service from an over-headline to other consumers in the vicinity of the fireworks factory and by providing such service to the fireworks factory itself.

The Authority is requesting Enemalta to act in a proportionate and non-discriminatory manner with regard to the complainant in question, and to provide the electricity service from the nearest feasible point of supply.

You are kindly requested to inform the Authority of your intended action in writing within twenty calendar days from the date of this letter. In the

absence of a reply, the Authority will proceed to provide a formal decision.”

7. Enemalta replied by means of a letter dated 29<sup>th</sup> December 2009 stating that “... the rural room in question is located directly adjacent to an existent fireworks factory and also within 183 m of a second fireworks factory. While it is true that overhead lines pass through the area, Enemalta has received advice from the AFM that the 183m safety distance applicable to fireworks factories should apply to electricity services. Enemalta is now enforcing this policy and measures will be taken to remove overhead lines which are located within the 183 m safety zones after due coordination with the owners of the fireworks factories and the AFM to ensure safety both to our personnel and third parties.

Enemalta have proposed a year ago a cost sharing solution to Mr. Gatt, who however has not accepted it and his application has been cancelled, and the application fee refunded. Mr Gatt is being asked to finance the trench himself and Enemalta is proposing to use the trench to relocate the other services. They do not propose to share the costs of the trench and this is not an equitable offer.

This policy is being applied to all similar cases and is in line with the law regulating fireworks factories and is both proportionate and non-discriminatory. Supply may be provided to such applicants from the nearest safe point and will be extended at a charge in accordance with the provisions of the Electricity Supply Regulations”.

8. MRA responded to Enemalta by means of a letter dated 31<sup>st</sup> December 2009, and making reference to the cost sharing arrangement that Enemalta had proposed to the applicant (Mr. John Mary Gatt), requested details of the arrangement and a copy of the advice received from AFM.
9. In a letter dated 27 January 2010 Enemalta explained the cost sharing arrangement proposed to the complainant in 2008 which would have required Enemalta to spend an estimated Euros 6000 in order to deviate the existing aerial lines up to point A (as shown on the Enemalta site plan) and to provide cables from point A to C. On the other hand the complainant was requested to finance the trench from point A to E and the cable from point C to point E paying a sum of Euros 11,535.

## **II.B Assessment**

### **The Explosives Ordinance**

10. Enemalta has justified its course of action as a measure which is in line with current safety regulations, referring to the Explosives Ordinance. The Ordinance however provides for certain measures to be taken only in the case of the establishment of gunpowder or other similar factories, which is not so in this particular case. Enemalta had justified its stance by

referring to an e-mail communication with Major M. Spiteri (Ammo & explosive company, AFM).

It is clear that the provision in question does not apply to the situation of the applicant. Here reference is being made to article 4 of the Explosives Ordinance, referred to by Enemalta, which states:

“The following precautions shall be required to be observed to the satisfaction of the Commissioner of Police in every case in which a gunpowder factory or other similar factory is established:

- (a) that the factory shall be at a distance of not less than one hundred and eighty-three metres from -
  - (i) any inhabited place;
  - (ii) any street which may be used regularly for the passage of motor vehicles; or
  - (iii) any other street within one hundred and eighty three metres of which it would not be advisable, in the opinion of the Commissioner of Police, after consultation with the Director of Public Works, to establish such a factory;

Enemalta is applying by analogy this provision to the case of overhead electricity lines. The Explosive Ordinance refers to inhabited places,<sup>1</sup> to any street which may be used regularly for the passage of motor vehicles, or to any other street within one hundred and eighty three metres of which it would not be advisable, in the opinion of the Commissioner of Police, after consultation with the Director of Public Works, to establish such a factory. The law does not specify services infrastructure such as electrical lines or telephone lines as giving rise to the prohibition mentioned in article 4 of the Explosive Ordinance, nor does it give any discretion to Enemalta to refuse to provide electricity service from electrical lines when such lines lie at a distance of not less than one hundred and eighty-three metres from where a gunpowder factory or other similar factory is established.

11. Enemalta Corporation has stated that it is applying the same policy to other similar cases. However, Enemalta has previously acted differently by providing electricity services from an overhead line to other consumers in the vicinity of the fireworks factory and by providing such service to the fireworks factory itself. Furthermore, the Corporation when requested by the Authority to provide details of the other instances to which this ‘policy’ was applied or which is in the process of being applied, gave no reply.

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<sup>1</sup> The Explosives Ordinance defines an "inhabited place" as any place in which there is an aggregation of houses inhabited, or capable of being inhabited, by more than one hundred persons;

### **The Electricity Supply Regulations**

12. The Electricity Supply Regulations establish the application fees for services falling under the category of standard connections and the methodology for the calculation of connection fees which may be charged by Enemalta. The 'policy' being applied in this case by Enemalta is not contemplated by the Electricity Supply Regulations.
13. The offer made by Enemalta as explained by the letter dated 27<sup>th</sup> to the Authority would result in the complainant paying 11,535 euros for a service that in normal circumstances would have cost him the standard application fee of Euros 300 if provided from a nearby overhead line.

### **Cost sharing arrangement**

14. The costs sharing arrangement proposed by Enemalta requires the complainant to finance the whole of the trenching works required to be done for the laying of an underground cable, up to the room where the service is to be provided to the complainant. Under this scenario Enemalta would be utilising part of this trench to be used in common for the replacement of the two electrical services provided from overhead lines to two other customers located in the vicinity of the complainant, without in fact there being any sharing of the costs. Enemalta would be supplying the cables in the common trench from point A to C for all the three customers. The proposed arrangement would require the two existing customers to finance the part of the trench and cable that are not common but which are required to complete the service connection to their premises from point B and C respectively (as indicated on the Enemalta site plan). In effect Enemalta is intending to require existing customers to pay further connection charges to those already paid for. Furthermore the arrangement offered to the complainant is objectionable in itself apart from the merits of the case in question, since not all the expenses would be shared by all parties in a proportionate manner as outlined above.
15. It is also to be noted that Enemalta intends to locate all the electricity meters on a pole indicated as position A on the Enemalta site plan. This effectively means that all the cables beyond this point A, (and all to be laid in a trench to be located in a public way) would form part of the internal electrical installation of the customers involved. Enemalta would thus be waiving any responsibility as regards maintenance and repairs vis-à-vis those cables.
16. Enemalta is justifying its course of action by raising occupational safety issues. It is understandable that Enemalta should strive to safeguard the safety of its personnel. However the Corporation should resort to less drastic measures by establishing proper working practices and procedures that mitigate any risks which may be involved. These working practices and procedures could for example require that none of Enemalta's personnel should perform works in the vicinity of, or in or near the

fireworks factory itself when there is potential for danger during the hours when fireworks are manufactured or in the event of danger from lightning or other potentially risky situations being present.

### **The legal position**

17. Article 14(1)(b) of the Enemalta Act provides as follows:

“14. (1) Subject to the provisions of this Act and to any other requirement provided under any other law or in any authorisation, licence or permit howsoever described, Enemalta may –

(b) supply electrical energy to any person who undertakes to enter into a contract with Enemalta, giving such security as the Corporation may require, to take or continue to receive, and to pay for a supply of electrical energy upon such terms and conditions and for such period as the Corporation may determine”

While on the one hand, article 14(1)(b) provides a certain measure of discretion to Enemalta to impose such terms and conditions and for such period as the Corporation may determine upon any person who undertakes to enter into a contract with Enemalta, for the supply of electrical energy, Enemalta is not allowed to impose terms and conditions which are manifestly unfair, discriminatory and disproportionate as in the case in question. For while article 14(1)(b) provides this measure of discretion Enemalta is also bound to observe article 3 (6) (b) of the Enemalta Act, which provides that in carrying out its functions at law, Enemalta shall:

“(b) be subject to and abide by any laws, orders, directives, standards, and other legal requirements howsoever described, as may be imposed by or under the Malta Resources Authority Act or any other law;”

Article 20 (1) of the Enemalta Act also provides that:

20. (1) The prices to be charged by Enemalta for the supply of electrical energy and related services shall be in accordance with such tariffs as may, from time to time, be approved by the Malta Resources Authority.

Article 20 (3) also requires Enemalta *inter alia* to ensure that

“any such tariffs and agreements shall not give undue preference as between consumers similarly situated or make undue discrimination as between persons similarly situated having regard to the place and time of supply, the quantity of electrical energy supplied, the consumer load and power factor, the purpose for which the supply is taken and any other circumstance which could

justify a preferential or discriminatory treatment.”

In terms of Regulation 13(1) of the Electricity Regulations, 2004 Enemalta Corporation is designated as the distribution system operator in Malta.

In terms of regulation 20 (3) of the Electricity Regulations, the distribution system operator (Enemalta) may be required by the Authority, if necessary,

“to modify the terms and conditions, tariffs, price structures, rules, mechanisms and methodologies referred to in these regulations, to ensure that they are proportionate and applied in a non-discriminatory manner, and undertakings so directed shall comply with such directions.”

### **III. Decision**

**18. For the above reasons the Malta Resources Authority hereby determines as follows:**

The Authority holds that the arrangement being imposed by Enemalta on the complainant is unfair, discriminatory and disproportionate.

Enemalta is thereby required to take the necessary remedial action by providing the electricity service requested by the complainant from the nearest feasible point of supply in terms of the Electricity Supply Regulations, and which in this case is the overhead line situated nearest to the complainant’s premises.

Dr Reuben Balzan  
Chairman