

Information paper on ownership and maintenance of customer service lines

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This paper does not discuss or relate to the provision of line function services (as required by section 62 of the Electricity Act 1992) by certain parties until 2013.

Purpose

1. Determining who owns, and who is responsible for maintaining, a customer service line is often problematic, and must be considered on a case by case basis as there is no legislation that comprehensively addresses the ownership, or responsibility for maintenance, of customer service lines.
2. This paper:
 - (a) explains that in many (but not all) cases, the part of a customer service line used exclusively to supply an end consumer and located on the end consumer's private property will be owned by the end consumer. This means that the end consumer will be responsible for maintaining that part of the customer service line;
 - (b) provides information which may be helpful in determining who owns and/or who may be responsible for maintaining a particular line in cases where the line crosses or is fixed to properties owned by third parties, or is used to supply electricity to other properties before reaching the end consumer; and

- (c) suggests ways to prevent future disagreements by encouraging all parties to ensure that ownership is clearly agreed and documented for future reference, including prior to any property purchase.
- 3. A customer service line is a line that conveys electricity between the network of lines owned by a network company (the “network”) and a customer’s premises. The point at which the network ends and the customer service line begins is called the “point of connection” (POC)¹.
- 4. A customer service line may be owned by the end consumer, either alone or in part by a third party (for example, where the last length of line to the consumer’s property branches off a line owned by a neighbouring consumer). A customer service line may be located on private land (the end consumer’s private land or a third party’s private land) or, for example, it may be located on public land, such as road reserve.
- 5. Appendix 1 also includes legislative and other definitions of terms used in this paper.

Introduction

- 6. The legal position regarding who owns a line can vary, depending on the legislation in place at the time that the relevant line was built, whether contractual arrangements altered the initial legal position, and whether the line crosses or is fixed to properties owned by third parties (other than the end consumer), or is used to supply electricity to other properties before reaching the end consumer.
- 7. Even if ownership is clear, it does not follow that the owner of a customer service line is required to maintain the relevant line.
- 8. The Electricity Act 1992 (“Act”) protects rights of access for owners of lines (“existing works”) built or under construction as at 1 January 1993 up to the “point of supply” (“POS”) as defined in the Act, which is generally, but not always, at the boundary of the end consumer’s private land. This enables (but

¹ “Customer service line” and “point of connection” are defined in the Commission’s draft model domestic contract (as released for consultation in April 2008) as <http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/modelcontracts08>

The location of the POC must be identified on a case by case basis for each customer. The POC for a particular customer, for example, could be well on the network side of the POS. For another customer, the POC and the POS could be at the same place.

does not require) owners of existing works to maintain those lines up to the POS.

9. For lines built after 1 January 1993, easements or other legal arrangements were required to allow for building and access for maintenance. For those lines, most, but not all, network companies have required the consumer supplied by the relevant line to own the line. Ownership (and therefore maintenance responsibilities) for lines built from 1993 is therefore normally clearer.
10. In the absence of further legislative changes, the ownership of, and responsibility for maintaining, lines must be determined on a case by case basis.

Why issues arise with customer service lines

11. In general, the responsibility for maintaining (including repairing) a line rests with the owner of that line, unless the owner and a third party have agreed otherwise.
12. In many (but not all) cases, the part of a line that is located on an end consumer's private property, and used exclusively to supply the end consumer, will be owned by the end consumer because the line is a "fixture". Therefore, the end consumer (the owner of the customer service line) can ensure that the line is maintained (for example, by paying a contractor to maintain or repair the line).
13. However, beyond the boundary of the end consumer's private property, disputes may arise when maintenance, repair, or replacement of a line is required and neither the consumer nor the network company believes that they own the line, or a third-party owner of a line does not believe that they should be responsible for maintaining it.
14. Disputes may also arise relating to access to the customer service line for the purpose of maintenance, for example if the line is owned by the end consumer but is located on land that is not owned by the end consumer.
15. The legal position is often unclear because:
 - (a) it is often decades since the customer service line was built and over time documentation, if it ever existed, has been lost; and

- (b) legislation dealing with customer service lines has changed a number of times over the past 100 years.
16. In addition, the need for maintenance or replacement often arises either in a dangerous situation, or failure of a line that leaves the consumer without electricity supply.² Due to the urgent need to restore supply and avoid consequential damage, there is often no time for consumers or the network company to research who owns the relevant line or whether arrangements already exist regarding who must maintain or replace the line. This may lead to complex disputes after the event when it is time to determine who is required to pay for the maintenance or replacement of the line.
17. Standard consumer contracts do not normally address ownership of customer service lines because the legal position may vary significantly from consumer to consumer. Therefore, standard consumer contracts generally indicate only that the consumers are responsible for maintenance of lines on the consumer's side of the POS, or the POC, as the case may be.

Issues related to ownership and responsibility for maintenance and repair of customer service lines built prior to 1993

Ownership

18. Identifying ownership of lines built before 1993 can be problematic as little or no documentation may exist regarding who owns, or is responsible for maintaining customer service lines. There are numerous statutory provisions covering customer service lines dating back for almost a century and customer service lines could have been built many decades ago under legislation that is no longer in force.
19. Once built, and provided they are maintained, lines can be in place for many decades and this tends to be a contributing factor to the lack of clarity regarding ownership of lines built prior to 1993.

Maintenance – responsibility

20. In terms of maintenance, in general the responsibility for maintaining (including repairing) a line rests with the owner of that line, unless the owner and a third party have agreed otherwise.

² The Electricity (Hazards from Trees) Regulations 2003 impose obligations on works owners and tree owners to take steps so that trees do not encroach on lines. This reduces the risk that lines will be affected by falling trees.

21. In practice, who actually maintains and repairs lines varies from network to network.
22. Most network companies will not assume responsibility for maintenance or repair of a customer service line (i.e., the part of the line not owned by the network) unless a specific agreement exists between the network company and the consumer. Therefore, in the event that a customer service line needs to be maintained, repaired, or replaced, the network company will expect that consumer to pay the full costs involved.³
23. Similarly, a third party owner of a customer service line (i.e. a person other than the relevant network or the end consumer) may require the end consumer to pay the full costs of maintaining or repairing the line.

Maintenance – access

24. Section 23 of the Act gives an owner of existing works the right to enter land for the purpose of maintaining those works. Section 23 was included to avoid the effect of the repeal of the previous legislation. It essentially preserves the rights of existing owners of lines located on land not owned by them to access such works for maintenance. If a customer service line is an existing work, therefore, the owner of that line is permitted by the Act to access that line for maintenance, provided the process for doing so (as set out in the Act) is followed.
25. For a customer service line that is not an existing work, determining access for maintenance for the part of the line located on a third party's land⁴ requires arrangements to be made with the owner of the land on which the line is located.

Issues related to ownership and responsibility for maintenance and repair of customer service lines built from 1993 onwards

Ownership

26. The ownership of lines built from 1993 onwards should generally be clear as easements for sections of the lines on private land are more likely to be in place than for lines built prior to 1993.

³ However, some local network companies have decided, as a matter of policy, to assume responsibility for maintenance and repair of customer service lines (for example, Orion in Canterbury).

⁴ Third party land may include Council land or other public land.

27. To date there appear to have been few disputes relating to customer service lines built from 1993 onwards. This could reflect clearer documentation for those lines, but it may also reflect the fact that major replacement (and associated costs) has not yet occurred.
28. However, problems may occur if, for instance, land is subdivided: for example, if a customer service line crosses a third party's land without an easement being obtained (e.g. a family member builds on the same block of land, but the land is subdivided and sold at a later date without an easement being registered).
29. It is likely that, as time passes, and the original parties involved in the construction of customer service lines change, lines built from 1993 onwards could become more problematic. It is therefore important that ownership of, and rights to access, lines are documented.

Maintenance - responsibility

30. As noted above in relation to lines built before 1993, in general the responsibility for maintaining (including repairing) a line rests with the owner of that line, unless the owner and a third party have agreed otherwise.
31. Similarly, while, some network companies have taken the approach that they do not wish to be responsible for any customer service lines (i.e. lines which are not owned by the network), at least one has taken the approach that it is prepared to be responsible for repairs and maintenance of customer service lines.
32. However, disputes may arise if a third party owner of a customer service line does not consider that they should be responsible for maintaining it.

Maintenance – access

33. Access to private land for customer service lines built since 1993 is not protected by specific electricity industry regulation. Owners need to have an easement to access a third party's land to effect repairs and maintenance. In general, such arrangements appear to have been put in place for lines built from 1993 onwards.

Determination of ownership – all customer service lines

34. Ownership cannot be automatically determined based on who paid for a particular line to be built. It cannot be assumed that just because the consumer paid for the line by way of a capital contribution that they have any claim to ownership.
35. Conversely, network companies cannot simply state they are gifting lines to their consumers. A gift must be accepted and it is not possible for a network company to avoid ownership by merely announcing it is gifting lines.

Types of disputes that can occur

36. Below are two examples which highlight the potential areas of dispute. They do not represent the full range of potential issues and are included to illustrate the type of problems that may occur. The examples are followed by a discussion on steps that can be taken to avoid or deal with these problems.

Example one

37. A residential property is subdivided leaving part of the original customer service line on the newly created front lot. Therefore the customer service line runs over the newly created front section to reach the house which is now on a back section. The network company states that = customer service line starts where the line enters the private property, and this is where the network company's responsibility ends. This was the previous POS i.e. the property boundary when it was one section, and also the POC.
38. If the customer service line is fixed to the new front section (for example, by a pole located on the front section, or if the line is under the front section), the law relating to fixtures is likely to mean that the new purchaser of the front section owns that part of the customer service line on (or under) the newly created section.
39. Alternatively, if the customer service line is not fixed to the new front section, the owner of the back section may still own the entire customer service line.
40. In either case, if supply to the back section is compromised, the owner of the back section will need to make some arrangement with the owner of the front section to enable access to the part of the customer service line on the front section in the course of restoring the supply of electricity to the back section.

Example two

41. A new subdivision is created with eight lots. All lots are supplied from a pole on one of the lots. There is also a line on the shared driveway to the roadside. The network company states that it does not own either the shared line or the pole. In this case there is a lack of clarity regarding ownership.
42. It is likely that the property developer paid for the line and the pole. If this is the case, then there should be an easement in place covering maintenance of services on the drive.
43. In relation to ownership of customer service lines supplying the lots, if they are all fixed to the pole on one lot, then the owner of that lot may own at least part of the customer service lines supplying the other lots. If no contractual provisions or easements are in place, the following questions arise:
 - (a) Are the pole and shared line on the driveway owned jointly and is everyone jointly responsible regardless of their distance from the pole and the length of line required to serve them?
 - (b) What if the customer service line between two of the lots requires repair, is that a joint responsibility for all eight lot holders or just the ones affected?
 - (c) What rights of access are there for the other property owners to the pole which is on one property?

What steps can be taken to avoid or deal with these problems

44. Affected parties can take steps to mitigate disputes over ownership and responsibility for existing lines and to avoid problems in the future. These are outlined below.

Steps all parties can take

45. As the ownership of a line, and responsibilities for maintaining and repairing that line, may be governed by statutory provisions as well as any contracts that are in place relating to the line, each case must be researched independently.
46. Understanding the individual circumstances and locating any relevant paper work well in advance of any dispute arising is recommended for all parties as there may be different perceptions and also access to different documentation.

47. The information which will be helpful in deciding in each particular circumstance includes:
- (a) When was the line built?
 - (b) Which legislation was in place when the line was built?
 - (c) Is there any paperwork related to the building or ownership of the line?
 - (d) Is there a specific contract or easement that covers the ownership and/or maintenance of the line?
 - (e) Whose land does the line cross? Does the line cross public land or private land owned by another party?
 - (f) Where is the POS?
 - (g) Where is the POC?
 - (h) Whose land is the line fixed to? For example, is it fixed to a particular piece of land by a pole or runs under the land?
 - (i) What were the standard terms and conditions of supply of the network company at the time the line was built?
 - (j) What is the network company's current policy?
 - (k) Who has maintained the line in the past?
48. The answers to these questions may not completely resolve the matters in dispute, but may assist any investigation of ownership and responsibility.

Steps network companies can take

49. In order to ensure ownership of, and maintenance responsibilities for, lines are clear, it is desirable for network companies to:
- (a) Clearly communicate the company's policy regarding maintenance of customer service lines (i.e., lines not owned by the network) to anyone potentially affected or with the ability to influence those affected. This should include electricity retailers, consumers, land developers, lawyers, and councils. Publishing the company's policy on the website would provide a valuable source of information for affected parties.

- (b) Undertake the proactive identification of customer service lines where the network company believes that the POC is on the network side of the POS. This could also include advising consumers of the position of the POC and POS.
- (c) Compile and maintain documentation on the ownership of, and responsibility to maintain, customer service lines, including lines that the network company does not believe that it owns, if the company believes there could be potential for disputes in the future.

Steps retailers can take

50. It is desirable for retailers to:

- (a) Ensure that its retail team is fully aware of the network company's policy on customer service lines in each area in which the retailer supplies electricity.
- (b) Develop contracts that explain that end consumers may be responsible for maintaining customer service lines supplying the consumer.

Steps consumers can take

51. Consumers can take the following steps to ensure that they are aware of who owns the line supplying the consumers' property, and who is responsible for maintaining the line⁵:

- (a) Undertake proactive identification of lines used to supply the consumer's property.
- (b) Check that easements or other arrangements are in place that determine ownership and maintenance responsibilities if purchasing of land where the supply is via customer service lines, or purchasers of land where there is a supply line crossing over it.
- (c) Understand local network company policy regarding maintenance of consumer services lines, and find out where the network company believes the POC is located.

⁵ From the point where the line crosses the boundary of private property on to a consumer's property, the line will in many (but not all cases) be a customer service line owned by the consumer.

- (d) If there are other parties (i.e. neighbours) affected, discuss the situation with them and try to come to a united position to present to other parties.
- (e) Maintain documentation on customer service lines affecting the consumer, including lines not owned by the consumer if there is a possibility that disputes will arise in the future.
- (f) Ensure that for every new customer service line, easements are in place.

Steps subdividers, advisers, and Councils can take

52. Those wishing to subdivide land or to advise on subdividing land, councils, lawyers, etc can take the following steps:
- (a) Research and understand local network company's policy.
 - (b) Research and understand current legislation relating to customer service lines.
 - (c) Ensure that the creation of new customer service lines (e.g. via subdivision which moves the POC further away from the POS) is covered by the establishment of easements and that there is agreement with the network company on who will own that supply line and who will be responsible for its maintenance and replacement.

Steps lawyers can take

53. Lawyers assisting in the subdivision or purchase of land can take the following steps:
- (a) Ask subdividers or purchasers if there are lines that cross the land, check for easements and advise on any maintenance or ownership issues for those lines.
 - (b) Ensure that that any customer service lines are clearly identified and their status with the network company understood.
 - (c) Ensure that, if the purchaser is to be responsible for the customer service line, there are appropriate easements in place or that statutory provisions provide them with access.

Conclusion

54. For existing customer service lines, it is likely that disputes will still occur due to the expensive nature of maintenance and replacement of these assets and the frequent lack of clear documentation of responsibility. However, if the steps outlined above are taken, the number and level of disputes should be minimised.
55. For new lines, if the steps outlined above are taken, then it should be possible to avoid future disputes.

Appendix 1: Definitions

Customer service line is defined in the draft model domestic contracts (as released for consultation in April 2008) as follows

<http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/modelcontracts08>:

Customer service line means those lines (whether owned by you or a third party or parties) that convey electricity between the Network and your Premises;

Electrical installation is defined in section 2(1) of the Electricity Act 1992 as follows:

“Electrical installation”–

- (a) Means all fittings:
 - (i) That form part of a system for conveying electricity; and
 - (ii) That form part of such a system at any point from the point of supply to a consumer to any point from which electricity conveyed through that system may be consumed; and
- (b) Includes any fittings that are used, or designed or intended for use, by any person, or in connection with the generation of electricity for that person’s use and not for supply to any other person; but
- (c) Does not include any electrical appliance.

Existing works is defined in section 2(a) of the Electricity Act 1992 as follows:

“Existing works”,–

- (a) in relation to works owned by the Corporation, means any works constructed before the 1st day of January 1988; and includes any works that were wholly or partly in existence, or work on the construction of which commenced, before the 1st day of January 1988:
- (b) in relation to works owned by any other person, means any works constructed before the 1st day of January 1993; and includes any works that were wholly or partly in existence, or work on the construction of which commenced, before the 1st day of January 1993:

Fittings is defined in section 2(1) of the Electricity Act 1992 as follows:

“**Fittings**” means everything used, or designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance or use of electricity.

Point of connection (POC) is defined in the Electricity Governance Rules 2003 (Rules) as follows:

“**Point of Connection**” means a point where electricity may flow into or out of the grid, local network or embedded network.

Point of connection is also defined in the draft model domestic contracts *[reference to be inserted]* as follows:

Point of Connection means the point where your Customer Service Line connects to the Network;

Point of Supply (POS) is defined in section 2(3) of the Electricity Act 1992 as follows:

- [(3) In this Act, “**point of supply**”, in relation to a property, means the point or points on the boundary of the property at which exclusive fittings enter that property, except that,—
- (a) If there are both high voltage lines and a transformer owned by the electricity distributor (network company) on the property, the point of supply is the point at which electricity from the transformer enters exclusive fittings; or
 - (b) If there are non-exclusive fittings on the property, the point of supply is the point at which those fittings become exclusive fittings; or
 - (c) If the exclusive fittings on the property are owned by a consumer that is a tenant or licensee of the owner or occupier of the property, the point of supply is the point at which those exclusive fittings enter the area leased or licensed by the consumer; or

- (d) If there is specific agreement that any other point on the property is the point of supply, the point of supply is the agreed point;—

and, in this definition,—

“Exclusive fittings” means fittings used or intended to be used for the purpose of supplying electricity exclusively to that property

“High voltage lines” means lines conveying electricity at a voltage of 1000 volts or more

“Property”—

- (a) means the land within the boundary where the electricity is consumed:
- (b) includes the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier:
- (c) includes the whole of any property that has been subdivided under the Unit Titles Act 1972

“Specific agreement” may be an agreement—

- (a) entered into by—
 - (i) the existing consumer; or
 - (ii) any person with a greater interest in the property than the consumer (such as the consumer’s landlord); or
 - (iii) any body corporate under the Unit Titles Act 1972 or the registered proprietor of the land to which the unit plan relates; and
- (b) entered into by the electricity distributor (network company) or the electricity retailer; and
- (c) entered into before or after the date on which this provision comes into force.]

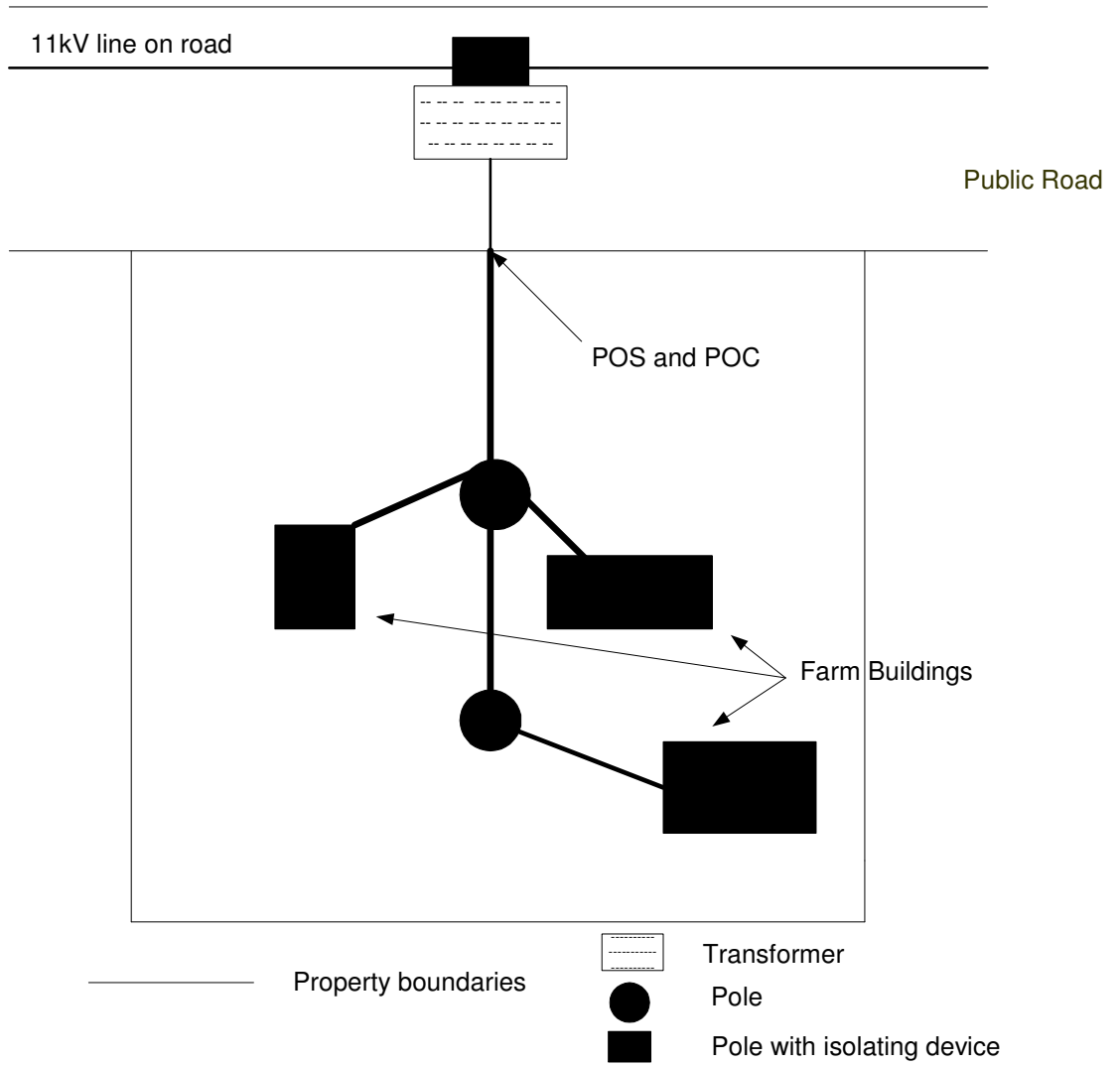
Works is defined in section 2(1) of the Electricity Act 1992 as follows:

“Works”—

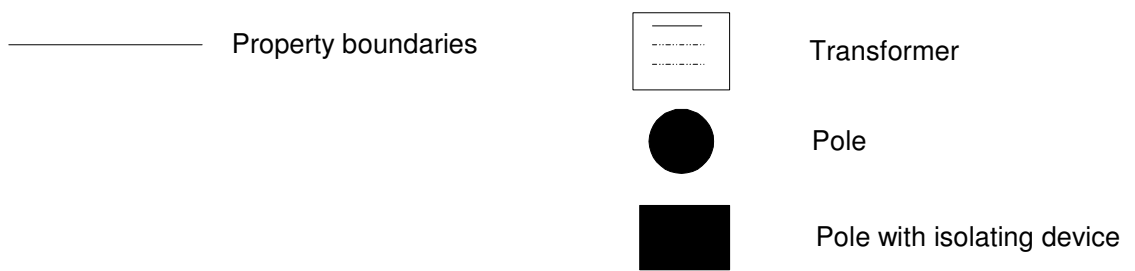
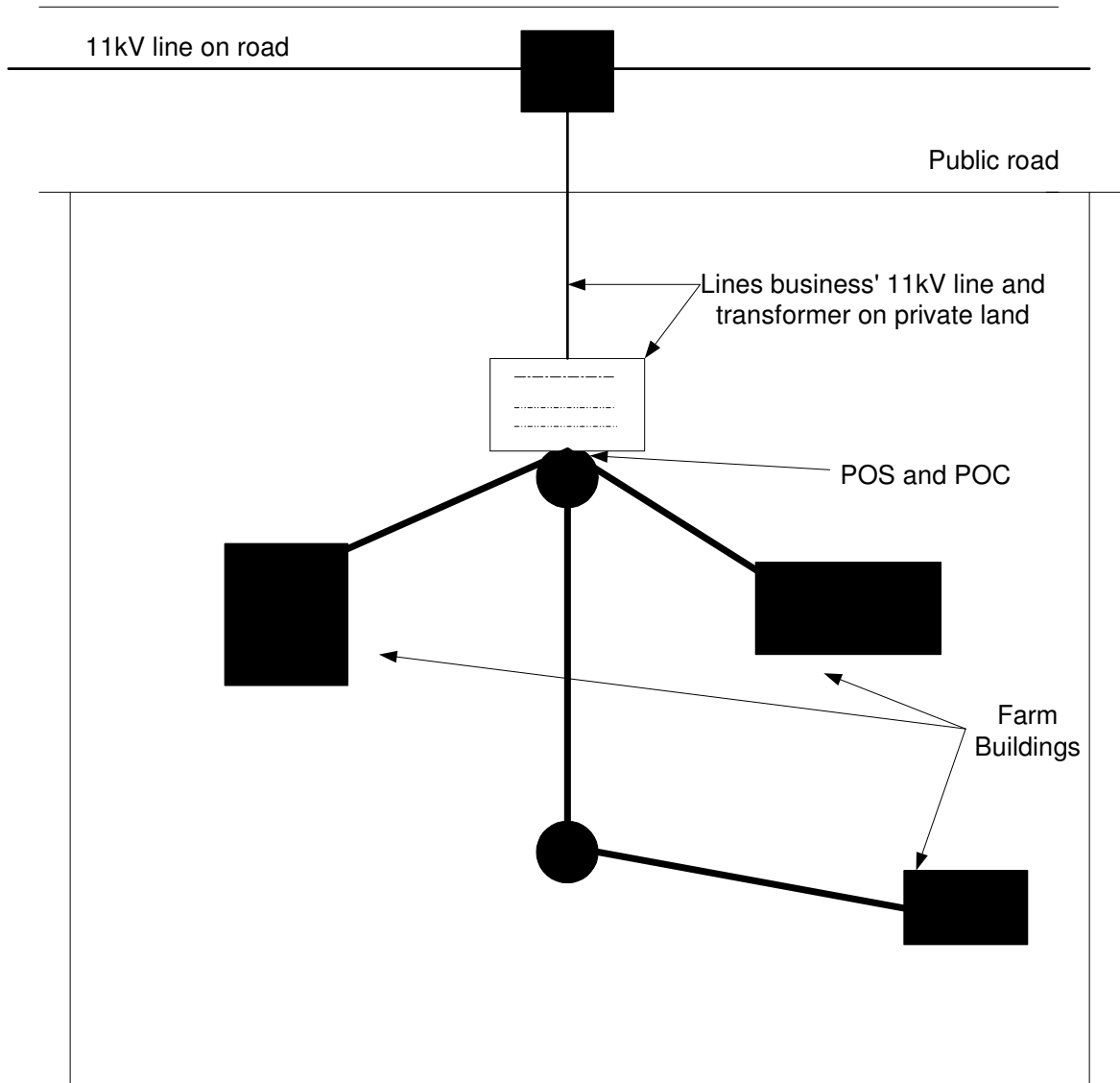
- (a) Means any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but
- (b) Does not include-
 - (i) Any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person’s use and not for supply to any other person; or
 - (ii) Any part of any electrical installation.

Appendix 2: Point of supply and point of connection diagrams

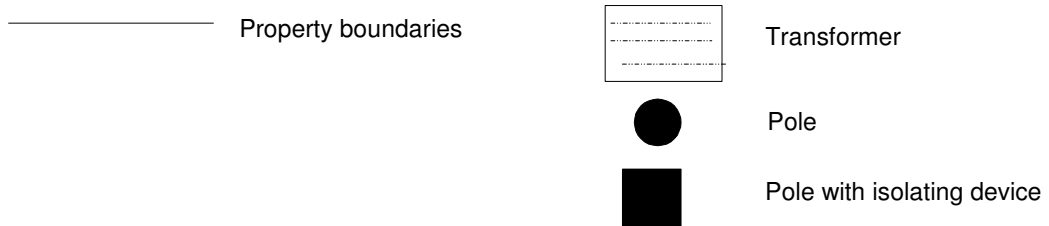
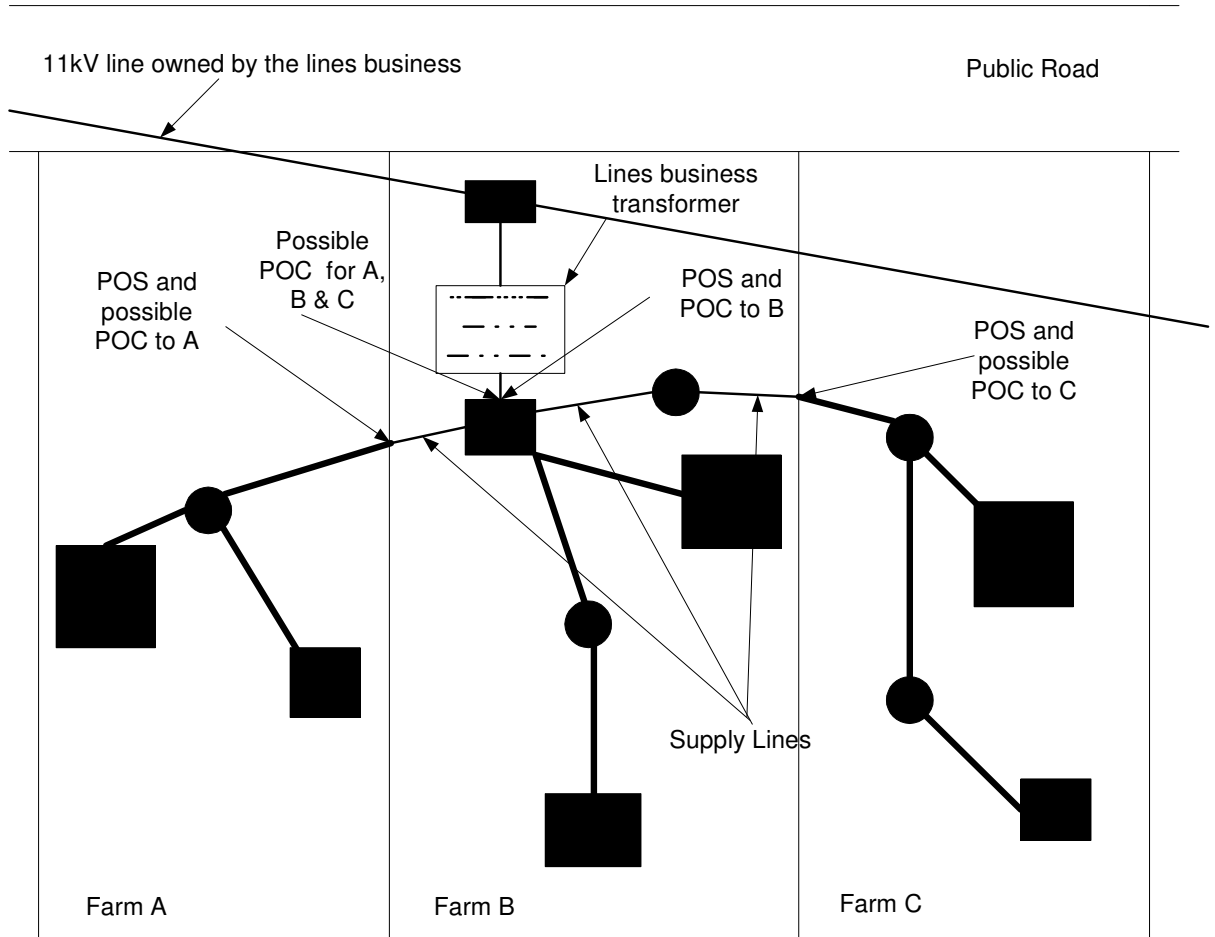
Farm supplied at 230/400 Volts



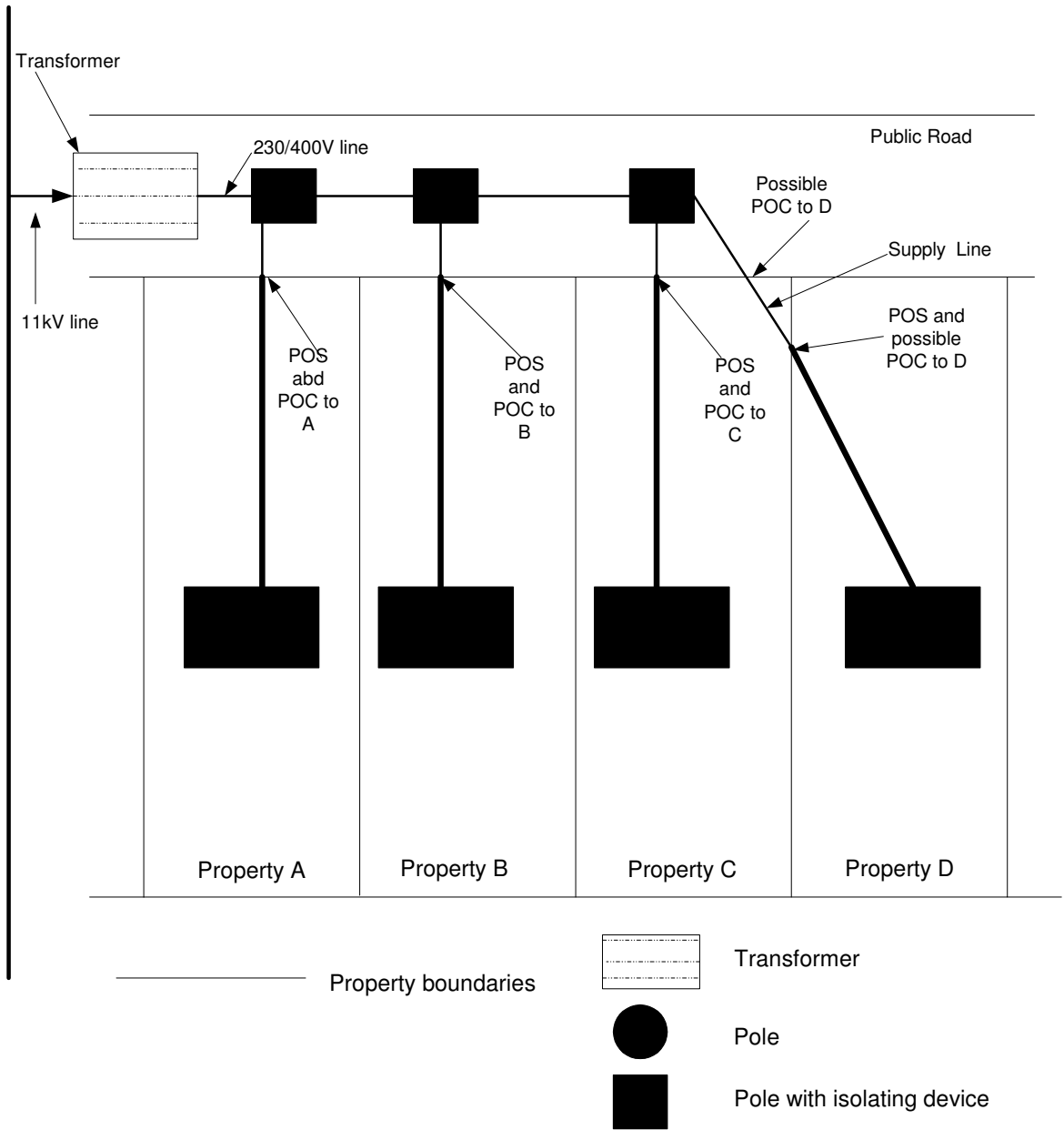
Farm supplied at 11,000 volts



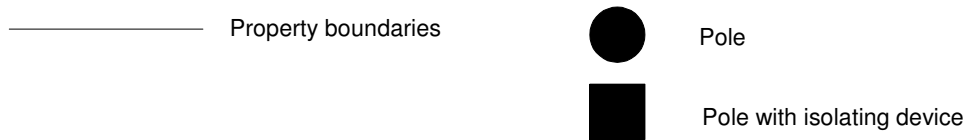
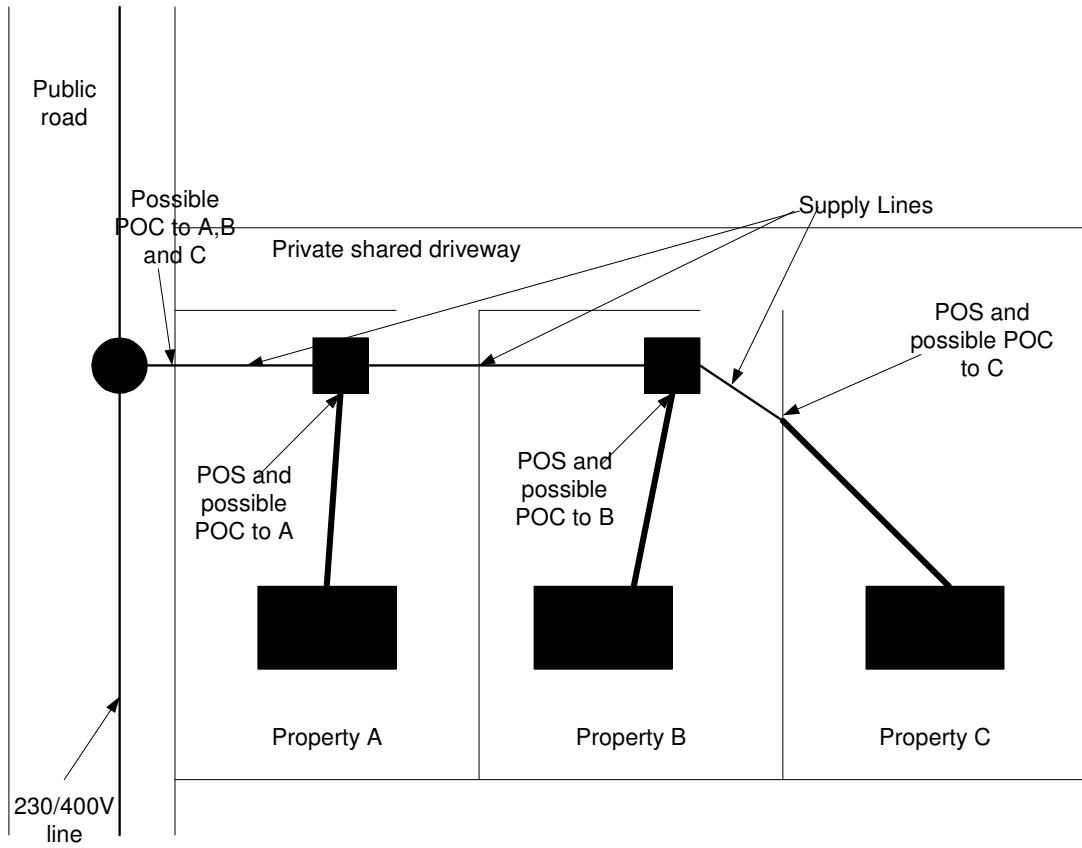
Rural 11kV supply, with 11kV and 230/400V lines on private property



Supply to single urban properties



Supply to three houses where lines cross private property



Supply to group of houses/shops on common title

