

Ecotricity

Email:
retailpolicyinterventions@ofgem.gov.uk

Date: 28 March 2023

Dear Sir/ Madam

Derogations from SLC22B and SLC 22D

This letter sets out the decision of the Gas and Electricity Markets Authority (the "Authority") to grant Ecotricity Limited (Company number 03043412; the "Licensee"), a limited derogation from standard licence condition SLC 22B ("BAT") and SLC 22D (prohibition of Dead Tariffs) of their electricity and gas supply licences respectively, in the terms (and subject to the conditions) set out in the attached directions.

The purpose of these derogations is to support renewable tariffs which have been derogated from the default tariff cap and to benefit customers.

These derogations, which have immediate effect, replace the written statement issued to Ecotricity on 16 August 2022 which provided comfort that Ofgem would not take enforcement action against Ecotricity for not complying with SLC 22B.

Background and policy context

SLC 22B states that "the licensee must ensure that all its Tariffs are available to, and are capable of being entered into by, both new and existing Domestic Customers". Ofgem introduced this measure in April 2022 as a short-term intervention to address risks to consumers from ongoing wholesale market volatility. The principal policy intent of SLC 22B is to temporarily reduce the likelihood of unsustainable price competition between existing suppliers in the event of wholesale prices falling quickly and significantly by stopping suppliers from offering "acquisition only" deals exclusively to new customers.

Ofgem engaged with Ecotricity on the impact SLC 22B would have on its business model, specifically the resulting requirement that it would have to offer its default price capped SVTs to all customers. The supplier incurs materially greater costs for all its tariffs as a result of its business model which is to provide materially greater support for investment in renewable electricity. The supplier sources the same renewable energy for all its tariffs, including its default price cap SVT.

Ofgem acknowledges that if Ecotricity was required to offer its default price capped SVTs, which are potentially cheaper than its derogated green SVT, to new customers it would have to potentially supply more expensive renewable energy below cost to more customers. Ofgem considers that this would undermine the supplier's business model and the transition to net zero.

On 16 August 2022 Ofgem issued a written statement to Ecotricity which provided comfort that Ofgem would not take enforcement action against Ecotricity for not complying with SLC 22B. This confirmed that Ecotricity could offer its default price capped SVTs only to its existing customers coming to the end of their fixed term contracts and who haven't elected to move to Ecotricity's derogated green SVT, a new fixed term contract or another supplier, or who are a deemed customer moving to a property Ecotricity already supply and are going through a change of tenancy process ("Change of Tenancy").

The written statement set out that, notwithstanding supplier obligations to comply with existing licence conditions, Ofgem appreciated that these were not intended to prevent suppliers with derogated green tariffs from operating in the market. The written statement added that Ofgem considered that derogated green tariffs are good for consumers, particularly as we transition towards net zero and away from traditional finite sources of fuel.

The comfort this written statement provided was temporary in nature, intending to remain in force as long as SLC 22B was in force. When Ofgem introduced SLC 22B in April 2022, we scheduled it to expire on 30 September 2022, with a provision in the licence condition to extend it until no later than 31 March 2023.

We also considered granting a derogation from SLC 22D, as a derogation for a standard variable or evergreen tariff from SLC 22B would bring it into non-compliance with SLC 22D (see below).

Since issuing the written statement, we have extended SLC 22B for a longer period than was originally intended, and beyond the written statement's latest expiry of 31 March 2023. On 26 August 2022, Ofgem announced its decision to extend SLC 22B (along with the Market Stabilisation Charge or "MSC") until 31 March 2023. The decision also invited comments from stakeholders on what action, if any, Ofgem should take in relation to the period after 31 March 2023, when the licence conditions for the MSC and the BAT were due to end.

Following further consultation, and in view of the continued high and volatile wholesale energy prices and the need to maintain market stability, on 3 February 2023 Ofgem announced its decision to extend SLC 22B until 31 March 2024, with the licence mechanism amended to enable it to be renewed on an annual basis. The decision also noted the suggestion, made by some consultation respondents, that the BAT should be made a permanent feature and said Ofgem would consider this issue in the coming months.

On 2 March 2023, Ecotricity confirmed to Ofgem that it wanted to continue offering its default price capped SVTs to a subset of existing customers only. It also confirmed that its business model remains the same for offering derogated green SVTs.

Ofgem position on SLC 22B

Ofgem's principal, statutory objective is to protect consumers' interests, now and in the future, including their interest in a cleaner, greener environment. One of the ways we do this is by supporting a low cost transition to net zero. To support this transition we have granted derogations from the price cap to green SVTs which provide materially greater support to renewables than other tariffs.

Ofgem's position on the policy intent behind SLC 22B remains the same as set out in the written statement.

Providing a derogation from SLC 22B for Ecotricity does not conflict with the principal policy intent of SLC 22B. The default price capped SVTs which Ecotricity is seeking to offer only to existing customers cannot be considered "acquisition-only" tariffs which could lead to

unsustainable price competition as they would be available exclusively to existing customers.

Granting Ecotricity a derogation from SLC 22B is in line with the policy intent of the market wide derogation from SLC 22B for certain domestic, fixed term tariffs which are only available to existing customers with the aim of retaining the loyalty of those customers, known as "Fixed Retention Tariffs" Ofgem granted on 7 April 2022. Ofgem stated in the market wide derogation letter that we do not consider that these tariffs affect the risks we are concerned about in relation to market stability, and consider they can have wider benefits to consumers.

Ofgem stated in the letter that this market wide derogation does not cover SVTs given the conflict with other standard licence conditions including the requirements around SLC 22D (prohibition of Dead Tariffs). The letter said that for other types of derogation requests, i.e., those that do not relate to Fixed Retention Tariffs and fall outside the scope of the market wide derogation, suppliers are required to apply to Ofgem for an individual derogation.

As with the market wide derogation for Fixed Retention Tariffs, Ofgem considers that granting Ecotricity a derogation to only offer its default price capped SVTs to existing customers (in the categories described above) does not affect the risks we are concerned about in relation to market stability, and considers such a derogation can have wider benefits to consumers. A derogation also supports net zero and is consistent with the policy intent behind the price cap derogations and Ofgem's statutory objective.

In these specific and limited circumstances, and in light of the fact that the written statement was due to expire on 31 March 2023, Ofgem considers it is appropriate to replace the written statement with a derogation from SLC 22B for Ecotricity.

Ofgem position on SLC 22D

As set out in the market wide derogation for fixed retention tariffs, a derogation for a standard variable or evergreen tariff from SLC 22B would bring it into non-compliance with SLC 22D. SLC 22D prohibits suppliers offering dead tariffs barring certain exemptions.

Ofgem have therefore considered whether to grant a derogation from SLC 22D in this instance, notwithstanding that the request by Ecotricity relates to SLC 22B only. This is due to the particularly close inter-relationship between SLCs 22B and 22D and the circumstances of the derogation request. This should not be taken as an indication that Ofgem will normally consider whether to grant derogations from SLCs other than those explicitly sought by the licensee.

The electricity supply licence defines a dead tariff as "a Tariff in respect of an Evergreen Supply Contract which is not a Live Evergreen Tariff". It defines a live evergreen tariff as "one Tariff in respect of an Evergreen Supply Contract which continues to be capable of being entered into by all Domestic Customers in the Region in which the Tariff is available". The policy intent of SLC 22D is to reduce price discrimination by protecting customers from being left on poor value evergreen tariffs indefinitely.

It thus follows that an SVT or evergreen tariff that is not open to all domestic consumers would, by definition, be a dead tariff and hence fall into scope of the SLC22D requirements. SLC 22D does however contain a derogation clause (22D.21): "The licensee is not required to comply with standard condition 22D to such extent and subject to such conditions as the Authority may from time to time direct".

The conditions set out in the derogation from the default price cap granted to Ecotricity and other qualifying suppliers offering derogated green SVTs require suppliers to provide a default

price capped SVT to customers. This is because one of the conditions of the derogation from the default price cap is that the derogated green SVT must be a tariff that the customer actively chooses to switch to; existing customers who come to the end of their fixed deal cannot be automatically rolled onto the derogated green SVT if they have not requested it. This is in order to protect vulnerable customers in particular or those who do not engage with their energy supplier from paying a higher rate if they have not actively agreed to do so. This means that suppliers have to offer such customers price capped default tariffs to comply with licence conditions. Offering these price capped default tariffs to only existing and not new customers however contravenes SLC 22D and the wider composite requirement for suppliers to offer a default price capped SVT to all customers that derives from several licence conditions plus the default tariff cap legislation all coming together.

Ofgem considers that this requirement of the price cap derogation for suppliers to offer price capped default tariffs to existing customers, in addition to its derogated green SVT, in effect necessitates a derogation from SLC 22D and exemption from the wider composite requirement for suppliers to offer a default price capped SVT to all customers. If Ecotricity had not received a derogation from the price cap which also required it to offer an additional price cap SVT to existing customers, and it instead offered to all customers a green SVT which was subject to the default price cap (in the unlikely event it was economic to do so), it would no longer be in non compliance with SLC 22D and the wider composite requirement for suppliers to offer a default price capped SVT to all customers.

If Ofgem did not grant a derogation to Ecotricity from SLC 22D and exemption from the wider composite requirement for suppliers to offer a default price capped SVT to all customers, this would make the derogation from SLC 22B inoperative. Because we consider that a derogation from SLC 22B is in the interests of consumers and supports the transition to net zero, for the reasons already outlined, we consider that this supports the required accompanying derogation from SLC 22D and exemption from the wider composite requirements around the default price capped SVT in these specific and limited circumstances.

We consider that the direct impact on consumers and the market of Ecotricity not having to offer default price capped SVTs to new customers is likely to be limited. The price cap helps to address the original policy intent of SLC 22D to reduce price discrimination by protecting customers who are rolled onto a default price capped SVT which is not available to new customers from being overcharged. If Ofgem denied the derogation request and Ecotricity was required to offer to all customers a green SVT which was subject to the default price cap (in the unlikely event it was economic to do so), it is highly unlikely the supplier would be able to consistently offer a default price capped SVT at a level which is materially below the price cap because it has higher renewable costs. It is therefore highly unlikely that Ecotricity would be able to compete with other suppliers on price and attract many customers to its default price capped SVT, limiting the impact on the market of granting this derogation.

We consider that Ecotricity's circumstances, as outlined above, are specific and limited and, whilst all derogation requests will be treated on their individual merits, it should not be assumed that granting these derogations will lead to requests for similar derogations by other suppliers being granted. All three of the existing suppliers in the market whose business model is focused on providing materially greater support for investment in renewable electricity already have been granted derogations from the price cap.

In particular, it should not be assumed that suppliers whose business model is not focused on providing materially greater support for investment in renewable electricity will be entitled to derogations from the price cap in order to offer a single derogated green SVT in the short term, or indeed that they would then be entitled to further derogations from SLC 22B as Ecotricity has done. Suppliers have to provide significant amounts of evidence to demonstrate, as stated in our guidance, that by consumers being on that tariff, support is

given to renewables to an extent that is materially greater than that which is brought about as result of subsidies, obligations or other mandatory mechanisms.

In addition, suppliers have to be able to demonstrate that their costs by virtue of the tariff are materially greater than the level of the default tariff cap for reasons that are directly attributable to the support that the tariff provides to renewables. Ofgem has regarded this condition as being met when at least 50% of the costs of supplying the tariff above the level of the default price cap are renewable or will be invested in renewables.

Unless Ofgem has specified that such specific and limited circumstances warrant exemption from the wider composite requirements around the default price capped SVT, all other suppliers must continue to offer a default price capped SVT to all customers.

The Authority's Decision

The Authority therefore grants Ecotricity derogations from SLC 22B and SLC 22D allowing Ecotricity to offer its default capped SVTs only to its existing customers coming to the end of their fixed term contract and who haven't elected to move to Ecotricity's derogated green SVT, a new fixed term contract or another supplier or are deemed customers going through a Change of Tenancy process, subject to the terms of the attached directions.

If you have any questions about this decision, please contact
retailpolicyinterventions@ofgem.gov.uk

Yours Sincerely



Maureen Paul, Deputy Director, Retail Market Policy

Signed on behalf of the Authority and authorised for that purpose.

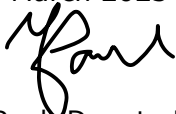
ATTACHMENT A: Electricity Supply Licence

The Company Secretary
Ecotricity Limited
Lion House
Rowcroft, Stroud
Gloucestershire
GL5 3BY

Direction issued to Ecotricity Limited (company number 030434129, the "Licensee") by the Gas and Electricity Markets Authority

1. The Authority issues this direction pursuant to paragraph 3 of standard condition 22B ("SLC22B.3") of the Electricity Supply Licence ("the Licence") and pursuant to paragraph 21 of standard condition 22D ("SLC22D.21") of the Licence granted under section 6(1)(d) of the Electricity Act 1989 to the Licensee.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. SLC 22B.3 provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of standard condition 22B to such extent and subject to such conditions as the Authority may direct.
4. SLC 22D.21 provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of standard condition 22D to such extent and subject to such conditions as the Authority may direct.
5. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 28 March 2023.
6. The Authority directs that the Licensee is relieved of its obligations to comply with paragraph 1 of standard condition 22B of the Licence to the extent that it may offer the following tariffs exclusively to existing Domestic Customers:
 - a. Out of Contract - Electricity only
 - b. Out of Contract - By all meter types and payment methods
7. The Authority directs that the Licensee is not required to comply with paragraph 1 of standard condition 22D of the Licence in respect of the tariffs listed at paragraph 6(a) to (b) of this Direction ("the Derogation").
8. The Licensee may only rely on this derogation in the event that it complies with the condition that it is required to report any change of circumstances relevant to this Direction to the Authority without delay.
9. This Direction shall take effect from 31 March 2023 and shall remain in force for the duration of SLC 22B and SLC 22D, unless it is revoked earlier or varied in writing by the Authority.

Dated: 28 March 2023

Signed: 

Maureen Paul, Deputy Director, Retail Market Policy

Signed on behalf of the Authority and authorised for that purpose.

ATTACHMENT B: Gas Supply Licence

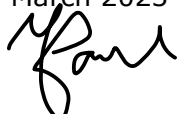
The Company Secretary
Ecotricity Limited
Lion House
Rowcroft, Stroud
Gloucestershire
GL5 3BY

Direction issued to Ecotricity Limited (company number 030434129, the "Licensee") by the Gas and Electricity Markets Authority

1. The Authority issues this direction pursuant to paragraph 3 of standard condition 22B ("SLC22B.3") of the Gas Supply Licence ("the Licence") and pursuant to paragraph 21 of standard condition 22D ("SLC22D.21") of the Licence granted under section 7A(1) of the Gas Act 1986 to the Licensee.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. SLC 22B.3 provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of standard condition 22B to such extent and subject to such conditions as the Authority may direct.
4. SLC 22D.21 provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of standard condition 22D to such extent and subject to such conditions as the Authority may direct.
5. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 28 March 2023.
6. The Authority directs that the Licensee is relieved of its obligations to comply with paragraph 1 of standard condition 22B of the Licence to the extent that it may offer the following tariffs exclusively to existing Domestic Customers:
 - a. Out of Contract - Gas only
 - b. Out of Contract - By all meter types and payment methods
7. The Authority directs that the Licensee is not required to comply with paragraph 1 of standard condition 22D of the Licence ("the Derogation") in respect of the tariffs listed at paragraph 6(a) to (b) of this Direction ("the Derogation").
8. The Licensee may only rely on this derogation in the event that it complies with the condition that it is required to report any change of circumstances relevant to this Direction to the Authority without delay.
9. This Direction shall take effect from 31 March 2023 and shall remain in force for the duration of SLC 22B and SLC 22D, unless it is revoked earlier or varied in writing by the Authority.

Dated: 28 March 2023

Signed:



Maureen Paul, Deputy Director, Retail Market Policy

Signed on behalf of the Authority and authorised for that purpose.