

Octopus Energy

Email:

retailpolicyinterventions@ofgem.gov.uk

Date: 29 March 2023

Dear Sir/ Madam

Derogations from SLC 22B and SLC 22D

This letter sets out the decision of the Gas and Electricity Markets Authority (the "Authority") to grant Octopus Energy (Company number 09263424; the "Licensee"), a limited derogation from standard licence condition SLC 22B ("BAT") and SLC 22D (prohibition of Dead Tariffs) of its electricity and gas supply licences respectively, in the terms (and subject to the conditions) set out in the attached directions.

The primary purpose of these derogations is to enable Octopus Energy to offer a better value tariff for its smart prepayment meter customers.

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 in what was intended to be 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.

Following a 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. Acknowledging that SLC 22B also promotes fairness in the market by ensuring that any discounted deals are also available to existing customers, Ofgem said we would consider this issue in the coming months.

Octopus derogation request

On 9 December 2022 Octopus Energy requested a derogation from SLC 22B in order to offer its Loyal Flexible Octopus Smart Pay as You Go contract (smart prepayment meter standard variable tariff) to existing traditional prepayment meter customers only who choose to switch to smart prepayment meter. Conditions of the tariff include customers having been an Octopus Energy customer for 6 months and exchanging a traditional

prepayment meter for a smart prepayment meter. The tariff is also applied automatically to involuntary switches of existing customers due to debt.

Octopus Energy states in its derogation request that:

- It (the Loyal Flexible Octopus Smart Pay as You Go tariff) is the supplier's cheapest offer
- It promotes conversion to smart technology, which enables an overall superior customer experience and supports the transition to net zero
- It ensures that even if customers are involuntarily switched to prepayment in the latter stages of debt collection they are not disadvantaged by a higher priced tariff.
- That charging all existing and new smart prepayment meter customers this lower price not commercially viable.

Other related derogations

On 7 April 2022 Ofgem granted a 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 stated that we do not consider that these tariffs affect the risks we are concerned about in relation to market stability and considers they can have wider benefits to consumers.

Ofgem also said it decided to limit the application of this derogation to fixed tariffs only and not include standard variable tariffs in this market-wide derogation given the conflict with other standard licence conditions including the requirements around SLC 22D (prohibition of Dead Tariffs). The market wide derogation 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.

Ofgem has also granted individual derogations to Good Energy and Ecotricity from SLC 22B and SLC 22D enabling them to only offer their default price capped SVTs to existing customers. This is in order to support renewable tariffs which have been derogated from the default tariff cap and to benefit customers.

Ofgem position on SLC 22B

Ofgem considers that granting Octopus Energy a derogation to only offer its Loyal Flexible Octopus Smart Pay as You Go contract to existing customers does not conflict with the policy intent of SLC 22B, as demonstrated by the current market wide derogation for Fixed Retention Tariffs. The Loyal Flexible Octopus Smart Pay as You Go contract cannot be considered "acquisition-only" tariffs which could lead to unsustainable price competition as they would be available exclusively to existing as opposed to new customers.

Ofgem considers such a derogation 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 by:

- enabling prepayment meter customers, who are less likely to switch and are more likely to be in vulnerable circumstances, to save money
- promoting conversion to smart prepayment mode from traditional prepayment meters, with added benefits to customers and net zero

We consider facilitating these benefits to be in line with Ofgem's principal, statutory objective to protect consumers' interests. Ofgem has a statutory duty to consider the needs of customers in vulnerable circumstances in particular. Our principal statutory objective includes protecting consumers' interests 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, including by supporting the roll-out of smart meters. Smart meters help to balance the system as we generate more of our electricity from intermittent renewables and need to power new sources of electricity demand like electric vehicles.

In these specific and limited circumstances Ofgem considers it is appropriate to provide Octopus Energy a derogation from SLC 22B to enable it to offer its Loyal Flexible Octopus Smart Pay as You Go tariff.

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 Octopus 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: “Exception to compliance with condition 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”.

We consider that the wider benefits to consumers (see above) which justify granting a derogation from SLC 22B to Octopus Energy also justifies granting the required accompanying derogation to SLC 22D. In particular, doing so allows prepayment meter customers to get a better deal, especially since they are less likely to switch and are more likely to be in vulnerable circumstances.

The price cap helps to address the original policy intent of SLC 22D to reduce price discrimination by protecting customers who switch to an evergreen tariff covered by the price cap (like the Loyal Flexible Octopus Smart Pay as You Go) from being overcharged. Notwithstanding the ongoing protection provided by the price cap, in order to ensure that the Loyal Flexible Octopus Smart Pay as You Go remains competitive (as a Dead Tariff, there is less incentive for suppliers to keep such a tariff competitive if it is not being offered to new customers), Ofgem has decided to add one condition for approving the derogation from SLC 22D.

Octopus Energy has to ensure that the Loyal Flexible Octopus Smart Pay as You Go tariff remains the cheapest evergreen tariff by that payment type (i.e. for all Octopus Energy evergreen prepayment tariffs). This is in line with the policy intent of 22D.7 which allows suppliers to offer a Dead Tariff which existed before 23 October 2013 when SLC 22D was introduced (and also be exempted from SLC 22B as a result) provided that Tariff is cheaper than or as cheap as the licensee’s Relevant Cheapest Evergreen Tariff for the particular Domestic Customer. Octopus Energy, as set out in 22D.7, will have to reassess in every

twelve month period whether the Loyal Flexible Octopus Smart Pay as You Go tariff (the qualifying "Dead Tariff") is cheaper than or as cheap as its Relevant Cheapest Evergreen Tariff for the particular Domestic Customer and only continue to supply the Domestic Customer using that Dead Tariff if that Tariff is cheaper than or as cheap as the licensee's Relevant Cheapest Evergreen Tariff for the particular Domestic Customer.

As standard licence condition 22D.8 sets out, if when re-assessed every 12 months, the Loyal Flexible Octopus Smart Pay as You Go tariff is no longer Octopus Energy's Relevant Cheapest Evergreen Tariff for the particular Domestic Customer, Octopus Energy will have to move customers affected to its Relevant Cheapest Evergreen Tariff as soon as is reasonably practicable following the reassessment under paragraph 22D.7.

For clarity, the derogation from SLC 22D does not exempt Octopus Energy from the wider composite requirement for suppliers to offer a default price capped SVT by each payment type to all customers that derives from several licence conditions plus the default tariff cap legislation all coming together. Therefore, notwithstanding the derogations from SLC 22B and SLC 22D allowing Octopus Energy to offer its Loyal Flexible Octopus Smart Pay as You Go tariff to existing customers only, it must continue to offer to all customers another standard variable tariff for prepayment customers (irrespective of whether the meter is smart or traditional) which functions as its prepayment meter default tariff and is subject to the price cap. This will ensure that Octopus is compliant with the composite requirement.

The Authority's Decision

By granting Octopus Energy derogations from SLC 22B and SLC 22D for its Loyal Flexible Octopus Smart Pay as You Go tariff, we are not establishing a precedent whereby all future similar derogation requests will be granted. We will consider derogation requests from SLC 22B on a case by case basis, considering the benefits to consumers, especially those in vulnerable circumstances, and the wider market.

Having regard to the information contained in Octopus Energy's derogation request, and considering its specific and limited circumstances, we consider that granting Octopus Energy a derogation from SLC 22B and SLC 22D for its Loyal Flexible Octopus Smart Pay as You Go tariff is consistent with the Authority's principal objective and statutory duties, and does not undermine the policy intention behind these licence conditions.

The Authority therefore grants derogations to Octopus Energy from SLC 22B and SLC 22D for its Loyal Flexible Octopus Smart Pay as You Go tariff, with effect from the date of 29 March 2023, and subject to the terms of the attached directions.

To the extent that these licence conditions may have been breached to date in respect of the Loyal Flexible Octopus Smart Pay as You Go tariff, Ofgem will not take any retrospective enforcement action.

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
Octopus Energy Limited
UK House, 5th floor
164-182 Oxford Street
London
W1D 1NN

Direction issued to Octopus Energy Limited (company number 09263424, 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 29 March 2023.
6. The Authority directs that, subject to the conditions set out below, 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 its Loyal Flexible Octopus Smart Pay as You Go contract exclusively to existing customers.
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 tariff listed at paragraph 6(a) to (c) of this Direction ("the Derogation").
8. The Licensee may only rely on this derogation provided that the tariff listed at paragraph 6 of this Direction remains the cheapest evergreen tariff by that payment type offered by the Licensee (i.e. for all Octopus Energy evergreen prepayment tariffs). The Licensee, as set out in 22D.7, will have to reassess in every twelve month period whether the tariff listed at paragraph 6 of this Direction (the qualifying "Dead Tariff") is cheaper than or as cheap as its Relevant Cheapest Evergreen Tariff for the particular Domestic Customer and only continue to supply the Domestic Customer using that Dead Tariff if that Tariff is cheaper than or as cheap as the licensee's Relevant Cheapest Evergreen Tariff for the particular Domestic Customer. As standard licence condition 22D.8 sets out, if when re-assessed every 12 months, the tariff listed at paragraph 6 of this Direction is no longer Octopus Energy's Relevant Cheapest Evergreen Tariff for the particular Domestic Customer, Octopus Energy will have to move customers affected to its Relevant Cheapest Evergreen Tariff as soon as is reasonably practicable following the reassessment under paragraph 22D.7.

9. Furthermore, 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.
10. This Direction takes effect from 29 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: 29 March 2023

Signed: 

Maureen Paul, Deputy Director, Retail Market Policy
Signed on behalf of the Authority and authorised for that purpose.