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Guidelines on Green Supply Offerings

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1. Introduction

Background

- 1.1 In December 2001, Ofgem issued a consultation paper setting out proposals for Guidelines on Green Supply Offerings in the domestic electricity market. The draft guidelines set out Ofgem's approach to the use of environmental or 'green' claims in the description and marketing of electricity by suppliers. There were 27 responses to the consultation. A summary of the issues raised and Ofgem's response to those issues has been issued separately. (Green supply consultation: summary of responses, April 2002)
- 1.2 Following this consultation process, Ofgem has finalised the Guidelines, which are included in this document. These Guidelines may be updated from time to time; Ofgem will consult with interested parties on any future significant changes.

Purpose of this document

- 1.3 The Government's Renewables Obligation (in England and Wales) and the Renewables Obligation Scotland (RO/ROS) were introduced on 1 April 2002. These are the major instruments for the promotion of generation from renewable sources. It is important that the relationship between these programmes and the existing and future market for voluntary green supply is clarified.
- 1.4 Consumers need to be able to make informed choices on the basis of reliable and verifiable information if they wish to support the environment through their choice of electricity supply. Unreliable or misleading green claims limit the potential of green supply offerings to bring about environmental improvements because they discourage suppliers' investment in genuine environmental improvements and can de-motivate consumers.
- 1.5 Ofgem published its Environmental Action Plan (EAP) in August 2001. One of the specific actions that was identified in the plan was to:

'Issue guidelines on the future of green tariffs for domestic customers'.

1.6 The aim of these Guidelines is to:

- ◆ clarify suppliers' obligations in regard to marketing of green supply offerings;
- ◆ provide guidance to suppliers on best practice in the marketing of green supply offerings in the domestic market;
- ◆ provide confidence to consumers that 'green' offerings are credible and defensible, and
- ◆ clarify the relationship between the Renewables Obligation and the marketing of domestic green supply offerings.

1.7 The Guidelines themselves do not impose any new requirements on licensees.

Contacts

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2. Background

- 2.1 Liberalisation of energy markets in Great Britain has made it possible for consumers to contract with a range of suppliers to provide part or all of their electricity from renewable sources or otherwise support the environment. These are referred to as green supply offerings.
- 2.2 Purchase of green electricity is a way that consumers can act to minimise the effects on the environment of their energy use¹. This is consistent with the notion of sustainable consumption, which can result in market led improvements in environmental performance.
- 2.3 However, for consumers to make informed choices about green supply offerings, reliable information is necessary on the nature of the offer being made. Unreliable or misleading green claims limit the potential of green supply offerings to bring about environmental improvements because they discourage suppliers' investment in genuine environmental improvements and can demotivate consumers.
- 2.4 Most green supply arrangements to date in Great Britain have been accredited under the banner of the EST Future Energy Scheme². This is an accreditation scheme that vets and audits renewable energy offerings. It was established by the EST in 1999 and has been supported by the Department of Trade and Industry (DTI).
- 2.5 There are currently an estimated 60,000 customers on green offerings, with over 45,000 on offerings which are accredited by Future Energy. Total annual electricity sales to these customers amounts to around 250 GWh, which is worth over £15 million a year.
- 2.6 There are two types of offerings accredited by Future Energy, energy-based – 'Green Supply' - and contribution-based – 'Green Funds' – where payments are made into a fund to support future investments in new renewable energy.

¹ Others include reducing consumption, making their homes more energy efficient and using energy efficient appliances.

² There have been some other environmental offerings that have fallen outside the scheme.

- 2.7 Green supply offerings must also be seen in the context of other Government policies to increase the share of renewables in the national energy mix, specifically the exemption for renewables from the Climate Change Levy (CCL) and the Renewables Obligation for England and Wales (RO) and the Renewables Obligation Scotland (ROS). These schemes are referred to collectively as RO/ROS in this document. More detail on the programmes is included in Appendix 1.
- 2.8 The Utilities Act 2000 introduced a new principal objective and new duties into the Electricity Act³. Ofgem's principal objective is to carry out its functions in the manner best calculated to protect the interests of present and future consumers, wherever appropriate by promoting effective competition. The Act also sets out criteria which Ofgem must have regard to in carrying out its functions in relation to electricity supply. In carrying out those functions, amongst its other duties, Ofgem must have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity.
- 2.9 The Environmental Action Plan sets out how we intend to meet our statutory duties, within this context. The Plan describes our approach in terms of policy and delivery, and it also describes how Ofgem will itself seek to act in an environmentally responsible way in administering its own affairs.

Main features of the guidelines

- 2.10 These draft guidelines include:
- ◆ definitions of key terms and a discussion of which technologies constitute 'green energy';
 - ◆ description and references to the relevant regulatory and advisory instruments; and
 - ◆ Ofgem's expectations in regard to key aspects of green supply offerings.

³ Parallel changes were made to the Gas Act.

Status of the Guidelines

- 2.11 The Guidelines themselves do not impose any new requirements on licensees. They are intended to assist those suppliers who intend to make green supply offerings and makes reference to potential legal liability. They should be read in conjunction with, and should not be seen as a definitive interpretation of, the relevant legislation. Anyone in doubt about how they may be affected by the legislative requirements should seek independent legal advice.

3. Definitions and scope

3.1 There is no single definition of what constitutes 'green' – particularly in relation to energy supply. For the purposes of clarity, the following terms are used in this document:

- ◆ *'Green supply offering'* refers to any contractual arrangement between an electricity supplier and a consumer where it is claimed that the supply will give rise to environmental benefit. These arrangements are variously described elsewhere as 'green power', 'green offerings' and 'green tariffs'⁴.
- ◆ *'Energy-based green offering'* refers to supply contracts where there is a direct relationship between energy supplied and the purchase of energy by the supplier; e.g. the supplier undertakes to match all or a fixed percentage of a consumer's energy supply with purchases of electricity from renewable sources.
- ◆ *'Contribution-based green offering'* refers to supply contracts where suppliers make a monetary contribution on consumers' behalf to bring about environmental benefit. The contribution may be linked to consumption levels or may be a fixed regular payment. These are also referred to elsewhere as 'green funds' or 'fund-based tariffs'.

Some offerings may incorporate a combination of energy-based and contribution based features. Suppliers may also make a range of offerings that claim environmental benefit through energy efficiency and non-renewable technologies such as Combined Heat and Power (CHP). These may be considered to be 'green' or 'environmentally friendly' but do not constitute 'green supply' and are therefore out of the scope of this document.

3.2 This document focuses only on offerings made for domestic supply.

3.3 It is not the purpose of this document to set a strict definition for what constitutes 'green energy'. Ofgem considers that it is important that suppliers are able to be

innovative in the offerings that they make to the public. However it is also important that there is general consistency in approach and use of terminology so that public confidence can be maintained and the potential benefits of green supply offerings are not undermined; and, above all, that the product supplied is accurately described in all marketing material.

3.4 In addition to the need for factual accuracy it is also necessary that green supply offerings are generally consistent with public expectations. General practice in Great Britain to date (and in other jurisdictions) is to focus on technologies that avoid or minimise the emissions of greenhouse gases through the use of renewable energy.

3.5 The basic definition of 'renewable sources' in the Utilities Act 2000 is 'sources of energy other than fossil fuel or nuclear fuel...'. The DTI has identified the following technologies as renewable⁵:

- ◆ biofuels (e.g. all types of biomass, including the biodegradable fraction of energy from waste, landfill gas, sewage gas, agricultural and forestry residues, and energy crops);
- ◆ onshore and offshore wind;
- ◆ water (hydro power, wave power and tidal energy);
- ◆ solar energy (both active and passive solar heating as well as photovoltaics); and
- ◆ geothermal energy.

3.6 The table below summarises the targeted technologies for UK and European climate change programmes and for voluntary green energy accreditation schemes in the UK and elsewhere⁶. The shaded squares indicate technologies

⁴ The term 'green tariff' has been avoided because the concept of tariff was removed as a result of the recent amendments to the Electricity Act; all consumers either have or are now deemed to have a contract with suppliers.

⁵ *New & Renewable Energy: Prospects for the 21st Century* The Renewables Obligation Statutory Consultation, DTI. August 2001

⁶ The diagram does not attempt to show the precise details of individual definitions, but to indicate the general principles.

that are fully supported; the hatched squares indicate technologies that are supported subject to particular qualifications.

	Regulatory Instruments			Voluntary marketing schemes		
	CCL exemption	RO/ROS	EU Renewables Directive	Future energy (UK)	Green power (Australia)	Green-e (USA)
Large hydro						
Small hydro						
Geothermal power						
Solar						
Wind power						
Tidal & wave power						
Landfill gas						
Sewage gas						
Energy crops						
Biomass						
Co-firing of biomass						
Advanced energy from waste technologies						
Energy from waste incineration						
CHP						

	Fully supported technologies
	Technologies supported with qualification

3.7 The definitions used for the purposes of the Renewables Obligation suggest a core of technologies generally understood to warrant extra support. This is based on an estimation of economic viability as well as potential for avoidance of greenhouse gas emissions, and in meeting other environmental goals such as local air and water quality, impact on landscape and biodiversity, impact on cultural heritage, visual and noise impacts and resource conservation and waste minimisation.

3.8 These technologies are⁷:

- ◆ landfill gas
- ◆ sewage gas
- ◆ small hydro
- ◆ wind (both onshore and offshore)

- ◆ energy crops and other biomass (except when co-fired)
- ◆ geothermal power
- ◆ tidal, tidal stream and wave power
- ◆ solar (thermal and photovoltaics).

3.9 As contracting for green supply offerings is entirely voluntary, customer perceptions can be of equal or greater significance than any 'objective' view of the environmental merit of a particular electricity generator or generation technology. However these perceptions will be formed to a large extent by information in the public domain which needs to be accurate as far as possible.

⁷ These are listed in *New & Renewable Energy: Prospects for the 21st Century* The Renewables Obligation Statutory Consultation, DTI. August 2001; the Renewables Obligation Order identifies these technologies by listing exclusions.

4. Regulatory controls on green supply offerings

Ofgem's role in supply price regulation

- 4.1 Ofgem announced in February 2002 that its future approach to supply price regulation would be the reliance on the Competition Act 1998 to protect consumers in the domestic supply market. This approach came into effect from 1 April 2002⁸. Price controls are no longer considered the appropriate form of protection for customers given the development and level of competition for all customers.
- 4.2 Before the introduction of the new licensing regime on 1 October 2001, Ofgem received prior notification of variations to and the introduction of new domestic tariffs for dominant electricity suppliers. The aim of this was to ensure that they complied with non-discrimination conditions set out in their licences. This provision covered green tariffs.
- 4.3 In considering such prior notifications Ofgem attempted to ensure that new or revised tariffs were broadly cost reflective and not unduly discriminatory, predatory or onerous. Ofgem also checked that there was no aspect which could distort consumers' incentives to switch supplier.
- 4.4 The 'greenness' of the tariff was not assessed, only whether or not the premium for the green energy broadly reflected expected future market prices for green energy. However, Ofgem pointed out to suppliers that advertising of the tariffs should not be untrue or misleading and that claims made about them should be verifiable.
- 4.5 Under the new arrangements⁹ the former Public Electricity Suppliers are no longer required to notify Ofgem 28 days in advance of the introduction or variation of a tariff. Protection of consumers against the abuse of a dominant position is achieved through application of the Competition Act 1998. Chapter II of the Competition Act prohibits behaviour that amounts to an abuse of a

⁸ *Review of domestic gas and electricity competition and supply price regulation: Conclusions and final proposals*. February 2002.

⁹ Ofgem consulted on removing the non-discrimination conditions in July 2000, 'Gas and electricity supply licences: Proposals for standard non-discrimination conditions', Ofgem 2000. Ofgem confirmed its

dominant position. Abusive behaviour includes behaviour seeking to exclude rivals from competition in the market, but will not prohibit legitimate competitive responses. Action may be taken against any supply arrangements which are considered to be anti-competitive or an abuse of market dominance, including:

- ◆ excessive pricing
- ◆ discriminatory behaviour
- ◆ predatory behaviour.

- 4.6 The Competition Act does not require suppliers to seek pre-approval from Ofgem of the introduction of new tariffs. However, suppliers are able to seek guidance from Ofgem on behaviour that the supplier believes could breach the prohibitions of the Competition Act. The same applies in relation to green supply offerings.

Other regulatory controls

- 4.7 Green supply offerings and the way in which they are marketed may fall within suppliers' licence conditions and their responsibilities under the Competition Act. In addition to this and to the possibility of civil action, such marketing activities may fall within the remit of other regulatory agencies and industry codes.

Trading Standards Service

- 4.8 The Trading Standards Service is responsible for ensuring that claims are accurate and meaningful. The Trade Descriptions Act 1968 makes it a criminal offence to market goods in a way that is either false or misleading. It aims to create a fair trading environment and advises on and enforces a wide range of laws designed to protect the interests of both consumers and businesses.

proposals to remove these conditions in October 2000, 'Utilities Act: Standard licence conditions: Final proposals', Ofgem, October 2000.

Office of Fair Trading

- 4.9 Under the Control of Misleading Advertisements Regulations 1988, the Director General of Fair Trading has the power to seek a court injunction to ban a misleading advertisement. However, this is a power that is kept in reserve most of the time with the policing of advertising being carried out in the main by the bodies identified in paragraphs 4.11 – 4.13. The Office of Fair Trading will only intervene if, in the opinion of the Director General, it is in the public interest to do so.
- 4.10 A misleading advertisement is defined by the regulations as one that deceives or is likely to deceive and so affect economic behaviour, or injures or is likely to injure a competitor. Advertisements covered can include oral as well as written forms of advertising.

Media bodies

- 4.11 There are three regulatory bodies that oversee advertising in various media. The Advertising Standards Authority, a self-regulatory body, investigates complaints from any source against advertisements and promotions in non-broadcast media (i.e. magazines, newspapers, billboards, cinemas etc.); the Independent Television Commission regulates television advertising (including cable television); and the Radio Authority covers radio.
- 4.12 Each organisation has codes of conduct for the areas of advertising that it regulates. In certain cases, the relevant codes include specific provision regarding environmental claims. The self-regulatory codes are backed up by the Control of Misleading Advertisements Regulations (as noted above) and the Broadcasting Act, and the authorities can fall back on other enforcement such as revocation of licences if there are severe or continued violations of the codes.
- 4.13 Details of media industry regulation and codes of practice are included in Appendix 2.
- 4.14 In making adjudications the bodies may wish to refer to these guidelines if they consider them to be relevant and appropriate.

Guidance documents

- 4.15 In addition to the regulatory controls outlined above there are a number of advisory documents that are relevant to green supply offerings by electricity suppliers. The most important are those that are issued by the International Organisation for Standardisation (ISO) and guidance provided by UK government agencies, which is informed by these standards.

ISO/British Standards

- 4.16 The ISO 14000 series of international standards relates to environmental management. Within this range the ISO14020 series relates to environmental claims. These have been adopted as British Standards by the British Standards Institution, and as European standards by the European Committee for Standardisation (CEN). These standards do not have legal status in the United Kingdom. However, they are used as reference documents by regulatory authorities such as the ASA and Trading Standards.

ISO 14020

- 4.17 This standard provides general principles which serve as a basis for the development of ISO guidelines and standards on environmental claims and declarations. The objective of these declarations is 'through communication of verifiable and accurate information, that is not misleading, on environmental aspects of products and services, to encourage the demand for and the supply of those products and services that cause less stress on the environment, thereby stimulating the potential for market driven continuous environmental improvement.'

ISO 14021

- 4.18 This standard provides guidance on the terminology, symbols and testing and verification methodologies an organisation should use for self-declaration of the environmental aspects of its products and services (referred to as 'Type II' claims). It describes selected terms commonly used in environmental claims and gives qualifications for their use. It also sets out a general evaluation and verification methodology for self-declared environmental claims and specific evaluation and verification methods for the selected claims in this standard.

- 4.19 The objective of ISO14021 is to harmonise the use of self-declared environmental claims. The anticipated benefits are:
- ◆ accurate and verifiable environmental claims that are not misleading
 - ◆ increased potential for market forces to stimulate environmental improvements in production, processes and products
 - ◆ prevention or minimisation of unwarranted claims
 - ◆ reduction in marketplace confusion
 - ◆ facilitation of international trade
 - ◆ increased opportunity for purchasers, potential purchasers and users of the product to make more informed choices.

ISO 14024

- 4.20 This standard provides the guiding principles and procedures for third-party environmental labelling certification programmes (Type I Environmental Labelling).
- 4.21 ISO 14025 provides guidance and procedures on a specialised form of third-party environmental labelling certification using quantified product information labels and pre-set indices (Type III Environmental Labelling); it is an ISO technical report and it has not been implemented as a UK or European standard.

DEFRA/DTI *Green Claims Code* (revised 2000)

- 4.22 The Code sets out the standard of information that the public can expect to be given about the environmental impacts of consumer products. The Government first launched the code in 1998, following wide consultation with business, consumer and environmental organisations. It has since been updated to take account of ISO 14021.
- 4.23 The code is supported by the following organisations:
- ◆ Confederation of British Industry
 - ◆ British Retail Consortium
 - ◆ Local Authorities Coordinating Body on Food and Trading Standards
 - ◆ British Standards Institution.

4.24 The key features of green claims as set out in the Code are shown in Box 1.

Box 1: Excerpt from DEFRA/DTI Green Claims Code (Revised 2000)

A GREEN CLAIM SHOULD BE ...

- **truthful, accurate, and able to be substantiated;**
- **relevant** to the product in question and the environmental issues connected with it;
- **clear** about what environmental issue or aspect of the product the claim refers to;
- **explicit about the meaning of any symbol** used in the claim – unless the symbol is required by law, or is backed up by regulations or standards, or is part of an independent certification scheme;
- **in plain language** and in line with standard definitions.

A GREEN CLAIM SHOULD NOT...

- **be vague or ambiguous**, for instance by simply trying to give a good impression about general concern for the environment;
- **imply that it commands universal acceptance** if there is actually some significant doubt or division of scientific opinion over the issue in question;
- **imply more than it actually covers**, if the claim is only about limited aspects of a product or its production, or does not deal with a significant issue for that type of product;
- **make comparisons**, unless the comparison is relevant, clear and specific;
- **imply that a product or service is exceptional** if the claim is based on what is standard practice anyway;
- **use language that exaggerates** the advantages of the environmental feature the claim refers to;
- **imply that the product or service is endorsed** or certified by another organisation when it has not been.

4.25 The Code is not intended to detract from the powers available under the law to the authorities such as Trading Standards Officers; it is intended to support the role of those authorities.

DTI guidelines for non-advertising green claims

4.26 The purpose of these guidelines is to help organisations to formulate express or implicit claims, made through public relations activities or other image building exercises, which concern the effects on the environment of their activities, products or services. The term 'claim' as used in these guidelines is intended to be interpreted in the broadest sense and so includes, for example, statements of support for environmental causes, logo design, and statements made in

educational literature, promotional videos, speeches, articles, press releases, annual reports and position papers.

- 4.27 However, express or implicit environmental claims may be made in other ways that are not currently subject to the regulatory or self-regulatory controls outlined above. These guidelines were developed to provide assistance in framing such claims.
- 4.28 The principles in the code are shown in Box 2. The guidelines also include specific advice for specific areas of communication such as corporate identity, corporate advertising, reports, educational literature, information leaflets and news releases

Box 2: DTI Principles for Non-Advertising Green Claims

DO exercise a high degree of integrity in promotional activities involving environmental claims.

DO ensure that environmental claims are fully and demonstrably substantiated before they are used.

DO take steps to avoid giving a misleading impression of your organisation's overall operations in relation to the environment.

DO ensure that environmental claims made by your organisation are legal, decent, honest and truthful, and that they provide accurate and meaningful information to enable consumers to exercise informed choice.

DO ensure that environmental claims made by your organisation are accurate and comply with relevant legislation.

DO ensure that you are able to justify, using verifiable evidence, any connection that is made between the environment and the products or services your organisation provides.

DO NOT use environmental claims that are ambiguous, vague, deceptively selective, misleading or irrelevant.

DO NOT make environmental claims appear wider in scope than is justified. For example, if a claim applies only to a specific stage in the life-cycle of the product or service, make this clear.

5. Key features of green supply offerings

- 5.1 Suppliers are required to comply with the conditions of their licences under the Electricity Act, as amended, and with their obligations under the Competition Act and other legislation. In addition Ofgem expects suppliers to ensure that any marketing of green supply offerings will be consistent with the relevant industry codes and the principles expressed in ISO14021 and the DTI/DEFRA *Green Claims Code*.
- 5.2 In the context of these documents, there are certain features that Ofgem would expect to see in electricity suppliers' marketing of their green supply offerings. These are
- ◆ transparency
 - ◆ additionality
 - ◆ verification.
- 5.3 Each of these aspects is dealt with in more detail in the following sections.

Transparency

- 5.4 Transparency in regard to green supply offerings depends firstly on accuracy. However, in order to ensure public confidence in green supply offerings, there is a need to go beyond that and for offerings to be clear, and to be consistent with public understanding and expectations as to what constitutes 'green energy'.
- 5.5 All marketing and related information should be based on correct, up-to-date and specific information about the product that is being offered. Claims that are vague or that cannot be objectively substantiated should not be made unless they are clearly identified as opinions. Claims should also be relevant to the supply of energy and to the environmental effects of electricity generation and supply.
- 5.6 The use of images and symbols should also reflect the feature of the product being offered. For example, the use of images of particular technologies in advertising should reflect the technologies actually used or supported.

- 5.7 It is likely that any claims made concerning green supply offerings will need considerable explanation and/or qualification to ensure that they are accurate or not misleading. Any such explanatory or qualifying statements need to be of reasonable size and prominence in any marketing material.
- 5.8 In addition to the need for factual accuracy and the need to define specifically the precise scope of any green supply offering, it is also necessary that green supply offerings are generally consistent with public expectations. The following common features are therefore proposed for green supply offerings.

Focus on renewable energy

- 5.9 As discussed in Section 3, general practice and public expectations are that green supply offerings will be based on the provision or promotion of renewable energy as defined in paragraph 3.5.
- 5.10 Offerings that include reference to other potentially environmentally beneficial technologies such as CHP, fuel cells or energy efficiency do not constitute 'green supply offerings' and are outside the scope of this document. Ofgem does not wish to discourage innovation in supply arrangements in these areas.
- 5.11 Green supply offerings based on the core renewable technologies identified in paragraph 3.7 will be widely acceptable and consistent with public expectations. Use of these technologies in green supply offerings should reflect best practice in regard to all environmental aspects of electricity supply, for example in the control of emissions from combustion-based technologies or protection of fisheries in the case of hydro and tidal power.
- 5.12 Individual suppliers will choose technologies for inclusion in offerings according to availability, cost and market acceptability, or according to the criteria established by certification/accreditation bodies. In order to assist customer choice, any offering based on technologies outside the core technologies listed in paragraph 3.8 should identify which of the different renewable energy sources are included and the percentage mix of renewable energy sources provided to customers. It is recognised that there is a degree of uncertainty in relationship to actual energy supplied, therefore average historical estimates may be used.

New capacity

- 5.13 It will not be expected that all energy supplied under green supply arrangements will be from new capacity. However, it is expected that the proportion sourced from new supply is a feature that will be reported by suppliers.

Renewable generators outside Great Britain

- 5.14 Because the effects of the emission of greenhouse gases are not location-specific, it may be of environmental benefit for suppliers to secure renewable energy from overseas. However, it is considered that there are considerable problems in relation to verification and double counting of supply from outside Great Britain. It should therefore be made clear to customers if any electricity supplied under a of their green supply offering comes from outside Great Britain.
- 5.15 Ofgem has developed principles for the verification of renewable supply to the UK for the purpose of issuing Levy Exemption Certificates (LECs). Because of the potential difficulties in verification and double counting, it is expected that any energy-based green offering based on international generators should be able to be subjected to similar tests. These include verification of the source and of the transport of electricity through interconnectors.

Price levels

- 5.16 All green supply offerings will be subject to the Competition Act 1998. The Act prohibits anti-competitive pricing¹⁰. Price premiums over standard supply paid by consumers of green supply offerings should either be fully paid into a fund, in the case of contribution-based offerings, or reflect the long-term additional cost of the supply as described, in the case of energy-based offerings.

Additionality

- 5.17 Green supply offerings can help meet the environmental goals of the Government, and of the consumers who choose them, in one or both of the following ways:

¹⁰ Guidance on the types of pricing behaviour restricted by the Act, including excessive prices and price discrimination, is provided in the guideline "Competition Act 1998, Assessment of Individual Agreements and Conduct" OFT, OFT 414 September 1999.

- ◆ ensuring the **generation** and sale of energy from renewable sources that would otherwise be sourced from other sources (generally associated with energy-based offerings); and
- ◆ an increase in renewable generation **capacity** (generally associated with contribution-based offerings).

5.18 Consumers choosing a green offering need to be able to be satisfied that their support is making a difference. This may be through direct financial support for additional generation or capacity – or through indirect support which may result in some future benefit.

Additional generation

5.19 As a general principle it is expected that the additional cost of any energy which is purchased by suppliers as part of a mandatory scheme should not be recovered from customers under a domestic green supply offering. This is in line with the principle in the DTI/DEFRA Green Claims Code that claims should not ‘imply that a product or service is exceptional if the claim is based on what is standard practice anyway’.

5.20 In relation to the RO/ROS, the Government has stated that green supply offerings ‘should not be used to meet a supplier’s costs in fulfilling their obligation but rather the intention is that any green tariff should lead to additional generation, over and above a supplier’s obligation’¹¹.

5.21 Any energy-based offering which operates outside this general principle should make explicit that the power supplied forms part of the supplier’s legal obligation under the RO or ROS and provide evidence to consumers and/or third parties as to how the offering delivers a sufficiently material additional environmental benefit to justify the claim to be a green offering (see also paragraph 5.23).

¹¹ *New & Renewable Energy: Prospects for the 21st Century* The Renewables Obligation Statutory Consultation, DTI. August 2001

5.22 The premium charged for an energy-based green offering should be directed to either:

- ◆ the additional cost of purchasing renewable energy from non-RO/ROS accredited sources, or
- ◆ the cost of obtaining ROCs which are not presented as part of the renewables obligation (see paragraph 5.44).

5.23 Benefit forgone by the supply of CCL exempt energy in the domestic market is considered to provide some additionality. However the value of this additionality is small and should not be recovered from premiums on customers. Any claim of additionality based on forgone CCL exemption would need rigorous verification, probably involving third party audits or an accreditation scheme. It is doubtful whether this level of additionality in itself would be regarded as sufficiently material to justify a claim of green supply.

5.24 Where suppliers make undertakings to match energy supplied with renewable energy the supplier should provide verifiable evidence to customers or third parties on how customers' support makes a sufficiently material difference to the environment.

Additional capacity

5.25 The creation of additional renewable capacity in the electricity generation market provides long term benefits from green supply. Ofgem does not have specific expectations for new capacity in regard to energy based-offerings but the benefit of these offerings is maximised if a proportion of the capacity used is new.

5.26 In the case of contribution-based products, the commissioning of new capacity is central to the demonstration of additionality from these contributions. Suppliers of contribution-based green offerings should ensure that the amount of the contribution is identified, whether it is a flat amount or an amount per unit of energy. Suppliers should also provide detailed criteria for the expenditure of funds raised.

- 5.27 These criteria should include a commitment to spend the money on the expansion of capacity in renewable energy. The criteria should also be clear in relation to the timing of expenditure; whether the expenditure is in the form of grants, loans or equity investment; and whether the provision is directed at commercial entities or community organisations.
- 5.28 Expenditure would only be considered additional if it were used for capital equipment, and for associated expenditure including site acquisition, feasibility studies, design studies and project management. Expenditure on promotion, education or general awareness-raising is not considered additional except when associated with a particular project.
- 5.29 In the case of commercial investment, the treatment of future benefits from ROCs will need to be addressed. Generation that has been established in this way and also supported through the RO/ROS could be seen to be making double use of additional customer support.
- 5.30 Suppliers should demonstrate to potential customers and/or to accreditation bodies how they intend to deal with this issue. For example, they may elect not to seek RO/ROS accreditation for the generating station; or to retire or set aside ROCs relating to all future generation or for generation over a fixed period, reflecting the value of the additional contribution made by consumers to support the project.
- 5.31 Suppliers should evaluate expenditure from contribution-based offerings and report to consumers their performance against the funds criteria.

Verification

- 5.32 The following principles for verification and information disclosure principles are generally based on the principles contained in ISO 14021.
- 5.33 Suppliers should be responsible for evaluation and provision of data necessary for the verification of the claims made in the marketing of green energy. Before marketing, measures should be established to ensure that the claim can be objectively verified.

- 5.34 The evaluation should be fully documented and the documentation retained by the claimant for the purpose of the information disclosure referred to below. This should be for the period that the offering is made, and for a reasonable period thereafter.
- 5.35 Claims regarding green supply will only be considered verifiable if such verification can be made without access to confidential business information. Green supply offerings should not be made if they can only be verified by confidential business information.
- 5.36 Information should be made available in one of the following ways.
- ◆ suppliers may voluntarily release to the public the information necessary to verify an environmental claim
 - ◆ the information necessary to verify the claim may be disclosed, upon request, at a reasonable cost (to cover administration), time and place, to any person seeking to verify the claim, or
 - ◆ the claim may be verified through third party arm's length accreditation or auditing (see below in paragraphs 5.45–5.48)
- 5.37 If a claim involves a comparison with other products or with the total electricity market suppliers should ensure that base-lines reflecting general practice including the proportion of renewable energy supplied under the RO/ROS are used and are kept up-to-date.
- 5.38 The European Directive on Misleading Advertising¹² includes principles on comparative advertising.

Verification of energy-based offerings

- 5.39 Suppliers will need to have and retain evidence to verify all claims made under the terms agreed with the customer for green supply. This will involve matching energy sold under green supply arrangements with purchases of energy consistent with the claim as to origin, technology etc. as well as evidence of actual physical supply if appropriate.

¹² Council directive 84/450/EEC, modified by Directive 97/55/EC

- 5.40 Evidence must also be available to verify the additionality of energy supply in accordance with the previous section. Given the unpredictable nature of many renewable sources it is acceptable for evidence to be averaged over period of time such as a year.
- 5.41 Consistent with the approach of the RO/ROS that ROCs represent the renewable component of energy that is actually supplied in Great Britain, the acquisition of ROCs by suppliers beyond those required for their obligation will be an acceptable mechanism for the verification of premium energy-based offerings.
- 5.42 The Renewables Obligation for England and Wales and the Renewables Obligation (Scotland) include provision for ROCs to be deleted on request from registered holders so that they may not be redeemed against any supplier's obligation. There is also provision for other parties, such as third party accreditation bodies, to hold ROCs, which may be used as evidence of additionality¹³.

Verification of contribution-based offerings

- 5.43 Premiums raised under contribution-based offerings should be paid into a fund that is completely and verifiably separated from the general accounts of the supplier. Third party auditing of payments into and out of the fund is essential to match money collected with payments made, and to verify consistency with the criteria for payment referred to in 5.27.

Third party badging of green supply offerings

- 5.44 Suppliers may find it beneficial to use an accreditation system such as Future Energy, or any other that may enter the market, as a means to ensure verification. This may allow public confidence that the claims are fully audited and verified by third parties.
- 5.45 In many countries the marketing of green electricity is audited and accredited by one or more independent schemes. These schemes are involved in green supply in a number of ways, specifically:

¹³ These provisions are contained in the relevant orders, for England and Wales this is the Renewables Obligation Order (SI No. 2002/914) and for Scotland, the the Renewables Obligation (Scotland) Order (SSI No. 2002/163).

- ◆ as labelling schemes, which provide specific classification criteria by which offerings can be described
- ◆ as accreditation schemes which audit participants' compliance, and
- ◆ as marketing organisations which promote the take up of certified offerings.

5.46 The Future Energy scheme has undertaken all of these roles in Great Britain to date and the EST has announced that it intends the scheme to continue.

5.47 The use of accreditation systems is voluntary for suppliers, and one or more scheme may exist in the UK market in the future. However, a proliferation of alternative badging schemes could only undermine market confidence in green supply offerings and would not benefit consumers or suppliers.

Appendix 1 Climate Change Levy exemption and the Renewables Obligation

The Climate Change Levy (CCL) exemption for renewables and LECs

A1.1 The Climate Change Levy is a tax imposed on energy supplied to industrial and commercial consumers. One exemption from the Levy imposed on electricity supply is for electricity derived from renewables.

A1.2 Ofgem's role in the CCL is purely with regard to the exemption for renewables. In Great Britain, Ofgem is responsible for:

- ◆ accreditation of qualifying renewable generators
- ◆ issuing certificates - Levy Exemption Certificates (LECs) to generators for each megawatt hour of output generated each month
- ◆ recording the LECs held by each supplier by month
- ◆ reporting – Ofgem will report to HM Customs and Excise (HMCE) the number of LECs held by each supplier.

A1.3 Ofreg has the same responsibilities in Northern Ireland.

Qualifying renewable generators

A1.4 Ofgem is responsible for accrediting generation from qualifying renewable sources. Accreditation involves the completion of a questionnaire by each generator, the details of which will then be assessed by Ofgem to check compliance with the definition. Only generators that have been accredited will qualify for LECs.

Certificates

A1.5 LECs are part of the evidence to demonstrate to HMCE the amount of CCL exempt electricity from qualifying renewable sources supplied to non-domestic customers in the given period. The LECs are passed from the generator to the contracted supplier. LECs cannot be separated from the electricity and therefore cannot be traded separately.

The Renewables Obligation and ROCs

- A1.6 The Renewables Obligation and the Renewables Obligation (Scotland) (RO/ROS) were introduced on 1 April 2002. They place a legal obligation on all licensed electricity suppliers to produce evidence that either they have supplied a specified proportion of their electricity supplies from renewable energy sources to customers in Great Britain, or that another electricity supplier has done so.
- A1.7 Suppliers are required to produce evidence of their compliance with this obligation to Ofgem. Evidence can be via certificates, referred to as Renewables Obligation Certificates (ROCs) and/or paying buyout. The details of implementation is set out in Orders, one for the RO and one for the ROS. The Government has proposed that the Obligation will remain in place until March 2027.
- A1.8 Ofgem is responsible for implementing, monitoring and enforcing compliance with RO/ROS following their introduction. This includes a number of functions:
- ◆ accrediting generators
 - ◆ issuing ROCs
 - ◆ maintaining a register of ROC holdings
 - ◆ assessing compliance
 - ◆ adjusting the buyout price by the RPI each year
 - ◆ receiving and recycling buyout, and
 - ◆ reporting annually on compliance with the Renewables Obligation.
- A1.9 ROCs will be issued for eligible renewable electricity generated within the United Kingdom and supplied to customers in Great Britain. A supplier may discharge the Obligation by buying ROCs from generators or another party as ROCs can be sold separately to the electricity.
- A1.10 Ofgem will be responsible for assessing and monitoring the extent of compliance by suppliers. Suppliers will be required to provide evidence of their

compliance with the RO/ROS by a given date, after the end of each Obligation period. This can be through the presentation of ROCs or suppliers may fulfil part or all of the RO/ROS by paying a 'buy out' price to Ofgem.

A1.11 The proceeds from such buying out will be returned to suppliers by Ofgem in proportion to the amount of eligible ROCs that each supplier presents to discharge the RO compared to the total amount of such eligible ROCs presented by all suppliers in England and Wales, and in Scotland respectively.

Appendix 2 Self regulatory codes of conduct for green claims

Advertising Standards Authority

- A2.1 The Advertising Standards Authority (ASA) was established in 1962 to provide independent scrutiny of the newly created self-regulatory system set up by the industry. Its chief tasks are to promote and enforce high standards in advertisements, to investigate complaints, to identify and resolve problems through its own research, to ensure that the system operates in the public interest and to act as the channel for communications with those who have an interest in advertising standards.
- A2.2 The British Codes of Advertising and Sales Promotion (BCASP) are written by the advertising industry through the Committee of Advertising Practice (CAP). All the main trade and professional bodies representing advertisers, agencies, service suppliers and media owners are members of CAP. In addition to writing the Codes, they agree to enforce them. But even if an advertiser is not a member of one of the CAP trade bodies, they will be required to observe the Codes and the rulings of the ASA Council.
- A2.3 The ASA is a limited company, and is independent of both the Government and the advertising business. The ASA investigates complaints from any source against advertisements and promotions in non-broadcast media (i.e. magazines, newspapers, billboards, cinemas etc.). Advertisers are told the outcome of the ASA Council's rulings and, where appropriate, are asked to withdraw or amend their advertisements or promotions.

Sanctions

- A2.4 The ASA states that it is recognised by the Government as an effective means of controlling advertisements and promotions. Under the Control of Misleading Advertisements Regulations 1988, if a misleading advertisement or promotion continues to appear after the Council has ruled against it, the ASA can refer the matter to the Director General of Fair Trading, who can seek an undertaking from anyone responsible for commissioning, preparing or disseminating it that it

will be discontinued. If this is not given or is not honoured, the OFT can seek an injunction from the Court to prevent its further appearance. Anyone who defaults can be found to be in contempt of court, and is liable to be penalised accordingly.

- A2.5 ASA adjudications provide guidance to the industry on how the codes are to be interpreted and act as a record of ASA policy for consumers, media, government and all parts of the advertising business.

Environmental claims

- A2.6 The ASA Codes have a short section on environmental claims:

- *The basis of any claim should be explained clearly and should be qualified where necessary. Unqualified claims can mislead if they omit significant information.*
- *Claims such as ‘environmentally friendly’ or ‘wholly biodegradable’ should not be used without qualification unless advertisers can provide convincing evidence that their product will cause no environmental damage. Qualified claims and comparisons such as ‘greener’ or ‘friendlier’ may be acceptable if advertisers can substantiate that their product provides an overall improvement in environmental terms either against their competitors’ or their own previous products.*
- *Where there is a significant division of scientific opinion or where evidence is inconclusive this should be reflected in any statements made in the advertisement. Advertisers should not suggest that their claims command universal acceptance if it is not the case.*
- *If a product has never had a demonstrably adverse effect on the environment, advertisements should not imply that the formulation has changed to make it safe. It is legitimate, however, to make claims about a product whose composition has changed or has always been designed in a way that omits chemicals known to cause damage to the environment.*
- *The use of extravagant language should be avoided, as should bogus and confusing scientific terms. If it is necessary to use a scientific expression, its*

meaning should be clear. (Paragraphs 49.1–49.5, British Codes of Advertising and Sales Promotion)

- A2.7 A recent adjudication¹⁴ upheld a complaint regarding refrigerant in air conditioning units. In the adjudication the Authority referred to ISO 14021 and the DEFRA/DTI *Green Claims Code* and ruled that advertisers, when assessing the environmental impacts of materials, should take into account the full life cycle of the product. This includes manufacture, use and disposal and extraction of raw materials.

Independent Television Commission

- A2.8 The Broadcasting Act 1990 makes it the statutory duty of the Independent Television Commission (ITC) to draw up, after appropriate consultation, and enforce a code governing standards and practice in television advertising and the sponsoring of programmes. The Code is kept under regular review with the help of an independent advisory committee comprising representatives of both consumer and advertising interests. All holders of relevant ITC licences are required to ensure that any advertising they transmit complies with this Code and to satisfy the ITC that they have adequate procedures to fulfil this requirement. The ITC draws up and revises the rules, advises broadcasters on interpretation, monitors compliance and investigates complaints. It has the power to require advertising that does not comply to be withdrawn.

Environmental claims

- A2.9 The ITC codes deal with environmental claims in a short section called 'Protection of the Environment':

'No advertisement may encourage or condone behaviour prejudicial to the protection of the environment. This does not preclude responsible advertisements for products and services which may have some adverse environmental impact in normal use, e.g. motor cars. All claims relating to environmental impact must comply with guidelines approved by the

¹⁴ Advertising Standards Authority June 2000 *Mitsubishi Electric UK Ltd*

Commission from time to time for this purpose.’¹⁵

(Paragraph 22 ITC Code of Advertising Standards & Practice)

Broadcast Advertising Clearance Centre

A2.10 The Broadcast Advertising Clearance Centre (BACC) examines all television commercials to ascertain their legality and to pass judgement on taste. The organisation is funded by the commercial television companies. The BACC code includes guidance on environmental claims in Section 8 of the Code.

Radio Authority

A2.11 The Radio Authority’s Advertising and Sponsorship Code is also based on the requirements of the Broadcasting Act 1990. The Code applies to all advertisements and sponsorships on all services (with the exception of digital additional services) licensed by the Radio Authority. The Broadcasting Act requires the Radio Authority to revise the Code from time to time to reflect changes in circumstances, as well as public views and attitudes. The Act requires the Authority to consult Licensees and other interested parties about the Code.

A2.12 The Radio Authority may require advertising and sponsorship which does not comply with the Code to be withdrawn or suspended. If a Code Rule is breached, the Authority may impose sanctions, ranging from a warning, an apology or a correction, to a fine or the shortening or revoking of a licence.

Environmental claims

A2.13 The Radio Authority Codes cover environmental claims and state that all claims must be supported by factual evidence:

- (a) *Generalised claims for environmental benefit must be assessed on a ‘cradle to grave’ basis. The complete life-cycle of the product and its packaging, the environmental effects of its manufacture, use, disposal and all other relevant aspects must be taken into account;*
- (b) *Categorical statements such as ‘environment friendly’, ‘safe’ or ‘green’ are inappropriate;*

¹⁵ No specific guidelines at the ITC. (See BACC section below)

- (c) *Limited claims, relating to specific aspects of products or services, are acceptable in circumstances where more general ones cannot be justified;*
- (d) *Qualified claims (such as 'friendlier') are acceptable only where products/services can demonstrate significant advantages over competitors or improvements in, for example, the chemicals or packaging they use. In such cases the nature of the benefit must be explained, e.g. 'our unbleached nappies are kinder to the environment';*
- (e) *Claims based on the absence of a harmful chemical or damaging effect are unacceptable if the product category does not generally include the chemical or cause the effect. Claims for the absence of harmful constituents are also unacceptable if the product contains other, equally harmful elements. Spurious 'free from X' claims are unacceptable.*

(Section 2, Paragraph 5 Radio Authority Advertising and Sponsorship Code Dec 2000)

A2.14 Sound factual evidence must support all claims, and the codes state that advertising should also follow the Green Claims Code, published by the DEFRA and the DTI.

Appendix 3 Specific requirements of ISO 14021

Self-declared environmental claims and any explanatory statements are subject to all requirements in 5.7 [of the standard ISO 14021]. Such claims, including any explanatory statement:

- a) shall be accurate and not misleading;
- b) shall be substantiated and verified;
- c) shall be relevant to that particular product, and used only in an appropriate context or setting;
- d) shall be presented in a manner that clearly indicates whether the claim applies to the complete product, or only to a product component or packaging, or to an element of a service;
- e) shall be specific as to the environmental aspect or environmental improvement which is claimed;
- f) shall not be restated using different terminology to imply multiple benefits for a single environmental change;
- g) shall be unlikely to result to misinterpretation;
- h) shall be true not only in relation to the final product but also shall take into consideration all relevant aspects of the product life cycle in order to identify the potential for one impact to be increased in the process of decreasing another;
NOTE This does not necessarily mean that a life cycle assessment should be undertaken.
- i) shall be presented in a manner which does not imply that the product is endorsed or certified by an independent third-party organisation when it is not;
- j) shall not, either directly or by implication, suggest an environmental improvement which does not exist, nor shall it exaggerate the environmental aspect of the product to which the claim relates;
- k) shall not be made if, despite the claim being literally true, it is likely to be misinterpreted by purchasers or is misleading through the omission of relevant facts;
- l) shall only relate to an environmental aspect that either exists or is likely to be realised, during the life of the product;
- m) shall be presented in a manner that clearly indicates that the environmental claim and explanatory statement should be read together. The explanatory

statement shall be of reasonable size and in reasonable proximity to the environmental claim it accompanies;

- n) shall, if a comparative assertion of environmental superiority or improvement is made, be specific and make clear the basis for the comparison. In particular, the environmental claim shall be relevant in terms of how recently any improvement was made;
- o) shall, if based on pre-existing but previously undisclosed aspect, be presented in a manner that does not lead purchasers, potential purchasers and users of the product to believe that the claim is based on a recent product or process modification;
- p) shall not be made where they are based on the absence of ingredients or features which have never been associated with the product category;
- q) shall be reassessed and updated as necessary to reflect changes in technology, competitive products or other circumstances that could alter the accuracy of the claim; and
- r) shall be relevant to the area where the corresponding environmental impact occurs.

NOTE A process-related claim can be made anywhere, so long as the environmental impact occurs in the area where the production process is located. The size of the area will be determined by the nature of the impact.

Key Contacts

Advertising Standards Authority (ASA)

020 7580 5555

www.asa.org.uk

British Standards Institute (BSI)

020 8996 9000

www.bsi-global.com

Department for Environment, Food and Rural Affairs (DEFRA)

Environment Business and Consumers Division

020 7238 6000

www.defra.gov.uk

Energy Saving Trust (EST)

020 7222 0101

www.est.org.uk

Independent Television Commission (ITC)

020 7255 3000

www.itc.org.uk

Office of Fair Trading (OFT)

020 7211 8000 (switchboard)

08457 22 44 99 (general enquiries)

www.oft.gov.uk

Radio Authority

020 7430 2724

www.radioauthority.org.uk

Trading Standards Service

www.tradingstandards.gov.uk

or contact your Local Authority