Fuel mix disclosure - proposed supply licence amendment
Response by E.ON UK

This is E.ON UK's[1] response to Ofgem's consultation paper on the proposed licence supply amendment which will implement the fuel labelling requirements of Directive 2003/54/EC ("the Directive"). We have divided our response into some general comments on what we consider to be the key issues and specific comments on the draft licence amendment.

General Comments

Interested third parties

DTI and Ofgem have sought a light-touch approach towards implementation of the relevant articles of the Directive, and we welcome their decision to do so. Nevertheless, we expect that the practical implementation of fuel labelling will be subject to examination, particularly by those wishing to scrutinise environmental data published by suppliers.

DTI and Ofgem have accepted that, given the practicalities of the commodity based power market in the UK and the need for pragmatic implementation, it will be impossible to assign an exact place and time of origin to every unit of electricity supplied. There is a likelihood that the apportioning process that suppliers will follow in good faith will be criticised for a perceived lack of rigour, even though the approach is sound in meeting the objectives of the Directive. We are pleased that at the 5th August seminar DTI/Ofgem agreed to assist suppliers in addressing this issue and we look forward to working with them.

Obligation to provide Information

It is most important that Ofgem and DTI apply the Directive in as flexible way as possible in regard to promotional materials. The objective should be that *prospective* customers only need to receive a fuel label once prior to completion of a sale and this could be in a welcome pack during the cooling off period. Obviously customers will then receive this information with their bills, if and for so long as they stay with the supplier.

The costs and complexities arising from a wider-drawn requirement, for instance to put a fuel label on every item of promotional literature, are substantial. There will be a direct extra cost as space is required to present the label and an indirect cost as effort is expended in securing a presentation which is consistent with the form of

[1] E.ON UK supplies energy under the Powergen and E.ON Energy brands.

promotion. There will be confusion if the promotion does not allow for space to give a presentation which a customer can easily read and compare with that provided on the bill. The inherent complexity of the fuel label may make it harder for customers to engage with the competitive market and hence could create a barrier to switching.

These costs and complexities can be overcome if the information to prospective customers is presented as described above, in a welcome pack prior to conclusion of the cooling off period.

The parallel should be with food labelling, where information on the packaging is available to the customer immediately before purchase, but is not required on promotional coupons or other advertisements.

This interpretation is consistent with both the Directive and the Commission's advice note:

- annex A to the Directive requires information to be communicated to the customer prior to conclusion or confirmation of the contract.
- the advice note only states as a main obligation the inclusion of information in or with bills.

We recommend promotional materials are not defined explicitly, but rather Paragraph 2 is modified to read:

> *(b) at least once prior to conclusion or confirmation of a contract with a customer*

We would welcome opportunities for further discussion with Ofgem/DTI on alternative formulations and drafting if this proposed wording is not acceptable.

<u>Compliance Cycle & Total Electricity Supplied Denominator</u>

We are very concerned about the suggested timescales, since the three month 'balancing period' between April and July is in practice a very challenging timescale for both the industry and DTI/Ofgem:

- The industry is dependent upon the DTI issuing the Residual Mix Table. The DTI have stated, at the 5th August seminar, that this data will be issued by the end of April. Any delay, however justified, in the production of this data by DTI may result in licensees being in breach of their licence
- The denominator is the same figure as that notified to the DTI on 20th June, in compliance with the Renewables obligation. In practice, suppliers will have at most a month to make their fuel mix calculations then update web-

sites and printed material. This is extremely challenging and will result in additional costs for consumers as print runs are accelerated, or cancelled if there are delays in supplying information, and unused stocks are destroyed.

- It is not necessary to mandate a rigid timescale, since all information will be dated.
- We recommend that Paragraph 5 is amended to read 'as soon as reasonably practicable' and the guidelines advise 1 July as the target, but do not make it a mandatory requirement.
- The accurate verification of renewable generation output information from the SVA metering system, which will form the basis of generator declarations and REGOs also needs to be taken into account. SVA dispute resolution can take several months. Guidance from Ofgem on the treatment of outstanding disputed data will be needed, which should be developed together with the industry.

Environmental Information

The emission factors to be published by the DTI must be endorsed by DEFRA/EA and relevant industry bodies i.e. JEP and CHPA. As the fuel labelling data year does not run synchronously with the current EA emissions reporting year (Oct-Sept) or the EU emissions trading scheme year (Jan-Dec) the factors issued for fuel labelling will not be consistent with these other 'official' figures. DTI/Ofgem/DEFRA/EA should be prepared to answer enquiries which may be referred to them by suppliers from interested parties on the consistency of such data.

In answer to the specific question in 2.11, we believe that there is value in keeping the option of using accredited station specific factors open, largely because at this stage the advantages and disadvantages for both consumers and the industry e.g. in terms of the consistency issue raised above, have not been fully weighed up. The use of station-specific emissions factors should certainly not be made mandatory, particularly given that generator declarations are themselves voluntary and are subject to certain inevitable uncertainties, which we discuss below.

Evidence for Fuel Sources

DTI National Average
This a pragmatic approach from DTI/Ofgem given the practicalities of the UK traded market, but the limitations of this national average (it may result in double counting of volumes) should be highlighted by the DTI.

Generator Declarations
We have previously stated our concerns over declarations to both DTI and Ofgem, which can be summarised as follows:

- very few supply licensees have a station specific contractual relationship with a generator
- current traded market volume is circa 1000TWh (3x physical demand), which makes the precision of a declaration supplied by a generator/trader difficult to ascertain
- annual ex-post declarations will not accurately reflect the real time delivery of power from all generation sources to meet the national demand, let alone the demand of specific groups of customers
- the volume supplied by generators to NGC via the balancing market will need to be excluded from generation declarations as it could be supplied to any or all supply licence holders. Are DTI/Ofgem able to clarify whether they intend to oblige NGC to issue some kind of generator declaration to suppliers in respect of the imbalance volumes?
- Ofgem state (2.16) that the licence condition will make suppliers responsible for the accuracy and reliability of the information provided. Suppliers cannot compel generators to comply with the requirements of paragraph 8 of the condition but can only request this as part of their contractual arrangements. It appears, moreover, that generators are not to be put under any explicit obligation to produce such information. We do not see how a supplier can be held responsible for any inaccuracies in the data they are supplied with by an external third party as this is clearly beyond their direct control.

Generator Declarations for Renewable output (Year 1)
We have concerns that, because renewable generation declarations are not mandatory, small renewable generators may not be willing to supply declarations without a degree of assistance or incentive from suppliers. Given that suppliers can hold numerous contracts of this sort, obtaining declarations for each one could prove to be a huge administrative and potentially financial burden.

One way to avoid this problem (which will only exist during the first year of the scheme) would be to accept ROCs as meeting the generator declaration requirement in year one, provided that the supplier takes reasonable efforts to avoid double counting. This would also reduce the administrative burden upon both generators and suppliers, given that it makes use of an existing data source.

REGOs for Renewable output (Year 2)
Whilst, in the long term, REGOs offer a good method of certifying the origin of renewable electricity, we do have several concerns:

- Ofgem have not yet published any documents regarding the REGO implementation programme, despite the need for the system to be fully operational by April 2005. We urge DTI/Ofgem to provide a consultation paper and more detailed plan before the end of September 2004. Due to the

very pressing timescales, it is essential that the industry and Ofgem engage in dialogue about the practicalities of issuing and tracking REGOs, especially in terms of IT systems.

- Ofgem should confirm whether REGOs will be tradable or not. We are concerned that separating the certificates from the energy that they were originally associated with may undermine their value as a definitive measure of renewable energy supply.
- There are no clear commercial incentives for renewable generators to be involved in the REGO scheme and as such it may require financial and operational contributions from the supplier to obtain REGOs. There is a risk that such a cost may have to be passed onto consumers.

Verification, compliance & audit

There appears to have been a distinct shift in the nature of this process from the original DTI conclusion paper to the current Ofgem consultation paper. It was originally envisaged that audit certificates would be issued by DTI/Ofgem approved auditors, providing the agreed standard had been met, and this certificate would constitute final evidence of full compliance.

We accept that the Directive requires Member States to take 'the necessary steps to ensure that the information provided by suppliers to their customers pursuant to [Article 3 (6)] is reliable' and that Ofgem cannot use its Condition 19 powers as a basis for information requests on fuel labelling, because the function it is exercising is not conferred on it under the Electricity Act or Utilities Act but under the European Communities Act.

However, in answer to the question in paragraph 2.19 of the consultation document we are concerned that, as currently drafted, Ofgem's intended approach to fulfilling this obligation is disproportionate and goes further than is necessary to meet the requirements of the Directive. Ofgem have stated that it is not their intention to carry out "dawn raid" style investigations. We value this reassurance, but unfortunately, it does not justify Ofgem's view that powers of access to premises are necessary. Making provision for the use of such wide-ranging powers on the understanding that they are highly unlikely to be used is difficult to describe as stable, light touch regulation, since much is left open to what would effectively be changes in personal opinion.

It would also be helpful if Ofgem were to clarify how long they would expect fuel mix data would need to be retained by a supplier and how long declaration information would need to be retained by a generator.

Best Practice Guidance

We welcome Ofgem's intent to provide best practice guidance, but also note that initially suppliers are likely to experiment with a variety of presentations and it will take time for best practice to emerge.

Next Steps

The proposed licence condition is complex and it would be wise for the final draft to be circulated to interested parties to confirm that it achieves what Ofgem intend.

Comments on Draft Licence condition

Paragraph 1

REGOs are a requirement of Article 5 of Directive 2001/77/EC (the Renewables Directive). For consistency and to permit integration with schemes of other Member States, "Guarantees of Origin" should refer to certificates issued in compliance with Article 5 of the Renewables Directive, not solely to those issued by Ofgem under the UK REGO scheme.

Clarification is required on the definition of "preceding year". Condition 52A of the Supply Licence allows a supplier's financial year to be a different period. For example, our financial year runs from January to December. We also note that the Notes on implementation of the Directive state that "The disclosed information (fuel mix and its related environmental impact) must relate to the preceding *calendar* year (emphasis added)". Discrepancy between financial year is one factor that may impair comparison between different suppliers' figures.

The definition of "renewable" should refer to Article 2 of the Renewables Directive, since this is the definition that is applicable to REGOs and allows consistency between Member States.

Paragraph 2

As discussed above, we recommend that Paragraph 2(b) is modified to:

> *(b) at least once prior to conclusion or confirmation of a contract with a customer*

but we would welcome opportunities to discuss alternative formulations and drafting.

Paragraph 3

No issues

Paragraph 4

No Issues

Paragraph 5

Again, as discussed above, this should be amended to read:

> *"…it shall provide the information required to be produced under Paragraphs 2 and 3 as soon as is reasonably practicable following the end of the disclosure period and shall update that information as soon as reasonably practicable thereafter."*

Paragraph 6

The drafting of 6(c) does not appear to make sense. Are the words "*attributable to an energy source*" to "*a generator declaration*" superfluous?

Paragraph 7

No Issues

Paragraph 8

a) The station name to be used for renewable generating stations should be defined as being the station name used in the ROC database; this would avoid any confusion that may be caused by such stations having names that do not relate directly to their location.
b) The definition of fuel will need to specify whether it relates to all fuel burn or just fuel burn when the station is exporting, since these are different measures. The former is reported to the EA.
c) The definition of electricity assigned, will need to be defined to take account of station load, line loss and volume supplied to NGC via the BM
d) No issues
e) This refers to paragraphs 7 (a) to (d); we assume this should be 8 (a) to (d).

Paragraph 9

(a) Should Ofgem/DTI choose to keep the option of using station specific emission factors open, this paragraph would need to be changed
(b) should read:

> *" … by the percentage of electricity supplied from a nuclear energy source as calculated …"*

Paragraph 10

No issues

Paragraph 11, 12 & 13

Paragraphs 11, 12 and 13 are disproportionate and unnecessary to achieve the requirements of the Directive, given that DTI's preference is for a light-touch regulatory approach. As already mentioned above, it is unclear to us why it is necessary to have access to premises to check the data in question. We contend that a power under the condition to require information to be provided is sufficient.

The cross reference in paragraphs 12 and 13 to paragraph 14 is incorrect; it should be to paragraph 11.

Paragraph 14

No Issues

E.ON UK
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