

**Notice under Section 25 of the Electricity Act 1989 following an investigation into compliance by Atlantic Electric and Gas Limited (“Atlantic”) with the Renewables Obligation and Renewables Obligation Scotland under The Renewables Obligation Order 2002 (No.914) and The Renewables Obligation (Scotland) Order 2002 (No.163)**

**30 September 2004**

1. This document constitutes a notice, published in accordance with section 25(5A) (6)(b) of the Electricity Act 1989, stating that:
  - (a) the Gas and Electricity Markets Authority (“the Authority”) is satisfied that Atlantic is likely to contravene the relevant requirement of its supply licence imposed by sections 32 to 32C of the Electricity Act 1989 and the relevant Articles of the Renewables Obligation Order 2002 and the Renewables Obligation (Scotland) Order 2002; and
  - (b) the Authority has decided not to make a provisional order or final order under section 25 of the Electricity Act 1989 as it is satisfied that Atlantic has agreed to take and is taking all reasonable steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the relevant requirement.

Background

2. The Authority grants licences for the supply of electricity. It has a duty to keep under review all activities in the areas to which electricity licences apply. It also has a duty to take enforcement action where it is satisfied that a licence obligation is being, or is likely to be, contravened and may impose a financial penalty in respect of a past or continuing contravention.
3. Ofgem has conducted an investigation into Atlantic’s compliance with its Renewables Obligation and its Renewables Obligation Scotland in respect of the obligation period 1 April 2003 to 31 March 2004 (“the second obligation period”).

The Relevant Requirement

4. Compliance with the Renewables Obligation and the Renewables Obligation Scotland is a “relevant requirement” within the meaning of section 25 of the Electricity Act 1989.
5. The Renewables Obligation and the Renewables Obligation Scotland are set out in section 32 of the Electricity Act 1989 and in Article 3 of the Renewables Obligation Order 2002 and the Renewables Obligation (Scotland) Order 2002 (“the Orders”) respectively. It requires each licensed electricity supplier to produce evidence in the form of certificates (Renewables Obligations Certificates (“ROCs”)) that, during a period designated in the Orders, it has supplied to customers in Great Britain a specified percentage of electricity generated from renewable sources – or that another supplier has done so, or that they have done so jointly. The evidence must be produced to the Authority before the

‘specified day’, which is the 1 October immediately following any obligation period.

6. An electricity supplier may alternatively discharge its Renewables Obligation or Renewables Obligation Scotland by making a buy-out payment to the Authority before the specified day relating to the relevant obligation period. For the second obligation period, the required buy-out payment was £30.51 for each MWh of an electricity supplier’s Renewables Obligation or Renewables Obligation Scotland in respect of which the electricity supplier did not produce a ROC.

#### Atlantic current situation

7. Atlantic, a licensed electricity supplier, went into administrative receivership on 28 April 2004.
8. Atlantic’s Renewables Obligation for the second obligation period was 273,473 ROCs or a buy-out payment of £8,343,661.23 at £30.51 per ROC.
9. Atlantic’s Renewables Obligation Scotland for the second obligation period was 4769 ROCs or a buy-out payment of £145,502.19 at £30.51 per ROC.
10. Atlantic’s Administrative Receivers have informed the Authority that their prime duty is to realise the assets of Atlantic in order to discharge the company’s liabilities to its secured and, where appropriate, preferential creditors. Any liability in respect of the Renewables Obligation or the Renewables Obligation Scotland would be an ordinary, unsecured liability, as would any penalty imposed by the Authority. The assessment of the Administrative Receivers was that there was no present prospect of funds being available for distribution to unsecured creditors.
11. The Authority is therefore satisfied that Atlantic is likely to fail to comply with the Renewables Obligation and Renewables Obligation Scotland in respect of the second obligation period by not producing 278,242 ROCs or making a buy-out payment of £8,489,163.42 to the Authority before 1 October 2004.

#### Authority Decision

12. Section 25 of the Electricity Act 1989 provides that, subject to section 25(5) and 25(5A), where the Authority is satisfied that a licence holder is likely to contravene any relevant requirement it shall make a provisional order or final order which makes such provision as is requisite for the purpose of securing compliance with that requirement.
13. Section 25(5A) of the Electricity Act 1989 provides that the Authority is not required to make a provisional order or final order if it is satisfied that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question. Given the constraints imposed on an Administrator, the Authority has taken the view that there are no further steps that could be taken

and on this basis a provisional order or final order is unlikely to have practical effect and could be considered a disproportionate response.

14. The Authority, having taken full account of the particular facts and circumstances of the contravention outlined above, concluded that it is not proportionate to issue a provisional order or final order in this case. To do so would serve no practical purpose.

John Neilson  
Managing Director Corporate Affairs

Duly authorised on behalf of the Gas and Electricity Markets Authority