

**Revision of Guidelines on Green Supply Offerings**

**Consultation Document**

March 2005



## Summary

For consumers to make appropriate 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 de-motivate consumers.

Following consultation, Ofgem issued Guidelines on Green Supply Offerings in the domestic electricity market in April 2002 ("the 2002 Guidelines"). The 2002 Guidelines set out objective criteria for the use of environmental or 'green' claims in the description and marketing of electricity by suppliers.

Since 2002 there have been a number of developments that affect green supply offerings. These include:

- ◆ the decision of the Energy Saving Trust to discontinue the Future Energy Scheme;
- ◆ experience of three years of operation of the Renewables Obligation;
- ◆ the introduction of Renewable Energy Guarantees of Origin;
- ◆ the requirement for electricity suppliers to disclose the fuels used to generate the electricity they supply, and
- ◆ the growing importance of green supply for non-domestic consumers.

The 2002 Guidelines are being reviewed in the light of these changes, the operation of the supply market in respect of green supply offerings, and the views expressed in the series of workshops organised by suppliers and the Business Council for Sustainable Energy. This document includes a draft set of revised Guidelines and is actively seeking views on a number of aspects of the Guidelines. The following issues have been addressed in revising the Guidelines:

- ◆ scope of the Guidelines;
- ◆ supply in the commercial/industrial market;
- ◆ evidence of supply;

- ◆ links with fuel mix disclosure;
- ◆ definition, measurement and standard for additionality;
- ◆ third party accreditation, and
- ◆ enforcement.

**Ofgem invites views from interested parties on all aspects of the draft revised**

**Guidelines.** Final revised Guidelines will be issued later in 2005.

The Guidelines do not impose any new requirements on licensees. They are intended to assist those suppliers who intend to make green supply offerings, to inform consumers, and to assist those who may be involved in the audit and/or verification of green supply offerings. This document makes reference to potential legal liability. It should be read in conjunction with, and must 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.

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# 1. Introduction

- 1.1 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. The offers to enter into such contracts are referred to as “green supply offerings”.
- 1.2 The purchase of green supply offerings is a way that consumers can act to minimise the effects on the environment of their energy use<sup>1</sup>. This can result in market led improvements in environmental performance.
- 1.3 However, for consumers to make appropriate 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.
- 1.4 Following consultation, Ofgem issued Guidelines on Green Supply Offerings in April 2002 (“the 2002 Guidelines”) which address green supply offerings in the domestic supply market. The 2002 Guidelines set out objective criteria for the use of environmental or ‘green’ claims in the description and marketing of electricity by suppliers.
- 1.5 The aims of the 2002 Guidelines were 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 supply offerings are credible and defensible, and

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

- ◆ clarify the relationship between the Renewables Obligation and the marketing of domestic green supply offerings.
- 1.6 On publication of the 2002 Guidelines, Ofgem stated that they may be updated from time to time. Since 2002 there have been a number of developments that affect the green supply markets. These include:
- ◆ the decision of the Energy Saving Trust to discontinue the Future Energy Scheme,
  - ◆ experience of three years of operation of the Renewables Obligation,
  - ◆ the introduction of Renewable Energy Guarantees of Origin,
  - ◆ the requirement for electricity suppliers to disclose the fuels used to generate the electricity they supply, and
  - ◆ the growing importance of green supply for non-residential consumers.
- 1.7 In the same period, there has developed considerable diversity in the range of green supply offerings available – all of which claim to give consumers the opportunity to deliver environmental benefits through their electricity purchases, but in a wide variety of ways. There have also been conflicting views as to how beneficial some of the offerings may be.
- 1.8 Since termination of the EST's Future Energy scheme there has not been an accreditation system for offerings. There has, however, been some attempt to benchmark the offerings and provide some consumer guidance – including by Friends of the Earth in its listing and recommendations for green supply<sup>2</sup>.
- 1.9 Some suppliers, consumer groups and green groups have expressed a desire for a more structured auditing and verification system for green claims made in the marketing of electricity. A number of meetings organised by suppliers and attended by a range of stakeholders on the issue of auditing of green supply offerings have been held to further this initiative.

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<sup>2</sup> [www.foe.org.uk/campaigns/climate/press\\_for\\_change/choose\\_green\\_energy](http://www.foe.org.uk/campaigns/climate/press_for_change/choose_green_energy)

- 1.10 In the light of these developments, Ofgem undertook in the 2003/04 review of its Environmental Action Plan to revise the 2002 Guidelines.

### ***Impact Assessment***

- 1.11 This document does not include an Impact Assessment because it is purely advisory and does not impose any new regulatory obligations on suppliers.

### ***Next Steps***

- 1.12 This document sets out Ofgem's proposals for revised Guidelines on Green Supply Offerings. It invites views from interested parties on all aspects of the Guidelines. Final revised Guidelines will be issued later in 2005.

### ***Handling of responses***

- 1.13 In accordance with its usual practice, Ofgem intends to make responses to this consultation available through the Ofgem library and website. Respondents may request that their response is kept confidential. Ofgem shall respect this subject to any obligations to disclose information e.g. under the Freedom of Information Act 2000<sup>3</sup> or the Environmental Information Regulations 2004. Respondents wishing their responses to remain confidential should clearly mark the documents to that effect and include the reasons for confidentiality.

### ***Timetable for consultation***

- 1.14 Views are requested by 1 July 2005 and should be sent, preferably by email, to:

John Costyn  
Head of Environmental Issues  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Tel: 020 7901 7166  
Fax: 020 7901 7387  
email: [sea@ofgem.gov.uk](mailto:sea@ofgem.gov.uk)

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<sup>3</sup> For more information goto [www.foi.gov.uk/understand.htm](http://www.foi.gov.uk/understand.htm)  
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- 1.15 If you have any queries on this document, please contact John Costyn on 020 7901 7166 or Alex Thorne (alex.thorne@ofgem.gov.uk) on 020 7901 7194 who will be pleased to help.

### ***Status of the Guidelines***

- 1.16 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, to inform consumers and to assist those who may be involved in the audit and/or verification of green supply offerings.
- 1.17 The Guidelines make 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.

### **Contacts**

- 1.18 A list of useful contacts can be found at Appendix 3.

## 2. Draft revised Guidelines

2.1 The key features of green supply offerings are:

- ◆ transparency: offerings need to be clear, and to be consistent with public understanding and expectations as to what constitutes ‘green energy’
- ◆ additionality: consumers choosing a green offering need to be able to be satisfied that their support is making a difference
- ◆ verification: suppliers will need to have and retain evidence to verify all claims and to make it available to the public or an external verifier.

### *Transparency*

2.2 All marketing and related information should be based on correct, up-to-date and specific information about the product that is being offered.

2.3 Claims of supply from renewable generation should be based on the same requirements that apply under the fuel mix disclosure supply licence condition such as:

- ◆ the application of the definition of renewable generation (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases)
- ◆ the evidence to support supply (i.e. by REGOs).

2.4 Suppliers should inform prospective purchasers of green supply offerings of the specific technologies of generation relevant to the green offering – this is particularly important in the case of large hydro stations, waste to energy generation and generation outside Great Britain:

***N.B.** Evidence of supply of renewable energy alone does **not** constitute additionality, especially where that supply forms part of a supplier’s renewable obligation.*

2.5 Electricity supplied as CCL exempt energy in the commercial market should not be sold as “green supply” unless it can be identified as renewable according to the fuel mix disclosure licence condition (i.e. supported by REGOs).

- 2.6 The use of images and symbols should reflect the product being offered; for example, the use of images of wind generation should not be used for an offering that does not include substantial wind generation.

### ***Additionality***

- 2.7 Consumers choosing a green supply offering need to be able to be satisfied that their support is making a difference to the environment in one or more of the three following ways:
- ◆ ensuring **additional generation** from renewable sources than would otherwise have occurred;
  - ◆ ensuring investment in the expansion of **renewable generation capacity** that would not otherwise have occurred;
  - ◆ a clearly identified **environmental benefit** not directly related to renewable energy supply.
- 2.8 Suppliers should inform consumers which of these form the basis of the additionality being claimed, and which do not.

### ***Verification***

- 2.9 Suppliers should be responsible for evaluation and provision of data necessary for the verification of all claims made in the marketing of green energy. Before marketing, measures should be established to ensure that the claim can be objectively verified.
- 2.10 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.
- 2.11 Information used to verify claims 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)

### ***Verification of supply***

- 2.12 Suppliers will need to have and retain evidence to verify that the total energy sold under green supply arrangements does not exceed the amount of renewable generation claimed in the supplier's fuel mix disclosure label.
- 2.13 Any specific claims in regard to technology employed should be supported by evidence (e.g. REGOs) with purchases of energy consistent with the claim as to origin, technology etc.
- 2.14 Given the unpredictable nature of many renewable sources it is acceptable for evidence to be averaged over a year.
- 2.15 Evidence for preceding years is an acceptable measure to support marketing to future customers.

### ***Verification of additionality***

#### ***Deletion of ROCs***

- 2.16 If suppliers use the acquisition of ROCs beyond those required for their obligation for the verification of additionality, these ROCs should be deleted from the Register or held by other parties, such as third party accreditation bodies.

#### ***Operation of funds***

- 2.17 Premiums raised under green 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 payments.

- 2.18 The criteria for payments into and out of the fund should be clear and published. 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.
- 2.19 In the case of commercial investment, the treatment of future benefits e.g. from ROCs will need to be addressed in detail.
- 2.20 Suppliers should evaluate expenditure from contribution-based offerings and report to consumers their performance against the funds criteria.

### ***Third party badging of green supply offerings***

- 2.21 Suppliers are encouraged to use an accreditation system, if available, as a means to ensure verification. This may allow public confidence that the claims are fully audited and verified by third parties.

### 3. Issues considered in revising the Guidelines

- 3.1 The 2002 Guidelines have been reviewed in the light of:
- ◆ the changes identified in paragraph 1.6,
  - ◆ issues raised in respect of the provision of green supply offerings in the electricity supply market, and
  - ◆ the views raised in the series of workshops organised by suppliers and Business Council for Sustainable Energy.
- 3.2 This chapter explains the issues that have been considered as part of the review and should be considered alongside the revised Guidelines. **Ofgem seeks comments from interested parties on all aspects of the revised Guidelines.**

#### ***Key features of the Guidelines***

- 3.3 The 2002 Guidelines identified certain features that should be accounted for in electricity suppliers' marketing of green supply offerings as being transparency; additionality, and verification.
- 3.4 **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'.
- 3.5 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.
- 3.6 The basic feature of **additionality** is that 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 renewable generation or capacity – or through indirect support which may result in some identified future benefit.

- 3.7 The 2002 Guidelines proposed principles for **verification** and for information disclosure, generally based on the principles contained in ISO 14021 (see Appendix 1).
- 3.8 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 without the need for access to confidential business information.

### ***Scope of the Guidelines***

- 3.9 The 2002 Guidelines did not include 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.
- 3.10 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. The DTI has identified the following technologies as renewable<sup>4</sup>:
- ◆ 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

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<sup>4</sup> *New & Renewable Energy: Prospects for the 21st Century* The Renewables Obligation Statutory Consultation, DTI. August 2001  
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- ◆ geothermal energy.

3.11 However the 2002 Guidelines also recognised that within these there is a core of technologies widely understood to warrant support, and others for which providing support may be more controversial whether for economic or other reasons. The revised Guidelines therefore propose that suppliers should specify which technologies are supported by their green supply offerings.

### ***Supply in the industrial and commercial market***

3.12 The 2002 Guidelines specifically excluded consideration of supply in the non-domestic sector. It was considered at the time that relevant issues were likely to be different, principally as a result of the Climate Change Levy (CCL) exemption for renewables. It now appears, however, that purchase of green supply by non-domestic consumers is a major area of growth in the market and it is timely to consider the issues that affect green supply for all consumers in the revised Guidelines.

3.13 A number of very large consumers have announced that they are purchasing significant amounts of renewable energy. Some observers are now suggesting that the amounts claimed are approaching the total renewable generation output in the United Kingdom.

3.14 This raises the issue of how suppliers identify renewable energy to their consumers, and how those consumers report those purchases as part of their environmental reporting.

3.15 A general aim of the 2002 Guidelines was that suppliers should avoid double counting. To align reporting of supply of renewable energy as far as possible with the framework established for fuel mix disclosure, the revised Guidelines propose that electricity supplied as CCL-exempt energy to commercial customers should *not* be sold as “green supply” unless it is supported by Renewable Electricity Guarantees of Origin (REGOs). See paragraph 3.18 for further consideration of this issue.

3.16 **Views are sought on the treatment of supply to non-domestic customers in the revised Guidelines.**

3.17 How electricity consumers treat emissions associated with their electricity purchases, including purchases of green supply, is beyond the scope of these Guidelines. However, it is an issue that may be taken up by Defra, NGOs or other bodies in considering any revision of environmental reporting guidance or standards.

### ***Evidence of supply***

3.18 The 2002 Guidelines suggested that only supply that is demonstrably additional to the Renewables Obligation should be considered as green supply. However it appears that suppliers and customers would also benefit from a standardised, industry-wide method of verifying supply of all renewable energy. Alternatives that might be used for this include the holding of REGOs, ROCs, Climate Change Levy Exemption Certificates (LECs) for renewables or through evidence from supply contracts (See Box 1).

3.19 There would be clear advantages from an agreement across the industry regarding this evidence. This would reduce the risk of double counting where the same unit of electricity could be sold by different suppliers, or by a single supplier to different customers, based on the different pieces of evidence that may be held.

3.20 Ofgem, in the revised Guidelines, proposes that the most appropriate evidence for tracking supply of renewable electricity to consumers of green supply is through the holding of an equivalent number of REGOs for the relevant financial year at an agreed date and time, consistent with the rules that apply under the fuel mix disclosure supply licence condition (12.00 noon on 1 July following the financial year in question). Ofgem is seeking broad industry support for this position.

### Box 1: Certificate Systems

**Renewable Energy Guarantees of Origin (REGOs)** are certificates issued by Ofgem under The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003. The Regulations require the issue of a Guarantee of Origin, on request, in respect of electricity generated from renewable energy sources. REGOs can also be used as the basis for fuel mix disclosure in Great Britain. For more information see Ofgem's administration procedures<sup>5</sup>.

**Climate Change Levy Exemption Certificates for renewables (Renewables LECs)** are used as part of the evidence required by HM Customs and Excise to demonstrate entitlement to the exemption from the Climate Change Levy (CCL). The CCL applies to energy used in the non-domestic sector and the levy payable for electricity is £4.30 per MWh. Electricity from specified renewable generation is exempt from the CCL. Ofgem issues one LEC for each MWh of qualifying output. For more information go to the CCL area of Ofgem's website<sup>6</sup>.

**Renewables Obligation Certificates (ROCs)** are issued to renewable electricity generated within, and supplied to, customers in the United Kingdom<sup>7</sup>. ROCs may be used by suppliers to discharge their Renewables Obligation (RO). Under the RO suppliers are required to source part of their electricity from renewable generation. This figure currently stands at 4.9% and increases yearly to 10.4% in 2010. Suppliers may also meet their obligation by 'buying out' – that is paying into a fund which is then redistributed to suppliers in proportion to ROCs presented. ROCs can be purchased separately from the electricity in relation to which they were issued. For more information see Ofgem's administration procedures<sup>8</sup>.

3.21 The advantages of the use of REGOs over other evidence include the following:

- ◆ they provide an unambiguous link between renewable generation and supply;
- ◆ they can be verified without reference to confidential information, such as would be required by a system supported by contracts;
- ◆ they are the evidence that is to be used to support the renewable share of supply under the fuel mix disclosure supply licence condition;
- ◆ reliance on the REGO Register and an agreed common date and time will prevent double counting, and

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<sup>5</sup> [www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/8821\\_rego\\_procedures\\_sept04.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/8821_rego_procedures_sept04.pdf)

<sup>6</sup> [www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/cclexemptionrenew](http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/cclexemptionrenew)

<sup>7</sup> The Renewables Obligation Order (Northern Ireland) 2005 comes into force on 1 April 2005.

<sup>8</sup> [http://ofgem2.ulcc.ac.uk/temp/ofgem/cache/cmsattach/8688\\_Generati\\_Stations\\_morethan50kW\\_sept04.pdf](http://ofgem2.ulcc.ac.uk/temp/ofgem/cache/cmsattach/8688_Generati_Stations_morethan50kW_sept04.pdf)

- ◆ the use of ROCs as the sole evidence of renewable supply excludes some technologies, does not recognise the contribution to renewable generation made by suppliers who pay buy-out, and is complicated by the specific rules of the Renewables Obligation as a support mechanism, e.g. banking.

3.22 The need for generators to acquire REGOs may pose some additional burden. However, it is likely that this would be borne anyway in order to support fuel mix disclosure requirements.

3.23 **Views are sought on:**

- ◆ **the need for an agreed standard of evidence to support supply of renewable energy;**
- ◆ **whether REGOs form an appropriate basis for any agreed standard of evidence, and**
- ◆ **how industry-wide agreement on a standard for evidence could be achieved.**

### ***Links with fuel mix disclosure***

3.24 As noted above, one of the main justifications for the proposal to use REGOs as the evidence of supply of renewable generation is the fact that it is to form the basis of reporting the renewable share of suppliers' fuel mix under the licence condition which implements the UK's obligations in this area. It is proposed that double counting would be further avoided if an explicit link could be made between fuel mix disclosure and the supply of renewable energy.

3.25 The revised Guidelines therefore propose that suppliers should hold and retain evidence to verify that the total amount of renewable energy sold under green supply arrangements does not exceed the amount of renewable generation claimed in the supplier's fuel mix disclosure label.

## ***Definition, measurement and standards for additionality***

- 3.26 The 2002 Guidelines stated that consumers choosing a green supply offering needed to be able to be satisfied that their support was making a difference; that is that claims should not 'imply that a product or service is exceptional if the claim is based on what is standard practice anyway'<sup>9</sup>. Green supply offerings were originally identified to help meet the environmental goals of the Government, and of the consumers who choose them, in one or both of the following ways:
- ◆ ensuring the **generation** and sale of energy from renewable sources that would otherwise be sourced from other sources, and
  - ◆ an increase in renewable generation **capacity**
- 3.27 In general this covers the claims of existing green supply offerings. However, there are a number of green supply offerings that also claim to deliver environmental benefits in other ways e.g. by offsetting emissions or through improving biodiversity. It is therefore proposed to add to the alternative requirements for additionality: "the provision of a clearly identified **environmental benefit** not directly related to renewable energy supply".
- 3.28 The revised Guidelines propose that suppliers should identify which forms of additionality are delivered by green supply offerings as well as those aspects of additionality that are not.
- 3.29 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'<sup>10</sup>. As part of the Renewables Obligation the Government has established a mechanism for suppliers to delete ROCs from the register on

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<sup>9</sup> DTI/DEFRA Green Claims Code

<sup>10</sup> *New & Renewable Energy: Prospects for the 21st Century* The Renewables Obligation Statutory Consultation, DTI. August 2001  
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demand. It is argued that retiring ROCs effectively strengthens the target provided by the Renewables Obligation by reducing the number of ROCs, and that this will lead to greater investment in renewable capacity. Therefore this is a means of providing verification for the additionality element of green supply offerings. A number of suppliers have taken advantage of this provision so far. However, not everyone agrees that retiring ROCs from the Register does in fact demonstrate additionality. See Box 2 for a discussion of the issues regarding the retirement of ROCs as a means of demonstrating additionality.

**Box 2: ROC retirement as a means of demonstrating additionality**

Retiring ROCs demonstrates additional expenditure on the part of suppliers, since they cannot then use those ROCs to comply with the RO, and must either buy additional ROCs or pay into the buy-out fund instead. Whichever option they chose means that, overall, a greater proportion of the RO will be met through buying-out. This will result in a larger amount of money being recycled *pro rata* on the basis of the remaining ROCs. This will increase the value of ROCs.

Since the RO is a market-based instrument, suppliers or traders should be prepared to pay generators more for ROCs as a result, and the expectation of return from each unit of renewable generation would be greater as a result. This would be likely to tip the balance in favour of marginal investment in new capacity in the longer term.

However, retiring ROCs is unlikely to result in increased renewable generation from existing capacity in the short term, since the assumption must be that existing capacity is already generating to the maximum that the circumstances will allow. Total generation is therefore fixed in the short term.

This line of argument means that there is a question over the 'value' of the amount of additionality that ROC retirement actually delivers to consumers and whether its indirect effects actually match consumer expectations in this regard.

3.30 It is proposed that claims of additionality that are based on the expansion of capacity should demonstrate how capacity is being expanded above and beyond the expansion that is driven by the incentives of the Renewables Obligation. As established in the 2002 Guidelines, the treatment of future benefits from ROCs will need to be addressed.

3.31 These issues are generally covered in the revised Guidelines in principles covering funds. These principles include:

- ◆ accounting separation
- ◆ clear rules for expenditure from funds, and

- ◆ auditing and evaluation of expenditure from funds.
- 3.32 Claims of additionality based on more general environmental benefits are also likely to be based on expenditure from identified funds.
- 3.33 In addition to the definition of additionality there is a need to determine appropriate ways to measure and verify this additionality. There may also be a need to agree minimum standards. It is likely that third party accreditation could play a role in this. This is discussed in the next section.
- 3.34 **Given the debate concerning the definition and measurement of additionality, Ofgem seeks views on the following issues:**
- ◆ **how should definitions, measurement and minimum standards for additionality be set?**
  - ◆ **does the retirement of ROCs provide sufficient evidence of additionality?**
  - ◆ **how can suppliers otherwise demonstrate that green supply offerings deliver benefits above the legal requirements of the Renewables Obligation?**
  - ◆ **would there be a role for suppliers to retire EU-ETS allowances to demonstrate additionality?**

### ***Third-party accreditation***

- 3.35 In many countries the marketing of green electricity is audited and accredited by one or more independent schemes. At the time of the 2002 Guidelines, suppliers had the option of participating in an accreditation system, Future Energy, operated by the Energy Saving Trust, as a means to ensure verification. This scheme has since been discontinued and a number of interested parties have called for the re-establishment of some form of third party scrutiny for green supply offerings in Great Britain.
- 3.36 Third party involvement in the provision of green supply offerings could take a number of forms and perform a number of functions. These would include:

- ◆ the establishment of detailed definitions and setting of minimum standards for the definition of aspects of green supply offerings e.g. detailed definition and thresholds for additionality of various types
- ◆ the development of protocols and procedures for the measurement and auditing of additionality
- ◆ auditing of claims on an *ad hoc* or systematic basis
- ◆ as labelling schemes, which provide recognition and badging for offerings – this could be on an approved/not approved basis or on a rating basis e.g. A to E rating, or
- ◆ as marketing organisations which promote the take up of certified offerings.

3.37 An important aspect of the operation of a third-party auditing or verification is the source of funds and independence. In order to be effective, an accreditation system would need to have a relatively high level of market recognition and be perceived as credible. Funding on a membership basis may compromise these aspects.

3.38 The use of accreditation systems is voluntary for suppliers, and one or more scheme may exist in the Great Britain 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.

3.39 **Views are sought on the need for a system of third-party verification for green supply in Great Britain, the form this system should take, the possible organisation or organisations that could carry this out, and the preferred funding mechanisms.**

## ***Enforcement***

3.40 The 2002 Guidelines did not propose to impose any new legal requirements on licensees. They were intended to assist those suppliers who make green supply offerings, to inform consumers and to assist those who may be involved in the

audit and/or verification of green supply offerings. This is also the case with respect to the revised Guidelines.

- 3.41 Green supply offerings and the way in which they are marketed may fall to be investigated by Ofgem under the Act or the Competition Act. Should Ofgem find that a licensee has breached its licence or a prohibition of the Competition Act, it will take enforcement action.
- 3.42 The Electricity Act 1989 (as amended) (“the Act”) provides that the Authority may not take enforcement action under the Act if it is satisfied that it is more appropriate to address a matter under the Competition Act.
- 3.43 Most relevantly in the context of these Guidelines, the Competition Act prohibits conduct that amounts to an abuse of a dominant position in a market. Behaviour that may amount to an abuse includes:
- ◆ excessive pricing;
  - ◆ discriminatory behaviour, and
  - ◆ predatory pricing.
- 3.44 Suppliers may request guidance from Ofgem on green supply offerings if they are concerned that they could result in a breach of the Competition Act.<sup>11</sup> If a party is concerned that an electricity supplier is breaching the Competition Act, it may make a complaint, with supporting evidence, to Ofgem.
- 3.45 green supply offerings may also fall within the remit of other regulatory agencies and industry codes. The regulation of advertisements and green claims is reviewed in Appendix 1 and 2. Suppliers should also be aware of the possibility of civil action should misleading green claims be made by them.
- 3.46 Please note that any reference to potential legal liability should be read in conjunction with the relevant legislation. This document must not be seen as a definitive interpretation of the law. Anyone in doubt about how they may be

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<sup>11</sup> It should be noted that such guidance would be given on a strictly confidential basis and would not be binding on Ofgem.

affected by the legislative requirements referred to should seek independent legal advice.

# Appendix 1 Regulation of advertisements and green claims

## Office of Fair Trading

- A1.1 The Control of Misleading Advertisements Regulations (CMARs) are aimed at protecting consumers and traders from misleading or unacceptable comparative advertising.
- A1.2 The OFT's role is mainly to support and reinforce the controls exercised by other bodies (see below) where they have been unable to take effective action. It is expected that in most cases the OFT will step in only when these bodies have been unable to deal adequately with a complaint and where it is in the public interest that an advertisement is stopped. The OFT has, however, stated that there are some, albeit rare, instances where it would want to act without referring the matter to other bodies first.
- A1.3 Complaints about misleading advertisements are handled by the Advertising Standards Authority and the trading standards service. Agencies such as the Financial Services Authority and the Medicines Control Agency handle more specialised advertising complaints.
- A1.4 An advert is misleading if it deceives or is likely to deceive its audience and affect that audience's economic decision-making. This also applies if it harms or is likely to harm a competitor of the organisation placing the advertisement. An advert will be likely to affect the economic decision-making of readers if, for example, it persuades them to part with money.
- A1.5 An advert can be deceptive in various ways, for example, if it:
- ◆ contains a false statement of fact - this may be possible to prove or disprove by evidence;
  - ◆ conceals or leaves out important facts;
  - ◆ promises to do something but there is no intention of carrying it out, or

- ◆ creates a false impression, even if everything stated in it may be literally true.

### **Broadcast and non-broadcast advertisement regulation**

- A1.6 The advertising industry takes responsibility for the Codes itself through the Committee of Advertising Practice (CAP), an industry body made up of advertisers, sales promoters, direct marketers and interactive advertisers, agencies and media owners. CAP is divided into two parts – broadcast and non-broadcast. The Broadcast arm is contracted by Ofcom to write and enforce the codes of practice that govern TV and radio advertising, while the non-broadcast arm covers all other forms of advertising, sales promotions and direct marketing. CAP is advised by the Advertising Advisory Committee on broadcast matters, a body whose non-advertising members bring a consumer's eye view to CAP's work.
- A1.7 The Advertising Standards Authority (ASA) is the body that investigates complaints about advertising that breaches the Codes. From 1 November 2004 the ASA has taken on responsibility for complaints regarding advertisements in broadcast media i.e. television and radio. This is in addition to its responsibilities for non-broadcast media which includes: magazines, newspapers, posters, direct mail and cinemas etc. This change has been introduced by the Office of Communications (Ofcom) and creates a 'one-stop shop' for advertisement complaints.
- A1.8 The changes result from a decision by Ofcom that day-to-day responsibility for upholding standards in broadcast advertising should be contracted out to the ASA. However, Ofcom will retain overall responsibility for broadcast advertising regulation and the ASA will report back to the regulator periodically on the effectiveness of the new system.
- A1.9 The majority of UK advertising falls within the Codes, but for the few that contravene the rules the ASA can refer, for example, a broadcaster to Ofcom if a licensee is not following the rules or it can refer an advertiser, agency or publisher to the OFT if they breach the Codes.

## **Trading Standards Service**

A1.10 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.

## **Guidance documents**

A1.11 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. These are discussed below.

## **ISO/British Standards**

A1.12 The ISO 14000 series of international standards relates to environmental management. Within this range the ISO 14020 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**

A1.13 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**

A1.14 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.

A1.15 The objective of ISO 14021 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, and
- ◆ increased opportunity for purchasers, potential purchasers and users of the product to make more informed choices.

## **ISO 14024**

A1.16 This standard provides the guiding principles and procedures for third party environmental labelling certification programmes (Type 1 Environmental Labelling).

## **Defra/DTI Green Claims Code**

A1.17 The Defra/DTI Code sets out the standard of information that the public can expect to be given about the environmental impacts of consumer products. 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.

A1.18 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.

A1.19 The key features of green claims as set out in the Code are shown in Box 3 below.

A1.20 To complement the Green Claims Code, Defra and the DTI have published guidance<sup>12</sup> for anyone producing, selling or advertising products or services in the UK who:

- ◆ currently makes environmental claims about those produces;
- ◆ is considering how to market the environmental attributes of their products, or
- ◆ queries from customers about the environmental attributes of their products and is considering how to respond.

A1.21 The purpose of the guidance is to promote the use of clear, truthful and relevant environmental claims and labels on products. The objectives of the guidance are to:

- ◆ give confidence to firms that their claims meet good practice standards in the UK, Europe and internationally;
- ◆ improve the standard of environmental claims found in the UK market, and
- ◆ encourage more firms to provide environmental information on their products.

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<sup>12</sup> *Green Claims – Practical Guidance, How to make a good environmental claim* Defra 2003  
Revision of Guidelines on Green Supply Offerings  
Office of Gas and Electricity Markets

### Box 3: Excerpt from Defra/DTI Green Claims Code

#### 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.

### Eugene standard

A1.22 The acronym Eugene stood originally as an abbreviation for European Green Electricity Network. Now known as the Eugene Network its mission is to promote green energy labelling as a market tool to facilitate and stimulate additional generation of renewable and efficient energy services, and to foster a clean energy system. More specifically, the Eugene Network objectives include:

- ◆ to co-ordinate green energy labelling initiatives at an international and national level;
- ◆ to develop an international standard for green energy and a harmonised labelling system;

- ◆ to convince governments and international institutions to adopt the Eugene Standard as the basis of their national or international green energy markets, and
- ◆ to encourage all energy consumers to invest in and only purchase environmentally credible green energy products.

A1.23 The Eugene Standard is an international benchmark for green energy tariffs. It supports energy technologies that have undisputed environmental benefits. The Eugene Standard can be used as a symbol of 'good' energy, which has less of an impact on the environment than conventional energy.

A1.24 The Eugene Standard contains a number of key aspects to which suppliers must adhere if they are to be accredited under the scheme. These include the following.

- ◆ Eligible sources – these are: geothermal, wind, solar electric, hydropower, biomass and natural gas-fired CHP. Each of these sources must comply with a strict criteria, for instance, hydropower is only eligible if it operates so that the river system's principal ecological functions are preserved.
- ◆ Additionality – offerings must lead to the increase of green electricity generation compared to what would have occurred otherwise. There is a 'gold' and a 'silver' class of additionality to reflect differences in green markets across Europe. The additionality requirements must be met entirely over and above governmental renewable legislation.
- ◆ Verification – suppliers must conduct a verification process each year to substantiate their claims. The supplier must employ an independent certified public accountant to conduct this verification.

A1.25 Further information can be found at [www.eugenestandard.org](http://www.eugenestandard.org).

## 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 ASA is the body that investigates complaints about advertising which breaches the Codes – it is now a ‘one stop shop’ which, as well as investigating and ruling on complaints, conducts research into how well advertisers are following the Codes of Practice.
- 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.
- A2.4 The majority of UK advertising is within the Codes, but for the few who persistently flout the rules the ASA can rely on the backing of the Office of Fair Trading and Ofcom.

### ***Environmental claims – non-broadcast advertising***

- A2.5 The Code has a 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 Code of Advertising, Sales Promotion and Direct Marketing March 2003)

### **Sanctions**

A2.6 If the ASA Council upholds a complaint, the advertisement or piece of marketing material must be withdrawn or amended. Persistent offenders who refuse to do this can be required to have their marketing material vetted before publication. In the most extreme cases. Under the Control of Misleading Advertisements Regulations 1988, if a misleading advertisement or promotion continues to appear after the ASA 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.

A2.7 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 – broadcast advertising***

#### **Television Advertising Standards Code**

A2.8 The Code deals with environmental claims by stating that:

- ◆ Advertisements must not make unsubstantiated claims about environmental impact (Paragraph 5.2.6 Television Advertising Standards Code)
- ◆ The Code also refers advertisers to the Defra/DTI code and also to ISO 14021 and states that any departure from the best practice set out in these documents must be justified.

#### **Broadcast Advertising Clearance Centre**

A2.9 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.

#### **Radio Advertising Standards Code**

A2.10 The Code covers 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;*
- (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 5 Radio Advertising Standards Code )

## **Sanctions**

A2.11 Broadcasters are obliged by a condition of their Ofcom licences to enforce ASA rulings. If they persistently run advertisements that breach the Codes, broadcasters risk being referred by the ASA to Ofcom, which can impose fines and even withdraw their licence to broadcast.

## Appendix 3 Key Contacts

Advertising Standards Authority (ASA)

020 7492 2222

[www.asa.org.uk](http://www.asa.org.uk)

British Standards Institute (BSI)

020 8996 9000

[www.bsi-global.com](http://www.bsi-global.com)

Department for Environment, Food and Rural Affairs (DEFRA)

Environment Business and Consumers Division

08459 335577

[www.defra.gov.uk](http://www.defra.gov.uk)

Energy Saving Trust (EST)

020 7222 0101

[www.est.org.uk](http://www.est.org.uk)

Office of Communications (Ofcom)

0845 456 3000

[www.ofcom.org.uk](http://www.ofcom.org.uk)

Office of Fair Trading (OFT)

08457 22 44 99 (general enquiries)

[www.oft.gov.uk](http://www.oft.gov.uk)

Trading Standards Service

[www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)

or contact your Local Authority