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Cc. All Interested Parties

28 October 2005

Dear Colleague,

**Decision in relation to the request from the Green Renewable Energy Company Ltd for a Direction under Standard Condition 14 (“Compulsory Acquisition of Land etc”) and a Direction under Standard Condition 15 (“Other Powers etc”) of the Electricity Generation Licence**

The Gas and Electricity Markets Authority (“the Authority”)<sup>1</sup> has considered an application for an electricity generation licence made by The Green Renewable Energy Company Ltd (“GRE”) on 8 June 2005.

As part of its application GRE submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of Standard Licence Condition 14 (“SLC 14”) “Compulsory Acquisition of Land etc” and paragraphs 5 to 8 of Standard Licence Condition 15 (“SLC 15”) “Other Powers etc” be given effect in its electricity generation licence.

On 6 September 2005, Ofgem issued a consultation<sup>2</sup> concerning GRE’s request that the provisions of paragraphs 5 to 7 of SLC14 and paragraphs 5 to 8 of SLC 15 be given effect in the electricity generation licence of GRE, inviting views from interested parties on the Authority’s preliminary view to consent to GRE’s request.

No responses were received to that consultation.

The Authority has decided to implement its preliminary view and direct that paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 have effect in the electricity generation licence of GRE for five years from 28 October 2005.

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<sup>1</sup> Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority, the regulator of the gas and electricity industries in Great Britain. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

<sup>2</sup> ‘Request from Request from the Green Renewable Energy Company Ltd for a Direction under Standard Condition 14 (“Compulsory Acquisition of Land etc”) and a Direction under Standard Condition 15 (“Other Powers etc”) of the Electricity Generation Licence’, Ofgem, September 2005.

This letter explains the background to GRE's request and sets out the Authority's reasons for its decision. This letter constitutes the notice required from the Authority under Section 49A of the Electricity Act 1989 in relation to the direction issued by the Authority providing that the provisions of paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 shall be in effect in the electricity generation licence of GRE.

## **Background to SLC 14**

Paragraphs 5 to 7 of SLC 14 refer to and set out the purposes for which the powers and rights conferred under Schedule 3<sup>3</sup> of the Electricity Act 1989 shall have effect. Schedule 3 provides for the Secretary of State to authorise a licence holder to compulsorily purchase any land for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on. Where the land in question belongs to another licence holder, the Authority must give its consent to the Secretary of State's authorisation.

The purposes referred to in SLC 14 (in paragraph 6 specifically) are:

- (a) the construction or extension of a generating station;
- (b) activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and
- (c) the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with:
  - (i) a transmission system; or
  - (ii) a distribution system.

Therefore, under SLC 14 licensees can make a request of the Secretary of State for the compulsory purchase of land in connection with the activities listed above (detailed in paragraph 6 of SLC 14). For the purpose of clarification, the Authority can give effect to the powers and requirements of SLC 14 in specific electricity generation licences; i.e. it can switch the condition on or off, but it does not have the vires to take a decision in respect of whether the land in question can be compulsorily purchased. Any such decisions fall entirely to the Secretary of State, except where the land in question belongs to another licence holder. In the latter case, under Schedule 3 (2) (1) the Authority must give its consent to the Secretary of State's authorisation.

Paragraphs 1 and 2 of SLC 14 specify how paragraphs 5 to 7 can be given effect. Paragraph 1 of SLC 14 relates to the provisions of paragraphs 5 to 7 of SLC 14 being brought into effect by the Secretary of State.<sup>4</sup> Paragraph 2 of SLC 14 sets out that when the Authority issues a direction that the provisions of paragraphs 5 to 7 of SLC 14 shall have effect, it shall specify a period

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<sup>3</sup> Schedule 3 of the Electricity Act 1989 is set out in full in Appendix 1.

<sup>4</sup> Paragraph 1 of SLC 14 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 14 to have effect within a generation licence, the provisions contained in paragraphs 5 to 7 will apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30th September 2001.

during which such paragraphs shall have effect. Therefore those licences where paragraphs 5 to 7 of SLC 14 were brought into effect by the Secretary of State may or may not include an expiry date, whereas those licences where paragraphs 5 to 7 of SLC 14 have been brought into effect by the Authority will necessarily include an expiry date.

Details of those licences in which paragraphs 5 to 7 of SLC 14 have been given effect without an expiry date being specified, those licences in which paragraphs 5 to 7 of SLC 14 have been given effect including an expiry date and those licences where these paragraphs are not in effect are available on the electronic public register<sup>5</sup> on the Ofgem website.<sup>6</sup>

## **Background to SLC 15**

Paragraphs 5 to 8 of SLC 15 details the activities that the licensee is enabled to carry out by the effect of the powers and rights conferred under Schedule 4<sup>7</sup> of the Electricity Act 1989 and requires the licensee to obtain the consent of the Authority before exercising its rights of entry to land<sup>8</sup> for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station.

Schedule 4 gives powers to licence holders, subject to the necessary consents and giving of notices, to execute certain kinds of work for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, specifically:

(a) the installation under, over, in, along, or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing and removing:

- (i) any electric lines or electrical plant; and
- (ii) any structures for housing or covering such lines or plant;

(b) any works requisite for or incidental to the purposes of any works falling in (a) above including for those purposes:

- (i) opening or breaking up any street or sewers, drains or tunnels within or under any street;
- (ii) tunnelling or boring under any street; and
- (iii) removing or using all earth and materials in or under any street.

Paragraph 6 of Schedule 4 relates to the acquisition of wayleaves by the licensee. In particular, it enables the Secretary of State to grant the necessary wayleave, if this has not been done by the owner or occupier of the land.

Paragraphs 1 and 2 of SLC 15 specify how paragraphs 5 to 8 can be given effect. Paragraph 1 of SLC 15 relates to the provisions of paragraphs 5 to 8 being brought into effect by the Secretary of

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<sup>5</sup> <http://62.173.69.60/index.php?pk=folder97241>

<sup>6</sup> [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

<sup>7</sup> Schedule 4 of the Electricity Act 1989 is set out in full in Appendix 2.

<sup>8</sup> Paragraph 10(1) of Schedule 4

State.<sup>9</sup> Paragraph 2 of SLC 15 sets out that the Authority may issue a direction that the provisions of paragraphs 5 to 8 of SLC 15 shall have effect for a period specified in the direction and that this period may be extended by a further direction of the Authority.

Details of those licences in which paragraphs 5 to 8 of SLC 15 have been given effect are available on the electronic public register on the Ofgem website.

### **GRE's request**

GRE submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 be given effect in its electricity generation licence.

GRE stated in its request that it is developing a series of biomass power plants at various locations in the country, in respect of which it considers it essential to have available wayleaves, easements etc. for the installation and connection of associated pipes, pipelines, cables export of power off site, construction and laydown areas, access etc.

### **Ofgem's preliminary view**

#### *Request in relation to SLC 14*

The preliminary view of the Authority was that it should make a direction to give effect to paragraphs 5 to 7 of SLC 14 of the electricity generation licence to be granted to GRE. It proposed that such direction should be for a period of five years.

This preliminary view was consistent with the Authority's decision in respect of the electricity generation licence of British Energy Generation Ltd.<sup>10</sup> In that decision, Ofgem considered that it was appropriate, "subject to the outcome of any review Ofgem conducts in relation to the application of the powers, rights and obligations conferred on licensees in the electricity generation licence" to limit the duration for which paragraphs 5 to 7 of SLC 14 were given effect to five years.

#### *Request in relation to SLC 15*

The preliminary view of the Authority was that it should also make a direction to give effect to paragraphs 5 to 8 of SLC 15 of the electricity generation licence to be granted to GRE. It proposed that such direction should be for a period of five years.

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<sup>9</sup> Paragraph 1 of SLC 15 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 15 to have effect within a generation licence, the provisions contained in paragraphs 5 to 8 shall apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30<sup>th</sup> September 2001.

<sup>10</sup> Decision in relation to the request of British Energy Plc for paragraphs 5 to 7 of Standard Licence Condition 14: "Compulsory Acquisition of Land etc" to be given effect in the electricity generation licence of British Energy Generation Ltd, February 2005.

Ofgem considered that this preliminary view was consistent with the principal objective of the Authority to protect the interests of consumers,<sup>11</sup> wherever appropriate, by promoting effective competition between persons engaged in the generation of supply, and further that this preliminary view would assist in the meeting of all reasonable demands for electricity. Ofgem considered this to be the case as giving effect to paragraphs 5 to 8 of SLC 15 is intended to assist GRE in the construction of new generation facilities.

### **Respondents' views**

No responses were received to this consultation.

### **Ofgem's final view**

Following this period of consultation, and having noted that no consultation responses have been received, Ofgem has further considered this request and is of the view that its preliminary view remains appropriate. Therefore Ofgem considers that the Authority should make a direction to give effect to paragraphs 5 to 7 of SLC14 and paragraphs 5 to 8 of SLC 15 of the electricity generation licence to be granted to GRE for a period of five years.

Ofgem considers that this view remains consistent with its previous decision in respect of the request from British Energy.

### *Electricity Generation Licence Review*

In its consultation with respect to the request from British Energy, Ofgem recognised that the powers and rights conferred in relation to the compulsory purchase of land may not be applied consistently to all generation licensees. Further that this issue of consistency may extend to a number of standard licence conditions in which powers, rights and obligations can be conferred to licence holders by the Secretary of State or the Authority via the licence (including for example electricity generation standard licence conditions 15, 17, 17A and 18). Ofgem therefore considered that this issue of consistency could give rise to potential concerns over whether, and if so to what degree, there is any resulting distortion of competition. Ofgem therefore considered that it was appropriate to conduct a broad review of the powers, rights and obligations conferred on licensees under the electricity generation licence.

However, due to Ofgem resources being diverted to take forward other more urgent workstrands, Ofgem has not yet been able to take forward a review of the electricity generation licence. Further, having considered the potential nature of this review, Ofgem notes that whilst it would be more desirable to take forward a wider review at this time, such a review is unlikely to be able to be undertaken over the coming winter months given that other, more urgent, workstrands require additional support over this period.

However, Ofgem considers that it remains important to address the application of SLC14 and SLC15 as a matter of some urgency. Ofgem has therefore decided to take forward a review of

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<sup>11</sup> Ofgem's principal objective is defined in Section 3A of the Electricity Act 1989 (as amended).

these two standard licence conditions, separate to a wider electricity generation licence review, as soon as possible.

Until such time as this review is completed, Ofgem considers that, in relation to GRE's request, there is no objective justification for GRE to be denied similar powers as compared with other companies that currently have SLC14 and SLC 15 in effect in their electricity generation licence. Therefore, Ofgem considers that, at this time and subject to the outcome of any review conducted by Ofgem in respect of SLC 14 and SLC 15, it would be appropriate to agree to GRE's application and to bring the relevant provisions of the licence into effect for a period of five years from the date that the direction is issued.

### **The Authority's decision**

In accordance with the terms of SLC14, the Authority has decided to direct that paragraphs 5 to 7 of SLC14 be given effect in the electricity generation licence of GRE for a duration of five years from 28 October 2005.

In accordance with the terms of SLC15, the Authority has decided to direct that paragraphs 5 to 8 of SLC15 be given effect in the electricity generation licence of GRE for a duration of five years from 28 October 2005.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Ben Woodside on 020 7901 7471.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sonia Brown'.

Sonia Brown  
**Director, Wholesale Markets**