

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.
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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 use¹. 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
- 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 supply².

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.

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 2000³ 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

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.

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 being:

- transparency
- additionality
- 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:

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

3.11 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 nondomestic 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 nondomestic

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’.

(HM Revenue and Customs would make the point that for purposes of CCL, Levy Exemption Certificates (LECs) are the badge that allows qualifying renewable electricity to be supplied to the final non-domestic consumer as levy exempt. As such REGOs do not have a role in this – and we must be careful industry realise this and do not treat LECs and REGOs as interchangeable

To some degree, LECs for CCL and REGOs for green offerings are always going to represent different things, for example for CCL purposes only small scale hydro’s qualify (up to 10 MW) – rather than the large scale hydros referred to in para 2.4 in this consultation and LECs issued for MW units unlike REGOs - KW units

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 2).

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 procedures⁵.

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.

Renewables Obligation Certificates (ROCs) are issued to renewable electricity generated within, and supplied to, customers in the United Kingdom⁷. 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.

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.

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
- 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. (If we are referring to evidence to show renewables as fuel mix etc in bills then this is undoubtedly a good idea, but as outlined previously, there must be no confusion that a different source of evidence could be interchangeable with Levy Exemption Certificates (LECs) for exemption of a parcel of electricity from CCL. The requirement for LECs has legislative backing)**
- **whether REGOs form an appropriate basis for any agreed standard of evidence, and (Notwithstanding the above concerns, REGOs seem the logical means of identifying the renewable element for the mix of fuel on bills to consumers etc**
- **how industry-wide agreement on a standard for evidence could be achieved. (This consultation will help, but the precise use of REGOs must be precisely spelled out. I don't want to be a broken record but Industry must be clear that REGOs cannot replace LECs for CCL purposes, or holding a LEC and REGO for a certain parcel of electricity somehow acts to 'double' the green electricity they can exempt from CCL. Guidance must be clear on this**
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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’⁹. 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.

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’¹⁰. As part of the Renewables Obligation the Government has established a mechanism for suppliers to delete ROCs from the register on 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 3 for a discussion of the issues regarding the retirement of ROCs as a means of demonstrating additionality.

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.

3.29 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.

3.30 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.

3.31 Claims of additionality based on more general environmental benefits are also likely to be based on expenditure from identified funds.

3.32 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.

3.33 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? (I think this is outside our purview and expertise/ interest to comment on this,**

Third-party accreditation

3.34 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.

3.35 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.

3.36 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.

3.37 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.

3.38 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. (Ofgem already oversee the ROC arrangements, and Issue and 'retire' LECs to assist Revenue and Customs' assurance of CCL and its exemptions, also have power to investigate LEC irregularities. So they would seem to be the natural body to administer any third party verification.

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Though I think you have to bear in mind EU Directive 2001/77/EC (that promotes electricity production from renewable energy sources Article 4.2 states the following:

“The Commission shall, not later than 27 October 2005, present a well documented report ... [that] shall assess the success, including cost effectiveness, of the support systems referred to in paragraph 1 in promoting the consumption of electricity produced from renewable sources... This report shall, if necessary, be accompanied by a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources”

I think this Consultation ought to keep one eye on the outcome of this with before making definitive decisions about verification/ developing further means of encouraging green supply.

Enforcement

3.39 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.

3.40 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.

3.41 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.

3.42 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.

3.43 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.¹¹ If a party is concerned that an electricity supplier is breaching the Competition Act, it may make a complaint, with supporting evidence, to Ofgem.

3.44 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.

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