

16 January 2008

Dear Clair and Hannah - ES&SMarkets@ofgem.gov.uk

Energy Retail Association response to Ofgem's Consultation – 'Cutting the Green Customer Confusion – Next Steps'

Thank you for the opportunity to respond to the consultation 'Cutting the Green Customer Confusion – Next Steps'. The ERA represents the main domestic energy suppliers in Great Britain - British Gas, EDF Energy, npower, E.ON, Scottish Power, and Scottish and Southern Energy - and has been working to develop a straw man for a verification scheme with its members and the wider energy community. Individual members will be responding separately, and in areas their views may differ. However in this response we look at the bigger picture as well as bring together the areas of agreement and aspects where further consideration is required.

ERA members are very keen to see new Guidelines in 'green supply' published as soon as possible. We are supportive for a verification scheme to be set up to help build consumer confidence in the claims being made by suppliers. We agree that customers are likely to benefit from having a verification scheme which provides transparency, along with access to basic information in this exceptionally complex area.

However Ofgem must remain focussed on its duties and should not blur the lines of responsibilities.

The focus of the Guidelines must be agreed, and should complement the work of the Advertising Standards Agency.

We have concerns that Ofgem are placing too much emphasis on the details of the certification scheme, although they have clearly stated that this should be a voluntary scheme, led by industry. The information provided by Ofgem on its expectation of how the scheme could work is very useful and informative. However there should be scope for suppliers to work together to deliver a verification scheme that they feel their customers will relate to. In this regard the straw man work carried out under the auspices of the ERA will be tested with customer groups to make sure that the verification scheme achieves its objectives.

Timescales

It is important that any scheme is flexible and capable of developing over time. It should also strike the appropriate balance between facilitating competition and providing customers with the right amount of information to enable them to make informed choices about their supplier.

In our view, delivering a fully developed, working verification scheme within six months of the publication of the final set of guidelines would be challenging, although the industry has a very good track record in delivering voluntary initiatives, such as the establishment of the Energy Supply Ombudsman.

Whilst the industry is committed to delivering a verification scheme as soon as feasibly possible, in partnership with Ofgem and others, there are important decisions to be made. These are in areas such as scheme facilitator, start up costs and longer finance and engagement options, to name just a few. Therefore Ofgem should reconsider the implications of the ownership of such a scheme, at least in its early life.

Ofgem have already informed the industry that it takes the BSI six to nine months to set up their 'fast track' option. Ofgem's proposed timescales could rule out the involvement of an organisation such as BSI, which the ERA considers to be inappropriate at this stage. We therefore believe that Ofgem should build some flexibility into its proposals to ensure that the industry secures the best outcome for customers by developing a scheme which is fit for purpose. If it does not, we would be interested to know the thought processes and reasons for deciding on the timescale of three and six months, aside from political pressure.

Research

Ofgem have been carrying out deliberative forums in this area. As yet the industry has not been made aware of the outcomes of these forums. It would be beneficial to share the background and outcome of the research with the industry to ensure any views are considered when developing the verification scheme.

Voluntary

We agree that the scheme should be voluntary. This enables the scheme to be independent, more flexible and to respond quicker to customer and industry needs.

Non-domestic

We agree that non-domestic customers should be included within the guidelines and that the verification scheme could be extended to include products aimed at non-domestic customers.

Status of the Guidelines

In section 3.3 Ofgem proposes that companies sign up to the scheme as it will enable them to monitor the effectiveness of the scheme.

We propose that it would be clearer for customers if Ofgem made available a list of the name of the tariff, and the company that offers that tariff. This would reduce the risk that customers think that all of the tariffs offered by the company have been verified. However this could be a role for the independent verifier of the scheme, rather than Ofgem.

Guideline Misuse

In section 3.5 Ofgem state that they would have to take action to address any serious misuse of the guidelines. Any serious misuse of the verification scheme should be addressed by the verification facilitator and any other relevant bodies, such as the ASA. However given that the guidelines are to be voluntary, we would not expect Ofgem to have an enduring role once these are in place, giving scope for the Guidelines to evolve and develop over time.

Verifier

The industry is keen to appoint a trusted and independent verifier to give the scheme credibility for consumers.

Renewable and Low Carbon

We agree that there is scope to include guidelines relating to low carbon energy tariffs within the overall scheme. However due to the focus of customer interest and levels of complexity, we propose that we should focus our efforts on developing a robust verification scheme for renewable energy based tariffs, which by default would also be low/zero carbon. Whilst doing so we would also be working to address some of the issues related to low carbon.

However it is possible that the renewable scheme would be ready first, and we would not wish to delay this until the low carbon one is ready. So long as the industry is working with wider stakeholders

to deliver both verification schemes we feel that Ofgem should feel assured that we are not in any way shape or form trying to stall this area.

Ofgem have suggested in a previous meeting that suppliers will be prohibited from using the word 'green' in any marketing materials. This is clearly a step beyond Ofgem's responsibilities. Individuals have their own view on what is 'green'. The word 'green' is now used in numerous, and various, instances on a daily basis and has become part of everyday language for many people to describe something that has environmental benefits – whatever they may be. What is relevant for industry, or internal facing documents, is not necessarily relevant for consumers, or external facing information. We should look at other verification schemes, such as the Australian Green Power model, to see where we may learn lessons.

It is useful in this instance to separate out renewable and low carbon generation sources, so customers can choose what generation source their energy comes from. By doing this, and including nuclear energy into the scheme, customers will be aware that nuclear is not renewable but is low carbon and can make choices based on that knowledge. However, again the key is establishing renewable guidelines and a verification scheme that are workable and beneficial to customers. Only then should we focus on low carbon.

Suppliers agree that the fuel source should be made transparent to the customer, so that no mis-interpretation could occur. This area is already governed by the ASA – e.g. suppliers are not allowed to market an environmentally friendly tariff based on biofuels with pictures of off-shore windfarms.

Information

Suppliers are committed to providing clear, consistent and understandable information for customers.

However there are differing views over exactly how this information must be provided, what information is provided, and how it is delivered.

One option is for the Guidelines to outline what information is required and when it is presented, whilst the verification scheme decides the format. Option two is to leave this to the verification scheme so that any information requirements can develop over time without needing to change the guidelines. A compromise might be for the Guidelines to outline examples of the type of information, but the detail is left to the verification scheme to decide.

Currently we are working on what information Ofgem and the industry feel would be beneficial for consumers to know more about. This will be discussed with the verification manager and consumer representatives further along in the process to ensure that the right level has been achieved. Ofgem does not need to get involved with this level of detail in its guidelines.

- **Information requirements on all tariffs**

In section 3.24 Ofgem proposes within the guidelines that suppliers make available to customers information on low carbon and renewable credentials for all tariffs. We believe that this proposal falls outside of the scope of this consultation and that Ofgem should reconsider the practicalities of it. Non renewable/low carbon tariffs are standard tariffs that vary by payment method, channel, associated discounts etc, which for the majority will not have a varied fuel mix but would be covered in the more general FMD. We believe that most customers would not be interested in this information.

This also goes beyond the scope of the EU FMD requirements and could have the potential of delaying the introduction of the verification scheme.

We feel it would be useful for Ofgem to carry out an impact assessment of how suppliers would expect to achieve this within the proposed timescales.

One middle ground option could be for suppliers to separate their renewable and low carbon tariffs from their other tariffs and group the information accordingly. Customers who are not interested in low carbon and renewable tariffs do not need to know this information. Customers who are interested in low carbon and renewable tariffs do not need this level of detail on all of the other tariffs suppliers provide. They may however be interested in knowing the low carbon and renewable credentials of the company as a whole. This information could then be available on the supplier's website for these customers and any other interested parties.

Customer Environmental Contributions

In the consultation Ofgem propose suppliers to provide information to customers on their RO and EEC/CERT contributions calculated by individual suppliers on the basis of the average customer bill. We feel that by doing this suppliers are giving away competitive information. Should this information be provided to customers we would like to see Ofgem providing the figures (whether in £ or as a percentage) for the typical customer bill. This will give customers an approximate indication of their current contributions, without suppliers giving up sensitive information. Ofgem already provides this information in its household energy bills explained factsheet.

Discussions on this area have previously taken place with government departments and we would suggest that Ofgem discuss this with their colleagues in other departments before making any final decision.

In addition not all suppliers in this market have EEC/CERT contributions and would therefore question whether this would simplify matters for customers, or simply confuse them.

Evidence

We agreed that REGOs seem to be the most logical way for suppliers to provide evidence to the verifier and ensure that customers are aware of the generation source of that tariff/REGO. We feel that where LECs are presented, they should be kept with REGOs to prevent double selling for domestic customers.

Additionality

There has been consistency in difference of opinions over additionality. This remains. Suppliers will offer their own views in this area. The options Ofgem list as 'additional' seem sensible within the current market place but we must ensure that any verification scheme is 'future proofed' and has the flexibility to adapt to new products.

However it would be useful for Ofgem to clarify exactly what it means when saying 'environmental benefits in excess of requirements under the RO, EEC and other pre-existing legal requirements' (3.43). I.e. with regards to the current RO contributions, is the legal minimum on suppliers the buyout fund option, and therefore if they purchase renewable energy that is over and above their legal obligation?

Minimum qualifiers for renewable energy and low carbon energy with other environmental benefits that can be verified by the scheme should be able to be considered as additional. We should move away from the use of the word Additionality since the real value is ensuring that supplies are genuinely renewable or low carbon energy sources and that where suppliers choose to offer further environmental benefits such claims are verifiable. It has been suggested by one supplier that to further authenticate the further environmental benefit that this be given a separate quality mark or be incorporated into the quality mark.

An important aspect of the additionality section of the consultation document states that 'suppliers... would only be permitted to charge a premium for a particular tariff where they were able to demonstrate that the tariff offered some additional environmental benefit over and above their legal obligations'. We have a number of issues with this statement, namely that this is price control and outside of Ofgem's remit in this area. In addition, what tariff would be used as the 'base' to judge this on, as suppliers offer a range of different tariffs? This is unworkable and brings more layers of confusion and complexity than necessary for such a scheme.

In section 3.76 Ofgem goes on to state that "so long as it could be demonstrated that the customer was getting something extra, we consider this option would deliver benefits". This brings up numerous unanswered questions, such as who is to determine what is 'extra', and how much extra would be necessary.

Fuel Mix Disclosure (FMD)

The issues over FMD are complex, and may not achieve a reduction in any customer confusion. The ERA will be hosting a supplier workshop to look at it and how the current FMD may be useful within this area. We will share this with Ofgem and wider stakeholders, as well as discuss it with any verification manager in due course. Ofgem should not force suppliers to go beyond the existing EU requirements, which undermine the point of the Directive.

Marketing

In the consultation document Ofgem states that information should be made on the supplier's website and in all marketing material provided at the point of sale to ensure customers can make choices regarding the environmental benefits of the tariff before they enter into a contract for it. We agree that customers must be aware of the full details of the tariff. However, again suppliers have different views over whose responsibility it is to outline the details of what, how, where, and when. This could be decided by Ofgem within the Guidelines or the verifier, although these areas also cross over into the realms of ASA guidelines and others.

Offsetting

We agree that carbon offsetting should be permitted as part of any tariff, ideally supported by Defra's code of best practise.

Compliance

Under the 'Compliance with the Guidelines' section, Ofgem state that suppliers will have one month to sign up to the content of the guidelines. This is unworkable on a number of bases. If suppliers do not sign up to the guidelines within one month they are effectively excluded from this important, but niche, area. What if suppliers wanted to sign up to it a month and a day after? It would also exclude new entrants and new products. Ofgem should keep an open mind and maintain a flexible approach in this area.

Ofgem go on to state that they will then be publishing a list of suppliers that are signed up on their website. Unfortunately this may be perceived as being a 'naming and shaming' exercise which could undermine the positive work that has been done here. It is our view that this list should be managed by the verification body.

Ofgem say that the suppliers who have signed up to the guidelines then have until May 2008 to ensure that their tariffs are compliant with the guidelines. This timescale is onerous and will limit innovation in this area as suppliers may not be able to achieve this and then will be forced out, via a 'voluntary' scheme, from being active in this key marketplace. In addition, what would happen to new products?

Suppliers are committed to developing the scheme and have been working with Ofgem to do this. However, for the reasons outlined earlier in this paper, it is not feasible to state that it will be set up by August 2008.

Review

It is important that any verification scheme is reviewed on a periodic basis by the verifier to ensure it is working and responsive to customer demands. We expect that the scheme that will be launched in 2008 will help customers in this area. However this area is unlikely to stay still, in regulation terms, suppliers' offerings, and customer demands, and therefore we would expect it to improve and develop over time.

We hope these views have been useful. We will continue with the workshops and liaise with you and the wider community to ensure progress continues in this area. However if you have any questions about the points raised in this response please do not hesitate to contact me.

Kind regards,

Frances Williamson

Industry Relations Manager