



Making a positive difference  
for energy consumers

Mike Gibson  
Head of Regulation and Compliance  
Flow Energy Limited  
Felaw Maltings  
48 Felaw Street, Ipswich  
IP2 8PN

22 September 2014

Dear Mr Gibson,

### **Request for derogation – MicroCHP Boiler Discount**

This letter sets out the decision of the Gas and Electricity Markets Authority (the “**Authority**”) to grant Flow Energy Limited (the “**Licensee**”) temporary and limited derogations from certain standard conditions of its gas and electricity supply licences. These derogations will enable the Licensee to offer its proposed micro-combined heat and power (MicroCHP) boiler discount (the “**MicroCHP Discount**”).

The relevant Directions are attached. These will be published and shall remain in force in accordance with the terms of the Directions, unless revoked earlier or varied in writing by the Authority. Any change in circumstances relevant to the derogations must be reported to the Authority as soon as possible.

This letter constitutes the Notice, under section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986, of the reasons for the Authority’s decision to issue the attached Direction. Capitalised terms used in this letter, which are not defined herein, have the meaning given to them in standard licence condition (SLC) 1 of electricity and gas supply licences.

### **Background to Derogation Request**

The Authority received a request from the Licensee on 14 April 2014 for a derogation from paragraph 4 of SLC 22B of its gas and electricity supply licences.<sup>1</sup> The Licensee wishes to offer, for a five-year term, a cash discount to domestic dual fuel customers who purchase its MicroCHP boiler, as a means of incentivising the uptake of its MicroCHP technology. To be eligible for the MicroCHP Discount, customers must purchase the MicroCHP boiler by: (i) paying the full cost of the boiler upfront without finance; (ii) signing up to the Licensee’s approved third party finance package; or (iii) entering into an alternative financing arrangement of their choice notified to the Licensee.

Paragraph 4 of SLC 22B prohibits licensed suppliers from providing any cash discount other than those expressly exempted from the prohibition in SLC 22B (ie Dual Fuel Discounts and Online Account Management Discounts).<sup>2</sup> Paragraph 2 of SLC 22A requires licensed suppliers to ensure that all Charges for Supply Activities are incorporated within a single Standing Charge and/or a single Unit Rate or Time of Use Rates (as applicable).

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<sup>1</sup> The Licensee provided to the Authority additional information regarding its offer by two emails dated 30<sup>th</sup> May 2014 and 21<sup>st</sup> July 2014.

<sup>2</sup> Licensed suppliers are prohibited from using any Discount which is: (i) pounds sterling or any currency of any other country; (ii) capable of being directly redeemed (rather than sold) for pounds sterling or any currency of any other country; (iii) in any way applied to a Unit Rate or Standing Charge; or (iv) in any way capable of being applied to (rather than incorporated within) a Unit Rate or Standing Charge by a Domestic Customer.

However, paragraph 4 of SLC 22A and paragraph 36 of SLC 22B provide that the Authority may issue directions relieving a licensee of its obligations to comply with SLC 22A and SLC 22B respectively to such extent and subject to such conditions as the Authority may direct.

The Licensee explained in its application that the MicroCHP Discount will comprise fixed monthly payments to the domestic customer equivalent to the repayments due, or which would be due, under the Licensee's approved third party finance package over a five year term (regardless of whether the customer chooses the Licensee's approved third party finance package or an alternative finance, or pays upfront for the boiler without finance). The Licensee stated in its application that the MicroCHP Discount will be awarded to customers who: (i) assign to the Licensee the output generated by the MicroCHP boiler, and (ii) appoint the Licensee as the recipient of the Feed-in-Tariff (FiT) payments. Without derogations from SLC 22B.4 and SLC 22A.2, the proposed MicroCHP Discount would be prohibited.

The Licensee stated that uptake of MicroCHP technology has been restricted to date by price and that it is proposing an innovative business model that will allow a reduction in the cost of producing the MicroCHP boiler. It considers that the scheme will help reduce the selling price to a level that is comparable to that of a traditional condensing boiler, which will promote uptake of this technology. It also submitted that its MicroCHP boiler will increase the efficiency of gas usage and generate an estimated £200 savings per year for a typical household.

### **The Authority's Decision**

Having regard to our principal objective and statutory duties, including our duty to consider the need to contribute to the achievement of sustainable development, and based on the information submitted by the Licensee, we consider that:

1. the MicroCHP boiler offers an innovative technology which aims to increase the efficiency of gas usage by consumers and is consistent with the Authority's overall interest of promoting energy efficiency;
2. the MicroCHP Discount may make the MicroCHP technology more affordable to eligible consumers who are likely to benefit from the savings expected to be generated to their energy bills;
3. any potential detrimental impacts on consumers, from granting a temporary derogation in respect of the MicroCHP Discount, would likely be outweighed by the environmental benefits associated with such a scheme and the savings to customers; and
4. given that the FiT payment for MicroCHP technology is currently limited by government policy to the first 30,000 units, the impact on consumers from granting a temporary derogation in respect of the MicroCHP Discount would likely be limited.

Therefore, the Authority grants the Licensee temporary derogations from paragraph 2 of SLC 22A and paragraph 4 of SLC 22B in respect of the MicroCHP Discount with effect from the date of, and subject to the terms of, the attached Directions, such that the Licensee may:

- use the MicroCHP Discount in accordance with the terms of the attached Directions, notwithstanding the prohibition in paragraph 4 of SLC 22B; and
- require Domestic Customers who opt for the MicroCHP Discount to (i) assign to the Licensee the output generated by the MicroCHP boiler, and (ii) appoint the Licensee as the recipient of the FiT payments, as conditions of eligibility for the MicroCHP Discount, notwithstanding the requirement in paragraph 2 of SLC 22A to ensure that all Charges for Supply Activities are incorporated within a single Standing Charge and/or a single Unit Rate or Time of Use Rates (as applicable).

Furthermore, the Authority also grants the Licensee temporary derogations from certain SLCs which: (i) apply to Fixed Term Supply Contracts; and (ii) relate to certain tariff information requirements, as detailed in the attached Directions. In this regard, the Authority also requires the Licensee to comply with additional conditions specified in the attached Directions.

As explained during the Retail Market Review, where any term of a supply contract has a fixed-term period, that contract will be considered as a Fixed Term Supply Contract.<sup>3</sup> Consequently, any tariff that includes the proposed MicroCHP Discount will constitute a Fixed Term Supply Contract, because of the fixed term aspect (ie five years) of the discount. We consider that it would be in the interests of consumers to exempt the Licensee from certain rules for Fixed Term Supply Contracts relating to renewals, contract variations and information requirements. We consider that the risk of potential lock-in effects will be limited, given that consumers have the possibility to terminate the contract at any moment and receive FiT payments instead of the MicroCHP Discount.

Moreover, the attached Directions include additional conditions for the Licensee, including:

- (i) a prohibition against applying a termination fee to any tariff with which the proposed MicroCHP Discount is offered (this condition provides further protection for consumers wishing to switch supplier within five years of purchasing a MicroCHP boiler); and
- (ii) a requirement that the MicroCHP Discount is an optional Discount, such that Domestic Customers who wish to retain their FiT payments and generation output may opt not to receive the MicroCHP Discount.

The attached Directions further direct that the MicroCHP Discount should not be included in the calculations of the TCR, the TIL Estimated Annual Costs and the customer's Estimated Annual Costs (Personal Projection). We consider that including the MicroCHP Discount in these calculations could potentially mislead customers about the real cost of their energy when comparing against other tariffs, in particular for those who do not appoint the Licensee as the recipient of the FiT payments.

Finally, we would emphasise that the Licensee must take steps to ensure that it complies with the Standards of Conduct (SLC 25C), which require suppliers to act transparently and to treat customers fairly. For example, customers should be informed in a fair and transparent manner:

- of their liability to make repayments under the Licensee's approved third party finance package, which is independent of any MicroCHP Discount they may receive;
- that the Licensee's charges for supply may change during the repayment term; and
- that the MicroCHP Discount is only payable while the consumer remains a customer of the Licensee and complies with the tariff terms, including the requirement to assign FiT payments to the Licensee.

If you would like to discuss any aspects of this letter, please contact Jibirila Leinyuy on 0207 901 7000 or [Derogations@ofgem.gov.uk](mailto:Derogations@ofgem.gov.uk).

Yours sincerely,

**Neil Barnes**  
**Associate Partner, Retail Markets**

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<sup>3</sup> Ofgem, [The Retail Market Review – Implementation of Simpler Tariff Choices and Clearer Information](#), 27 August 2013.

## **ATTACHMENT 1: Electricity Supply Licence**

The Company Secretary  
Flow Energy Limited  
Felaw Maltings, 48 Felaw Street,  
Ipswich, IP2 8PN

### **Direction issued to Flow Energy Limited (company number 7489062, the "Licensee") by the Gas and Electricity Markets Authority – MicroCHP Discount**

1. This Direction is issued by the Gas and Electricity Markets Authority (the "**Authority**") pursuant to Standard Licence Conditions (SLC) 22A.4, 22B.36, 22C.10, 31A.6A, 31A.15, 31B.12, 31C.9 and 31E.17 of the electricity supply licence granted under section 6(1)(d) of the Electricity Act 1989 to the Licensee (the "**Licence**").
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in SLC 1 and 31A of the Licence.
3. SLC 22A.4, 22B.36, 22C.10, 23.7, 31A.6A, 31A.15, 31B.12, 31C.9 and 31E.17 of the Licence provide that the Authority may issue directions relieving the Licensee of its obligations to comply with SLC 22A, 22B, 22C, 23, 31A (sections A and B), 31B, 31C and 31E to such extent and subject to such conditions as the Authority may direct.
4. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 22 September 2014.
5. The Authority hereby directs that the Licensee is on a temporary basis permitted to use the MicroCHP Discount (as defined below) in connection with its dual fuel Tariffs, offered under a Domestic Supply Contract, notwithstanding the general prohibition against certain Discounts contained in paragraph 4 of SLC 22B.
6. The Authority furthermore directs that the Licensee is on a temporary basis permitted to require Domestic Customers who opt for the MicroCHP Discount to:
  - a. assign to the Licensee the output generated by the MicroCHP boiler, and/or
  - b. appoint the Licensee as the recipient of the FiT payments,as conditions of the Domestic Customer's eligibility for the MicroCHP Discount, notwithstanding the requirement in paragraph 2 of SLC 22A to ensure that all Charges for Supply Activities are incorporated within a single Standing Charge and/or a single Unit Rate or Time of Use Rates (as applicable).
7. The Authority furthermore directs that where the Licensee is required to calculate the Tariff Comparison Rate, the TIL Estimated Annual Costs or the Domestic Customer's Estimated Annual Costs (Personal Projection) for the purposes of SLC 23, 31A (sections A and B), 31B, 31C or 31E, the Licensee must exclude the MicroCHP Discount from such calculation.
8. The Authority furthermore directs that the Licensee is relieved of certain conditions of its Licence relating to Fixed Term Supply Contracts, which are listed in the schedule hereto.

#### **Alternative Conditions**

9. This Direction is subject to the Licensee's continuing compliance with the following alternative conditions which apply in respect of any Tariff when the Licensee offers, makes available or provides the MicroCHP Discount to a Domestic Customer:

- a. The Licensee must include text on the "About your tariff" label (below the information provided pursuant to paragraph S2.7 of schedule 2 to SLC 31A) on Bills and statements of account which briefly describes the fact that the Tariff has no end date.
  - b. The Licensee must include text in Entry 7 (*Tariff ends on*) of the "About your tariff" label on Annual Statements which briefly describes the fact that the Tariff has no end date.
  - c. The Licensee must include text in Entry 10 (*Discounts and additional charges*) of the "About your tariff" label on Annual Statements explaining that the MicroCHP Discount will end after the initial five-year period from the installation date of the MicroCHP boiler.
  - d. The Licensee must include text in Entry 8 of the Tariff Information Label (*Tariff ends on*) which briefly describes the fact that the Tariff has no end date.
  - e. The Licensee must include a statement in Entry 11 (*Discounts and additional charges*) of the Tariff Information Label explaining that the MicroCHP Discount (i) is available as an optional Discount to Domestic Customers purchasing a MicroCHP boiler and (ii) will end after the initial five-year period from the installation date of the MicroCHP boiler.
  - f. The Licensee must not include a term in a Domestic Supply Contract to which a MicroCHP Discount is applied requiring the Domestic Customer to pay a Termination Fee to end that Contract.
  - g. The Licensee must ensure that a Domestic Customer who has entered into a Domestic Supply Contract to which a MicroCHP Discount is applied is entitled to give notice to terminate such Domestic Supply Contract at any time.
  - h. Where the Licensee provides a Domestic Customer with any information about their Estimated Annual Costs, the Licensee must provide the Domestic Customer with a statement to the effect that the nature of the contract means that the Charges for the Supply of Electricity may be increased by the Licensee in the future.
  - i. The Licensee must only offer the MicroCHP Discount as an optional Discount, such that a Domestic Customer who purchases a MicroCHP boiler may opt to retain feed-in tariff payments and generation output relating to the MicroCHP boiler instead of receiving the MicroCHP Discount.
10. This derogation is also granted on the condition that the material provided by the Licensee to the Authority in its application and related correspondence is accurate in all material respects. The Licensee must report any change of circumstances relevant to this Direction to the Authority.
11. For the purposes of this Direction, the term "**MicroCHP Discount**" means a Discount which is:
- a. only available to, up to and including, 30,000 dual fuel Domestic Customers of the Licensee who purchase the Licensee's MicroCHP boiler;
  - b. only available to Domestic Customers whose MicroCHP boiler installation date is on or before 1 January 2017;
  - c. offered for the same duration, is of the same monetary amount and contains the same terms and conditions for all Tariffs with which the MicroCHP Discount is offered, made available or provided;
  - d. not used for a period longer than five years from the installation date of the MicroCHP boiler to which the MicroCHP Discount relates;
  - e. of a precise and fixed monetary amount equal to the repayments due under the Licensee's approved third party finance package (or which would have been due had the Domestic Customer opted for the Licensee's approved third party finance package);
  - f. Continuously Applied on a daily basis and not expressed as a percentage; and

g. subject to paragraph 22B.24 of SLC 22B, only presented as a monetary amount in pounds sterling per year.

12. This Direction shall take immediate effect and shall remain in force until and unless it is revoked or varied in writing by the Authority.

Dated: 22 September 2014

**Neil Barnes**

**Associate Partner, Retail Markets**

Signed on behalf of the Authority and authorised for that purpose

## Schedule

<b>SLC</b>	<b>Description</b>
22C.3	Renewal of Fixed Term Supply Contracts
22C.9	Prohibition on increasing the Charges for the Supply of Electricity and other adverse unilateral variations
31A.2(i)	Requirement to include text setting out the date when the fixed term period ends on every Bill or statement of account sent to a Domestic Customer
Paragraph S2.8(a) of schedule 2 to SLC 31A	Requirement to include text setting out the date when the fixed term period ends on the "About your tariff" label on Bills and statements of account
31A.9(q)	Requirement to inform Domestic Customer of the date on which the fixed term period ends in the Annual Statement
Paragraph S4.15(g)(i) of schedule 4 to SLC 31A	Requirement to include text setting out the date when the fixed term period ends on the "About your tariff" label for Annual Statements
Paragraph S1.10(a) of schedule 1 to SLC 31B	Requirement to include text setting out the date when the fixed term period ends on the Tariff Information Label

## **ATTACHMENT 2: Gas Supply Licence**

The Company Secretary  
Flow Energy Limited  
Felaw Maltings, 48 Felaw Street,  
Ipswich, IP2 8PN

### **Direction issued to Flow Energy Limited (company number 7489062, the "Licensee") by the Gas and Electricity Markets Authority – MicroCHP Discount**

1. This Direction is issued by the Gas and Electricity Markets Authority (the "**Authority**") pursuant to Standard Licence Conditions (SLC) 22A.4, 22B.36, 22C.10, 31A.6A, 31A.15, 31B.12, 31C.9 and 31E.17 of the gas supply licence granted under section 7A(1) of the Gas Act 1986 to the Licensee (the "**Licence**").
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in SLC 1 and 31A of the Licence.
3. SLC 22A.4, 22B.36, 22C.10, 23.7, 31A.6A, 31A.15, 31B.12, 31C.9 and 31E.17 of the Licence provide that the Authority may issue directions relieving the Licensee of its obligations to comply with SLC 22A, 22B, 22C, 23, 31A (sections A and B), 31B, 31C and 31E to such extent and subject to such conditions as the Authority may direct.
4. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 22 September 2014.
5. The Authority hereby directs that the Licensee is on a temporary basis permitted to use the MicroCHP Discount (as defined below) in connection with its dual fuel Tariffs, offered under a Domestic Supply Contract, notwithstanding the general prohibition against certain Discounts contained in paragraph 4 of SLC 22B.
6. The Authority furthermore directs that the Licensee is on a temporary basis permitted to require Domestic Customers who opt for the MicroCHP Discount to:
  - a. assign to the Licensee the output generated by the MicroCHP boiler, and/or
  - b. appoint the Licensee as the recipient of the FiT payments,as conditions of the Domestic Customer's eligibility for the MicroCHP Discount, notwithstanding the requirement in paragraph 2 of SLC 22A to ensure that all Charges for Supply Activities are incorporated within a single Standing Charge and/or a single Unit Rate or Time of Use Rates (as applicable).
7. The Authority furthermore directs that where the Licensee is required to calculate the Tariff Comparison Rate, the TIL Estimated Annual Costs or the Domestic Customer's Estimated Annual Costs (Personal Projection) for the purposes of SLC 23, 31A (sections A and B), 31B, 31C or 31E, the Licensee must exclude the MicroCHP Discount from such calculation.
8. The Authority furthermore directs that the Licensee is relieved of certain conditions of its Licence relating to Fixed Term Supply Contracts, which are listed in the schedule hereto.

#### **Alternative Conditions**

9. This Direction is subject to the Licensee's continuing compliance with the following alternative conditions which apply in respect of any Tariff when the Licensee offers, makes available or provides the MicroCHP Discount to a Domestic Customer:



- a. The Licensee must include text on the "About your tariff" label (below the information provided pursuant to paragraph S2.7 of schedule 2 to SLC 31A) on Bills and statements of account which briefly describes the fact that the Tariff has no end date.
- b. The Licensee must include text in Entry 7 (*Tariff ends on*) of the "About your tariff" label on Annual Statements which briefly describes the fact that the Tariff has no end date.
- c. The Licensee must include text in Entry 10 (*Discounts and additional charges*) of the "About your tariff" label on Annual Statements explaining that the MicroCHP Discount will end after the initial five-year period from the installation date of the MicroCHP boiler.
- d. The Licensee must include text in Entry 8 of the Tariff Information Label (*Tariff ends on*) which briefly describes the fact that the Tariff has no end date.
- e. The Licensee must include a statement in Entry 11 (*Discounts and additional charges*) of the Tariff Information Label explaining that the MicroCHP Discount (i) is available as an optional Discount to Domestic Customers purchasing a MicroCHP boiler and (ii) will end after the initial five-year period from the installation date of the MicroCHP boiler.
- f. The Licensee must not include a term in a Domestic Supply Contract to which a MicroCHP Discount is applied requiring the Domestic Customer to pay a Termination Fee to end that Contract.
- g. The Licensee must ensure that a Domestic Customer who has entered into a Domestic Supply Contract to which a MicroCHP Discount is applied is entitled to give notice to terminate such Domestic Supply Contract at any time.
- h. Where the Licensee provides a Domestic Customer with any information about their Estimated Annual Costs, the Licensee must provide the Domestic Customer with a statement to the effect that the nature of the contract means that the Charges for the Supply of Gas may be increased by the Licensee in the future.
- i. The Licensee must only offer the MicroCHP Discount as an optional Discount, such that a Domestic Customer who purchases a MicroCHP boiler may opt to retain feed-in tariff payments and generation output relating to the MicroCHP boiler instead of receiving the MicroCHP Discount.

10. This derogation is also granted on the condition that the material provided by the Licensee to the Authority in its application and related correspondence is accurate in all material respects. The Licensee must report any change of circumstances relevant to this Direction to the Authority.

11. For the purposes of this Direction, the term "**MicroCHP Discount**" means a Discount which is:

- a. only available to, up to and including, 30,000 dual fuel Domestic Customers of the Licensee who purchase the Licensee's MicroCHP boiler;
- b. only available to Domestic Customers whose MicroCHP boiler installation date is on or before 1 January 2017;
- c. offered for the same duration, is of the same monetary amount and contains the same terms and conditions for all Tariffs with which the MicroCHP Discount is offered, made available or provided;
- d. not used for a period longer than five years from the installation date of the MicroCHP boiler to which the MicroCHP Discount relates;
- e. of a precise and fixed monetary amount equal to the repayments due under the Licensee's approved third party finance package (or which would have been due had the Domestic Customer opted for the Licensee's approved third party finance package);
- f. Continuously Applied on a daily basis and not expressed as a percentage; and

g. subject to paragraph 22B.24 of SLC 22B, only presented as a monetary amount in pounds sterling per year.

12. This Direction shall take immediate effect and shall remain in force until and unless it is revoked or varied in writing by the Authority.

Dated: 22 September 2014

**Neil Barnes**

**Associate Partner, Retail Markets**

Signed on behalf of the Authority and authorised for that purpose

## Schedule

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22C.9	Prohibition on increasing the Charges for the Supply of Gas and other adverse unilateral variations
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