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**The Renewable Energy Company Ltd (Ecotricity) response to consultation  
on revised enforcement guidelines**

Dear Andy MacFaul,

Ecotricity is an independent British renewable energy generator and supplier with over 110,000 customer accounts and 61.5MW of renewable capacity. The power we supply is 100% renewable and we pride ourselves in the professional, transparent and personalised customer service that we offer, which is consistently recognised by customers and third party surveys. For the last three years we've maintained the lowest number of complaints per 1000 customers in the industry and for 2013 with 41 complaints in total, our key complaints measurement stands at 0.55 complaints per 1000 customers.

We welcome Ofgem's review of the Enforcement Guidelines and support the objectives of improving transparency and consistency, and taking a proportionate approach to enforcement.

We also acknowledge receipt of the open letter on regulatory compliance setting out Ofgem's opinion on how compliance and enforcement activities interact. We will be responding to that letter separately but will cross-refer in this response to any which interact.

We provide our responses to the consultation questions below.



### **1. Do you agree with the proposed changes to our prioritisation criteria?**

The prioritisation criteria proposed appear relevant and fair and it is helpful that companies have been made aware of them. We do, however, make the following points:

- In reference to paragraph 3.6.(12), if resources are not available to open a case, will Ofgem take 'alternative actions' with the company in breach so that the issue is addressed? We believe that where a breach impacts upon competition in the market, it is not acceptable for Ofgem to excuse a lack of investigation on the grounds of inadequate resources.
- We suggest Ofgem consider an additional prioritisation, the consistency of approach towards companies committing the same or a similar breach. We consider it anti-competitive if companies are treated differently when committing similar breaches, especially if financial penalties have been incurred.

### **2. Is our approach to the range of alternative actions appropriate?**

The alternative actions proposed, namely entering into a dialogue with the company, issuing a warning, agreeing a period of reporting or accepting actions of redress from the company appear appropriate. The key element in this approach is the dialogue with the company which will need to be timely and meaningful. In general however we welcome this approach to enforcement.

### **3. Do you agree with our proposals for making cases public?**

We accept Ofgem's points about transparency and the deterrent effect in making cases public. We also welcome Ofgem's confirmation that a case which is closed without a finding of breach or infringement will also be made public. However where there is no finding of breach, the latter publication will not recompense the company for the potential detriment to its business incurred as a result of the first publication. We believe that Ofgem should be required, following dialogue with the company, to publicise more widely than the website, as recompense in cases where there is no finding of breach.

### **4. Do you agree with the proposed settlement process?**

### **5. Do you agree with the proposed settlement windows?**

We can see that settlement would be in Ofgem's interest, such that an admission of breach will be achieved without the need for a protracted process. In addition, we can see that it would be in the interests of companies to pay a smaller penalty, accept the finding and make the necessary process improvements. However we agree that the company should not be able to mitigate its responsibility to the consumer.

Ofgem's approach to giving companies a 'reasonable period' to reach early settlement is, we consider, appropriate drafting. However, as a small supplier with limited resources, we consider that 28 days does not reflect a 'reasonable period' and is insufficient to conduct adequate 'early' settlement discussions; 60 days to be more appropriate given the time it can take to marshal interested parties and provide them with adequate data to reach agreement.



## **6. Do you have any views on how we propose to implement the new decision making framework?**

We support the settlement of cases being dealt with by a Settlement Committee. However we have concerns regarding the opportunities for Senior Partners, when acting alone in sectoral cases where the penalty amount is below £100,000, to make settlement decisions on a political basis. We therefore believe that the threshold in these circumstances should be lowered.

An Enforcement Decision Panel, comprising members of the Authority who are independent from the case team investigating a case, is appropriate. Access to adequate legal skills is also appropriate.

## **7. Are these proposals an effective way to allow stakeholders visibility of our timetables and performance?**

We support the changes to increase visibility of the enforcement process. However, we also suggest that in line with Ofgem's transparency objectives, Ofgem undertake to keep complainants informed of the progress of their complaint in the stages before a case is opened.

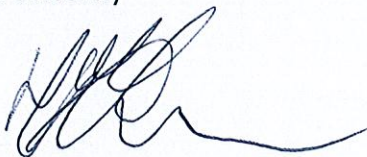
In addition, we note that no specific reference is made in the Guidelines to information provided to Ofgem from industry participants on a competitor's non-compliance. We assume that this is intentional and that industry complaints are considered alongside other sources of information. We would add that industry information on non-compliance has usually had more resource given to providing the data and should be considered in light of this. For this reason, we believe that industry complaints about competitors should be given more weighting and be explicitly addressed in the guidelines.

## **Conclusion**

In general we support the changes proposed in the revised Enforcement Guidelines. We propose that Ofgem add a further prioritisation criterion to ensure that a consistent approach is applied when handling cases of a similar nature. In addition we believe that Ofgem should be required, following dialogue with the company, to publish details of a case more widely than the website, as recompense in situations where there is no finding of breach. Finally, we believe that complaints from industry participants should be separately addressed in the Guidelines and that they should receive a higher weighting than individual consumer complaints.

Ecotricity welcomes the opportunity to respond and hope you take our comments on board. We also welcome any further contact in response to this submission. Please contact Holly Tomlinson on 01453 769301 or [holly.tomlinson@ecotricity.co.uk](mailto:holly.tomlinson@ecotricity.co.uk)

Yours sincerely



Holly Tomlinson  
**Head of Regulation, Compliance & Projects (Acting)**



5. Do you have any views on how we propose to implement the new decision making framework?

We support the adoption of cases being dealt with by a Settlement Committee. However, we have concerns regarding the arrangements for dealing with cases in second cases where the penalty amount is below £100,000. To make settlement decisions on a financial basis, we believe there is a risk that the interests of the public will be overlooked.

An Enforcement Decision Panel, comprising members of the Authority who are independent from the case, must investigate a case, is appropriate. Access to adequate legal skills is also appropriate.

6. Are there proposals an effective way to allow stakeholders visibility of our thinking and the process?

We support the changes to increase visibility of the enforcement process. However, we also suggest that in line with Ofcom's transparency objectives, Ofcom undertake to keep complainants informed of the progress of their complaint in the stages before a case is opened.

In addition, we note that no specific reference is made in the Guidelines to information provided to Ofcom from industry participants or a competitor's competitor. We assume that this is intentional and that industry participants are considered as other sources of information. We would add that industry information on non-compliance has usually been more readily given to providing the data and should be considered in light of this. For this reason, we believe that industry complaints about competitors should be given more weighting and be explicitly addressed in the guidelines.

## Conclusion

In general we support the changes proposed in the revised Enforcement Guidelines. We propose that Ofcom and a number of stakeholders continue to ensure that a consistent approach is applied when dealing with cases of a similar nature. In addition, we believe that Ofcom should be required, following dialogue with the company, to publish details of a case more widely than the current 25 companies in situations where there is no finding of breach. First, we believe that complaints from industry participants should be given more weighting in the guidelines and that this should receive a higher weighting than individual consumer complaints.

Finally, we welcome the opportunity to respond and hope you take our comments on board. We also welcome any further contact in respect of this submission. Please contact us by email on 01253 763301 or [regulatory@ofcom.gov.uk](mailto:regulatory@ofcom.gov.uk).

Yours sincerely,



Holly Tomlinson  
Head of Regulation, Compliance & Projects (Legal)