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Ecotricity Response to Statutory Consultation on Improving Consumer Protection in the Green and Renewable Energy Offers Market

Introduction

Ecotricity is a renewable energy generator and supplier with over 140,000 customer accounts and 61.5MWh generating capacity across the UK. We provide our customers with a single electricity tariff, Green Electricity, which comes from 100% renewable sources. We operate a not-for-dividend business model whereby we reinvest the money our customers spend on their energy bills to build more renewable generation.

As noted in our response to your June 2014 consultation, Ofgem's proposals to introduce mandatory requirements for all green and renewable tariffs will have a major impact on our business and hinder our efforts to reduce the cost of green electricity for customers. We note from the open letter dated 1st of October that little has changed in your proposals since the June consultation. Whilst we welcome your continued preference for a flexible and pragmatic approach to additionality, we remain concerned about other aspects of your proposals. We have repeatedly expressed these concerns including in our consultation response on the 14th of February 2014; a bilateral meeting with Ofgem; a conference call; and our response to the workshop on the 9th of April 2014.

In short, there remain many inconsistencies with Ofgem's proposals and we object to the fact that costs are being imposed on renewable electricity, that do not apply to other forms of electricity for which environmental benefits are claimed, such as nuclear. This seems at odds with the current climate of concern about ever rising energy bills for Ofgem to bring forward this scheme, which only applies to green energy, and which will simply increase the bills of customers that choose it – for no material gain that we can see. David Cameron has famously expressed a dislike for green subsidies – these proposals row in the opposite direction.

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We also believe that Ofgem's proposed scheme is based on a flawed assessment of need in the market place and inadequate research to establish that. The previous voluntary scheme clearly failed, which should suggest customers just didn't need it, or get it - and Ofgem's approach to that is to make it mandatory.

When viewed in totality the requirements of this new scheme appear, whether by design or not, to place green electricity and all who may sell it at a significant market disadvantage. Not just over brown or conventional electricity, but over other forms of low carbon (and hence 'environmentally beneficial') forms of electricity – such as nuclear, clean coal (CCS) and even gas from fracking if some of its proponents are to be believed (like the current Government).

There are also a number of clarifications needed. These are listed below following the key inconsistencies of the proposals. We also suggest an amendment to the licence condition drafting to reduce unnecessary regulatory risk.

Inconsistencies

Inconsistency 1: Nuclear Power

In our previous response we highlighted the fact that nuclear is not covered by these requirements despite the fact that it is widely touted as a low carbon source of electricity and hence has claimed environmental benefits. Companies with tariffs that provide nuclear generated electricity will thus be claiming environmental benefits, but do not have to provide any additionality or retire certificates, or otherwise comply with the rather lugubrious and onerous requirements of this scheme.

Your open letter responds to this by stating that environmental claims in relation to nuclear would be covered the ASA and Defra Guidance. However, surely the same is true of claims in respect of renewable tariffs? You have still not justified why claims with respect to renewable energy needs to be covered by additional regulations, but nuclear does not. Given that, unlike renewables, the overall environmental benefit of nuclear power is disputed; it should be nuclear, not renewables, that is subject to more stringent advertising regulations. Of course both renewables and nuclear benefit from public support, and so your arguments for ensuring additionality from renewables on that basis (because it is supported by the public already) also should hold for nuclear. These arguments also apply to CCS, Waste to Energy schemes and potentially to fracking.

Inconsistency 2: REGOs, LECs and FMD

We previously pointed out the inconsistency with Ofgem's treatment of renewable tariffs and FMD. Ofgem proposes to require that, in order to claim to supply a domestic renewable tariff, suppliers will need to have a REGO and retire a LEC for every MWh supplied under that tariff; however, it will not require LECs to be retired for FMD purposes.

Our June response asked Ofgem to clarify how a supplier should advertise itself if it has a 100% renewable FMD (eg. a REGO for every MWh of electricity supplied), but has not retired a LEC for every MWh of electricity supplied to domestic customers. Your open letter does not address this problem or provide any guidance for a supplier in that situation. It is surely incumbent upon you to explain how this anomaly can be addressed by suppliers that may find themselves in that situation. The situation will be created by your new rules, and their conflict with existing regulations. Such a supplier must surely be forced to be in breach of one set of rules or the other, as they appear mutually exclusive.

Please provide a response to this inconsistency.

Inconsistency 3: Domestic and non-domestic tariffs

Ofgem's justification for requiring suppliers to retire LECs is that it is in line with regulations from HMRC and it avoids some form of 'double counting', which we find hard to accept. If you believe this to be the case, then why only apply the requirement to retire LECs to domestic tariffs? The Climate Change Levy (CCL) is after all a levy on business use of energy. To force domestic consumers of green energy to pay it (which will be the effect of mandating retirement) and not to do the same in the business sector seems perverse. And if there is a case for creating a new level of consumer protection for domestic electricity customers, via these new rules more generally, then why does the same case not apply to SMEs at least. Large businesses are quite different we can see that. But profile 3 to 8 business customers, and especially 3 to 4 are very similar to domestic profiles 1 and 2. We can see no logic in stopping at profiles 1 and 2.

Please provide a response to this inconsistency.

Inconsistency 4: LEC Retiring, not ROC retiring

Both LECs and ROCs provide financial benefits to renewable generators and are forms of public support. Ofgem's logic with respect to LECs should surely therefore be applied to ROCs. Both certificates have a market value which benefits forms of renewable energy and efforts to reduce carbon emissions - as was intended we believe. We think it inconsistent to require LECs to be retired, for the reasons Ofgem cites – and yet not to require the same of ROCs.

Please provide a response to this inconsistency.

Additionality

Positive: Innovative and Flexible Additionality

One area in which we agree with Ofgem is that additionality should be flexible and enable innovation. As a company our "bills into mills" model has always been based on the premise that it is not enough to simply supply green power that is already there; you need to actually add to amount of green power in the mix. This is what we have always done and; as you can see from the data collected for our Whichgreen website¹; we invest more into building new forms of renewable energy than any other supplier. In previous discussions on this model and our other projects such as: our Electric Highway; research into new green technologies; and green gas; have suggested that these would count as additional environmental benefits. Given that these projects would not be possible without our customers choosing to switch to us, we trust that Ofgem will continue to agree that they should be considered good examples of additional benefits.

Clarification needed 1: Additionality reporting on a per customer basis

In our previous response we requested further detail of how additionality is counted on a per customer basis. The open letter and the statutory consultation do not clarify this. The letter gives the example of avoided CO2 equivalent per customer, but it does not indicate whether other metrics will be allowed. We would suggest that pounds invested per customer is a sensible metric. This would then allow for the construction of projects that are clearly green, but whose actual CO2 equivalent are dependent on outside forces. For example the carbon savings of the Electric Highway will be related to its use as well as how much is invested in it; therefore we could not make promises to our customers as to the level of CO2 avoided that results from their switch.

As noted in our previous response, when finalising the detail of requirements, it is essential that Ofgem account for the following:

1. Project costs will vary year on year;
2. Planning, research and development for renewable energy will inevitably result in some money being sunk on projects that do not come to fruition; and
3. Companies should not be required to publically disclose confidential information.

Clarification needed 2: Additionality met but LECs not retired

In response to your June consultation we requested further clarity on how a supplier that meets the additionality requirements, but does not meet the LEC retirement requirement, should market itself. Again, your open letter does not respond to this question. Again we think it incumbent on you to do so. It's perhaps ironic that this scheme that is intended to create some confidence and transparency for customers of green energy, does not do the same for suppliers of the same.

Please provide clarification on this.

Licence Condition Amendments

Transparency: amended wording suggested

In our previous response we noted that it is not clear from the drafting how the requirement to show customers the FMD would apply to customers that sign up on the phone. It would be far more sensible to allow suppliers to send this information to customers after they have signed up, but whilst they are still in their cooling off period. It may well be that this is Ofgem's intention; but in any event for the sake of clarity the licence condition wording should be amended to include the section in bold below:

*21D.8: Before it enters into a Domestic Supply Contract with a Domestic Customer for a Tariff that is the subject of an Environmental Claim, **or as soon as reasonably practical**, the licensee must take all reasonable steps to communicate the following information to the Domestic Customer:*

d) A Fuel Mix Disclosure chart illustrating the relevant fuel mix of the licensee in line with SLC 21....

Also, Ofgem should clarify whether the fuel mix quoted should be an historic FMD chart as per the requirements under SLC 21 or a predicted FMD chart that refers to the current supply. We also requested this last time, but the open letter has not clarified it.

The final point made in our previous response, which has not been addressed, was our suggestion that the "Tier 3" information about the industry and networks be provided by a third party or even Ofgem itself. The information required is all general information about the energy industry and is not specific to the supplier. Having a single source that all suppliers can link to would ensure that all customers are being given the same information. Not only would this reduce overall costs (of both website production and auditing), it also means that some suppliers would not gain a competitive advantage through inadequate information or biased explanations of how the industry and regulations work.

Please consider this suggestion and respond.

Conclusion

We believe that these proposals are based on a flawed assessment of the needs of the market and inadequate customer research. They will place renewable energy at a significant disadvantage relative to both traditional fossil fuels and other low carbon options.

Furthermore they are inconsistent in their treatment of:

- Renewable versus nuclear;
- Domestic versus non-domestic;
- Green tariffs versus FMD; and
- LECs versus ROCs.

We do not believe it is justifiable to make domestic customers that want green power, to pay more because of a tax that is aimed at non-domestic customers.

We support the flexible and innovative approach to additionality and note that we have long met this objective, despite not having been accredited under the Green Supply Guidelines.

Ofgem consistently mandates clarity in supplier communications with customers; we ask the same of Ofgem in its communications with the market. We would therefore like clarification on the following:

1. How is a supplier that has 100% REGO backed supply and therefore 100% renewable FMD, but does not retire LECs supposed to advertise itself under these proposals?
2. How is a supplier that in addition to having 100% REGO backing also meets the additionality criteria supposed to advertise itself if it does not retire LECs?
3. What are Ofgem's intentions with respect to additionality reporting on a per customer basis and how will it ensure that these requirements reflect the realities of investment into research and development?
4. Should suppliers present customers that sign up to their tariff with the FMD for their current year or a historic FMD in accordance with SLC 21?

Finally, we make the following practical suggestions:

1. In order to reduce unnecessary regulatory risk the wording of the licence condition be redrafted to allow this information to be sent to the customer “as soon as reasonably practical” after entering a contract.
2. The “Tier 3” information about the industry and network be provided by a third party and all suppliers link to the same information.

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 Dale Vince on dale.vince@ecotricity.co.uk and copy in our Compliance Team via Senior Regulation & Compliance Analyst, Holly Tomlinson, on holly.tomlinson@ecotricity.co.uk.

Yours sincerely,

Dale Vince
Founder

ⁱ <http://www.whichgreen.org/energy-supplier-rating>