

The Company Secretary

Spark Energy Supply Limited
Regent House
316 Beulah Hill
Upper Norwood
SE19 3HF London

6 May 2015

Dear Sir/Madam,

Derogation to allow prepayment tariffs for tenants of affordable social housing

This letter sets out the decision of the Gas and Electricity Markets Authority (the "**Authority**") to grant Spark Energy Supply Limited (company number 05857467, registered in England, the "**Licensee**") derogations from certain standard conditions of its gas and electricity supply licence. These derogations will enable the Licensee to offer an additional electricity and gas tariff to their existing four core tariffs for prepayment customers living in affordable social housing (the "**Affordable Social Housing Prepayment Tariff**").

The Directions are attached. These will be published and shall remain in force until 7 May 2018, unless revoked earlier or varied in writing by the Authority. Any change in circumstances relevant to the Direction 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 Directions. Capitalised terms used in this letter, which are not defined herein, have the meaning given to them in the standard conditions of the Licensee's electricity and gas supply licences.

Background to Derogation Request

Tariff cap

The Authority received a completed submission on 13 February 2015 from the Licensee for a derogation from paragraph 2(b) of SLC 22B of its gas and electricity supply licence.¹ The Licensee is currently using all its four Core Tariffs slots for gas and for electricity, and wishes to offer additional Core Tariffs (one for electricity and the other for gas) targeted at low-consuming prepayment customers living in affordable social housing.²

¹ The Licensee initially submitted an incomplete application on 12 December 2014. After a series of engagements with Ofgem, the Licensee identified the relevant rules it needed a derogation from and completed its application on 13 February 2015.

² The definition of affordable social housing is based on current government definition of affordable housing ([Definitions of general housing terms](#)): "Affordable housing is social rented and affordable rented housing,

To be compliant with the four core tariffs rule, the Licensee would need to drop some of its existing core tariffs. The Licensee considers that such substitution of its tariffs would not be commercially viable. It indicates that the Affordable Housing Prepayment Tariffs: are specifically designed for low energy users; will be cheaper than the Licensee's existing tariffs; and will not be commercially viable if offered to all prepayment customers due to the higher costs involved in operating the prepayment meters.

For a tenant to be eligible for the Affordable Social Housing Prepayment Tariff, the social housing provider would first need to sign up to the Licensee's scheme. Any existing tenant may then switch their energy supply to the Licensee if they wish to do so. Where an existing tenant decides not to switch their supply to the Licensee, the housing provider may switch the supply of the property to the Licensee when the property becomes vacant. However, the new tenant moving into the property would retain the right to switch to another supplier of their choice at no cost.

The Licensee proposes to offer this as a dual fuel standard variable prepayment tariff. The Licensee has set out a number of commitments in relation to the tariff including that it will have:

- no tie-ins or exit penalties;
- a zero standing charge to reduce the impact on consumers with low levels of energy consumption;
- a lower unit rate than the Licensee's standard variable prepayment tariffs;
- a unit rate that is competitive with the Licensee's dual fuel direct debit tariffs; and
- paper bills as standard but online account management will be made available to eligible customers, including any associated discount.

Paragraph 2(b) of SLC 22B prohibits any supplier from offering more than four Core Tariffs to a Domestic Customer at any time and in any region throughout Great Britain, for any Metering Category.³ Paragraph 36 of SLC 22B provides that the Authority may issue directions relieving a licensee of its obligations to comply with SLC 22B to such extent and subject to such conditions as the Authority may direct. Without a derogation from paragraph 2(b) of SLC 22B, the proposed Affordable Social Housing Prepayment Tariff would increase the Licensee's Core Tariffs above the four Core Tariffs cap and the Licensee would not be compliant with SLC 22B.

Prohibition against cash discount

As part of the scheme, and each time a property is vacant, the Licensee also wishes to provide the social housing provider a £5 credit on their electricity and gas prepayment cards. This credit could be used for the energy consumption during property improvement (electrical testing, repairs and renovation) during the transitional period when the property is vacant. However, any residual credit left on the gas and electricity prepayment cards would be available to a new tenant moving into the property.

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). We consider that any remaining credit in the prepaid card that is passed onto the tenant would constitute a cash discount (the

provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Social rented housing is owned by local authorities or private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency. Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80 per cent of the local market rent (including service charges, where applicable)."

³ This includes Metering Categories A and B for gas and A to E for electricity, as specified under SLC 22B.2(a) and defined under SLC 1 of both the gas and electricity supply licences. Prepayment is a payment method and not a metering category.

“Residual Cash Discount”), which would not be compliant with the cash discount rule. Without a derogation from paragraph 4 of SLC 22B, the Licensee would not be able to enable new tenants to receive the Residual Cash Discount.

The Authority’s Decision

Having regard to our principal objective and statutory duties including our duty to have regard to the interests of vulnerable consumers (eg individuals who are disabled or chronically sick, and of pensionable age or on low incomes), and based on the information submitted by the Licensee, we consider that the proposed scheme does not undermine the objectives of the Retail Market Review (RMR) and would be beneficial to eligible consumers.

The RMR reforms deliberately require suppliers to offer no more than four Core Tariffs to a Domestic Customer for any Metering Category at any time. This rule is aimed at making the market⁴ simpler and facilitating consumers’ ability to compare deals in order to choose the best energy tariffs for their needs. The RMR did not intend to stop consumers, particularly vulnerable consumers, from accessing offers that are beneficial to them. Ofgem is open to considering derogations when they are targeted towards social schemes and at addressing the needs of consumers in vulnerable situations. While not all prepayment customers are on low incomes, they face fewer tariff choices in the market and are more likely to be in fuel poverty than direct debit customers.

We consider that the proposed Affordable Social Housing Prepayment Tariff would not significantly increase complexity in the market. The scheme is limited to a specific group of consumers within the affordable social housing sector. This means that the number of consumers that will be affected is small. We consider that any potential detrimental impact on consumers from granting the required derogations to allow the new tariff would likely be outweighed by the savings to those targeted, particularly ones in financially vulnerable situations.

Therefore, the Authority grants the Licensee a derogation from paragraph 2(b) of SLC 22B in respect of the Affordable Social Housing Prepayment Tariff with effect from the date of, and subject to the terms of, the attached Direction. The effect of this derogation is that the Affordable Social Housing Prepayment Tariff will not count towards the Core Tariff cap imposed by paragraph 2(b) of SLC 22B.

Furthermore, the Authority grants the Licensee a derogation from paragraph 4 of SLC 22B to allow eligible consumers to receive the Residual Cash Discount. The discount rules were in part aimed at preventing cash discounts from distorting consumer choice. In this case, the Residual Cash Discount is not offered directly to consumers. We consider that it would not play a significant role in the consumer’s comparison of tariffs on the market and therefore is less likely to distort the consumer’s choice.

We will also exclude the Residual Cash Discount from certain aspects of the RMR information requirements. The Residual Cash Discount is not a feature of the tariff and the amount a customer receives is inherently uncertain. As such, the Authority grants the Licensee derogations from the requirements to include the Residual Cash Discount in the calculations of the Tariff Comparison Rate, the Tariff Information Label Estimated Annual Costs and the customer's Estimated Annual Costs (Personal Projection).

Finally, we would emphasise that the Licensee and, where applicable, their representatives, must take necessary steps to ensure full compliance with the Standards of Conduct (SLC 25C), which require suppliers to treat customers fairly. For example, customers should be informed in a fair and transparent manner to help them understand that they have the

⁴ In this document, we use the term “market” as shorthand for referring to different segments of the energy sector. For the avoidance of doubt, this term is not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

right to switch to a different tariff or supplier at any time, with no additional charges. Customers should also be informed that if their consumption levels are high, they may benefit more from a positive standing charge tariff with a lower unit rate. This information should be included in the customer's Annual Statement and in the customer's "welcome-pack" which should provide a detailed explanation of the main features of the Affordable Social Housing Prepayment Tariff.

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

Yours faithfully,

Neil Barnes
Associate Partner, Retail Markets

ATTACHMENT 1: Gas Supply Licence

The Company Secretary
Spark Energy Supply Limited
Regent House
316 Beulah Hill
Upper Norwood
SE19 3HF London

Direction issued to Spark Energy Supply Limited (company number 05857467, the "Licensee") by the Gas and Electricity Markets Authority – Affordable Social Housing Prepayment Tariff

1. This Direction is issued by the Gas and Electricity Markets Authority (the "**Authority**") pursuant to paragraph 36 of Standard Licence Condition (SLC) 22B of the gas supply licence granted to the Licensee under section 7A(1) of the Gas Act 1986 (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 of the Licence.
3. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 6 May 2015.
4. SLC 22B.36, 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 22B, 23, 31A (sections A and B), 31B, 31C or 31E (respectively) to such extent and subject to such conditions as the Authority may direct.
5. The Authority directs that the Licensee is temporarily relieved of its obligations under paragraph 2(b) of SLC 22B in respect of its gas tariff available to eligible prepayment customers living in affordable social housing (the "**Affordable Social Housing Prepayment Tariff**"), as described in the Licensee's application to the Authority. The effect of this paragraph is that the Affordable Social Housing Prepayment Tariff shall not count towards the maximum limit on the number of Core Tariffs which, pursuant to paragraph 2(b) of SLC 22B, the Licensee may make available to a Domestic Customer in any Region and in relation to any category of metering arrangement permitted under the Licence.
6. The Authority furthermore directs that the Licensee is on a temporary basis permitted to apply the Residual Cash Discount (as defined below), where applicable, in connection with the Affordable Social Housing Prepayment Tariff notwithstanding the general prohibition against certain Discounts contained in paragraph 4 of SLC 22B.
7. The Authority furthermore directs that, notwithstanding the Residual Cash Discount constitutes a Discount, where the Licensee is required to calculate the Tariff Comparison Rate, the TIL Estimated Annual Costs or a Domestic Customer's Estimated Annual Costs (Personal Projection) for the purposes of compliance with SLC 23, 31A (sections A and B), 31B, 31C or 31E, the Licensee must exclude the Residual Cash Discount from such calculations.
8. For the purposes of this Direction:
 - a. "**Housing Provider Credit**" means a £5 Discount credited to the relevant prepayment meter when an affordable social housing provider notifies the Licensee that a Domestic Customer on the Affordable Social Housing Prepayment Tariff has vacated the relevant premises; and

b. "**Residual Cash Discount**" means the remaining amount of the Housing Provider Credit which is passed onto a Domestic Customer moving into the relevant premises.

9. The Licensee is required to report any change of circumstances relevant to this Direction to the Authority.

10. This Direction shall take immediate effect and shall remain in force until 07 May 2018, unless revoked earlier or varied in writing by the Authority.

Dated: 6 May 2015

Neil Barnes

Associate Partner, Retail Markets

Signed on behalf of the Authority and authorised for that purpose

ATTACHMENT 2: Electricity Supply Licence

The Company Secretary
Spark Energy Supply Limited
Regent House
316 Beulah Hill
Upper Norwood
SE19 3HF London

Direction issued to Spark Energy Supply Limited (company number 05857467, the "Licensee") by the Gas and Electricity Markets Authority – Affordable Social Housing Prepayment Tariff

1. This Direction is issued by the Gas and Electricity Markets Authority (the "**Authority**") pursuant to paragraph 36 of Standard Licence Condition (SLC) 22B of the electricity supply licence granted under section 6(1)(d) of the Electricity Act 1989 (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 of the Licence.
3. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 6 May 2015.
4. SLC 22B.36, 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 22B, 23, 31A (sections A and B), 31B, 31C or 31E (respectively) to such extent and subject to such conditions as the Authority may direct.
5. The Authority directs that the Licensee is temporarily relieved of its obligations under paragraph 2(b) of SLC 22B in respect of its electricity tariff available to eligible prepayment customers living in affordable social housing (the "**Affordable Social Housing Prepayment Tariff**"), as described in the Licensee's application to the Authority. The effect of this paragraph is that the Affordable Social Housing Prepayment Tariff shall not count towards the maximum limit on the number of Core Tariffs which, pursuant to paragraph 2(b) of SLC 22B, the Licensee may make available to a Domestic Customer in any Region and in relation to any category of metering arrangement permitted under the Licence.
6. The Authority furthermore directs that the Licensee is on a temporary basis permitted to apply the Residual Cash Discount (as defined below), where applicable, in connection with the Affordable Social Housing Prepayment Tariff notwithstanding the general prohibition against certain Discounts contained in paragraph 4 of SLC 22B.
7. The Authority furthermore directs that, notwithstanding the Residual Cash Discount constitutes a Discount, where the Licensee is required to calculate the Tariff Comparison Rate, the TIL Estimated Annual Costs or a Domestic Customer's Estimated Annual Costs (Personal Projection) for the purposes of compliance with SLC 23, 31A (sections A and B), 31B, 31C or 31E, the Licensee must exclude the Residual Cash Discount from such calculations.
8. For the purposes of this Direction:
 - a. "**Housing Provider Credit**" means a £5 Discount credited to the relevant prepayment meter when an affordable social housing provider notifies the Licensee that a Domestic Customer on the Affordable Social Housing Prepayment Tariff has vacated the relevant premises; and

b. "**Residual Cash Discount**" means the remaining amount of the Housing Provider Credit which is passed onto a Domestic Customer moving into the relevant premises.

9. The Licensee is required to report any change of circumstances relevant to this Direction to the Authority.

10. This Direction shall take immediate effect and shall remain in force until 7 May 2018, unless revoked earlier or varied in writing by the Authority.

Dated: 6 May 2015

Neil Barnes

Associate Partner, Retail Markets

Signed on behalf of the Authority and authorised for that purpose