

The Company Secretary

Green Energy (UK) plc
Black Swan House
23 Baldock Street
Ware, Hertfordshire
SG12 9DH, UK

16 September 2015

Dear Sir/Madam,

Request for an enduring derogation – Green Energy share scheme

The Gas and Electricity Markets Authority (the “**Authority**” or “**we**”) has decided to replace Green Energy (UK) plc’s (company number 04194006, the “**Licensee**”) temporary derogation from certain standard conditions of its electricity supply licence in respect of its Green Energy share scheme (as described below) with an enduring derogation. Furthermore, the Authority has decided to grant the Licensee an equivalent derogation from conditions of its gas supply licence.

The relevant Directions are attached and will be published. These Directions will remain in force, in accordance with their terms, on an enduring basis, unless revoked or varied in writing by the Authority. Any change in circumstances relevant to the Directions 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 the standard conditions of the Licensee’s electricity and gas supply licences.

Background to the Derogation Request

The Authority received a written request from Green Energy Limited, an affiliate of the Licensee, on 25 July 2013 for a derogation from certain conditions of its electricity supply licence to continue to operate its Green Energy share scheme. Following dialogue with Ofgem, a formal derogation request was submitted on 23 December 2013.

Under the Green Energy share scheme, the first 50,000 customers who enter into a supply contract with the Licensee (or previously with Green Energy Limited) are each offered 400 free shares in the Licensee. A further 5,000,000 shares may also be allocated at the Licensee’s discretion to persons whom it considers are instrumental to the Licensee’s growth.

Although members of the Green Energy share scheme receive voting rights in the Licensee on allotment of the shares, rights to: (i) participate in a distribution of profits; (ii) monies on a return of assets; and (iii) transfer the shares, only accrue to them if they remain customers of the Licensee for a period of 3.5 years from the date of allotment. Once the 3.5 year period has elapsed, a customer who has acquired the shares will keep the shares whether they remain with the Licensee or switch to another supplier. The customer will continue to be invited to the Licensee’s Annual General Meeting and will receive the full benefit of any dividend.

Interaction of the scheme with Retail Market Review (RMR) rules

The offer of shares to customers constitutes a Bundled Product, as defined in electricity (and gas) supply standard licence condition (“SLC”) 1.

- Paragraph 14A of SLC 22B requires that any licensee offering an Optional Bundle with its Core Tariffs (including a Bundled Product which constitutes a Discount), must ensure that the Optional Bundle is available to all Domestic Customers which are subject to those Core Tariffs.
- Paragraph 15(a) of SLC 22B prohibits any licensee from offering any Bundled Product which does not contain the same terms and conditions and is of the same monetary amount in respect of all Live Evergreen Tariffs, Live Fixed Term Tariffs and Dead Tariffs of the licensee.
- Paragraph 16 of SLC 22B prohibits any licensee from offering a Bundled Product which constitutes a Discount if it is not “Continuously Applied” (as defined in paragraph 38 of SLC 22B) on a daily or per kWh basis.¹
- Paragraph 30 of SLC 22B requires licensees to ensure that all their Tariffs are available to, and are capable of being entered into by, both new and existing Domestic Customers.

Therefore, the Licensee requires derogations from paragraphs 14A, 15(a), 16, and 30 of SLC 22B of its electricity supply licence in order to be able to continue operating the Green Energy share scheme, as: (i) shares are only offered to the first 50,000 customers; and (ii) certain shareholder rights only vest in the customer shareholders after a period of 3.5 years from the date of allotment.

The Authority granted Green Energy Limited a temporary derogation from their electricity supply licence in respect of its Green Energy share scheme on 23 January 2014.^{2, 3} This derogation was transferred to the Licensee on 22 December 2014 to coincide with the transfer of Green Energy Limited’s supply licence to the Licensee.⁴ The Licensee’s derogation is due to expire on 23 January 2016, unless it is extended by the Authority.

Application for an enduring derogation

On 01 July 2015 the Authority received a request from the Licensee to replace its temporary derogation in respect of the Green Energy share scheme with an enduring derogation. The Licensee presented survey evidence demonstrating that a significant proportion of its customers want the Green Energy share scheme to continue. 56.8 per cent of the customers indicated that the share scheme was important to them, while 69.7 per cent supported the Licensee’s request for a derogation to continue offering the share scheme.

The Licensee also requested that the Authority grants a similar derogation in respect of its gas supply licence. The Licensee currently only offers gas as dual fuel to their electricity

¹ The Green Energy share scheme does not fall within the exception to the Continuously Applied rule for Bundled Products in paragraph 28 of SLC 22B.

² SLC 22B provides that the Authority may grant derogations relieving a licensee of its obligations to comply with SLC 22B to such extent and subject to such conditions as the Authority may direct.

³ The superseded derogation can be found here: <https://www.ofgem.gov.uk/publications-and-updates/superseded-decision-green-energy-limited-s-request-formal-derogation-paragraph-14a-15a-16-and-30-standard-licence-condition-22b-electricity-supply-licence-green-energy-share-scheme>

⁴ The replaced derogation can be found here: <https://www.ofgem.gov.uk/publications-and-updates/decision-green-energy-uk-plc-request-derogation-certain-standard-licence-conditions-its-electricity-supply-licence-respect-green-energy-share-scheme>

customers. However it does not exclude the possibility of offering gas in the future as a single fuel contract. The Licensee therefore wants a derogation from its gas supply licence to allow the opportunity for any single fuel gas customers to equally benefit from its Green Energy share scheme as its single fuel electricity customers.

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 the Green Energy share scheme is beneficial to consumers and does not undermine the objectives of the RMR.

The RMR rules were introduced to increase consumer engagement in order to stimulate competition in the market, in part by reducing tariff complexity.⁵ We do not consider that the share scheme significantly increases complexity in consumer decision-making. For example, the shares offered to consumers are not linked to the unit rate or the standing charge of their tariffs.

We consider that any potential detrimental impacts on consumers would likely be outweighed by the direct consumer benefits and the community benefits associated with such a scheme. The expected consumer and community benefits are reinforced by the Licensee's intention that its company should be 50 per cent owned by its customers, which through their share rights, will be actively involved in the Licensee's business and its objectives.

Therefore, the Authority grants the Licensee enduring derogations from paragraphs 14A, 15(a), 16, and 30 of SLC 22B of its gas and electricity supply licences in respect of the Licensee's Green Energy share scheme, subject to the terms of the attached Directions.

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

Signed on behalf of the Authority and authorised for that purpose.

⁵ In this document we use the term "market" as shorthand for referring to different segments of the energy sector. For the avoidance of doubt, these terms are 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.

ATTACHMENT: Electricity Supply Licence

The Company Secretary

Green Energy (UK) plc
Black Swan House
23 Baldock Street
Ware, Hertfordshire
SG12 9DH, UK

Direction issued to Green Energy (UK) plc (company number 04194006) by the Gas and Electricity Markets Authority pursuant to paragraph 36 of Standard Licence Condition 22B (*Restrictions on Tariff numbers and Tariff simplification*) of the electricity supply licence – Green Energy share scheme

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 (the "**Licence**") granted under section 6(1)(d) of the Electricity Act 1989 to Green Energy (UK) plc (company number 04194006; the "**Licensee**").
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the SLC.
3. Paragraph 36 of SLC 22B provides that the Authority may issue directions relieving the Licensee of its obligations to comply with SLC 22B 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 16 September 2015.
5. The Authority hereby directs, pursuant to paragraph 36 of SLC 22B, that the Licensee is, on an enduring basis and subject to the Licensee's continuing compliance with the condition in paragraph 6 of this Direction, relieved of its obligations under paragraphs 14A, 15(a), 16, and 30 of SLC 22B in respect of its Green Energy share scheme, as described in the accompanying letter to the Licensee dated 16 September 2015.
6. The Licensee is required to report any change of circumstances relevant to this Direction to the Authority.
7. This Direction shall take immediate effect and shall remain in effect on an enduring basis, unless revoked or varied in writing by the Authority.

Dated: 16 September 2015

Neil Barnes
Associate Partner, Retail Markets

Signed on behalf of the Authority and authorised for that purpose.

ATTACHMENT: Gas Supply Licence

The Company Secretary

Green Energy (UK) plc
Black Swan House
23 Baldock Street
Ware, Hertfordshire
SG12 9DH, UK

Direction issued to Green Energy (UK) plc (company number 04194006) by the Gas and Electricity Markets Authority pursuant to paragraph 36 of Standard Licence Condition 22B (*Restrictions on Tariff numbers and Tariff simplification*) of the gas supply licence – Green Energy share scheme

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 (the "**Licence**") granted under section 7A(1) of the Gas Act 1986 to Green Energy (UK) plc (company number 04194006; the "**Licensee**").
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the SLC.
3. Paragraph 36 of SLC 22B provides that the Authority may issue directions relieving the Licensee of its obligations to comply with SLC 22B to such extent and subject to such conditions as the Authority may direct.
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Dated: 16 September 2015

Neil Barnes
Associate Partner, Retail Markets

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