

Your Ref:
Our Ref: CRE Energy SLCs 14 & 15
Direct Dial: 020 7901 7159
Email: jo.witters@ofgem.gov.uk

Cc. All Interested Parties

4 January 2006

Dear colleague,

Request from CRE Energy Limited for a Direction under Standard Condition 14 (“Compulsory Acquisition of Land etc”) and a Direction under Standard Condition 15 (“Other Powers etc”) of the Electricity Generation Licence

CRE Energy Limited (CRE) is the holder of an electricity generation licence granted under section 6(1)(a) of the Electricity Act 1989. On 23 December 2005, CRE submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of Standard Licence Condition 14 (“SLC 14”) “Compulsory Acquisition of Land etc” and paragraphs 5 to 8 of Standard Licence Condition 15 (“SLC 15”) “Other Powers etc” be given effect in its electricity generation licence.

SLC 14 and SLC 15 refer to the powers and rights conferred by Schedule 3 and Schedule 4 of the Electricity Act 1989. They are only applicable to a holder of a generation licence to the extent that the licence so provides.¹ The generation licence makes provision for the Authority to make directions under SLC 14 and SLC 15 to give effect to certain paragraphs in those conditions which give the licence holder Schedule 3 and Schedule 4 rights (see below as to the detail of those rights).

This letter explains the background to CRE’s requests and invites views on the Authority’s preliminary view that it should issue the directions sought.

Background to SLC 14

Paragraphs 5 to 7 of SLC 14 set out the purposes for which the powers and rights conferred under Schedule 3 of the Electricity Act 1989 shall have effect.

Schedule 3 provides for the Secretary of State to authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

The purposes referred to in SLC 14 (in paragraph 6 specifically) are:

¹ Section 10(1) of the Electricity Act 1989.

- (a) the construction or extension of a generating station;
- (b) activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and
- (c) the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with:
 - (i) a transmission system; or
 - (ii) a distribution system.

For the purpose of clarification, the Authority does not have the vires to take a decision in respect of whether the land in question can be compulsorily purchased. Any such decisions fall to the Secretary of State (although where the land in question belongs to another licence holder, the Authority's consent to the Secretary of State's authorisation must be sought under paragraph 2(1) of Schedule 3).

Paragraphs 1 and 2 of SLC 14 specify how paragraphs 5 to 7 can be given effect. Paragraph 1 of SLC 14 relates to the provisions of paragraphs 5 to 7 of SLC 14 being brought into effect by the Secretary of State.² Paragraph 2 of SLC 14 sets out that the Authority may issue a direction that the provisions of paragraphs 5 to 7 of SLC 14 shall have effect for a period specified in the direction and that this period may be extended by a further direction of the Authority.

Details of those licences in which paragraphs 5 to 7 of SLC 14 have been given effect are available on the electronic public register³ on the Ofgem website.⁴

Background to SLC 15

Paragraphs 5 to 8 of SLC 15 detail the activities that the licensee is enabled to carry out by the effect of the powers and rights conferred under Schedule 4 of the Electricity Act 1989 and requires the licensee to obtain the consent of the Authority before exercising its rights of entry to land⁵ for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station.

Schedule 4 gives powers to licence holders, subject to the necessary consents and giving of notices, to execute certain kinds of work for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, specifically:

- (a) the installation under, over, in, along, or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing and removing:

² Paragraph 1 of SLC 14 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 14 to have effect within a generation licence, the provisions contained in paragraphs 5 to 7 will apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30th September 2001.

³ <http://62.173.69.60/index.php?pk=folder97241>

⁴ www.ofgem.gov.uk

⁵ Paragraph 10(1) of Schedule 4

- (i) any electric lines or electrical plant; and
- (ii) any structures for housing or covering such lines or plant;

(b) any works requisite for or incidental to the purposes of any works falling in (a) above including for those purposes:

- (i) opening or breaking up any street or sewers, drains or tunnels within or under any street;
- (ii) tunnelling or boring under any street; and
- (iii) removing or using all earth and materials in or under any street.

Paragraph 6 of Schedule 4 relates to the acquisition of wayleaves by the licensee. In particular, it enables the Secretary of State to grant the necessary wayleave, if this has not been done by the owner or occupier of the land.

Paragraphs 1 and 2 of SLC 15 specify how paragraphs 5 to 8 can be given effect. Paragraph 1 of SLC 15 relates to the provisions of paragraphs 5 to 8 being brought into effect by the Secretary of State.⁶ Paragraph 2 of SLC 15 sets out that the Authority may issue a direction that the provisions of paragraphs 5 to 8 of SLC 15 shall have effect for a period specified in the direction and that this period may be extended by a further direction of the Authority.

Details of those licences in which paragraphs 5 to 8 of SLC 15 have been given effect are available on the electronic public register on the Ofgem website.

CRE's request

CRE has submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 be given effect in its electricity generation licence.

In its application CRE explained that it intends to develop a series of windfarms at various locations in the UK in respect of which it considered it would be helpful to have the power to acquire land compulsorily. CRE also considered that it would be helpful to have the power of compulsory wayleaves available to it for activities such as the installation and connection of associated cables, the export of power off site, construction and lay down areas and access.

In its application CRE confirmed that, in the first instance, it is its intention to attempt to acquire land and/or wayleaves by negotiation with the relevant landowner(s) and not by seeking authorisation for compulsory acquisition and/or compulsory wayleaves from the Secretary of State. However, it considered that it would be helpful to prepare for the possibility of having to acquire land and/or wayleaves compulsorily.

⁶ Paragraph 1 of SLC 15 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 15 to have effect within a generation licence, the provisions contained in paragraphs 5 to 8 shall apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30th September 2001.

Ofgem's preliminary view

In its decision with respect to the request from the Green Renewable Energy Company Limited⁷ Ofgem outlined its concerns regarding the issue of consistency with respect to the application of a number of standard licence conditions and that it therefore considered that it was appropriate to conduct a broad review of the powers, rights and obligations conferred on licensees under the electricity generation licence.

However, Ofgem noted that due to Ofgem resources being diverted to take forward other more urgent workstrands, Ofgem had not yet been able to take forward a review of the electricity generation licence. Further, having considered the potential nature of this review, Ofgem noted that whilst it would be more desirable to take forward a wider review at this time, such a review would be unlikely to be undertaken over the coming winter months given that other, more urgent, workstrands require additional support over this period.

However, Ofgem considered that it remained important to address the application of SLC14 and SLC15 as a matter of some urgency and therefore will be taking forward a review of these two standard licence conditions, separate to a wider electricity generation licence review, as soon as possible.

Until such time as this review is completed, Ofgem considers that, in relation to CRE's request, there is no objective justification for CRE to be denied similar powers as compared with other companies that currently have SLC14 and SLC 15 in effect in their electricity generation licence. Therefore, Ofgem's initial view is that at this time, and subject to the outcome of any review conducted by Ofgem in respect of SLC 14 and SLC 15, it would be appropriate to agree to CRE's application and to bring the relevant provisions of the licence into effect for a period of five years.

Request in relation to SLC 14

The preliminary view of the Authority is that it should make a direction to give effect to paragraphs 5 to 7 of SLC 14 of the electricity generation licence to be granted to CRE. It proposes that such direction should be for a period of five years.

Request in relation to SLC 15

The preliminary view of the Authority is that it should also make a direction to give effect to paragraphs 5 to 8 of SLC 15 of the electricity generation licence to be granted to CRE. It proposes that such direction should be for a period of five years.

Ofgem considers that this preliminary view is consistent with the principal objective of the Authority to protect the interests of consumers,⁸ wherever appropriate, by promoting effective

⁷ 'Decision in relation to the request from the Green Renewable Energy Company Ltd for a Direction under Standard Condition 14 ("Compulsory Acquisition of Land etc") and a Direction under Standard Condition 15 ("Other Powers etc") of the Electricity Generation Licence', Ofgem, October 2005.

⁸ Ofgem's principal objective is defined in Section 3A of the Electricity Act 1989 (as amended).

competition between persons engaged in the generation of supply, and further that this preliminary view will assist in the meeting of all reasonable demands for electricity. Ofgem considers this to be the case as giving effect to paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 is intended to assist CRE in the construction of new generation facilities.

Views invited

Ofgem would welcome the views of interested parties on the Authority's preliminary view that paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 should be given effect in the electricity generation licence of CRE, for five years in each case. Interested parties are requested to submit their views by 5pm on 17 February 2006. Responses should be addressed to:

Ben Woodside
Wholesale Markets
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

Electronic responses may be sent to wholesale.markets@ofgem.gov.uk please mark your response 'CRE SLCs 14 & 15 application'.

Respondents are free to mark their replies as confidential although Ofgem would prefer, as far as possible, to be able to place responses to this paper in the Ofgem library. Unless clearly marked 'confidential', responses will be published by placing them in the Ofgem library and on the Ofgem website. Respondents should be aware that Ofgem may be required by law to disclose any reply.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Ben Woodside on 020 7901 7471.

Yours sincerely,

Jo Witters
Head of Wholesale Markets Policy

Consultation code of practice

If respondents have comments or complaints about the way this consultation has been conducted these should be sent to:

Michael Fews
Head of Licensing
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

michael.fews@ofgem.gov.uk