

Symbio Energy Ltd: Notice of Proposal to make a Final Order

Notice of Proposal to make a Final Order

The Electricity Act 1989 and the Gas Act 1986

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to make a Final Order (“FO”) pursuant to section 26 (1) and (2) of the Electricity Act 1989 (“the EA89”) and section 29(1) and (2) of the Gas Act 1986 (“the GA89”).

1. Background

1.1. Symbio Energy Limited (Company Number: 07999360) (“Symbio”), whose registered office is Integer Millennium House Bre Innovation Campus, Bucknalls Lane, Watford, Hertfordshire, England, WD25 9XX is the holder of an Electricity Supply Licence issued by the Gas and Electricity Markets Authority (“the Authority”) on 1 September 2017 under section 6(1)(d) of the EA89 and of a Gas Supply Licence issued by the Authority on 1 September 2017 under section 7A(1) of the GA86.

2. Request to provide information

2.1. The Authority will, when carrying out its functions as regulator of the Gas and Electricity Markets under Part I EA89 and GA86, and in relation to relevant licences granted under that legislation, act to protect the interests of existing and future electricity and gas consumers and the operation of those markets. In carrying out its functions, it will from time to time will seek information from licensees using its compulsory disclosure powers, in order to monitor their financial interests and their participation in the electricity and gas markets. Information seeking powers used by the Authority include Paragraphs 5.1 and 5.2 of Standard Condition 5 (“SLC 5”) of the Gas Supply Licence and Paragraphs 5.1 and 5.2 of SLC 5 of the Electricity Supply Licence which (both) provide that:

5.1 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested.

5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court

2.2 Symbio is a licensee subject to the requirements of both the Standard Conditions of the Electricity Supply Licence, and of the Standard Conditions of the Gas Supply Licence, and therefore of SLC 5 of each.

2.3 By a request dated 28 May 2021 pursuant to SLC 5 of the Gas Supply Licence and of the Electricity Supply Licence the Authority sought the following information from Symbio for service by 7 June 2017:

Annex 1 – Required information

Please provide the following information:

1. Up-to-date management accounts including balance sheet and monthly actuals, and accounts going back to at least April 2020 (including cash, customer arrears and credit balances).

2. The latest cashflow forecasts, with the applicable date, for the next 12 months, with the first six months shown daily, and monthly thereafter for the remainder of the 12 month period.

2.4. Symbio provided the items in Annex 1 paragraph one on 11 June 2021. However by correspondence dated 8 June 2021 Symbio indicated that it would not provide any of the items in the second paragraph of Annex 1, namely cashflow information sought (“the cashflow information”).

2.5. Symbio has continued to date to refuse to supply the cashflow information sought.

3. Contravention of a Relevant Condition making Final Order Requisite

3.1 Symbio has contravened (and continues to contravene) the requirements of SLC 5 by not supplying the information sought on 28 May 2021, whose delivery was required by 7 June 2021. This is an obligation enforceable by the Authority as a relevant condition for the purposes of section 25 EA89 and section 28 GA86.

3.2 It is, in the Authority’s view, requisite to make a Final Order (“FO”) requiring Symbio to make the required disclosure of information in order to bring it back into compliance with SLC 5.

3.3. The Authority proposes to make a Final Order requiring disclosure of the Information listed in paragraph 2 of Annex 1 to the Request for information dated 28 May 2021 within 48 hours of the FO being made.

3.4 Where a licensee fails to comply with the FO by providing the requested information the Authority may initiate the process of revocation of the licence or take other action to enforce compliance.

3.5 On 6 August 2021, the Authority published an open letter¹ in which it set out its expectation that suppliers should be open and cooperative in their engagement with Ofgem in accordance with Standard Licence Condition 5A of the Gas Supply Licence and Electricity Supply licence. To perform our regulatory functions effectively, it is essential that stakeholders provide us, and where relevant our third party advisors, with timely, complete and accurate information, both proactively and when requested. The quality of information provided to us by stakeholders is vital to our ability to monitor the market, make effective policy decisions and fulfil our statutory duties.

¹ <https://www.ofgem.gov.uk/sites/default/files/2021-08/Open%20letter%20-%20Retail%20financial%20stability.pdf>

3.6. In reaching its conclusion that it should propose to make the FO in the form set out in the Annex to this notice, the Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the EA89 and GA86. Sections 25(4A) and (4B) of both Acts relate to the question as to whether this matter should be investigated on the basis of a possible breach of the Competition Act 1998. The Authority does not consider that this case falls into that category. Section 25(5) of the EA89 and GA86 refers to the Authority's principal objective as set out in section 3A of the EA89 and section 4AA of the Gas Act.

3.7. In accordance with section 26(1) of the EA89 and section 29(1) of the GA86 the Authority gives notice that:

- a) SLC 5 of each of the Electricity and Gas Supply Licences, are provisions imposing obligations enforceable as "relevant conditions" by the Authority. In this context, the requirement to provide information is enforceable as a relevant condition.
- b) The omissions which, the Authority is satisfied constitute or would constitute contraventions of those requirements, and other factors which in the Authority's opinion justify the making of an FO are those set out above
- c) It is, in the Authority's view, requisite to make the FO in the form set out in the Annex to this notice
- d) Any representations or objections with respect to the proposed FO may be made to the Authority by **4pm on 8 September 2021** (see paragraph 2 below).

3.8. Therefore, the Authority proposes to make a FO requiring Symbio to:

- produce by email to the Authority (using email address: louisa.haddow@ofgem.gov.uk) within 48 hours of the FO being made the information sought in paragraph 2 of Annex 1 of the Request dated 28 May 2021

4. Representation or Objections

4.1. The Authority invites representations or objections in relation to its proposal to make the FO in the form set out in the Annex to this notice.

4.2. Any representations or objections with respect to this proposed notice to make the FO must be made in writing on or before 8 September 2021 and sent to Louisa Haddow, OFGEM, 10 South Colonnade Canary Wharf London E14 4PU or by email to: Louisa Haddow at louisa.haddow@ofgem.gov.uk.

4.3. If a respondent does not wish its response or part of its response to be published, it should clearly mark its response or the relevant parts "not for publication" and give reasons. The Authority will consider such requests on case by case basis.

4.4. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Date: 17 August 2021

Signed:

MEGAN FORBES
ELIZABETH FRANCE

Enforcement Decision Panel
Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex – Form of Final Order

Electricity Act 1989

DRAFT Final Order of the Gas and Electricity Markets Authority (“the Authority”) Made under section 25(1) of the Electricity Act 1989 (“EA89”) and under section 28(1) of the Gas Act 1986 (“GA86”)

To: Symbio Energy Limited Company Number: 07999360
whose registered office is Integer Millennium House Bre Innovation Campus, Bucknalls Lane,
Watford, Hertfordshire, England, WD25 9XX, holder of an Electricity Supply Licence issued by
the Gas and Electricity Markets Authority (“the Authority”) on 1 September 2017 under section
6(1)(d) of the EA89 and of a Gas Supply Licence issued by the Authority on 1 September 2017
under section 7A(1) of the GA86

WHEREAS:

A. Symbio Energy Limited (“Symbio”) is a licensee subject to the requirements of both the
Standard Conditions of the Electricity Supply Licence, and of the Standard Conditions of the
Gas Supply Licence:

B. The Authority will, when carrying out its functions as regulator of the Gas and Electricity
Markets under Part I EA89 and GA86, and in relation to relevant licences granted under that
legislation, act to protect the interests of existing and future electricity and gas consumers and
the operation of those markets. In carrying out its functions, it will from time to time will seek
information from licensees using its compulsory disclosure powers, in order to monitor their
financial interests and their participation in the electricity and gas markets:

C. Specifically, Symbio is subject to Paragraphs 5.1 and 5.2 of Standard Condition 5 (“SLC 5”)
of the Gas Supply Licence and to Paragraphs 5.1 and 5.2 of SLC 5 of the Electricity Supply
Licence which (both) provide that:

*5.1 After receiving a request from the Authority for Information that it may reasonably require
or that it considers may be necessary to enable it to perform any functions given or
transferred to it by or under any legislation, including any functions conferred on the Authority
by or under the Regulation, the licensee must give that Information to the Authority when and
in the form requested.*

*5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be
compelled to produce or give the Information in evidence in civil proceedings before a court*

D. By a request dated 28 May 2021 pursuant to SLC 5 of the Gas Supply Licence and of the
Electricity Supply Licence the Authority sought the following information from Symbio for
service by 7 June 2021:

Annex 1 – Required information

Please provide the following information:

*1. Up-to-date management accounts including balance sheet and monthly actuals, and
accounts going back to at least April 2020 (including cash, customer arrears and credit
balances).*

2. The latest cashflow forecasts, with the applicable date, for the next 12 months, with the first six months shown daily, and monthly thereafter for the remainder of the 12 month period.

E. Symbio provided the items in Annex 1 paragraph one on 11 June 2021. However by correspondence dated 8 June 2021 Symbio indicated that it would not provide any of the items in the second paragraph of Annex 1, namely cashflow information sought (“the cashflow information”);

F. Symbio has continued to date to refuse to supply the cashflow information sought;

G. It is also a requirement of Symbio’s licence (condition 5A) that it engage with the Authority in an open and co-operative manner;

H. The Authority is satisfied;

a) that Symbio has contravened and is continuing to contravene SLC 5 by failing to provide the cashflow information sought in paragraph 2 of Annex 1 of the request dated 28 May 2021 which is an obligation enforceable by the Authority as a relevant condition for the purposes of section 25 of EA89 and section 28 of GA86;

b) that the information sought is information which a licensee could be compelled to produce or give in evidence in civil proceedings before a court;

and

c) that the inclusion of an obligation upon Symbio within a Final Order, made under section 25(1) EA89 and section 28(1) of GA86, to compel production of, within 48 hours of the Final Order being made, the cashflow information in paragraph 2 of Annex 1 of the Request dated 28 May 2021, would be requisite for the purpose of securing Symbio’s compliance with SLC 5 as a relevant condition.

NOW THEREFORE:

The Authority, pursuant to section 25(1) of EA89 and section 28(1) of EA86 makes a Final Order requiring Symbio to:

- produce by email to the Authority (using email address: louisa.haddow@ofgem.gov.uk) within 48 hours of the Final Order being made the information sought in paragraph 2 of Annex 1 of the Request dated 28 May 2021

Dated: [date] August 2021

Signed

MEGAN FORBES
ELIZABETH FRANCE

Enforcement Decision Panel
Duly authorised on behalf of the Gas and Electricity Markets Authority

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