

Notice of reasons pursuant to Section 49A(1)(f) of the Electricity Act for the decision of the Authority to make a provisional order under Section 25(2) of the Electricity Act 1989

1. This Notice sets out the reasons why, on 18 August 2021, the Authority made a Provisional Order ("PO") in respect of contraventions by Symbio Energy Ltd ("Symbio") (company number 07999360) of Integer Millennium House Bre Innovation Campus, Bucknalls Lane, Watford, Hertfordshire, England, WD25 9XX. Symbio is the holder of an Electricity Supply Licence and as such is bound by Standard Licence Conditions ("SLCs") for electricity supply activities.
2. The Feed-in Tariffs ("FIT") scheme is a government programme designed to promote the uptake of small-scale renewable and low-carbon electricity generation technologies.
3. SLC 33 stipulates that (among other things) all licensed electricity suppliers that have supplied electricity in Great Britain, within the relevant FIT year or quarter are obligated to participate in the FIT levelisation process. They have to declare the amount of electricity they have supplied and make a financial contribution towards the scheme in proportion to this.
4. Levelisation is the mechanism by which the total cost of the FIT Scheme is apportioned across licensed electricity suppliers. The cost is allocated between suppliers in proportion to their share of the electricity supply market of Great Britain, whilst taking into account any FIT contribution they have already made. Payments are made quarterly and annually.
5. As a licenced electricity supplier, Symbio is required to comply with the conditions of SLC 33. SLC 33.3 provides that licensees shall comply with Part 3 of Schedule A (FIT obligations applicable to all licensees) with effect on and after 1 April 2010. Condition 3.1 of Part 3 of Schedule A to SLC 33 provides that licensees shall participate in the Levelisation Process as set out in Part 6 of the Feed-In Tariffs Order 2012, in accordance with the Authority's instructions. Condition 3.1.2 of Part 3 of Schedule A, further provides that licensees will make FIT Levelisation Payments in accordance with the Authority's instructions. SLC 33.5 states that Section C and Schedule A to Standard Condition 33 are "relevant conditions" for the purposes of section 25(8) of the Act and a non-complying licensee shall be subject to the enforcement powers of the Gas and Electricity Markets Authority ("the Authority") under the Act.
6. The SLCs and the Feed-In Tariff Order 2012 are enforceable as relevant requirements for the purposes of section 25 of the Electricity Act 1989. They require each FIT licensee to make Levelisation Payments to the Authority at specified times of the year. The deadlines for when these payments are due are laid out in Feed-In Tariff

Levelisation Schedule¹. Suppliers which fail to make the requisite payments by the deadlines, as instructed by the Authority, are in breach of SLC 33.3, conditions 3.1 and 3.1.2 of Schedule A, Part 3 of SLC 33 and the Feed-In Tariff Order 2012.

7. Symbio has a poor history of compliance with its regulatory obligations, having previously been subject to extensive compliance engagement and enforcement action by the Authority. These have included in relation to previous FIT levelisation payments, and compliance with the Renewables Obligation ("RO").
8. Symbio's Quarter 1, Year 12 payment of £449,025.79 ("the payment") fell due on 11 August 2021. Symbio had been invoiced for this payment on 28 July 2021. Symbio failed to make the payment on or before the due date and, at the time of making the provisional order, had still not done so.
9. Following an informal reminder from the Authority, Symbio stated that it intended to make the payment on 3 September 2021. This is not in accordance with the scheme arrangements or Symbio's obligations, and is not acceptable to the Authority. As has been stated elsewhere, including in relation to Symbio specifically², the Authority is not in the business of providing commercial credit to suppliers and will not do so.
10. Symbio stated that it would pay interest on the outstanding amount. The scheme legislation makes no provision for payment of interest and, as noted above, the Authority is not a commercial credit facility.
11. Non-compliance with the FIT scheme results in shortfalls in the fund, which variously result in compliant suppliers having to contribute additional funds by way of mutualisation, and/or other suppliers receiving less reimbursement than they are entitled to towards the costs of the FIT scheme. This is unfair to those other suppliers and gives an unfair competitive advantage to non-compliant suppliers.
12. The Authority has been mindful of the impact of the Covid pandemic on the cashflow of the sector. However, it has made very clear to the sector that these obligations need to be met in full and on time – not least because any leniency extended to one supplier is a direct cost imposed on other suppliers.³ It is the responsibility of every supplier to ensure it is adequately capitalised to meet its obligations.
13. The Authority has taken the view that a provisional order (rather than a final order with the associated delay) is requisite on this occasion. The Authority views this as the most timely means of securing payment from Symbio, reducing the risk of triggering the mutualisation process and protecting the interests of consumers. The Authority does

¹ [Feed-in Tariff Levelisation Schedule Year 12 | Ofgem](#)

² [Symbio Energy Limited: Final Order | Ofgem](#)

³ [Impact of COVID-19 on retail energy supply companies – regulatory expectations from 1 July 2020 | Ofgem](#)

not consider it acceptable for Symbio to fail to meet its financial and regulatory obligations when other licensees make adequate provision for compliance.

14. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5) and (5A), and section 26 of the EA89. In particular:

- a. It does not consider that it would be more appropriate to proceed under the Competition Act 1998 (that Act has no application to the present circumstances);
- b. It is satisfied that the duties imposed on the Authority by sections 3A to 3C of the EA89 do not preclude the Authority from making the PO (on the contrary, it considers that its duties require it to make the order);
- c. It does not consider there is an acceptable cure plan in place; nor is the contravention trivial

15. For the above reasons the Authority decided to make a provisional order requiring the payment of £449,025.79 forthwith. If the payment is not now made, the Authority will consider its options for further enforcement action.

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority