

**Avro Energy Limited: Notice of Reasons under section 38A(1)(f) and 38A(2) of the Gas Act 1986 and Section 49A(1)(f) and 49A(2) of the Electricity Act 1989 for the decision of the Gas and Electricity Markets Authority to make a provisional order.**

1. This document sets out the reasons why, on 14 September 2021, the Gas & Electricity Markets Authority (“Authority”) made a provisional order (“PO”) in respect of continuing and anticipated contraventions by Avro Energy Ltd (“Avro”) of its gas and electricity supply licences.
2. Avro is the holder of gas and electricity supply licences (“Licences”) and as such is bound by the Standard Licence Conditions (“SLCs”) of those licences.
3. The Authority is the industry regulator and is charged by its enabling legislation with keeping the gas and electricity markets under review. In performing that function, it obtains information using a variety of sources and methods.
4. In particular, the Authority routinely monitors the financial situations of the businesses it regulates. Where it has concerns about the financial circumstances of a supplier, it seeks information from the supplier to better understand its circumstances. The fact it has done so does not necessarily mean the supplier is in financial difficulty.
5. The Authority also has responsibility for ensuring continuity of supply to the customers of a failed supplier via the Supplier of Last Resort (SOLR) process. In order to run this process effectively, the Authority requires certain information from the supplier such as customer lists and details of customer credit and debit balances. Again, the fact the Authority has requested this information from any particular supplier does not necessarily mean that supplier is in financial difficulty – the Authority generally considers it prudent to secure such information at an early stage to ensure it is prepared to intervene if and when such intervention becomes necessary.

6. SLC 5 of the Licenses relevantly provide:

*“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”*

7. On 19 August 2021, the Authority issued Avro with two requests for information (“RFI’s”) pursuant to SLC 5. These information requests were for various financial information to assist the Authority in better understanding Avro’s circumstances, and for the information the Authority would require to run a SOLR process if and when such a process became necessary.
8. The Authority had previously requested the information informally both directly and via third party advisers engaged by the Authority, to no avail.
9. Avro has, at the time of publication of this Notice of Reasons, not provided a substantive response to the requests for information. It has verbally informed the Authority’s responsible officer that it objects to providing the material to the Authority, and/or that it considers the timeframe for provision of the information to be unreasonable. When asked by the Authority’s responsible officer what timeframe Avro would consider to be reasonable, Avro did not reply.
10. The Authority will always hear any concerns a supplier may have about an RFI it has issued or proposes to issue. Where the RFI causes difficulties for the supplier, the Authority may, in appropriate cases, be open to adjusting the scope of the RFI or extending the timeframe for compliance. The Authority expects, however, that the companies it regulates will co-operate with its enquiries and comply with the information requests it issues.

11. The Authority is satisfied that there is no substance to Avro's objections to providing the information in question. The Authority is charged with determining what information it requires to assist it in carrying out its functions and the methods which it adopts are not to be challenged lightly. Moreover, where a supplier does take issue with the Authority's exercise of its information gathering powers, the appropriate course (if the issue cannot be resolved through discussion and negotiation) is to challenge the RFI by way of judicial review.
12. In particular, the Authority is satisfied that the information it has requested is information which Avro could be compelled to produce in civil proceedings. Indeed, Avro has not sought to argue to the contrary.
13. Accordingly, it is apparent to the Authority that Avro is contravening SLC 5, and is likely to continue so to do.
14. It is imperative that the information is provided to the Authority promptly so that it may gain a better understanding of Avro's financial position. Besides the inherent need for such information to be provided and considered in a timely manner, the Authority presently has significant concerns about Avro's ability to meet its Renewables Obligation (RO) payment for the 2020/21 year. The payment is in the vicinity of £56 million and was due on 1 September 2021 (albeit there is a two month statutory late payment window, so Avro are not in breach of the RO scheme at this stage).
15. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5) and (5A), and section 26 of the Electricity Act 1989 and the equivalent provisions in the Gas Act 1986<sup>1</sup>. 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);

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<sup>1</sup> The equivalent provisions in the Gas Act 1986 being sections 28 (3), 28 (4A), 28 (4B), 28 (5), 28 (5A) and 29 of that Act.

c. It does not consider there is an acceptable cure plan in place; nor is the contravention trivial.

16. On this occasion the Authority has taken the view that a provisional order, rather than progressing a proposed final order, is requisite. It is not appropriate in these circumstances to allow the delay (of at least three weeks due to the statutory consultation process) associated with a final order. If circumstances requiring the Authority to make use of the information were to arise, it is imperative that the Authority has the information to hand immediately.

17. For those reasons, the Authority decided that a provisional order to compel full and immediate compliance with the RFI's was requisite on this occasion.

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority