

## **Colorado Energy Limited: Notice of reasons under Section 49A 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 21 September 2021, the Authority made a Provisional Order ("PO") in respect of contraventions by Colorado Energy Limited ("Colorado"), Company number 11042663, of 86-90 Paul Street, London, England, EC2A 4NE. Colorado 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, Colorado 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 the Feed-In Tariff Levelisation Schedule<sup>1</sup>.

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

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) Colorado's Year 11 annual levelisation payment of £261,406.12 ("the payment") fell due on 17 September 2021. Colorado had been invoiced for this payment on 2 September 2021. Colorado 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.
- (8) It is essential to the proper functioning of the FIT scheme that the levelisation payments are made in full and on time. As has been stated elsewhere, the Authority is not in the business of providing commercial credit to suppliers and will not do so.
- (9) Non-compliance with the FIT scheme results in shortfalls in the fund, which 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. It also results in a significant administrative burden for the Authority.
- (10) The Authority has been mindful of the impact of the Covid pandemic on the cashflow of the sector, and has been able to offer some regulatory flexibility in some areas. 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. It is the responsibility of every supplier to ensure it is adequately capitalised to meet its obligations.
- (11) The Authority recognises that the gas and electricity retail sector is under considerable pressure at the present time, due (amongst other factors) to high wholesale prices. It is important even (indeed, especially) in such an environment for obligations to be met on time – noting that a delayed or absent payment from any given supplier imposes an equivalent financial burden on other suppliers.
- (12) 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 appropriate means of securing payment from Colorado, upholding the integrity of the scheme, ensuring the timely flow of funds to other suppliers and in turn to the relevant customer generators, and protecting the interests of consumers. The Authority does not consider it acceptable for Colorado to fail to meet its financial and regulatory obligations when other licensees make adequate provision for compliance.
- (13) 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 considered 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 considered that its duties required it to make the order);
- c. It did not consider there is an acceptable remedial plan in place; nor was the contravention trivial

(14) For the above reasons the Authority decided to make a provisional order requiring the payment of £261,406.12 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