

Whoop Energy Ltd

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

Background: the making of the Final Order

1. This Notice sets out the reasons why, on 28 October 2021, the Authority made a Final Order in respect of likely contraventions by Whoop Energy Ltd (“Whoop Energy”), (company number 11611103)) whose registered office is situated at Chatterley Whitfield Enterprise Centre, Biddulph Road, Stoke-On-Trent, ST6 8UW.
2. Whoop Energy is the holder of of an electricity supply licence issued by the Authority on 18 February 2019 under section 6(1)(d) of the Electricity Act 1989 (“the Act”).

Background: Notice of Proposal to make the FO and inviting representations to the Authority.

3. The Authority has published pursuant to section 26(1) and (2) of the Act, a notice of its proposal to make the Final Order, dated 1 October 2021, and invited representations and objections to the notice to be made to it. The Notice of Proposal to make the Final Order can be found at: <https://www.ofgem.gov.uk/publications/whoop-energy-ltd-notice-proposal-make-final-order>.
4. As well as explaining the reasons why the Authority proposed to make the Final Order, the Notice of Proposal sets out the likely contravention the Final Order is in respect of, namely Whoop Energy’s likely contravene of the Renewables Obligation (“RO”) under article 7 of the Renewables Obligation Order 2015 (“ROO”) and article 5 of the Renewables Obligation (Scotland) Order 2009 (“ROS”). The Notice of Proposal explains, in particular, how Whoop Energy is likely to fail to present sufficient Renewables Obligation Certificates (“ROCs”) and/or to make payment to the Authority in the sum of £27,527.50 in relation to its ROO obligation and the sum of £28,778.75 in relation to its ROS obligation, together with accrued interest, by 31 October 2021.

5. The Authority did not receive representations in relation to the proposed order and remains of the view that Whoop Energy is likely to contravene its obligations under the RO and that the Final Order remains requisite.

Reasons for the Authority's decision to make the FO

6. Whoop Energy is a designated electricity supplier subject to the requirement to discharge its RO under the arrangements set out in the the ROO and the ROS.
7. In order to discharge the RO, article 7 of the ROO requires each designated electricity supplier to produce to the Authority the number of Renewables Obligation Certificates ("ROCs") it has acquired, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period. An obligation period is defined in article 2 of the ROO as the period starting on 1st April 2016 and ending on 31st March 2017, or any subsequent period of 12 months, ending with the period of 12 months ending on 31 March 2037. The requirement to produce ROCs is subject to articles 67 and 68 of the ROO whereby payments can be made to the Authority as an alternative to production of ROCs. Articles 5, 43 and 44 of the ROS impose materially identical obligations to discharge the RO in relation to electricity supplied in Scotland by producing ROCs to the Authority and/or making payments in lieu thereof.
8. Under article 68(6) of the ROO and article 44(6) of the ROS, where a supplier has paid to the Authority the necessary payments together with accrued interest, it will be treated as having discharged its RO for the relevant obligation period.
9. Under article 68(7) of the ROO and Article 44(7) of the ROS if, by 31 October in each year, a supplier has not paid to the Authority the necessary payments, together with accrued interest, the supplier will not have discharged its RO for the relevant obligation period.
10. Given that a number of suppliers failed to make the necessary payments on time for the obligation period ending on 31 March 2020, in the summer of 2021 the Authority was concerned by the significant non-compliance with the RO. Accordingly, the Authority engaged with the industry and made clear that it expected payments to be made in full and on time, and would be taking a robust approach to compliance and enforcement.

11. Despite this engagement, Whoop Energy failed to present sufficient ROCs and/or make payments to discharge its RO for the obligation period of 1 April 2020 to 31 March 2021 before the 31 August and 1 September deadlines as required by article 7 and as provided for in articles 67 of the ROO. Thereafter, Whoop Energy failed to make payments as provided for under article 68 of the ROO and the equivalent provisions of the ROS.
12. Whoop Energy owes £3,295,442.15 in relation to its ROO and £294,794.50 in relation to its ROS, together with late payment interest accruing daily¹, which total amount remains unpaid as at the date of this Final Order.
13. The Authority has attempted to engage with Whoop Energy and has invited it to explain the reason(s) for its non-payment, and to provide robust assurances to the Authority that it will be in a position to make the necessary payment in full together with accrued interest by the late payment deadline of 31 October 2021. Whoop Energy has failed to respond to the Authority's requests and the Authority is satisfied that Whoop Energy is likely to contravene the requirements of the ROO and/or the ROS.
14. The Authority considers it important to protect the integrity of the RO scheme, which is a Government scheme designed to incentivise the uptake of renewable electricity within the UK. A key aim of the scheme is to encourage UK electricity suppliers to obtain an increasing proportion of the electricity they supply from renewable sources.
15. If a supplier fails to discharge its RO on time and in full this leaves a shortfall in the scheme funds. The amount by which the supplier has defaulted is either absorbed into the scheme funds (meaning that less money is recycled back to suppliers) or the amount is mutualised, whereby compliant and partially compliant suppliers are required to make further payments to make up the shortfall.
16. Mutualised funds are then redistributed amongst suppliers who presented ROCs. Where there is a shortfall, this affects suppliers who have presented ROCs as they receive less money back through the scheme's recycling mechanism. This means that compliant

¹ The amount of interest due will depend on the exact date of the payment – this may be confirmed with the Authority's Renewable Electricity Compliance Team if required

suppliers are penalised and placed at an unfair competitive disadvantage, due to other suppliers' failure to comply with their RO. This distorts the market and is not acceptable to the Authority.

17. The Authority reiterates that compliance with regulatory obligations, including financial obligations, is not optional. Suppliers must meet these obligations in full and on time. The Authority is not in the business of providing commercial credit to suppliers and will not do so.
18. The RO scheme has been in place since 2002 and suppliers must ensure they are in a position to meet these obligations, whether by holding sufficient ROCs and/or having sufficient funds available to make the necessary payments.
19. The Authority has published the proposed Final Order for the statutory consultation period but did not receive any representations.
20. The Authority has taken into account the impact of the Covid 19 pandemic and the unprecedented increase in global gas prices on industry. Within this context, the Authority has also considered the effect of this enforcement action on competition in the market. Where suppliers have failed to meet their RO this has adverse consequences via the mutualisation mechanism for those suppliers who have complied. Having weighed up these considerations, the Authority remains of the view that Ampower is contravening, and is likely to contravene, its obligations and that the Final Order is requisite to secure its compliance.
21. The Authority has decided to make a Final Order requiring payment of the outstanding amounts together with accrued interest by no later than the prescribed late payment date of 31 October 2021.
22. If Whoop Energy fails to comply with the Final Order by making the required payments in full, the Authority may initiate the process of revocation of its electricity licence or take other action to enforce payment.
23. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), and (5A) and section 26 of the Act. 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 Act do not preclude Authority from making the Final Order (on the contrary, it considers that its duties require it to make the Final Order);
- c. It does not consider that the contravention is trivial.

24. In accordance with section 26(1) of the EA89, the Authority gives notice that:

- a. The ROO was made by the Secretary of State (and the ROS by the Scottish Ministers), inter alia, in exercise of the powers conferred by sections 32 to 32K, 32LA and 32M of EA89, which, pursuant to section 25 of and Schedule 6A to EA89, are provisions imposing obligations enforceable as “relevant requirements” by the Authority. In this context, the requirement to discharge the RO is enforceable as a relevant requirement;
- b. The acts or omissions which, in the Authority’s opinion, constitute or would constitute contraventions of those requirements, and other factors which in the Authority’s opinion justify the making of an Final Order are those set out above;
- c. The Authority considers it requisite to make the Final Order to secure compliance with the RO.

25. Therefore, the Authority has decided to make the Final Order requiring Whoop Energy to:

- a. make a payment to the Authority in full settlement of its RO for the obligation period of 1 April 2020 to 31 March 2021, in the sum of £27,527.50 plus accrued interest² by no later than 31 October 2021;

² The amount of interest due will depend on the exact date of the payment – this may be confirmed with the Authority’s Renewable Electricity Compliance Team if required

- b. make a payment to the Authority in full settlement of its ROS, for the obligation period of 1 April 2020 to 31 March 2021, in the sum of f £28,778.75 plus accrued interest³ by no later than 31 October 2021; and
- c. Notify the Authority by email to megan.pickard@ofgem.gov.uk and marcus.clubb@ofgem.gov.uk of such payment immediately after it has been made.

Dated: 28 October 2021

Signed:

MEGAN FORBES
ALI NIKPAY
PHILIP MARSDEN

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

³ The amount of interest due will depend on the exact date of the payment – this may be confirmed with the Authority's Renewable Electricity Compliance Team if required