

**The Electricity Act 1989**  
**Notice of Proposal to confirm a Provisional Order**  
**Proposal of the Gas and Electricity Markets Authority to confirm a Provisional Order**  
**pursuant to section 26 (1) and (2) of the Electricity Act 1989**

## **1. Background**

- 1.1. Delta Gas and Power Limited (formerly known as Lily Energy Supply Limited ("Delta"), (company number 09933244) of 344-354 Gray's Inn Road, London, England, WC1X 8BP, is the holder of an electricity supply licence issued by the Gas and Electricity Markets Authority ("the Authority") under section 6(1)(d) of the Electricity Act 1989 ("the Act").
- 1.2. Pursuant to section 25(2) of the Act, the Authority made and served a provisional order dated 28 October 2021 on Delta ("the Provisional Order"). The Provisional Order required Delta to:
  - 1.2.1. make a payment of £330,830.50 plus accrued interest in full settlement of its Renewables Obligations ("RO") under article 7 of the Renewables Obligation Order 2015 ("ROO"), and
  - 1.2.2. make a payment of £50,200.15 plus accrued interest in full settlement of its RO under article 5 of the Renewables Obligation (Scotland) Order 2009 ("ROS"), to the Authority by 31 October 2021.
- 1.3. On 18 November 2021, Delta made a payment of £100,000 towards settlement of its RO and accrued interest. However, notwithstanding the making of the Provisional Order, Delta has failed to make the balance of those payments in accordance with the terms of the Provisional Order.
- 1.4. The Provisional Order was made in respect of Delta's likely contravention of its RO under the ROO and the ROS. Delta subsequently failed to present sufficient Renewables Obligation Certificates ("ROCs") and/or to make payment to the Authority in the sum of £330,830.50 in relation to its ROO obligation and the sum of £50,200.15 in relation to its ROS obligation, together with accrued interest, by 31 October 2021 in contravention of its RO.

## **2. Reasons for confirming the Provisional Order**

- 2.1. The ROO and the ROS are enforceable as relevant requirements for the purposes of section 25 of the Act.
- 2.2. In order to discharge the RO, article 7 of the ROO requires each designated electricity supplier to produce to the Authority the number of ROCs it has acquired, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period and/or make payments to discharge its RO by 1 September and 31 August respectively each year. 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.
- 2.3. 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 by 31 October, it will be treated as having discharged its RO for the relevant obligation period.
- 2.4. 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.
- 2.5. 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.
- 2.6. Despite this engagement, Delta 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 and the equivalent provisions of the ROS. Thereafter, Delta failed to make payments as provided for under article 68 of the ROO and the equivalent provisions of the ROS.

- 2.7. Delta still owes £233,650.26 in relation to its ROO and £50,200.15 in relation to its ROS, together with late payment interest of £427.87 in respect of its ROS, which total amount remains unpaid as at the date of this Notice. Notwithstanding the making of the Provisional Order, Delta has failed to make full payment.
- 2.8. The Authority considers it is 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. To encourage compliance, until a supplier on whom a provisional order has been made, complies with that provisional order, it is important that will not lapse and that the Authority sends out a strong message that non-compliance will not be tolerated. The Authority reiterates that compliance with regulatory obligations, including financial obligations, is not optional. Suppliers must meet these obligations in full and on time.
- 2.9. The RO scheme has been in place since 2002 and there is no excuse for suppliers not to be aware of their obligations and ensure they are in a position to meet them, whether by holding sufficient ROCs and/or having sufficient funds available to make the necessary payments in accordance with the RO scheme. The Authority has taken into account the impact of the Covid 19 pandemic and unprecedented increase in global gas prices on industry but note that the majority of the RO has been met.
- 2.10. The Provisional Order will cease to have effect on 27 January 2022 unless confirmed by the Authority on or before that date. The Provisional Order was made for the reasons set out above. A copy of the Provisional Order and the Notice of Reasons for making the Provisional Order is available at: <https://www.ofgem.gov.uk/publications/delta-gas-and-power-limited-provisional-order>

2.11. The Authority proposes to confirm the Provisional Order with minor modifications as the amount of interest due has now crystallised. The Authority is satisfied that Delta is contravening the RO and will continue to do so if the Provisional Order lapses. The Authority therefore considers it requisite to confirm the Provisional Order and accordingly proposes to do so in the modified form set out in the Annex to this Notice.

2.12. Pursuant to section 25(4) of the Act, the Authority shall confirm a provisional order, with or without modification,s if:

2.12.1. The Authority is satisfied that the regulated person to whom the Provisional Order relates was likely to contravene and is contravening or has contravening any condition or relevant requirement; and

2.12.2. The provision made by the Provisional Order is requisite for the purpose of securing compliance with that condition or requirement.

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

2.13.1. 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);

2.13.2. Is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act do not preclude the Authority from confirming the Provisional Order (on the contrary, it considers that its duties require it to confirm the Provisional Order); and

2.13.3. Is satisfied that the contravention is not of a trivial nature.

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

2.14.1. 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 the Act, which, pursuant to section 25 of and Schedule 6A to the Act 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;

2.14.2. The acts or omissions which, in the Authority's opinion, constitute contraventions of those Relevant Conditions, and other factors which in the Authority's opinion justify the confirming of the Provisional Order are those set out above;

2.14.3. It is, in the Authority's view, requisite to confirm the Provisional Order the form set out in the Annex to this notice;

2.14.4. Any representations or objections with respect to the proposed confirmation of the Provisional Order may be made to the Authority by **5pm, 13 January 2022** (see paragraph 3 below).

2.15. Therefore, the Authority proposes to confirm the Provisional Order with modifications requiring Delta to:

2.15.1. Make the payment of £233,650.26 to the Authority in full settlement of its ROO for the obligation period of 1 April 2020 to 31 March 2021 forthwith;

2.15.2. Make the payment of £50,200.15 to the Authority in full settlement of its ROS for the obligation period of 1 April 2020 to 31 March 2021 forthwith;

2.15.3. Make the payment of £427.87 to the Authority in full settlement of accrued interest in respect of its ROS; and

2.15.4. notify the Authority by email to [megan.pickard@ofgem.gov.uk](mailto:megan.pickard@ofgem.gov.uk) and [melissa.granger@ofgem.gov.uk](mailto:melissa.granger@ofgem.gov.uk) of such payment immediately after it has been made.

### 3. Representation or Objections

- 3.1. The Authority invites representations or objections in relation to its proposal to confirm the Provisional Order with modifications in the form set out in the Annex to this notice.
- 3.2. Any representations or objections with respect to this proposed notice to confirm the Provisional Order with modifications must be made in writing on or before 5pm, 13 January 2022 and sent to Megan Pickard, OFGEM, 10 South Colonnade Canary Wharf London E14 4PU<sup>1</sup> or by email to: [megan.pickard@ofgem.gov.uk](mailto:megan.pickard@ofgem.gov.uk). Should you have any questions about this notice you can contact Megan Pickard on [megan.pickard@ofgem.gov.uk](mailto:megan.pickard@ofgem.gov.uk).
- 3.3. 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.
- 3.4. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated:

Signed:

MEGAN FORBES

PETER HINCHLIFFE

**Enforcement Decision Panel**

**Duly authorised on behalf of the Gas and Electricity Markets Authority**

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<sup>1</sup> Due to the Covid pandemic, staffing and arrangements for the handling of postal mail at Ofgem’s offices are currently very limited. There is also a risk that postal mail may be delayed. Accordingly, it is strongly preferred and recommended that representations are made by email if at all possible. If you need to make a representation by post, please notify the contact person above by email or telephone and ensure you allow sufficient time for the representation to reach the Authority before the deadline.

## **Annex – Form of Provisional Order**

### **Delta Gas and Power Limited Electricity Act 1989**

#### **DRAFT Provisional Order confirmed under section 25(4) of the Electricity Act 1989**

To: Delta Gas and Power Limited ("Delta") (formerly known as Lily Energy Supply Limited), (company number 09933244) of 344-354 Gray's Inn Road, London, England, WC1X 8BP, holder of an electricity supply licence issued by the Authority on 27 April 2016 under section 6(1)(d) of the Electricity Act 1989 ("the Act").

#### **WHEREAS:**

- A. Delta is a designated electricity supplier ("supplier") subject to the requirement to discharge its Renewables Obligations ("RO") under the arrangements set out in the Renewables Obligation Order 2015 ("the ROO") and the Renewables Obligation (Scotland) Order 2009 ("the ROS").
- B. Specifically, to discharge the RO, article 7 of the ROO and article 5 of the ROS requires each supplier to produce to the Authority the number of Renewables Obligation Certificates (ROCs) determined in accordance with the ROO and ROS as applicable, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period, by 1 September after the obligation period in question. An obligation period is defined in article 2 of the ROO and the ROS respectively as a 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 31st March 2037. Article 7 is subject to articles 67 and 68 of the ROO, and article 5 of the ROS is subject to articles 43 and 44 of the ROS, whereby payments can be made to the Authority as an alternative to production of ROCs;
- C. Under article 67 of the ROO and article 43 of the ROS, payments by a supplier, as an alternative to production of ROCs, are required to be made in full before 1 September after the obligation period in question;
- D. Under article 68 of the ROO and article 44 of the ROS, where a supplier has failed (in whole or part) to discharge its RO, by production of ROCs or by payments, before 1

September after the obligation period in question there is a further period that runs from 1 September to 31 October after the obligation period in question ("the late payment period"), and suppliers are able to use the late payment period to pay the outstanding sums which correspond to the ROCs due under their RO, together with interest on a daily basis at 5% above the Bank of England Base rate ("accrued interest");

- E. Under article 68(6) of the ROO and article 44(6) of the ROS, where a supplier has paid to the Authority the outstanding sums due, together with accrued interest by 31 October 2021, it will be treated as having discharged its RO for the relevant obligation period;
- F. Under article 68(7) of the ROO and article 44(7) of the ROS, if, by the end of the late payment period, a supplier has not paid to the Authority the outstanding sums due, together with accrued interest, the supplier will not have discharged its RO for the relevant obligation period;
- G. Under these arrangements, a supplier was required to discharge its RO for the obligation period of 1st April 2020 to 31st March 2021 in full by 1 September 2021, via the presentation to the Authority of valid ROCs and/or via making a payment by 31 August 2021 (or balancing payment, taking into account the value of any ROCs produced) to the Authority;
- H. Delta failed to present sufficient ROCs and/or make payments to discharge its RO, for the obligation period of 1st April 2020 to 31st March 2021, by 1 September 2021 and by 31 August 2021 as required by article 7 and as provided for in article 67 of the ROO and the equivalent provisions of the ROS;
- I. The Authority engaged with Delta in September 2021 and sought suitable assurances (for example, a bank guarantee, confirmation of undrawn credit facilities, or confirmation of support from a parent company or other investor) that it would be in a position to make payment of the outstanding sums and accrued interest in order to meet its RO within the late payment period;
- J. Delta provided such assurances to the satisfaction of the Authority in September 2021, but subsequently refused or failed to make the necessary payments in order to meet its RO;
- K. The Authority again engaged with Delta in October 2021 to seek further assurances that Delta remained in a position to make payment of the outstanding sums and accrued interest in order to meet its RO within the late payment period. On 25 October 2021, Delta informed the Authority that it was not in a position to make full payment of the outstanding sums and accrued interest within the late payment period and on 28 October



2021, the Authority made a Provisional Order requiring Delta to make payment of the outstanding sums together with accrued interest by 31 October 2021.

- L. On 18 November 2021, Delta made a payment of £100,000 towards settlement of its RO.
- M. 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 the Act, which, pursuant to section 25 of and Schedule 6A to the Act, are provisions imposing obligations enforceable as “relevant requirements” by the Authority;
- N. Delta failed to make the payment of the outstanding sums together with accrued interest by 31 October 2021 notwithstanding the imposition of the Provisional Order and as at the date of this order has still not made full payment of the outstanding sums; and
- O. The Authority is satisfied that:
  - a. Delta is contravening or has contravened its obligations under the ROO and the ROS, by failing to produce ROCs to the Authority, or to make payments as an alternative, sufficient to discharge its RO together with accrued interest before the end of the late payment period, which is an obligation enforceable by the Authority as a relevant condition for the purposes of section 25 of the Act; and
  - b. It is requisite to confirm the Provisional Order, made under section 25(2) of the Act, with modifications, for the purpose of securing Delta’s compliance with the relevant condition.

## **NOW THEREFORE:**

The Authority, pursuant to section 25(4) of the Act, confirms the Provisional Order dated 28 October 2021, with modifications, requiring Delta to:

- 1) make a payment to the Authority in full settlement of its ROO, for the obligation period of 1 April 2020 to 31 March 2021, in the sum of £233,650.26 forthwith;
- 2) 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 £50,200.15 forthwith;

- 3) make a payment of £427.87 to the Authority in full settlement of accrued interest in respect of its ROS forthwith; and
- 4) notify the Authority by email to [megan.pickard@ofgem.gov.uk](mailto:megan.pickard@ofgem.gov.uk) and [melissa.granger@ofgem.gov.uk](mailto:melissa.granger@ofgem.gov.uk) such payments immediately after they have been made.

Dated:

Signed:

MEGAN FORBES

PETER HINCHLIFFE

**Enforcement Decision Panel**

**Duly authorised on behalf of the Gas and Electricity Markets Authority**