

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 and reasons for confirming the Provisional Order

- 1.1. 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, is the holder of an electricity supply licence issued by the Gas and Electricity Markets Authority ("the Authority") on 27 April 2016 under section 6(1)(d) of the Electricity Act 1989 ("Act").
- 1.2. Pursuant to section 25(2) of the Act, the Authority made and served a Provisional Order dated 12 November 2021 on Delta. The Provisional Order required Delta to make a payment of £46,701.23 forthwith to the Authority. Notwithstanding the making of the Provisional Order, Delta has failed to make that payment.
- 1.3. The Provisional Order was made in respect of Delta's failure to comply with standard licence condition ("SLC") 33 (Feed-in Tariffs) which stipulates that (among other things) all licensed electricity suppliers that have supplied electricity in Great Britain, within the relevant Feed-in Tariff ("FIT") year or relevant quarter, are obligated to participate in the FIT levelisation process. Suppliers have to declare the amount of electricity they have supplied and make a financial contribution towards the FIT Scheme in proportion to this.
- 1.4. The FIT Scheme is a Government programme designed to promote the uptake of small-scale renewable and low-carbon electricity generation technologies. The FIT Scheme is now in FIT Year 12 which runs from 1 April 2021 to 31 March 2022.
- 1.5. As a licenced electricity supplier, Delta is required to comply with SLC 33. In particular, 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 1st April 2010. Condition 3.1 of Part 3 of Schedule A to SLC 33 requires licensees to participate in the levelisation process as set

out in Part 6 of the Feed-in Tariffs Order 2012 ("the FIT Order"), in accordance with the Authority's instructions. Condition 3.1.2 of Part 3 of Schedule A, requires licensees to 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 Authority under the Act.

- 1.6. The SLCs and the Order are enforceable as Relevant Conditions for the purposes of section 25 of the Act. The Relevant Conditions 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 for FIT Year 12 (1 April 2021 - 31 March 2022) /are laid out in FIT levelisation process Schedule for FIT Year 12¹. Suppliers which fail to make the requisite payments by the deadlines, as instructed by the Authority, are in breach of SLC 33.3, the requirement to participate in and make levelisation payments under Condition 3.1 of Schedule A, Part 3 of SLC 33 and the FIT Order.
- 1.7. A licensed supplier is not obligated to make a levelisation submission if it has not supplied electricity within the relevant levelisation period, unless that licenced supplier is also a FIT licensee and has associated payment data. 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.
- 1.8. In the Authority's annual report on the FIT Scheme for 2019 – 2020², the Authority noted a continuation in the trend of suppliers submitting late or inaccurate data and late payments in respect of FIT levelisation, although the number of suppliers participating in the FIT Scheme had dropped. Suppliers exiting the market led to outstanding periodic and annual FIT levelisation payments leading to a shortfall in the fund. However, mutualisation was not triggered.

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

² <https://www.ofgem.gov.uk/publications/feed-tariff-fit-annual-report-2019-20>

- 1.9. Mutualisation is the process whereby shortfalls in the fund above a threshold set annually by the Secretary of State are recovered from Licensed Electricity Suppliers. Compliant participants must address the shortfall by making additional payments. These payments are then redistributed to those licensees whose payments out of the FIT levelisation fund were reduced as a result of the shortfall in that fund.
- 1.10. Year 12, Quarter 2 levelisation payments were due to be paid to the Authority on or before 10 November 2021. This covers the period 1 July 2021 to 30 September 2021.
- 1.11. Delta failed to make the necessary payment by 10 November 2021 for the period 1 July 2021 to 30 September 2021 in the sum of £46,701.23 in line with its obligations under the Relevant Conditions. Delta failed to make the payment on or before the due date and, the Authority made a Provisional Order requiring Delta to make its Year 12, Quarter 2 levelisation payment of £46,701.23 forthwith. At the date of this Notice to Confirm the Provisional Order, Delta has still not made its annual levelisation payment, in breach of the Provisional Order.
- 1.12. It is essential to the proper functioning of the FIT scheme that levelisation payments are made in full and on time. 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.
- 1.13. The Provisional Order will cease to have effect on 11 February 2022 unless confirmed by the Authority on or before that date. The Provisional Order was made for the reasons set out above. It remains important to protect the integrity of the FIT scheme and to encourage compliance that until a supplier on whom a Provisional Order has been made, complies with that Provisional Order, it will not lapse. Delta has failed to make the payment and it is important that the Authority sends out a strong message that non-compliance will not be tolerated.

- 1.14. 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-provisional-order>
- 1.15. The Authority proposes to confirm the Provisional Order without modifications as it is satisfied that Delta is contravening SLC 33 and the FIT Order 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 form set out in the Annex to this Notice.
- 1.16. Pursuant to section 25(4) of the Act, the Authority shall confirm a provisional order with or without modifications if:
- 1.16.1. The Authority is satisfied that the regulated person to whom the order relates is contravening or is likely to contravene any condition or relevant requirement; and
 - 1.16.2. The provision made by the provisional order is requisite for the purpose of securing compliance with that condition or requirement.
- 1.17. 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:
- 1.17.1. 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);
 - 1.17.2. 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
 - 1.17.3. Is satisfied that the contravention is not of a trivial nature.
- 1.18. In accordance with section 26(1) of the Act, the Authority gives notice that:
- 1.18.1. SLC 33 and the FIT Order are provisions imposing obligations enforceable as Relevant Conditions by the Authority;

1.18.2. 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;

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

1.18.4. 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 2 below).

1.19. Therefore, the Authority proposes to confirm the Provisional Order requiring Delta to:

1.19.1. Make the payment of £46,701.23 to the Authority forthwith; and

1.19.2. Notify the Authority by email to megan.pickard@ofgem.gov.uk and melissa.granger@ofgem.gov.uk of the payment immediately after it has been made.

2. Representation or Objections

2.1. The Authority invites representations or objections in relation to its proposal to confirm the Provisional Order in the form set out in the Annex to this notice.

2.2. Any representations or objections with respect to this proposed notice to confirm the Provisional Order 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 4PU3 or by email to: megan.pickard@ofgem.gov.uk. Should you have any questions about this notice you can contact Megan Pickard on megan.pickard@ofgem.gov.uk.

³ 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.

2.3. 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.

2.4. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated: 15 December 2021

Signed:

MEGAN FORBES

PETER HINCHLIFFE

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

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 [formerly known as Lily Energy Supply Limited] ("Delta"), (company number 09933244) of 344-354 Gray's Inn Road, London, England, WC1X 8BP, holder of an electricity supply licence issued by the Gas and Electricity Authority ("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 comply with the standard licence conditions ("SLCs") of its electricity supply licence.
- B. As a licenced electricity supplier, Delta is required to comply with SLC 33 (Feed-in Tariffs). 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 1st April 2010. Condition 3.1 of Part 3 to Schedule A of SLC 33 provides that licensees shall participate in levelisation 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 provides that Section C and Schedule A of SLC 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 Authority under the Act.
- C. Where a supplier has failed to make a levelisation payment by a date specified by the Authority it will breach the requirements of SLC 33.3 and conditions 3.1 and 3.1.2 to Schedule A, Part 3 of SLC 33.
- D. Delta was required to make its FIT Year 12 Quarter 2 payment of £46,701.23 ("the payment") on or before 10 November 2021. The Year 12 levelisation schedule was

published on 19 February 2021⁴, outlining the deadlines of each levelisation payment. Delta was sent an invoice for the payment on 27 October 2021.

E. Delta has refused or failed to make the payment.

F. It appears to the Authority that Delta is contravening its obligations under SLC 33 as outlined above and that it is requisite to make a Provisional Order to secure Delta immediate compliance with these obligations.

NOW THEREFORE:

The Authority, pursuant to section 25(2) of the Act, makes a Provisional Order requiring Delta to:

- 1) make a payment to the Authority in full settlement of its Year 12 Quarter 2 levelisation payment in the sum of £46,701.23 forthwith; and
- 2) notify the Authority by email to megan.pickard@ofgem.gov.uk and melissa.granger@ofgem.gov.uk of the payment immediately after it has been made.

This Provisional Order will cease to have effect on 11 February 2022 unless confirmed by the Authority on or before that date.

Dated:

Signed:

MEGAN FORBES
PETER HINCHLIFFE

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

⁴ [Feed-in Tariff Levelisation Schedule Year 12 | Ofgem](#)