

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. Together Energy (Retail) Limited ("Together"), (company number 10300767) of 3rd Floor 1 Ashley Road, Altrincham, Cheshire, WA14 2DT, 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 29 October 2021 on Together ("the Provisional Order"). The Provisional Order required Together to:
 - 1.2.1. make a payment of £11,440,979.55 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 £961,410.45 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. Notwithstanding the making of the Provisional Order, Together has failed to make those payments in accordance with the terms of the Provisional Order.
- 1.4. The Provisional Order was made in respect of Together's likely contravention of its RO under the ROO and the ROS. Together subsequently failed to present sufficient Renewables Obligation Certificates ("ROCs") and/or to make payment to the Authority in the sum of £11,440,979.55 in relation to its ROO obligation and the sum of £961,410.45 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, Together 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, Together

failed to make payments as provided for under article 68 of the ROO and the equivalent provisions of the ROS.

- 2.7. Together owes £11,440,979.55 in relation to its ROO and £961,410.45 in relation to its ROS, together with late payment interest of £97,514.76 in respect of its ROO and late payment interest of £8,194.38 in respect of its ROS, which total amount remains unpaid as at the date of this Notice. Notwithstanding the making of the Provisional Order, Together has failed to make any 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 obligation has been met.
- 2.10. The Provisional Order will cease to have effect on 28 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/together-energy-retail-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 Together 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 Together to:

2.15.1. Make the payment of £11,440,979.55 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 £961,410.45 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 £97,514.76 to the Authority in full settlement of accrued interest in respect of its ROO;

2.15.4. Make the payment of £8,194.38 to the Authority in full settlement of accrued interest in respect of its ROS; and

2.15.5. notify the Authority by email to megan.pickard@ofgem.gov.uk and 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 by email to: megan.pickard@ofgem.gov.uk and Melissa.granger@ofgem.gov.uk or to Megan Pickard, OFGEM, 10 South Colonnade Canary Wharf London E14 4PU.¹ Should you have any questions about this notice you can contact Megan Pickard on megan.pickard@ofgem.gov.uk or Melissa Granger on Melissa.granger@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

¹ 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

**Together Energy (Retail) Limited
Electricity Act 1989**

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

To: Together Energy (Retail) Limited (“Together”), (company number 10300767) of 3rd Floor 1 Ashley Road, Altrincham, Cheshire, WA14 2DT holder of an electricity supply licence issued by the Authority on 14 November 2016 under section 6(1)(d) of the Electricity Act 1989 (“the Act”).

WHEREAS:

- A. Together 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. Together 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 Together 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. Together 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 Together in October 2021 to seek further assurances that Together 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 28 October 2021, Together 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 29

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

- L. 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;
- M. Together 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
- N. The Authority is satisfied that:
 - a. Together 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 Together’s compliance with the relevant condition.

NOW THEREFORE:

The Authority, pursuant to section 25(4) of the Act, confirms the Provisional Order dated 29 October 2021, with modifications, requiring Together 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 £11,440,979.55 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 £961,410.45 forthwith;

- 3) make a payment of £97,514.76 to the Authority in full settlement of accrued interest in respect of its ROO forthwith;
- 4) make a payment of £8,194.38 to the Authority in full settlement of accrued interest in respect of its ROS forthwith; and
- 5) notify the Authority by email to megan.pickard@ofgem.gov.uk and 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