

The Electricity Act 1989

Notice of reasons pursuant to Section 49A(1)(f) of the Electricity Act 1989 for a decision to confirm a provisional order made under section 25 (4) of the Electricity Act 1989

1. Background and reasons for confirming the Provisional Order

- 1.1. Whoop Energy Ltd (formerly known as Go Effortless Ltd) ("Whoop") (company number 11611103) whose registered office is situated at Chatterley Whitfield Enterprise Centre, Biddulph Road, Stoke-On-Trent, United Kingdom, ST6 8UW, is the holder of an electricity supply licence issued by the Gas and Electricity Markets Authority ("the Authority") on 18 February 2019 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 21 September 2021 ("the Provisional Order") on Whoop. The Provisional Order required Whoop to make a payment of £3,780.22 forthwith to the Authority. 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/whoop-energy-limited-provisional-order>
- 1.3. The Provisional Order was made in respect of Whoop'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.

- 1.5. As a licenced electricity supplier, Whoop 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 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 11 (1 April 2020 - 31 March 2021) are laid out in FIT levelisation process Schedule for FIT Year 11¹. 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

¹ [Feed-in Tariff Levelisation Schedule Year 11 | Ofgem](#)

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

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.

1.9. 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. Whoop's Year 11 annual levelisation payment of £3,780.22 fell due on 17 September 2021. Whoop was invoiced for this payment on 2 September 2021. Whoop failed to make the payment on or before the due date and failed to make the payment at the time the Provisional Order was made.

1.11. Given Whoop's continued failure to pay its annual levelisation payment and other relevant factors, the Authority published a notice of proposal to confirm the Provisional Order without modifications on 19 November 2021 ("the NOP"). The NOP explained why the Authority was minded to confirm the Provisional Order without modifications and invited representations on such intention . A copy of the NOP is available here: <https://www.ofgem.gov.uk/publications/whoop-energy-limited-provisional-order>.

1.12. The Authority has received no representations in response to the NOP. Furthermore, Whoop has not paid its Year 11 annual levelisation payment of £3,780.22.

1.13. 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.

1.14. If the Authority had not decided to confirm the Provisional Order, it would have ceased to have effect on 20 December 2021.

1.15. Given the context and reasons set out above, the Authority has decided to confirm the Provisional Order without modification. It remains important to protect the integrity of the FIT scheme and to ensure that unless and until a supplier on whom a provisional order has been made complies with that provisional order, it will not lapse. Whoop has continued to fail to engage with the Authority regarding the payment of its outstanding Year 11 annual levelisation payment of £3,780.22 and it is important that the Authority sends out a strong message that non-compliance will not be tolerated.

1.16. In confirming the Provisional Order without modification, the Authority is satisfied that:-

- 1.16.1. Whoop is contravening SLC 33 and the FIT Order and would continue to do so if the Provisional Order had lapsed; and
- 1.16.2. the provisions of the Provisional Order are requisite for the purpose of securing Whoop's compliance with its outstanding obligations under SLC33 and the FIT Order.

1.17. In making its decision to confirm the Provisional Order, 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:

- a. does not consider that it would have been more appropriate to proceed under the Competition Act 1998 (that Act has no application to the present circumstances);

- b. is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act did not preclude the Authority from confirming the Provisional Order (on the contrary, it considers that its duties required it to confirm the Provisional Order);
- c. is satisfied that the contravention is not of a trivial nature; and
- d. does not consider that Whoop had agreed to take and was taking all such steps as it appeared to the Authority to be appropriate for Whoop to take for the purpose of securing or facilitating compliance with its outstanding obligations under SLC33 and the FIT Order.

Dated: 15 December 2021

Signed:

MEGAN FORBES

PETER HINCHLIFFE

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority