

## **Provisional Order**

### **Delta Gas and Power Limited**

### **Electricity Act 1989**

### **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. 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. 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. At the date of confirming this Provisional Order, Delta has paid part of the outstanding sums but has failed to make full payment of the outstanding sums; and
- N. 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 forthwith to the Authority of £78,650.26 in full settlement of its ROO for the obligation period of 1 April 2020 to 31 March 2021.
- 2) Make a payment forthwith to the Authority of £14.03 in full settlement of its ROS for the obligation period of 1 April 2020 to 31 March 2021.
- 3) 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: 24 January 2022

Signed:

Megan Forbes

Peter Hinchliffe

**Enforcement Decision Panel**

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