

## **Delta Gas and Power Limited**

### **Notice of reasons under Section 49A of the Electricity Act for the decision of the Authority to confirm a Provisional Order under Section 25(4) of the Electricity Act 1989**

#### **Background: Confirmation of the Provisional Order**

1. This Notice sets out the reasons why, on 24 January 2022, the Authority confirmed the Provisional Order in respect of likely contraventions by 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.
2. Delta is the holder of an electricity supply licence issued by the Authority under section 6(1)(d) of the Electricity Act 1989 ("the Act").

#### **Background: Notice of Proposal to confirm the Provisional Order and inviting representations to the Authority.**

3. On 16 December 2021 the Authority published, pursuant to section 26(1) and (2) of the Act, a notice of its proposal to confirm a provisional order dated 28 October 2021 ("the Provisional Order") on Delta and invited representations and objections to the notice to be made to it. The Notice of Proposal to confirm the Provisional Order can be found at: <https://www.ofgem.gov.uk/publications/delta-gas-and-power-limited-provisional-order>
4. As well as explaining the reasons why the Authority proposed to confirm the Provisional Order, the Notice of Proposal set out the likely contravention that the Provisional Order was in respect of, namely that at the date of making the Provisional Order, Delta was likely to contravene the Renewables Obligation ("RO") under article 7 of the Renewables Obligation Order 2015 ("ROO") and article 5 of the Renewables Obligation (Scotland) Order 2009 ("ROS"). The Notice of Proposal explains, in particular, that the Authority made and served the Provisional Order on Delta because it considered that Delta was likely to fail 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. Delta failed to comply with the Provisional Order and make the payment by 31 October 2021.

5. Although Delta has subsequently made payment of some of the outstanding sums due to the Authority under the ROO and the ROS, the amount of £78,650.26 remains outstanding under the ROO and the amount of £14.03 remains outstanding under the ROS.
6. The Authority has not received representations from Delta that it is in a position to make immediate payment of the outstanding sums in full settlement of its RO and its ROS; nor has Delta presented other objections and arguments against confirming the Provisional Order. The Authority has not received representations from any other person/ party. The Authority remains of the view that Delta has failed to fully comply with the requirements of the Provisional Order, namely the requirement to make full payment, together with late payment interest in order to discharge its obligations under the RO and that the Provisional Order remains requisite.

#### **Reasons for the Authority's decision to confirm the PO**

7. Delta is a designated electricity supplier subject to the requirement to discharge its RO under the arrangements set out in the ROO and the ROS.
8. In order to discharge the RO, article 7 of the ROO requires each designated electricity supplier to produce to the Authority the number of Renewables Obligation Certificates ("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.

9. 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.
10. 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.
11. 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 that it would be taking a robust approach to compliance and enforcement.
12. 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. Thereafter, Delta failed to make payments as provided for under article 68 of the ROO and the equivalent provisions of the ROS.
13. As at 31 October 2021, Delta owed £330,830.50 in relation to its ROO and £50,200.15 in relation to its ROS, together with late payment interest which was accruing daily. While Delta has discharged part of the sum due under the RO, the sums referred to in paragraph 5 above remain unpaid as at the date of confirmation the Provisional Order.
14. The Authority has attempted to engage with Delta and has invited it to pay the full sum due under the RO. Despite assurances that the outstanding sum would be paid, Delta has failed to settle its outstanding RO and the Authority is satisfied that Delta is continuing to contravene the requirements of the ROO and/or the ROS.
15. The Authority considers it 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.

16. If a supplier fails to discharge its RO on time and in full this leaves a shortfall in the scheme funds. The amount by which the supplier has defaulted is either absorbed into the scheme funds (meaning that less money is recycled back to suppliers) or the amount is mutualised, whereby suppliers who have complied in full or in part are required to make further payments to make up the shortfall.
17. Mutualised funds are then redistributed amongst suppliers who presented ROCs. Where there is a shortfall, this affects suppliers who have presented ROCs as they receive less money back through the scheme's recycling mechanism. This means that compliant suppliers are penalised and placed at an unfair competitive disadvantage, due to other suppliers' failure to comply with their RO. This distorts the market and is not acceptable to the Authority.
18. The Authority reiterates that compliance with regulatory obligations, including financial obligations, is not optional. Suppliers must meet these obligations in full and on time.
19. 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.
20. The Authority has published the proposed confirmation of the Provisional Order for the statutory consultation period but did not receive any representations.
21. The Authority has taken into account the impact of the Covid 19 pandemic and the unprecedented increase in global gas prices on industry but note that the majority of the ROO and ROS obligations have been met. Having weighed up these considerations, the Authority remains of the view that Delta is contravening, and is likely to contravene, its obligations and that the confirmation of the Provisional Order is requisite to secure its compliance.

22. The Authority has decided to confirm the Provisional Order requiring payment of the outstanding amounts forthwith.

23. If Delta fails to comply with the confirmed Provisional Order by making the required payments in full, the Authority may initiate the process of revocation of its electricity licence or take other action to enforce payment.

24. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), and (5A) and section 26 of the Act. In particular:

- a. It 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);
- b. It 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);
- c. It does not consider that the contravention is trivial.

25. The Authority notes that:

- a. 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 EA89, which, pursuant to section 25 of and Schedule 6A to EA89, 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;
- b. The acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of those requirements, and other factors which in the Authority's opinion justify confirming the Provisional Order are those set out above; and
- c. The Authority considers it requisite to confirm the Provisional Order to secure compliance with the RO.

26. Therefore, the Authority has decided to confirm the Provisional Order requiring Delta to:

- a. 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.
- b. 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.
- c. 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.

Dated: 24 January 2022

Signed:

Megan Forbes  
Peter Hinchliffe

**Enforcement Decision Panel**

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