

## **Whoop Energy Ltd**

### **Notice of reasons pursuant to Section 49A(1)(f) of the Electricity Act 1989 for the decision to confirm a Provisional Order under Section 25(4) of the Electricity Act 1989**

1. This Notice sets out the reasons why, on 24 January 2022, the Gas and Electricity Markets Authority (“the Authority”) confirmed a Provisional Order dated 12 November 2021 in respect of contraventions by Whoop Energy Ltd (“Whoop”), (company number 11611103) of Chatterley Whitfield Enterprise Centre, Biddulph Road, Stoke-On-Trent, United Kingdom, ST6 8UW.
2. Whoop is the holder of an electricity supply licence issued by the Authority under section 6(1)(d) of the Electricity Act 1989 (“the Act”) and as such is bound by the Standard Licence Conditions (“SLCs”) for its electricity supply activities.
3. Pursuant to section 25(2) of the Act, the Authority made and served a Provisional Order dated 12 November 2021 (“the Provisional Order”). The Provisional Order required Whoop to make a payment of £19,013.51 forthwith to the Authority. Notwithstanding the making of the Provisional Order, Whoop has failed to make that payment.
4. The Provisional Order was made in respect of Whoop’s failure to comply with standard licence condition (“SLC”) 33 (Feed-in Tariffs). SLC 33 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.
5. 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.
6. 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.

7. In the Authority’s annual report on the FIT Scheme for 2019 – 2020<sup>1</sup>, 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.
8. 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.
9. Whoop’s Year 12, Quarter 2 levelisation payment of £19,013.51 fell due on 10 November 2021. This covers the period 1 July 2021 to 30 September 2021. Whoop failed to make the payment on or before the due date and, at the time of confirming the Provisional Order, has still not made its Year 12, Quarter 2 levelisation payment.
10. 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

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/feed-tariff-fit-annual-report-2019-20>

an unfair competitive advantage to non-compliant suppliers. It also results in a significant administrative burden for the Authority.

11. 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. Whoop has failed to engage with the Authority regarding payment and it is important that the Authority sends out a strong message that non-compliance will not be tolerated. For these reasons the Authority considers that the Provisional Order should be confirmed without modifications.

12. 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, the Authority:

- a. 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. is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act do not preclude the Authority from making the Provisional Order (on the contrary, it considers that its duties require it to make the Provisional Order); and
- c. is satisfied that the contravention is not of a trivial nature.

13. The Authority:

- a. Is satisfied that Whoop has not agreed to take and is not taking all such steps as it appears to the Authority for the time being to be appropriate for Whoop to take for the purpose of securing or facilitating compliance with the Relevant Conditions;
- b. Notes that the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of Relevant Conditions, and other factors which in the Authority's opinion justify the confirming of a Provisional Order are those set out above; and
- c. Considers it requisite to confirm the Provisional Order to secure compliance with the FIT Scheme.

14. For the above reasons, the Authority decided to confirm the Provisional Order requiring the outstanding payment of £19,013.51 to be made forthwith.

15. The confirmed Provisional Order is available at:

<https://www.ofgem.gov.uk/publications/whoop-energy-provisional-order>

Dated: 24 January 2022

Signed:

Megan Forbes

Peter Hinchliffe

**Enforcement Decision Panel**

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