

**UK Energy Incubator Hub Ltd: Notice of Reasons under section 38A(1)(f) and 38A(2) of the Gas Act 1986 and Section 49A(1)(f) and 49A(2) of the Electricity Act 1989 for the decision of the Gas and Electricity Markets Authority to make a provisional order.**

1. This document sets out the reasons why, on 30 March 2022, the Gas and Electricity Markets Authority (“Authority”) made a provisional order (“PO”) in respect of continuing and anticipated contraventions by UK Energy Incubator Hub Ltd, formerly known as Euston Energy Limited (“UK Energy”) of its gas and electricity supply licences.
2. UK Energy is the holder of gas and electricity supply licences (“Licences”) and as such is bound by the Standard Licence Conditions (“SLCs”) of those licences.
3. The Authority is the industry regulator and is charged by its enabling legislation with keeping the gas and electricity markets under review. In performing that function, it obtains information using a variety of sources and methods.
4. In particular, the Authority routinely monitors the financial situations of the businesses it regulates. Where it has concerns about the financial circumstances of a supplier, it seeks information from the supplier to better understand its circumstances. The fact it has done so does not necessarily mean the supplier is in financial difficulty.
5. The Authority also has responsibility for ensuring continuity of supply to the customers of a failed supplier via the Supplier of Last Resort (SOLR) process. In order to run this process effectively, the Authority requires certain information from the supplier such as customer lists and details of customer credit and debit balances. Again, the fact the Authority has requested this information from any particular supplier does not necessarily mean that supplier is in financial difficulty – the Authority generally considers it prudent to secure such information at an early stage to ensure it is prepared to intervene if and when such intervention becomes necessary.

6. SLC 5 of the Licenses relevantly provides:

*“5.1 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested*

*5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court”*

7. On 28 January 2022 the Authority issued UK Energy with a request for information (“RFI”) pursuant to SLC 5. This information request was for various financial information to assist the Authority in better understanding UK Energy’s circumstances, and for the information the Authority would require to run a SOLR process if and when such a process became necessary.
8. The RFI issued stated that UK Energy required to provide the information requested by 5pm on 3 February 2021. “2021” was a typographical error and should have read “2022”. The Authority considers that it was clear to UK Energy that it required to provide the information requested by 3 February 2022, 2021 being in the past at the date of issue and the RFI having been accompanied by a covering email requiring the information by Thursday that week (which was 3 February 2022). UK Energy also responded to the request on 4 February, after that deadline had passed, acknowledging that it had missed the deadline. It did not provide any substantive response to the RFI but explained that it was not in a position to provide the information requested because it considered that too much information had been requested in too short a timeframe. The information requested was standard financial information that suppliers should be able to obtain and provide within the timeframes specified in the RFI, which were in line with our standard practice.
9. UK Energy requested a telephone call with the Authority to further discuss provision of the information and this took place on 14 March 2022. During this telephone call, the Authority’s responsible officer responded to data protection and data security concerns

that UK Energy raised with regard to providing the information requested and discussed other concerns and difficulties that UK Energy raised. The officer reminded UK Energy that it was important that it provided the information requested as soon as possible. The Authority thereafter sought the information requested again by an email request dated 18 March. That email request re-attached the RFI. In that email, the Authority made clear that it considered that UK Energy was contravening its obligations under SLC 5 of the Licences by having failed to respond to the RFI. UK Energy did not reply to that email.

10. UK Energy had not, at the time of publication of the PO, provided a substantive response to the requests for information. It had informed the Authority's responsible officer that it had data protection and security concerns about providing the information requested. The Authority responded to those concerns in its email dated 18 March by providing a secure site through which to upload the information requested. UK Energy also indicated that it was having difficulty obtaining some of the information requested. However, it has not confirmed to the Authority when it will be in a position to provide that information. Also, and in any event, as set out above, the information requested is information which the Authority considers UK Energy should be in a position to obtain and provide within the timeframes specified in the RFI.
11. The Authority will always hear any concerns a supplier may have about an RFI it has issued or proposes to issue. Where the RFI causes difficulties for the supplier, the Authority may, in appropriate cases, be open to adjusting the scope of the RFI or extending the timeframe for compliance. In this case, the Authority issued its original RFI on 28 January with a response sought by 3 February. In its email dated 18 March, the Authority allowed additional time (until 25 March) for UK Energy to provide the information requested. The Authority expects that the companies it regulates will co-operate with its enquiries and comply with the information requests it issues.
12. The Authority is satisfied that there is no substance to UK Energy's objections to providing the information in question. The Authority is charged with determining what information it requires to assist it in carrying out its functions and only issues a request after careful consideration. Moreover, where a supplier does take issue with the Authority's exercise of its information gathering powers, the appropriate course (if the

issue cannot be resolved through discussion and negotiation) is to challenge the RFI by way of judicial review.

13. In particular, the Authority is satisfied that the information it has requested is information which UK Energy could be compelled to produce in civil proceedings. Indeed, UK Energy has not sought to argue to the contrary.
14. Accordingly, it is apparent to the Authority that UK Energy is contravening SLC 5, and is likely to continue so to do.
15. It is imperative that the information is provided to the Authority promptly so that it may gain a better understanding of UK Energy's financial position. Besides the inherent need for such information to be provided and considered in a timely manner, the Authority presently has significant concerns about its ability to meet its financial obligations.
16. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5) and (5A), and section 26 of the Electricity Act 1989 and the equivalent provisions in the Gas Act 1986<sup>1</sup>. 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 EA89 do not preclude the Authority from making the PO (on the contrary, it considers that its duties require it to make the order);
  - c. It does not consider there is an acceptable cure plan in place; nor is the contravention trivial.
17. On this occasion the Authority has taken the view that a provisional order, rather than progressing a proposed final order, is requisite. It is not appropriate in these circumstances to allow the delay (of at least three weeks due to the statutory consultation process) associated with a final order. If circumstances requiring the

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<sup>1</sup> The equivalent provisions in the Gas Act 1986 being sections 28 (3), 28 (4A), 28 (4B), 28 (5), 28 (5A) and 29 of that Act.

Authority to make use of the information were to arise, it is imperative that the Authority has the information to hand immediately.

18. For those reasons, the Authority decided that a provisional order to compel full and immediate compliance with the RFI was requisite on this occasion.

Charles Hargreaves  
Deputy Director, Enforcement  
Duly Authorised on behalf of the Gas & Electricity Markets Authority