

Tru Energy Limited

Notice of Reasons under section 25(2) of the Electricity Act 1989 and 28(2) of the Gas Act 1986

To: Tru Energy Limited ("TruEnergy"), company number 09735909, of Gable House, 239 Regents Park Road, London N3 3LF

- (1) This Notice sets out the reasons why, on 27 July 2022, the Gas & Electricity Markets Authority ("Authority") made a provisional order in respect of apparent contraventions by TruEnergy Limited ("TruEnergy"), company number 09735909, of Gable House, 239 Regents Park Road, London N3 3LF.
- (2) TruEnergy is the holder of gas and electricity supply licences granted by the Gas and Electricity Markets Authority ("the Authority") and is subject to the usual conditions thereunder, which are "relevant conditions" for the purposes of the Electricity Act 1989 ("EA89") and the Gas Act 1986 ("GA86") (together, "the Acts").
- (3) During May to July 2022, the Authority conducted a review of the practices of 17 licenced gas and electricity suppliers with regard to customer direct debits. It announced the initial findings of the review, in broad terms, on 13 July 2022¹. TruEnergy was one of two suppliers identified as having severe weaknesses in its systems and processes (the other supplier has since ceased trading). The Authority is concerned that TruEnergy does not have in place a consistent or structured approach to setting direct debits, it has not provided sufficient staff training on the regulatory framework that governs such a process, and it does not have sufficiently mature processes to guard against the risk of customer detriment from a direct debit payment being set either too high or too low. These failings are likely to lead to customer direct debits being set incorrectly, or not being evaluated for a long time, which can cause the build-up of either unnecessarily large credit balances or debt, depending on whether the customer is under or overpaying.
- (4) It appears to the Authority that TruEnergy is contravening the following Standard Licence Conditions ("SLCs") of its gas and electricity supply licenses:
 - a. SLC 4A.1, which requires TruEnergy to have and maintain robust internal capability, systems and processes to enable it to efficiently and effectively serve its customers and comply with its regulatory obligations, and,
 - b. SLC 27.15, which requires TruEnergy to ensure that the level of direct debit payments are based on the best and most current consumption data available.

¹ <https://www.ofgem.gov.uk/publications/press-release-ofgem-requires-improvements-energy-suppliers-customer-direct-debits>

- (5) TruEnergy has engaged constructively and appropriately with the Authority since the findings of the review, and has proposed improvements to its systems and processes which make some progress towards addressing the Authority's concerns. The Authority welcomes this positive engagement. However, it considers that these improvements need to be both more substantial and timely in order to satisfactorily bring TruEnergy into compliance with its regulatory obligations.
- (6) The provisional order requires TruEnergy to commission an independent audit of its policies and processes with respect to setting direct debits. The Authority is aware that TruEnergy, having previously had very few such policies or processes (with wide discretion given to individual staff members²), is seeking to develop them at pace. The Authority requires assurance through the independent audit that the policies that are currently being put in place are suitable to satisfy the relevant licence obligations and will be consistently followed by staff.
- (7) The Authority also considers it requisite to require TruEnergy to review the direct debit levels of all its customers as soon as possible. Data obtained by the Authority suggests that a significant proportion of TruEnergy's customers are likely to have direct debits that are either too high or too low, with the associated risk of either accumulating a large credit balance, or accumulating a substantial debt, neither of which is likely to be in the customer's best interests³. The data also suggests that TruEnergy may not be using the most up to date energy consumption information when setting the level of customer direct debit payments. The Authority considers it logical for this review to take place immediately following the completion of the auditor's report, such that recommendations on the process used can be taken into account.
- (8) The provisional order also requires TruEnergy to take all necessary and appropriate steps to implement learnings and recommendations from the auditor's report. It is not appropriate (or even possible) to be more prescriptive at this stage as the content of the report is unknown. Following receipt of the report, due 19 August, the Authority will continue to monitor and assess the situation, and will consider further compliance engagement or enforcement action as appropriate.
- (9) The Authority considers it particularly important to resolve this matter and secure sufficient progress from TruEnergy prior to the next price cap revision in October 2022 (which, unfortunately, is likely to result in a substantial increase to the price cap driven largely by persistently high wholesale energy prices). For this reason, the Authority considers that it is requisite to make a provisional order (rather than consulting on a final order, which would result in a delay of at least three weeks before the order could

² The Authority does not criticise customer service staff having a wide discretion to assist customers, provided those staff have a policy framework and appropriate training – including on the regulatory obligations that govern their exercise of that discretion – to inform their decisions.

³ Both situations also present systemic risk to the market, given that credit balances are mutualised in the event of supplier failure, and customer bad debt increases that very risk.

be made) to secure the necessary improvements with the timeliness that the Authority requires.

(10) The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), (5A) and 26 of the Electricity Act and the equivalent provisions in the Gas 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 the Acts do not preclude the making of the order;
- c. While noting that TruEnergy has put forward proposed remedial measures, it does not consider those sufficient to engage the provisions of section 25(5A) of the Electricity Act⁴; and,
- d. It does not consider the contraventions to be trivial.

(11) The provisional order has effect for the statutory maximum period of three months. The Authority will, in due course, consider whether to confirm the provisional order (with or without modifications). Unless earlier confirmed by the Authority, the provisional order will lapse on 27 October 2022.

Dated: 1 August 2022

Signed

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority

⁴ Or the equivalent identical provision of the Gas Act – s.28(5A).