

## Utilita Energy Limited

### Notice of reasons under Section 49A of the Electricity Act 1989 and Section 38A of the Gas Act 1986 for the decision to make a Provisional Order under Section 25(2) of the Electricity Act 1989 and Section 28(2) of the Gas Act 1986

1. This Notice sets out the reasons why, on 9 September 2022, the Gas and Electricity Authority (“the Authority”) made a Provisional Order in respect of likely contraventions by Utilita Energy Limited (“Utilita”), company number 04849181, having its registered office at Hutwood Court Bournemouth Road, Chandler's Ford, Eastleigh, Hampshire, United Kingdom, SO53 3QB.
2. Utilita is the holder of gas and electricity supply licences (“Licences”) granted by the Authority and is subject to the usual conditions thereunder, which are the “relevant conditions” for the purposes of the Electricity Act 1989 (“the Electricity Act”) and the Gas Act 1986 (“the Gas Act”) (together, “the Acts”).
3. The Provisional Order was made as it appeared to the Authority that Utilita was contravening and likely to continue to contravene relevant conditions and requirements by virtue of the following:
  - a. The Authority has received intelligence regarding concerns with Utilita’s provision of Additional Support Credit (“ASC”) from a number of sources. On 20 May 2022, the Authority set out its concerns in a letter to Utilita, requesting further information, including a copy of Utilita’s ASC policy and 70 call recordings of customers (35 refusals and 35 approvals) requesting ASC . Utilita’s response indicates that it does not fully consider consumer vulnerabilities when assessing the provision of ASC. In particular, the majority of the call recordings show that Utilita is not following the full process required under SLC 27A.5 of offering ASC to Domestic Customers<sup>1</sup> in a Vulnerable Situation<sup>2</sup> who are on a Prepayment Meter (“PPM”); who have self-

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<sup>1</sup> Has the meaning given to it at SLC 1.3 of the gas and electricity supply licences. Domestic Customer: means a Customer supplied or requiring to be supplied with electricity and/or gas at Domestic Premises but excludes such Customer insofar as he is supplied or requires to be supplied at premises other than Domestic Premises.

<sup>2</sup> Has the meaning given to it at SLC 0.9 of the gas and electricity supply licences. Vulnerable Situation: Means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is: (a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or (b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial.

- disconnected or are self-disconnecting; or have self-rationed or are self-rationing. By not offering or refusing ASC to these customers, Utilita is contravening, and is likely to continue contravening, SLC 27A.5.
- b. The recordings also indicate that Utilita is not assessing a customer's individual circumstances when considering whether ASC is in a customer's "best interest" and is instead using previous customer ASC debt as a blanket reason for refusal of ASC without offering alternative appropriate support. SLC 27A.7 allows a licensee to refuse ASC where there is previous ASC debt if ASC is not in the best interest of the individual customer but notes that alternative appropriate support must be provided in accordance with SLC 0 and SLC 31G.2. In failing to assess the "best interest" of individual customers and then refusing ASC without offering alternative appropriate support, Utilita is contravening, and is likely to continue to contravene SLC 27A.7.
  - c. The recordings further show that Utilita is not assessing the sum of ASC provided and calculating the instalments for repayment based on a customer's ability to pay and with regard to the value of all the charges that are to be recovered through the customer's PPM as required under SLC 27A.6 and SLC 27.8(b). The evidence from Utilita shows that customers offered ASC were not provided with sufficient credit to last the period before which they were able to top up or large proportions of customers' top ups were taken towards repayment without assessing customers' ability to pay, in contravention of SLC 27A.6 and SLC 27.8(b).
4. The Authority also considers that Utilita does not assess whether pre-payment is safe and reasonably practicable in all circumstances for Priority Services Register ("PSR") customers as required by SLC 26.4 and 26.5(d) and with reference to the definition of "Safe and Reasonably Practicable in all the Circumstances of the Case" in SLC 28.1A. From the call samples, it is clear that there are PSR customers who should have been offered alternative metering arrangements because a PPM did not appear to be safe and practicable in their circumstances, as required by SLC 26.4 and SLC 26.5(d). In particular, the Authority notes that Utilita did not offer alternative metering arrangements to customers who require a supply in respect of refrigerated medication and medical equipment.
  5. Utilita has engaged with the Authority, however it has not provided evidence of any action taken and/or that Utilita plans to take to ensure compliance with the relevant Standard Licence Conditions ("the relevant SLCs").

6. The Authority considers that it is essential to uphold compliance with the relevant SLCs. Failure to do so risks significant consumer harm in the event of the continuation of consumers, including PSR consumers, not receiving access to ASC. Given the current market circumstances and cost to consumers of gas and electricity, a lack of access to ASC could be highly detrimental to consumers, particularly those in a Vulnerable Situation.
7. The Authority considers it requisite to issue a provisional order (rather than consulting on a final order) because the information obtained by the Authority indicates that Utilita's customers are self-rationing and self-disconnecting as a result of not receiving ASC, including PSR customers, some of whom require supply in respect of medication and medical equipment. If the Authority does not require Utilita to make improvements immediately, by virtue of this provisional order and instead consults on a final order, it is more likely that Utilita's customers who have already self-disconnected or are self-rationing will continue to be in that position. It is also likely that further consumers will self-disconnect or self-ration as a result of not having access to ASC given the high fuel prices and cost of living costs and those customers will suffer harm (such as being unable to use medical equipment which requires a supply and/or being able to safely store medication that requires refrigeration) as a result.
8. The Provisional Order is intended to bring Utilita into compliance quickly with the conditions it is subject to. The Authority considers it particularly important to resolve this matter and secure compliance from Utilita prior to winter as consumption naturally increases during this period and PPM customers are more likely to be affected by this.
9. The Provisional Order sets out requirements which the Authority considers are requisite to bring Utilita into compliance with the relevant SLCs. These requirements are set out at paragraphs 10 to 13 below.
10. The Provisional Order requires Utilita to immediately review its internal call scripts which tell customers that ASC is not a licence requirement and provide the advice required to consumers to satisfy the requirements of SLC 27A.5 and SLC 27A.7 and to develop its ASC policy to ensure compliance with the relevant SLCs.
11. Utilita is also required to review all cases where customers are off supply and assess whether ASC can be applied. Utilita must also contact all its PSR customers who are dependent on their supply for medical reasons to offer a credit mode meter which may be a safer alternative to their current PPM. Utilita is required to review all PSR customers

requesting ASC and proactively ensure the functionality of the pre-payment meters to ensure compliance with SLC 26.4 and SLC 26.5(d). Utilita is also required to take customers' ability to pay into consideration in their repayment plan consideration and where ASC is applied calculate instalments for repayment in accordance with SLC 27A.6 and 27.8(b).

12. The Provisional Order also requires Utilita to engage fully and properly with Citizens Advice Bureau, Citizens Advice Scotland's Extra Help Unit and Ombudsman Services to ensure all referrals and off supply incidents are reassessed in line with the relevant SLCs.
13. Utilita must also commission an audit (at its own expense), by an independent compliance professional acceptable to the Authority. Utilita should proactively engage with the Authority throughout this process but particularly when it comes to their choice of auditor. Utilita should take all necessary and appropriate steps to implement learnings and recommendations from the auditor's report upon the direction of the Authority. Following receipt of the report the Authority will continue to monitor and assess the situation and will consider further compliance engagement or enforcement action as appropriate. The Authority considers that the audit is requisite as it will assist the Authority in its assessment of Utilita's compliance.
14. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), and (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 Electricity Act and the Gas Act do not preclude Authority from making the Provisional Order (on the contrary, it considers that its duties require it to make the Provisional Order);
  - c. It does not consider that the contraventions are trivial.
15. For the above reasons, the Authority decided to make a Provisional Order requiring Utilita to do the following:
  - (1) Utilita to immediately:
    - a) Not act in contravention of the relevant SLCs.
    - b) Cease use of the call script which tells customers that ASC is not a licence requirement and provide the advice required to consumers to satisfy the requirements of the relevant SLCs.

- c) Take a Domestic Customer's ability to pay into account for all repayment plan calculations to satisfy the requirements of SLC 27.8(b), and on each occasion, ASC is offered, calculate the instalments for repayment in accordance with SLC 27A.6.
  - d) Develop its ASC policy to ensure compliance with the relevant SLCs.
- (2) By no later than 4pm on 30<sup>th</sup> September 2022, Utilita to:
- a) Review cases where customers are off supply to ensure it offers ASC where required and assess whether pre-payment remains a safe payment method in each circumstance to satisfy the requirements of SLC 26.5 (d).
  - b) Contact all Priority Services Register (PSR) supply dependant customers and offer a credit mode meter that is safe and practicable in all circumstances of the case to satisfy the requirements of SLC 26.5 (d).
  - c) Review all PSR customers' requests for ASC and engage proactively to ensure that functionality of the pre-payment meter is safe and reasonably practicable in all circumstances of the case to satisfy the requirements of SLC 26.5(d).
  - d) Fully engage with Citizens Advice Bureau, Citizens Advice Scotland's Extra Help Unit and Ombudsman Services to ensure all referrals and off supply incidents are reassessed in line with the relevant SLCs.
- (3) By no later than 4pm on 31<sup>st</sup> October 2022, provide the Authority with an independent audit report (commissioned at Utilita's own expense and prepared by an independent professional acceptable to the Authority<sup>3</sup>) confirming Utilita's compliance with sections 1 and 2 above and identifying any areas in Utilita's policy and processes that do not comply with its regulatory obligations alongside recommended areas for improvement.

16. The Provisional Order was served to Utilita on Friday 9 September 2022.

17. The Authority will, in due course, consider whether to confirm the Provisional Order (with or without modifications). Unless earlier confirmed or revoked by the Authority, the Provisional Order will lapse on 9 December 2022.

18. The issuance of the Provisional Order is without prejudice to any further or other enforcement action the Authority may decide to take, in relation to this or any other

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<sup>3</sup> Utilita must consult with the Authority's responsible officer prior to engaging its proposed auditor.

outstanding or future breaches. The Authority will consider whether it is appropriate to impose a financial penalty on Utilita in relation to this breach.

Dated: 14 September 2022

Signed:

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority