

Delta Gas and Power Limited: Notice of reasons under Section 49A of the Electricity Act 1989 for the decision of the Authority to make a Final Order under Section 25 (1) of the Electricity Act 1989

- (1) This Notice sets out the reasons why, on 27th October 2022, the Authority made a Final Order (“FO”) in respect of likely contraventions by Delta Gas and Power Limited [formerly known as Lily Energy Supply Limited] (“Delta”), (company number 09933244), whose registered office is situated at 344-354 Gray’s Inn Road, London, England, WC1X 8BP.
- (2) Delta is the holder of an Electricity Supply Licence issued by the Authority on 27 April 2016 under section 6(1)(d) of the Electricity Act 1989 (“the Act”).

Background: Notice of Proposal to make the FO and inviting representations to the Authority.

- (3) The Authority has published pursuant to section 26(1) and (2) of the Act, a notice of its proposal to make the Final Order, dated 27th September 2022, and invited representations and objections to the notice to be made to it. The Notice of Proposal to make the Final Order can be found at: <https://www.ofgem.gov.uk/publications/ofgem-consults-issuing-final-orders-two-suppliers-over-ps1m-late-renewables-obligations-payments>
- (4) As well as explaining the reasons why the Authority proposed to make the Final Order, the Notice of Proposal sets out the likely contravention the Final Order is in respect of, namely Delta’s likely contravention of the Renewables Obligation (“RO”) under article 7 of the Renewables Obligation Order 2015 (“ROO”). The Notice of Proposal explains, in particular, how Delta is likely to fail to present sufficient Renewables Obligation Certificates (“ROCs”) and/or to make payment to the Authority in the sum of £530,809.20 in relation to its ROO obligation, with accrued interest, by 31 October 2022.
- (5) Delta provided representations which the Authority did not deem satisfactory as an assurance that Delta would be able to discharge their ROO balance by 31st October. Delta did not provide any further representations. Delta made full payment of their Renewable Obligation Scotland (ROS) balance on 19 October 2022. In relation to the proposed Final Order the Authority remains of the view that Delta is likely to contravene its obligations under the outstanding RO and that the Final Order remains requisite.

Reasons for the Authority’s decision to make the FO

- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) The Authority has engaged with the industry and made clear that it expected payments to be made in full and on time, and would be taking a robust approach to compliance and enforcement.
- (11) Despite this engagement, Delta failed to present sufficient ROCs and/or make payments to discharge its RO for the obligation period of 1 April 2021 to 31 March 2022 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 however Delta made full payment of their ROS balance of £114,720.62 on 19 October 2022.
- (12) Delta owes £530,809.20 plus accrued interest, in relation to its ROO, with late payment interest accruing daily, which total amount remains unpaid as at the date of this Final Order.
- (13) The Authority has engaged with Delta and invited it to explain the reason(s) for its non-payment, and to provide robust assurances to the Authority that it will be in a position to make the necessary payment in full together with accrued interest by the late payment deadline of 31 October 2022. Delta has failed to provide the Authority with assurances which are sufficiently robust and accordingly the Authority is satisfied that Delta is likely to contravene the requirements of the ROO.

- (14) 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.
- (15) 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.
- (16) 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.
- (17) The Authority reiterates that compliance with regulatory obligations, including financial obligations, is not optional. Suppliers must meet these obligations in full and on time.
- (18) The RO scheme has been in place since 2002 and suppliers must ensure they are in a position to meet these obligations, whether by holding sufficient ROCs and/or having sufficient funds available to make the necessary payments.
- (19) The Authority has published the proposed Final Order for the statutory consultation period but did not receive any further representations or objections.
- (20) The Authority has taken into account the impact of the unprecedented increase in global gas prices on industry. Within this context, the Authority has also considered the effect of this enforcement action on competition in the market. Where suppliers have failed to meet their RO, this has adverse consequences via the mutualisation mechanism for those suppliers who have complied. Having weighed up these considerations, the Authority remains of the view that Delta is likely to contravene, its obligations and that the Final Order is requisite to secure its compliance.
- (21) The Authority has decided to make a Final Order requiring payment of the outstanding amounts together with accrued interest by no later than the prescribed late payment date of 31 October 2022.
- (22) If Delta fails to comply with the Final 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.

(23) The Authority has had regard to the matters in sections 25 (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 making the Final Order (on the contrary, it considers that its duties require it to make the Final Order);
- c. It does not consider that Delta has agreed to take or is taking all such steps as it appears to the Authority for the time being to be appropriate for Delta to take for the purpose of securing or facilitating compliance;
- d. It does not consider that the contravention is trivial.

(24) 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 the Act, which, pursuant to section 25 of and Schedule 6A to the Act, are provisions imposing obligations enforceable as “relevant requirements” by the Authority. In this context, the requirement to discharge the RO and ROS 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 the making of an Final Order are those set out above; and
- c. The Authority considers it requisite to make the Final Order to secure compliance with the RO.

(24) Therefore, the Authority has decided to make the Final Order requiring Delta to:

- a. make a payment to the Authority in full settlement of its RO for the obligation period of 1 April 2021 to 31 March 2022, in the sum of £530,809.20 plus accrued interest by no later than 31 October 2022;
- b. Notify the Authority by email to tom.sykes@ofgem.gov.uk and dylan.hopkins@ofgem.gov.uk of such payment immediately after it has been made.

Dated: 27 October 2022

Signed:

Megan Forbes

Dr Philip Marsden

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority