

## **Foxglove Energy Supply Ltd**

### **Provisional Order confirmed under section 25(4) of the Electricity Act 1989 and 28(4) of the Gas Act 1986**

To: Foxglove Energy Supply Ltd ("Foxglove"), (company number 09689035) having its registered office at 16 North Mills, Frog Island, Leicester, Leicestershire, England, LE3 5DL, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 ("the Electricity Act") and holder of a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986 ("the Gas Act").

#### WHEREAS:

- A) Foxglove 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 and the Gas Act ("the Acts");
- B) Standard Licence Condition ("SLC") 4B of the gas and electricity supply licences requires licensees to at all times manage responsibly costs that could be Mutualised<sup>1</sup>, and relevantly provides:

*4B.1 The licensee shall at all times manage responsibly costs that could be Mutualised and take appropriate action to minimise such costs.*

**Meeting the financial responsibility principle**

*4B.2 The licensee shall at all times have adequate financial arrangements in place to meet its costs at risk of being Mutualised.*
- C) On 25 February 2022, the Authority issued a Request for Information ("RFI") to Foxglove seeking the provision of information relating to Foxglove's financial management, position and arrangements ("Stress Testing RFI").
- D) On 22 June 2022, due to ongoing concerns about Foxglove's financial management, position and arrangements, its compliance with SLC 4B and due to its failure to respond to a Management Control Framework ("MCF") RFI also issued on 25 February 2022, the Authority issued a further letter to Foxglove highlighting its concerns and reminding Foxglove of its obligations to comply with the MCF RFI ("22 June Letter").
- E) Based on the information Foxglove has provided to the Authority in response to the Stress Testing RFI and 22 June Letter, and based on other information the Authority

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<sup>1</sup> Has the meaning given to it as SLC 1 of the gas and electricity supply licences.

has obtained in its engagement with Foxglove, the Authority is satisfied that Foxglove is contravening or likely to contravene SLC 4B;

- F) Having had regard to the matters set out in section 25 of the Electricity Act and section 28 of the Gas Act, the Authority considers it is requisite to confirm the Provisional Order (with modifications) in exercise of the power in section 25(4) of the Electricity Act and section 28(4) of the Gas Act and that the provision made by the Provisional Order (with modifications) is requisite for the purpose of securing compliance with SLC 4B.

NOW THEREFORE:

The Authority, pursuant to section 25(4) of the Electricity Act and section 28(4) of the Gas Act, and for the purpose of securing compliance with SLC 4B, confirms the Provisional Order with modifications (effective on the date set out below) requiring Foxglove:

1. Not to act in contravention of SLC 4B;
2. Improve its financial position such that it can meet the requirements of all financial stress test scenarios provided by the Authority<sup>2</sup> to Foxglove alongside this Order, and in so doing ensure it will be able to meet its Renewables Obligation liability when this falls due<sup>3</sup>;
3. Provide the Authority with a report confirming Foxglove's compliance with paragraphs 1 and 2 above;
4. Until the Authority has confirmed in writing to Foxglove that it has provided a report in satisfaction of paragraph 3 above:
  - a. Refrain from all sales, marketing and customer acquisition activity, including the acquisition of any new domestic customers or upgrading of all existing domestic customer to dual fuel;
  - b. Refrain from making any payment, providing any loan or transferring any asset to any third party unless that payment, loan or transfer is one that Foxglove: i) is required to make by virtue of a legal requirement; ii) is essential to Foxglove's operation as a supplier of gas and electricity to consumers; or iii) is otherwise approved in writing by the Authority.

Pursuant to section 27(7) of the Electricity Act and section 30(8) of the Gas Act, the Authority may seek to enforce the Order by application to the High Court for injunctive or other relief without further notice to Foxglove.

Dated: 4 October 2022

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<sup>2</sup> The stress test scenarios require Foxglove to provide forecasts in respect of certain financial metrics in three key price scenarios (central, low and high). The Authority has provided detail of the financial metrics and pricing scenarios annexed to its letter to Foxglove dated 5 July 2022, served alongside this Order.

<sup>3</sup> As provided for under the Renewables Obligation Order 2015 (including any amendments to the order).

Signed

Megan Forbes (Chair)  
Peter Hinchliffe  
Ulrike Hotopp

Enforcement Decision Panel

Duly Authorised on behalf of the Gas & Electricity Markets Authority.