

Foxglove Energy Supply Ltd  
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FAO Simon Dowse

Date: 5 December 2022

**Private and confidential**

Dear Mr Dowse

**Notice of failure to comply with a confirmed Provisional Order within the meaning of section 25 of the Electricity Act 1989 and section 28 of the Gas Act 1986**

I refer to my letter of 4 October 2022 and can confirm that we now wish to initiate the process leading to possible revocation of Foxglove Energy Supply Ltd's ("Foxglove")'s electricity and gas licences.

Schedule 2 to the Electricity Supply Licence held by Foxglove makes provision for possible revocation of that Licence. Specifically, the relevant parts to this case provide that:

*"1. The Authority [namely the Gas and Electricity Markets Authority] may at any time revoke the licence by giving not less than 30 days' notice...in writing to the licensee:*

*(a)...*

*(b)...*

*(c) if the licensee fails:*

*(i) to comply with a final order (within the meaning of section 25 of the [Electricity] Act [1989])....and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee – provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity or effect of the final order...or before proceedings relating to any such application are finally determined...."*

Similarly, Schedule 2 to the Gas Supplier Licence held by Foxglove makes provision for possible revocation of that Licence. Specifically, the relevant parts to this case provide that:

*"1. The Authority [namely the Gas and Electricity Markets Authority] may at any time revoke the licence by giving not less than 30 days' notice...in writing to the licensee:*

*(a)...*

*(b)...*

*(c) if the licensee fails:*

*(i) to comply with a final order (within the meaning of section 28 of the [Gas] Act 1986) ...and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined..."*

The background to the present situation is this:

- On 11 October 2022 the Authority published its decision to confirm the Provisional Order dated 5 July 2022, with modifications, issued to Foxglove pursuant to section 25 of the Electricity Act 1989 ("the Electricity Act") and section 28 of the Gas Act 1986 ("the Gas Act");
- The Provisional Order was confirmed as the Authority was satisfied that Foxglove is likely to contravene the financial responsibility principle (Standard Licence Condition 4B);
- The 42-day period within which any application could have been made by Foxglove, pursuant to section 27 of the Electricity Act and section 30 of the Gas Act, questioning the validity or effect of the Provisional Order published on 11 October 2022 and served on Foxglove on 4 October 2022 has now expired without initiation of any such application or of proceedings relating to such;
- For the avoidance of doubt, Ofgem avers that any such application pursuant to section 27 of the Electricity Act and section 30 of the Gas Act would have been entirely without merit.

**This letter therefore provides Foxglove with written notice by the Authority, pursuant to Schedules 2(1)(c)(i) of the Electricity Supply Licence and 2(1)(c)(i) of the Gas Supply Licence, of Foxglove's failure to comply with the Provisional Order dated 5 July 2022 and confirmed with modifications on 4 October 2022.**

**If this failure is not rectified to the satisfaction of the Authority within three months after the giving of this notice in writing, the Authority may at any time revoke Foxglove's Electricity and Gas Supply Licences by giving no less than 30 days' notice in writing to the licensee.**

We confirm that this written notice will be published on the Authority's website on 5 December 2022.

Yours sincerely

**Marko Jovanovic**  
**Head of Enforcement Casework**  
**Conduct and Enforcement**