

Delta Gas and Power Ltd

Notice of proposal to confirm Provisional Order

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to confirm a Provisional Order pursuant to section 26(1) of the Electricity Act 1989 (“Electricity Act”) and section 29(1) of the Gas Act 1986 (“Gas Act”).

11 January 2023

1. Summary

1.1. On 7 November 2022 under section 25(2) of the Electricity Act and section 28(2) of the Gas Act, the **Authority** issued a Provisional Order to Delta Gas and Power Ltd (“Delta”), company number 09933244, whose registered office is situated at 344-354 Gray’s Inn Road, London, England, WC1X 8BP, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act and holder of a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act. The Provisional Order was issued in respect of contraventions or likely contraventions of Standard Licence Condition (SLC)s 4A (Operational Capability Principle) and 4B (Financial Responsibility Principle).

Unless otherwise stated, capitalised terms in this Notice are defined in the SLCs.

1.2. The Provisional Order will cease to have effect on 7 February 2023 unless confirmed by the Authority on or before that date. A copy of the Provisional Order issued on 7 November 2022 (“the Provisional Order”) and the document setting out the reasons for issuing the Provisional Order dated 10 November 2022 (“Reasons Notice”) can be found at:

[Delta Gas and Power Ltd: Provisional Order November 2022 | Ofgem](#)

1.3. The Authority now proposes to confirm the Provisional Order, as modified, as it is satisfied (subject to consideration of any representations by objections made in accordance with the Electricity Act and Gas Act and compliance with the further provisions therein) that Delta is contravening or is likely to contravene the requirements of SLC 4A. The Authority proposes to confirm the Provisional Order in the form set out in the Annex to this notice.

1.4. Pursuant to section 25(4) of the Electricity Act and section 28(4) of the Gas Act, the Authority shall confirm a Provisional Order with or without modifications if:

- a. The Authority is satisfied that the regulated person to whom the order related is contravening or is likely to contravene any condition or relevant requirement; and
 - b. The provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- 1.5. The Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the Electricity Act and section 28(4A), (4B), (5) and (5A) and section 29 of the Gas Act¹. The Authority 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); is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act do not preclude the Authority from confirming the Provisional Order (on the contrary, it considers that its duties require it to confirm the Provisional Order); and is satisfied that the contravention is not of a trivial nature.
- 1.6. Prior to confirming a Provisional Order, in accordance with section 26(1) of the Electricity Act and section 29(1) of the Gas Act, the Authority hereby gives notice that:
- a. SLC 4A is the relevant condition for the purpose of securing compliance with which the Provisional Order is to be confirmed;
 - b. the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of the relevant condition, and the other factors which in the Authority's opinion justify the confirmation of the Provisional Order are those set out at paragraph 4 below;
 - c. Any representations or objections with respect to the proposed confirmation may be made to the Authority by 2 February 2023 (see paragraph 5 below).

2. Background

- 2.1. The background to the making of the Provisional Order is set out in the Reasons Notice.

3. Reasons for the Authority's decision to propose to confirm the Provisional Order

- 3.1. Based on the information received by the Authority directly from Delta, the Authority is satisfied that Delta is contravening or is likely to contravene SLC 4A.
- 3.2. The Authority is minded to confirm that Provisional Order with modifications on the grounds that it is satisfied, in light of the matters set out at paragraph 4 of this Notice, that Delta is contravening or is likely to contravene SLC 4A. Consequently, the provisions

¹ Section 25(5) of the Electricity Act and Section 28(5) of the Gas Act refer to the Authority's principal objective as set out in section 3(A) of the Electricity Act and section 4AA of the Gas Act respectively, including the duty on the Authority to have regard to the need to secure financeability.

made by the Provisional Order with modifications are still requisite for the purpose of securing compliance with the relevant condition cited at paragraph 3.1.

4. The facts surrounding the Authority's decision on contraventions

- 4.1. The Authority has considered information obtained since the Provisional Order was made. The particular behaviours of concern relate to:
 - a. Delta's lack of internal capability, processes and systems to respond accurately and in a timely fashion to requests for information from the Authority and therefore to comply with its relevant legislative and regulatory obligations required by SLC 4A.

- 4.2. The Provisional Order required Delta not to act in contravention of SLCs 4A and 4B and, by 5 December 2022, improve its operational capability such that it could respond accurately and on time to any Requests for Information from the Authority in relation to its financial position and arrangements or otherwise and improve its financial position such that it could demonstrate that it could operate effectively under low, central and high financial stress test scenarios set out in the Stress Testing RFI. The Provisional Order also required Delta, by 7 December 2022, to provide the Authority with a report ("the Report") confirming that it had improved its operational capability and financial position as required by the Provisional Order and that it was in compliance with SLCs 4A and 4B.

- 4.3. Delta has provided the Report to the Authority. Delta has provided evidence to the Authority confirming that it has sufficient financial backing to operate effectively under the low, central and high financial stress test scenarios. As a result, the provisional order is no longer requisite to secure compliance with SLC 4B.

- 4.4. However, the updated financial forecasts provided by Delta on 5 December 2022 contained logic errors and used unrealistic assumptions, as did the earlier financial forecasts.

- 4.5. On 16 December 2022, Delta told the Authority that it has appointed an expert third party to support them in responding to requests for financial information. No other steps were outlined.

- 4.6. The Authority's view is, therefore, that the Report and other information provided to the Authority does not evidence that Delta has the operational capability to respond accurately and in a timely fashion to requests for information from the Authority and therefore to comply with its relevant legislative and regulatory obligations.

- 4.7. **For these reasons**, the Authority is of the opinion that Delta is contravening or is likely to contravene the requirements of SLC 4A.
- 4.8. As such, the Authority considers that it is requisite for the Provisional Order with modifications to be confirmed and to require Delta to comply with SLC 4A and to demonstrate that it can respond accurately and in a timely fashion to requests for information from the Authority. The Authority considers that this is proportionate and necessary in the circumstances given the risk of harm to consumers.

5. Representation or Objections

- 5.1. The Authority invites representations or objections. Any representations or objections with respect to the notice of proposal to confirm the Provisional Order must be made in writing on or before 2 February 2023 (being not less than 21 days from the date of publication of this notice) and sent by email to marko.jovanovic@ofgem.gov.uk and to vanessa.rouse@ofgem.gov.uk.
- 5.2. If a respondent does not wish its response or part of its response to be published, it should clearly mark its response or the relevant parts “not for publication” and give reasons.
- 5.3. Any representations or objections which are duly made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated: 11 January 2023

Name:

Signed for and on behalf of:

Megan Forbes (Chair)

Ulrike Hotopp

Ali Nikpay

Annex 1

Delta Gas and Power Limited

Proposed Provisional Order made under section 25(2) of the Electricity Act 1989 and 28(2) of the Gas Act 1986 as modified for confirmation (modifications shown in track changes)

To: Delta Gas and Power Limited (formerly known as Lily Energy Supply Limited) (“Delta”), (company number 09933244) of 344-354 Gray's Inn Road, London, England, WC1X 8BP, 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) Delta 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 and the Gas Act 1986 (“the Acts”).
- B) Standard Licence Condition (“SLC”) 4A of the gas and electricity supply licenses requires Delta to have and maintain robust internal capability, systems, and processes to enable it to serve its customers efficiently and effectively and comply with its regulatory obligations and relevantly provides:

4A.1 The licensee must ensure it has and maintains robust internal capability, systems, and processes to enable the licensee to: (a) efficiently and effectively serve each of its Customers; (b) efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks; and (c) comply with relevant legislative and regulatory obligations.
- C) On 11 July 2022 the Authority issued a Request for Information (“RFI”) seeking the provision of information relating to Delta’s financial management, position, and arrangements (“Stress Testing RFI”).
- D) On 8 August 2022, Delta submitted its response to the Stress Testing RFI and the Authority responded by letter dated 18 August 2022 to highlight several material errors and omissions in that response.
- E) On 14 September 2022, the Authority issued a further letter to Delta which contained queries regarding Delta’s financial management, position and arrangements and, in

response, Delta submitted revised information relating to these queries and those in the Stress Testing RFI.

- F) On 11 October 2022, representatives of the Authority met with representatives of Delta to highlight key concerns and to provide Delta an opportunity to make representations and, following that meeting, Delta submitted a letter to the Authority dated 18 October 2022 providing further information with regard to its financial management, position and arrangements.
- G) On 5 December 2022, Delta provided an updated financial forecast, which contained logic errors and used unrealistic assumptions.
- H) On 16 December 2022, Delta told the Authority that it has appointed an expert third party to support them in responding to requests for financial information. No other steps were outlined.
- I) Based on Delta's conduct to date, the Authority is satisfied that Delta is contravening or likely to contravene SLC 4A because it does not appear to have the internal capability, processes and systems to respond accurately and in a timely fashion to requests for information from the Authority and therefore to comply with its relevant legislative and regulatory obligations.
- J) 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-A

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 Delta:

1. Not to act in contravention of SLC 4A; and
2. Improve its operational capability such that it can respond accurately and on time to any Requests for Information from the Authority in relation to its financial position and arrangements or otherwise.

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 Delta.

Dated: []

Signed

[XXX]

Enforcement Decision Panel

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