

**Delta Gas and Power Ltd
Notice of reasons under Section 49A(1)(f) of the Electricity Act 1989 and Section 38A(1)(f) of the Gas Act 1986 for the decision to confirm a Provisional Order (with modifications) under Section 25(4) of the Electricity Act 1989 and Section 28(4) of the Gas Act 1986**

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.

1. This Notice sets out the reasons why, on 6 February 2023 the Gas and Electricity Markets Authority ("the Authority") confirmed a Provisional Order with modifications in respect of the contraventions or likely contraventions by Delta Gas and Power Ltd of Standard Licence Condition (SLC) 4A (Operational Capability Principle).
2. Delta is the holder of gas and electricity supply licences granted by the Authority and is subject to the usual conditions thereunder, which are "relevant conditions" for the purposes of the Electricity Act 1989 ("EA89") and the Gas Act 1986 ("EA86") (together, "the Acts");
3. 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. The Provisional Order was issued in respect of contraventions or likely contraventions of Standard Licence Conditions (SLC) 4A (Operational Capability Principle) and 4B (Financial Responsibility Principle).
4. 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.

5. Delta provided the Report to the Authority. Delta 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.
6. 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. 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.
7. The Authority's view was, therefore, that the Report and other information provided to the Authority did not evidence that Delta had 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.
8. For these reasons, the Authority was of the opinion that Delta was contravening or was likely to contravene the requirements of SLC 4A. As such, the Authority considered that it was 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 was proportionate and necessary in the circumstances given the risk of harm to consumers.
9. Therefore, the Authority published a notice of its proposal to confirm the Provisional Order with modifications on 11 January 2023 and invited representations and objections to the notice to be made to the Authority.
10. Since then, the Authority has received a further two responses from Delta with financial information and, whilst there are improvements in the quality of the submission, there are concerns that the return is not of a standard such as to satisfy us that Delta can respond accurately and on time to any Requests for Information from the Authority in relation to its financial position and

arrangements or otherwise. For example, the latest information provided states that:

- The forecast shows that cash at bank remains relatively flat despite a need to pay their 2023 RO balance in September 2023. We have queried whether this reflects the accurate position.
- The forecast includes annual customer growth. The way that this has been applied is on the basis of a flat line increase in revenue, which does not correspond to the volumes of energy that have been forecast. Furthermore, the volumes of energy forecast do not increase in line with the customer growth forecast. RO costs, Other Costs of Sale and all operational costs remain flat despite the forecast customer growth. This draws in to question the quality of the forecast. This has an impact on whether further cash injections may be needed.
- In the base case scenario the level of debtor days has been provided. We question whether these figures are realistic in the current circumstances and have therefore requested further information from Delta.

11. In response to the consultation, the Authority has not received any representations to the notice of proposal to confirm the Provisional Order, which were due by 2 February 2023.

12. Based on the information received by the Authority directly from Delta and representations made to it, the Authority is satisfied that Delta is contravening or is likely to contravene SLC 4A. Consequently, the provisions made by the Provisional Order with modifications are still requisite for the purpose of securing compliance with these relevant conditions.

13. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), (5A) and 26 EA89 and the equivalent provisions in GA86¹. In particular:

- a. It does not consider it would be 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 EA89 and 4AA to 4A GA86 do not preclude the Authority from

¹ Sections 28 (3), 28 (4A), 28 (4B), 28 (5), 28 (5A) and 29 GA86.

- 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.

Dated: 6 February 2023

Signed

Megan Forbes (Chair)

Ulrike Hotopp

Ali Nikpay

Enforcement Decision Panel Duly authorised on behalf of the Gas and Electricity

Markets Authority