

Notice of proposal of the Gas and Electricity Markets Authority to revoke a confirmed provisional order pursuant to section 26(6) of the Electricity Act 1989 and section 29(5) of the Gas Act 1986

Background

1. **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").

2. Pursuant to section 25(2) of the EA89 and section 28(2) of the GA86, the Authority issued and served a provisional order to Foxglove on 5 July 2022 (the "Provisional Order") which required Foxglove to:
 - a) Not to act in contravention of SLC 4B;
 - b) By 2 August 2022 improve its financial position such that it can demonstrate that it can operate effectively under all financial stress test scenarios provided by the Authority to Foxglove alongside the Provisional Order, and in so doing ensure it will be able to meet its Renewables Obligation liability when this falls due;
 - c) By no later than 5pm on 5 August 2022 provide the Authority with a report confirming Foxglove's compliance with paragraphs 1 and 2 above;
 - d) Until the provision of the report referred to in paragraph 3 above:
 - i) 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;
 - ii) Refrain from making any payment, providing any loan or transferring any asset to any third party unless that payment, loan or transfer is essential to Foxglove's operation as a supplier of gas and electricity to consumers.

The PO can be found at: <https://www.ofgem.gov.uk/publications/foxglove-energy-supply-ltd-provisional-order-july-2022>

3. Foxglove failed to improve its financial position sufficiently to demonstrate compliance with the requirements of the Provisional Order (all as more fully set out in the Notice of Reasons for decision to confirm the PO) and, after consultation, the Authority decided on 4 October 2022 to confirm the PO (the "Confirmed Provisional Order") with modifications. The Confirmed Provisional Order with modifications can be found at: https://www.ofgem.gov.uk/sites/default/files/2022-10/Foxglove_confirmed_PO_template_unsigned1665494631521.pdf
4. For the reasons set out below, the Authority now proposes to revoke the Confirmed Provisional Order.

Reasons for the Authority's proposal to revoke the Confirmed Provisional Order

5. Foxglove has submitted information to the Authority which demonstrates that, as at 31 March 2023, its financial position has improved significantly. Its current financial position is such that it has sufficient funds / capital to: meet its Renewables Obligation (RO) payment for 2022/23; ringfence its RO for the first 6 months of the 2023/24 RO obligation period¹; withstand a number of plausible price scenarios; and (if compelled to) refund a portion of customer credit balances. The Authority is therefore satisfied that Foxglove has sufficient funds to meet its obligations under SLC 4B at present.
6. As such, the Authority is now satisfied that the provision/s made by the Confirmed Provisional Order, dated 4 October 2022, are no longer requisite for the purpose of securing Foxglove's compliance with SLC 4B.

¹ As required by standard licence condition 30 of the electricity supply licence which is due to take effect from 31 May 2023.

7. The Authority retains significant concerns about Foxglove’s operational capability and proposes to pursue alternative regulatory action to address such concerns.
8. Pursuant to section 26(6) of the EA89 and section 29(5) of the GA86, the Authority is satisfied that the Confirmed Provisional Order is no longer requisite for the purposes of securing compliance with SLC 4B.
9. The Authority hereby gives notice that it proposes to revoke the Confirmed Provisional Order.

Representations or objections

10. The Authority invites representations or objections in relation to its proposal to revoke the Confirmed Provisional Order.
11. Any representations or objections with respect to this notice of proposal to revoke the Confirmed PO must be made in writing on or before 5pm on 11 July 2023 and sent via email to Marcus Clubb at Marcus.Clubb@ofgem.gov.uk or via post to OFGEM, 10 South Colonnade, Canary Wharf, London, E14 4PU1. Should you have any questions about this notice, you can contact Marcus Clubb at Marcus.Clubb@ofgem.gov.uk.
12. Responses will normally be published on the Ofgem website. Should you wish your response or part of your response to be confidential please indicate this clearly by marking “not for publication” and give reasons. The Authority will consider such requests on case-by-case basis.

13. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated: 09/06/2023

Name: Frank Hemmes, Head of Enforcement, Policy & Prevention

Signed for and on behalf of:

MEGAN FORBES (Chair)

PETER HINCHLIFFE

ULRIKE HOTOPP

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority