
Notice of reasons under section 49A of the Electricity Act 1989 for the decision to confirm a Provisional Order (with modifications) under section 25(4) of the Electricity Act 1989

To: Tomato Energy Ltd ("Tomato Energy") (company number 09735768) having its registered office at **Devonshire Business Centre Aviary Court, Wade Road, Basingstoke, England, RG24 8PE**, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 ("the Act").

- A. This Notice sets out the reasons why, on 09 July 2025, the Gas and Electricity Markets Authority ("the Authority") confirmed the Provisional Order dated 10 April 2025, with modifications, (the "Provisional Order") which was made in respect of contraventions or likely contraventions by Tomato Energy.

Background

- B. Tomato Energy is the holder of an electricity supply licence granted or treated as granted by the Authority under section 6(1)(d) of the Electricity Act 1989 ("the Act") and is subject to the conditions thereunder, which are "relevant conditions" enforceable for the purposes of section 25 of the Act.
- C. The Provisional Order was made as it appeared to the Authority that Tomato Energy was contravening, or was likely to contravene, relevant Standard Licence Conditions ("SLCs") as Tomato Energy appeared to not have robust internal capability, systems and processes to enable it to comply with relevant legislative and regulatory obligations (including its reporting obligations under SLC 4B.8) as required by SLC 4A.1 and appeared to not maintain Liquidity of sufficient amount and Quality to be able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis as required by SLC 4B.1.
- D. Standard Licence Condition 4A relevantly provides the following:

Condition 4A. Operational capability

4A.1 The licensee must ensure it has and maintains robust internal capability, systems and processes to enable the licensee to: [...]
(c) comply with relevant legislative and regulatory obligations.

- E. Standard Licence Condition 4B relevantly provides the following:

Condition 4B. Financial responsibility principle

4B.1 The licensee must ensure that it maintains Capital and Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis. [...]

Definitions [...]

4B.28 [...]

"Liquidity" means the resources that suppliers can convert into 'cash' as soon as needed and with minimal loss in value to meet liabilities as they fall due, including under adverse circumstances. [...]

"Quality" mean characteristics that make a source of funding best suited to allow a firm to absorb losses unambiguously on an ongoing basis, including under adverse circumstances.

Monitoring and Reporting

4B.8 The licensee must notify the Authority in writing:

- i. as soon as reasonably practicable but no later than 7 days after it becomes aware that there is a Material risk that any of the Trigger Points set out in sub-paragraphs (a) to (d) will occur; and*
- ii. as soon as reasonably practicable but no later than 7 days after it becomes aware that any of the following Trigger Points have occurred:*
 - a. any reduction in the licensee's Access to Funds, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6;*
 - b. any changes with respect to the licensee's contractual arrangements with counterparties, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6; or*
 - c. any change that could have a Material adverse effect in respect to the cash position of the licensee; [...]*
- iii. 4B.9 Where the licensee notifies the Authority in accordance with standard condition 4B.8, it must, along with the notification, explain the impact that the relevant change will have, may have or has had on its ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6.*

F. Standard Licence Conditions 4A.1, 4B.1 and 4B.8 are enforceable as relevant conditions for the purposes of section 25 of the Electricity Act 1989.

G. The Provisional Order was made as it appeared to the Authority that Tomato Energy was contravening or was likely to contravene the relevant conditions by virtue of the following:

- 1) Since late 2024, the Authority has been contacted by multiple industry parties in relation to the late or non-payment of financial liabilities by Tomato Energy. The Authority has engaged with Tomato Energy in respect of its obligations under the financial responsibility principle and its business practices in relation to meeting its financial liabilities and met with the licensee on 13 February 2025, 5 March 2025 and 7 April 2025. The licensee has repeatedly sought to assure the Authority that while it acknowledged that it had experienced cashflow challenges which had led to the late payment of financial liabilities, effective action had been taken to prevent a recurrence. However, as of 10 April 2025 it has not provided evidence that it has taken the necessary action to bring itself into compliance with its ongoing obligations. If Tomato Energy fails to pay its debts, including to industry participants, this could increase the risk of Mutualised costs which are ultimately passed on to consumers through higher bills in the event of its market exit. The apparent failure of Tomato Energy to have Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis means that Tomato Energy appears to be contravening SLC 4B.1.
- 2) The Authority also made clear to the licensee that a failure to meet reasonably anticipated financial liabilities in full and on time gave rise to obligations under SLC.4B.8-9 to notify the Authority in writing, with an explanation of the impact such failures would have, might have or have had on the licensee's ability to meet other elements of the financial responsibility principle. On 2 April 2025, the Authority was informed by multiple market participants that they were considering commencing legal proceedings against Tomato Energy for the recovery of unpaid liabilities totalling over £3m. The licensee has not submitted any notifications to the Authority under SLC.4B.8-9 and as such, Tomato Energy appears to have contravened SLC 4B.8.
- 3) Given the apparent failure of the licensee to submit the required notifications to the Authority under SLC 4B.8-9, it appears that the licensee is not maintaining robust internal capability, systems and processes to enable the licensee to comply with its relevant regulatory obligations contrary to SLC 4A.1.

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- H. Having regard to the above, the Authority considered that Tomato Energy appeared to be contravening, or was likely to contravene, SLC 4A.1, SLC 4B.1 and SLC 4B.8 and served a Provisional Order in respect of these likely contraventions. The Provisional Order required Tomato Energy to:
- 1) Provide the Authority with an independent report (commissioned by Tomato Energy at its own expense and prepared by an independent professional acceptable to the Authority with a framework and remit also acceptable to the Authority) regarding its compliance with SLC 4B.1. The report must also outline recommendations of what remedial actions, if any, Tomato Energy should take to maintain compliance with its obligations under SLC 4B.1.
 - 2) Obtain and maintain Liquidity of a sufficient amount and Quality so that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis.
 - 3) Refrain from all sales, marketing and customer acquisition activity until it evidences to the Authority its compliance with SLC 4A and SLC 4B.1.
 - 4) Refrain from making any payment, providing any loan or transferring any asset to any third party (including its Directors, shareholders, unlicensed parent company or other companies in the same group of companies) unless that payment, loan or transfer is one that i) it is required to make by virtue of a statutory requirement, court order or by virtue of a contractual requirement where making that payment is essential to enable Tomato Energy to run its business; ii) is essential to Tomato Energy's operation as a supplier of electricity to consumers; or iii) is otherwise approved in writing by the Authority ("Non-essential Payments Ban").
 - 5) Comply with SLC 4B.8 on an ongoing basis, which ensures the Authority receives important information from the licensee about indicators linked to supplier financial resilience ("Trigger Points") and enables the Authority to monitor the licensee's ongoing compliance with SLC 4B.
- I. The Authority considered it requisite to issue a Provisional Order rather than consulting on a Final Order. It was not appropriate in the circumstances to allow the delay associated with a Final Order. The issuing of a Provisional Order was requisite in accordance with section 25(2) of the Act to secure compliance with SLC 4A and with SLC 4B.1 at the earliest opportunity, requiring Tomato Energy to take the actions set out therein which were necessary, proportionate and in the public interest. If the Authority did not order Tomato Energy to make improvements to its
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compliance immediately, by virtue of the Provisional Order and instead consulted on a final order, it was more likely that Tomato Energy may fail to comply with SLC 4B.1, increasing the risk of potential Mutualised costs. The Authority needed to understand if Trigger Points have occurred and whether this may impact on the licensee's compliance with the broader SLC 4B and the licensee must have in place the capability to comply with these important relevant conditions. To that end, the Authority considered it was requisite to intervene immediately to secure compliance with SLC 4A.1, SLC 4B.1 and SLC 4B.8.

Reasons for the Authority's decision to confirm the Provisional Order

- J. Tomato Energy commissioned the independent report prescribed within requirement 1 of the Provisional Order (the "Report"). The Report was submitted to the Authority by the deadline of 4pm on 1 May 2025.
- K. The Authority notes that the Report indicates Tomato Energy could be able to maintain Liquidity of a sufficient amount and Quality that would allow it to meet its reasonably anticipated financial liabilities as they fall due where it is able to implement various strategies set out therein.
- L. However, from the Report and information obtained by the Authority, the Authority notes:
 - 1) Revenue projections may not fully account for the impact of seasonal fluctuations, whilst there are concerns that anticipated collections from third-party partners may be overstated.
 - 2) Initial forecasts for industry credits have been revised downward in more recent submissions.
 - 3) Continued extension of payment terms with creditors suggests an ongoing risk regarding an ability to meet foreseeable financial obligations as they become due.
 - 4) An overdraft facility may offer temporary liquidity support, but it is inherently limited and does not represent a sustainable solution for meeting the supplier's ongoing obligations under SLC 4B.1.
 - 5) External investment or agreements could potentially provide the liquidity needed to satisfy regulatory obligations. However, no conclusive evidence of any such investment or agreements has been provided.

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- M. The Authority further notes that the Report indicates Tomato Energy's ability to meet its reasonably anticipated financial liabilities over the next 3-6 months appears challenging without external investment.
- N. Tomato Energy has submitted information indicating its intention to develop and implement processes and procedures to manage its obligations under SLCs 4A and 4B.8. However, Tomato Energy has not yet submitted documented evidence of the existence or implementation of these processes and procedures.
- O. The Authority notes that the Report makes recommendations regarding the introduction of certain processes and procedures to assist with SLC 4B.1 compliance. Tomato Energy has submitted evidence that demonstrates partial implementation of these recommendations. However, the Authority's view of this information is that without additional investment, Tomato Energy will not be able to evidence ongoing compliance with SLC 4B.1.
- P. Tomato Energy submitted evidence to the Authority showing that, whilst it has engaged with the Authority appropriately with regards to some reportable Trigger Points, it continues to demonstrate a failure to notify the Authority, within the required timeframe, of all Trigger Points that had occurred since the issuing of the Provisional Order. The evidence submitted demonstrates that Tomato Energy has failed to comply wholly with SLC 4B.8.
- Q. For the reasons set out in paragraphs J through P above, the Authority took the decision to consult on confirming the Provisional Order, with modifications, on 13 June 2025 as it was of the opinion that Tomato Energy was contravening or was likely to contravene Standard Licence Conditions 4A.1, 4B.1 and 4B.8. The Authority reiterates that compliance with regulatory obligations is not optional. Suppliers must meet these obligations in full and on time.
- R. On 16 June 2025 the Authority published, pursuant to section 26(1) and (2) of the Electricity Act 1989, a notice of its proposal to confirm the Provisional Order, with modifications, (the "Notice of Proposal") and invited representations and objections to the notice to be made to it. The Notice of Proposal can be found at: [Notice of Proposal to Confirm a Provisional Order: Tomato Energy Ltd](#)
- S. As well as explaining the reasons why the Authority proposed to confirm the Provisional Order with modifications, the Notice of Proposal also sets out the likely contraventions that the Provisional Order was made in respect of, namely that at the
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date of making the Provisional Order, Tomato Energy was contravening, or was likely to contravene Standard Licence Conditions ("SLCs") 4A, 4B.1 and 4B.8.

- T. To date, notwithstanding the making of the Provisional Order, Tomato Energy has failed to comply with all requirements outlined in the Provisional Order.
- U. The Authority has not received representations from Tomato Energy in respect of the Authority's Notice of Proposal, nor has Tomato Energy presented other objections and arguments against confirming the Provisional Order.
- V. The Authority received a single representation, made by a party other than Tomato Energy, in respect of the Notice of Proposal to confirm the Provisional Order. This representation has been duly considered as part of the Authority's decision regarding confirmation of the Provisional Order.
- W. The Authority remains of the view that Tomato Energy has failed to fully comply with the requirements of the Provisional Order, namely the requirements to:
 - i. Obtain and maintain Liquidity of a sufficient amount and Quality so that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis.
 - ii. Put in place and maintain robust internal capability, systems and processes to enable the licensee to comply with relevant legislative and regulatory obligations (including, but not limited to, its reporting obligations under SLC 4B.8-9).
 - iii. Notify the Authority in writing as soon as reasonably practicable but no later than 7 days after it becomes aware that there is a Material risk that any of the Trigger Points (as set out in SLC 4B.8 (a) to (d)) will occur and/or as soon as reasonably practicable but no later than 7 days after it becomes aware that any of the Trigger Points have occurred.

And meet its obligations under SLCs 4A.1, 4B.1 and 4B.8, and that the confirmed Provisional Order remains requisite for the purpose of securing compliance with these relevant conditions.

- X. The Authority is satisfied that Tomato Energy is contravening or is likely to contravene Standard Licence Conditions 4A.1, 4B.1 and 4B.8 and that the confirmation of the Provisional Order, with modifications, is requisite to secure compliance.

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- Y. The Confirmed Provisional Order prohibits Tomato Energy from engaging in sales, marketing and customer acquisition activity until the Authority is satisfied that Tomato Energy is compliant with SLC 4A and SLC 4B.1 ("sales ban"). The Authority has considered this provision very carefully, mindful of its likely impact on Tomato Energy's business. Where Tomato Energy acquires new customers, its financial liabilities, including to industry bodies would be likely to increase. This in turn could increase the amount of costs at risk of being Mutualised. The Authority considers this 'sales ban' to be reasonable and proportionate in the circumstances to limit potential losses to consumers.
- Z. The Confirmed Provisional Order further prohibits Tomato Energy from making any payment, providing any loan or transferring any asset to any third party (including its Directors, shareholders, unlicensed parent company or other companies in the same group of companies) unless that payment, loan or transfer is legally required, essential to Tomato Energy's operation as a supplier of electricity or otherwise approved by the Authority ("ban on non-essential payments"). The Authority has also carefully considered this provision, again mindful of its potential impact on Tomato Energy's business. If Tomato Energy makes non-essential payments, it is very likely to decrease the amount or Quality of Liquidity available to it to meet its reasonably anticipated financial liabilities on an ongoing basis, thereby increasing the costs at risk of being Mutualised in the event of its exit from the supply market (due to insolvency, licence revocation or in any other circumstances). The Authority therefore considers that this requirement is reasonable and proportionate in the circumstances.
- AA. The Authority notes that the 'sales ban' and 'ban on non-essential payments' will only apply until Tomato Energy can evidence that it is meeting the requirements of the Confirmed Provisional Order and is therefore in compliance with SLC 4A.1 and SLC 4B.1.
- BB. If Tomato Energy fails to comply with the Confirmed Provisional Order, the Authority may issue a notice to rectify any non-compliance which, if not complied with, may result in the Authority initiating the process for revocation of Tomato Energy's electricity licence or taking other action to enforce the requirements of the Confirmed Provisional Order.
- CC. The Authority has had regard to the matters in sections 25(4A), (4B), (5), (5A) and (6) and 26 of the Electricity Act 1989. In particular:
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- i. It 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);
 - ii. It is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Electricity Act 1989 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);
 - iii. It does not consider that the contravention is trivial and is satisfied that Tomato Energy has not yet taken all appropriate steps for the purpose of securing or facilitating compliance with the relevant conditions.
- DD. The Authority notes that:
- i. Standard Licence Conditions 4A.1, 4B.1 and 4B.8 are provisions imposing obligations enforceable as relevant conditions by the Authority;
 - ii. The acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of those relevant conditions, which in the Authority's opinion justify confirming the Provisional Order (with modifications) are those set out above;
- EE. Therefore, the Authority has decided to confirm the Provisional Order, with modifications, requiring Tomato Energy to:
- 1) Obtain and maintain Liquidity of a sufficient amount and Quality so that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis by no later than **4pm on 31 August 2025**.
 - 2) Put in place and maintain robust internal capability, systems and processes to enable the licensee to comply with relevant legislative and regulatory obligations (including, but not limited to, its reporting obligations under SLC 4B.8-9).
 - 3) Until compliance with SLC 4A and SLC 4B.1 is achieved in accordance with the preceding paragraphs and the Authority has confirmed in writing to Tomato Energy that compliance has been achieved, Tomato Energy must:
 - o Refrain from all sales, marketing and customer acquisition activity, including the acquisition of any new domestic and non-domestic customers ("Sales Ban"); and
 - o 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: i) it is required to make by virtue of a statutory requirement, court order or by virtue of a contractual requirement where making that payment is essential to enable Tomato Energy to run its business; ii) is essential to Tomato Energy's
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operation as a supplier of electricity to consumers; or iii) is otherwise approved in writing by the Authority ("Non-essential Payments Ban").

- 4) Notify the Authority in writing as soon as reasonably practicable but no later than 7 days after it becomes aware that there is a Material risk that any of the Trigger Points (as set out in SLC 4B.8 (a) to (d)) will occur and/or as soon as reasonably practicable but no later than 7 days after it becomes aware that any of the Trigger Points have occurred.

FF. The Confirmed Provisional Order is published online at: [Compliance and enforcement - Investigations, orders and penalties | Ofgem](#). The Confirmed Provisional Order has been served to Tomato Energy on 9 July 2025.

GG. The issuance of the Confirmed Provisional Order is without prejudice to any further or other enforcement action the Authority may decide to take, in relation to this or any other outstanding or future breaches. The Authority is actively considering whether it is appropriate to impose a financial penalty on Tomato Energy in relation to this matter.

Dated: 9 July 2025

Signed:

Cathryn Scott (Director)

Duly Authorised on behalf of the Gas & Electricity Markets Authority