

Penalty notice

Notice of Proposal to Impose a Financial Penalty Pursuant to Section 27A(3) of the Electricity Act 1989

Date: 10 10 2025

Proposal of the Gas and Electricity Markets Authority ("the Authority") to impose a financial penalty, following a Provisional Order ("PO") issued to Tomato Energy Ltd ("Tomato Energy"), on 10 April 2025¹, with confirmation of this PO (with modifications) issued to Tomato Energy on 10 July 2025² in relation to its compliance with its obligations under Standard Licence Conditions ("SLC") 4A.1, 4B.1 and 4B.8 of its Electricity supply licence.

1. Summary

- 1.1. The Authority is satisfied that Tomato Energy has, since 10 April 2025, contravened, and as of 10 October 2025 is contravening, its obligation under SLC 4B.1 to ensure that it maintains Capital³ 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.
- 1.2. The Authority hereby gives notice under section 27A (3) of the Electricity Act 1989 ("EA 89") of its intention to impose a penalty of **£1,500,000** on Tomato Energy.
- 1.3. The Authority, having taken into account all relevant considerations under its Statement of Policy⁴ considers that a financial penalty is necessary and proportionate on the basis that Tomato Energy's continuing contravention of SLC 4B.1:
 - i. has resulted in a financial benefit to Tomato Energy (and a corresponding financial detriment to its creditors)

¹ [Provisional Order made under section 25\(2\) of the Electricity Act 1989](#) (10 April 2025), Ofgem website

² [Confirmed Provisional Order: Tomato Energy Ltd](#) (10 July 2025), Ofgem website

³ Unless otherwise stated, capitalised terms in this notice have the same meanings as those defined in the [Electricity Standard Licence Conditions](#).

⁴ [Statement of policy with respect to financial penalties and consumer redress under the Gas Act 1986 and the Electricity Act 1989](#) (23 March 2022), Ofgem website

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- ii. represents a serious and ongoing contravention of the rules implemented by the Authority to ensure the financial resilience of supply licensees following the gas crisis of 2022
- 1.4. The Authority also considers that proposing to impose a financial penalty is appropriate to deter future misconduct by Tomato Energy and by other industry participants.
- 1.5. In establishing the total financial liability, the Authority may take into account the effect of a proposed penalty on the financial viability of a regulated person⁵ and may make adjustments accordingly in light of its principal objective to protect the interests of existing and future consumers.⁶ We have taken into account that Tomato Energy has been in financial distress and therefore at heightened risk of exiting the supply market due to insolvency for a prolonged period. The Authority will carefully consider any representations or objections to the proposal which are duly made and not withdrawn, including whether the imposition of a financial penalty, and the amount, is reasonable in all circumstances of the case.
- 1.6. Any written representations or objections to this notice must be received by email to Head of Enforcement Sam Wood, sam.wood@ofgem.gov.uk, or Senior Enforcement Investigator James Walker, j.walker@ofgem.gov.uk, or by post to Sam Wood, Head Of Enforcement, Ofgem, Enforcement, 4th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU by **4pm on 3 November 2025**.
- 1.7. The Authority may publish any representations or objections that are not marked as confidential. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The Authority will consider whether to comply with any such requests on a case-by-case basis.

2. Relevant licence condition

- 2.1. On 5 April 2023, following consultation, the Authority published a decision on strengthening financial resilience with the objective of ensuring both that supply

⁵ [Statement of Policy with respect to Financial Penalties and Consumer Redress](#) (23 March 2022)

⁶ Ibid, paragraph 5.21

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licensees are less likely to fail and that if they do fail, costs to consumers are minimised and thus energy bills are kept as low as possible.⁷

- 2.2. The new rules, which came into effect for all supply licensees on 31 May 2023, included:

"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."

3. The acts or omissions which, in the opinion of the Authority, constitute the contravention in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed

Chronology of key events

- 3.1. On 10 April 2024, the Authority issued a PO⁸ to Tomato Energy on the basis that it was requisite for the purposes of section 25(2) Electricity Act 1989 to secure compliance with a number of licence conditions, including SLC 4B.1. As set out in the Notice of Reasons⁹ published alongside the PO, the Authority had engaged with Tomato Energy throughout the period of January 2025 to early April 2025 in relation to concerns that it was not meeting its reasonably anticipated financial liabilities as they fell due on an ongoing basis. While Tomato Energy had sought to provide assurances to the Authority that it was taking action to obtain and maintain Liquidity of sufficient amount and Quality to address its cashflow issues, it had failed to obtain and maintain the appropriate level of Liquidity to achieve compliance.
- 3.2. The PO required Tomato Energy to take a range of actions, including to 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 8 May 2025**.

⁷ [Decision on Strengthening Financial Resilience](#) (5 April 2023), Ofgem website

⁸ [Provisional Order made under section 25\(2\) of the Electricity Act 1989](#)

⁹ [Notice of reasons under section 49A of the Electricity Act 1989 for the decision to make a Provisional Order under section 25\(2\) of the Electricity Act 1989](#)

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- 3.3. As Tomato Energy did not meet the requirements set out in the PO, on 13 June 2025 the Authority issued notice of proposal to confirm the PO pursuant to section 26(1) and (2) of the Electricity Act 1989.¹⁰ Tomato Energy was given the opportunity to make representations about the proposal but did not do so.
- 3.4. On 10 July 2025, the Authority issued a confirmed PO (with modifications)¹¹ to Tomato Energy, requiring it to obtain and maintain Liquidity of a sufficient amount and Quality so that it was 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**. The notice of reasons published alongside the confirmed PO¹² noted that Tomato Energy's ability to meet its reasonably anticipated financial liabilities over the next 3-6 months appeared challenging without external investment.
- 3.5. On 10 September 2025, the Authority issued Tomato Energy with a notice of failure to comply with a confirmed PO.¹³
- 3.6. Information provided by Tomato Energy to the Authority indicates that:
 - i. as of 2 October 2025, its outstanding financial liabilities to over 35 creditors, including industry bodies, total over £12m
 - ii. while it has continued to engage with potential investors and other third parties, it has not finalised agreements which would enable it to address its serious cashflow challenges and meet its financial liabilities on an ongoing basis.

Principles relating to financial penalties

- 3.7. In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure, the Authority is required to have regard to its Statement of Policy with Respect to Financial Penalties and Consumer Redress¹⁴.

¹⁰ [Notice of proposal of the Gas and Electricity Markets Authority to confirm a Provisional Order pursuant to section 26 \(1\) and \(2\) of the Electricity Act 1989](#)

¹¹ [Confirmed Provisional Order: Tomato Energy Ltd](#)

¹² [Notice of Reasons to Confirm a Provisional Order: Tomato Energy Ltd](#) (10 July 2025), Ofgem website

¹³ [Notice of failure to comply with a confirmed Provisional Order within the meaning of section 25 of the Electricity Act 1989](#) (10 September 2025), Ofgem

¹⁴ [Statement of Policy with Respect to Financial Penalties and Consumer Redress](#) (23 March 2022), drafted in accordance with Section 27B(2) of the Electricity Act 1989 and section 30B of the Gas Act 1986, Ofgem website

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3.8. The Authority is required to carry out its functions under Part 1 of the EA 89 including the taking of any decision as to the imposition of a penalty, in the manner which it considers is best calculated to further its principal objective set out in section 3A EA 89 having regard to its other duties.

3.9. The Authority is clear that regulated persons should not benefit financially from any contravention or failure. Indeed, the Authority considers that non-compliance should normally cost significantly more than compliance and that financial penalties should act as a significant deterrent to future non-compliance, both for the regulated person and for other market participants.

General Criteria in relation to imposing a financial penalty and/or consumer redress order

3.10. In accordance with the Penalty Statement, the Authority has considered various factors in deciding whether to impose a penalty including those listed at paragraph 4.1 of the Penalty Statement:

A. The seriousness of the contravention or failure

3.11. The Authority considers Tomato Energy's contravention of SLC.4B.1 to be serious, taking into account that:

- i. the relevant obligation came into effect on 31 May 2023.
- ii. the contravention has been sustained and material.

B. The impact of licensees' behaviours, including the extent to which the failure damaged the interests of consumers or other market participants

3.12. The Authority does not consider that the contravention of SLC.4B.1 has, to date, had any direct adverse impact on Tomato Energy's Customers. However, it has had, and continues to have, a serious and adverse impact on:

- i. Tomato Energy's creditors, including multiple industry bodies, which have incurred additional and unnecessary operational and financial costs as a result of the late payments.
- ii. other supply licensees which are maintaining Liquidity of sufficient amount and Quality to meet their reasonably anticipated financial liabilities as they fall due on an ongoing basis
- iii. the interests of all consumers in terms of the risk of costs that could be Mutualised were it to exit the supply market.

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C. Deterrence, including whether a financial penalty is necessary to deter future contraventions or failures by all market participants and encourage compliance

- 3.13. The Authority considers that a financial penalty is necessary in the circumstances to emphasise that compliance with the rules implemented to prevent a recurrence of the impacts to consumers of supply licensees failing to be financial resilient is mandatory. All supply licensees should be in no doubt that a failure to comply with the rules will lead to consequences, including financial penalties.

4. Determining the amount of the financial penalty

- 4.1. The Penalty Policy sets out the process for determining the regulated person's overall financial liability as a result of the contravention or failure, taking into account the objectives of:
- i. ensuring that the regulated person does not benefit financially from the contravention or failure;
 - ii. reflecting the seriousness of the contravention or failure; and
 - iii. deterring future misconduct by the regulated person under investigation and other industry participants.
- 4.2. The total amount payable by a regulated person will normally be calculated in accordance with a six-step process, as set out below.

Step 1 – Calculate the detriment and gain

- 4.3. In estimating the financial gain to Tomato Energy of the contravention for the purposes of this step of calculating a reasonable financial penalty we have taken into account that:
- i. On the basis of information provided by Tomato Energy, its unpaid liabilities to its various creditors over a period of 6 months (that is, since the PO was issued on 10 April 2025) have consistently totalled (on a rolling basis) at least £10m

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- ii. For the purposes of the price cap, the pre-tax nominal Cost of Capital (CoC) of a non-vertically integrated supply licensee since April 2025 has been 12.82%¹⁵
- iii. The relative financial benefit to Tomato Energy resulting from contravention is therefore at least **£600,000**.

Step 2 – Assess the seriousness of the breach

- 4.4. The Authority considers the contravention to be at the higher scale of seriousness, taking into account the factors set out in the Policy Statement:
- **nature of the contravention or failure, including the frequency and/or duration of the contravention or failure:** the contravention is sustained (at least 6 months) and ongoing
 - **behaviour of the regulated person, including the regulated person's awareness of the contravention and the extent to which the regulated person and its senior management had taken steps to secure compliance:** we recognise that the senior management of Tomato Energy have, since late 2024 at the latest, been taking steps to engage with potential investors and other third parties to address its cashflow challenges and bring the licensee into compliance with its regulatory obligations (including SLC.4B.1.) However, these efforts have not yet resulted in any tangible or sustained reduction in the level of Tomato Energy's unpaid debts
 - **impact of the contravention or failure, including any detrimental effect on the ability of Ofgem or the Authority to fulfil its statutory duties and whether there was any consumer or market participant detriment or gain (financial or otherwise) made by the regulated person:** the Authority does not consider that the contravention has had any detrimental effect on its ability to fulfil its statutory duties. However, as noted above, we consider that there has been relative financial benefit to the regulated person.

¹⁵ See Chapter 4 Cost of Capital of [Price Cap - Decision on amending the methodology for setting the Earnings Before Interest and Tax \(EBIT\) allowance](#) (25 August 2023). The Cost of Capital for the last price cap periods April – June 2025 and July – September 2025 was 12.82%)

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- 4.5. The Authority considers that the seriousness of the breach warrants an uplift of the financial penalty to **£1,000,000**.

Step 3 – Consider aggravating or mitigating factors

- 4.6. The Authority will consider aggravating and mitigating factors and adjust the penal element of a proposed financial penalty accordingly. The Penalty Policy provides a non-exhaustive list of aggravating factors and mitigating factors related to the behaviour of the licensee that the Authority will consider, including:

- i. **The licensee's compliance history:** on 16 November 2023, the Authority opened an investigation into whether Tomato Energy was in compliance with Standard Licence Conditions ("SLC") SLC 4A and 5 in relation to the provision of data under the Energy Price Guarantee.¹⁶ The investigation established that Tomato Energy had significant gaps in its customer service procedures which exposed customers to an increased risk of harm. Tomato Energy accepted the findings of the investigation and submitted payments totalling £1,500,000 to Ofgem's Energy Industry Voluntary Redress Fund and made Consumer Redress payments to the impacted consumers.¹⁷
- ii. **The licensee's actions, or lack thereof, taken after becoming aware of the contravention or failure prior to Ofgem's investigation:** the Authority first became aware that Tomato Energy was not meeting its financial liabilities as a result of contact from its creditors in late 2024 and early 2025, rather than as a result of self-reporting by the licensee. The licensee indicated to the Authority, prior to the opening of its formal investigation on 10 April 2025, that it was seeking to bring itself into compliance with its licence obligations (including but not limited to SLC.4B.1) by securing additional investment, but it was not able to do so.
- iii. **Actions, or lack thereof, taken after becoming aware of the contravention or failure during Ofgem's investigation:** As noted above, the licensee has indicated that it has been taking steps to engage with

¹⁶ [Ofgem opens investigation into Tomato Energy | Ofgem](#) (1 December 2023), Ofgem website

¹⁷ [Investigation into Tomato Energy Limited \(formerly Logisor Energy Limited\) and its compliance with its obligations under SLCs 4A and 5 of the Electricity Licence | Ofgem](#) (1 December 2023), Ofgem website

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potential investors and other third parties to address its cashflow challenges and bring the licensee into compliance with its regulatory obligations (including SLC.4B.1.)

- 4.7. The Authority considers that, taking into account the above aggravating factors warrant an uplift to the proposed financial penalty to **£1,200,000.**

Step 4 – Consider an adjustment for deterrence

- 4.8. The Authority will consider whether a further adjustment to the penal element of a proposed financial penalty needs to be made to ensure that it will have a sufficient deterrent effect. The Authority may make such an adjustment if it considers that the penal element would otherwise be insufficient to deter the regulated person, or others, from committing further or similar contraventions or failures.
- 4.9. We consider the relevant circumstances of the case warrant a strong deterrent signal to be sent both to Tomato Energy, and to all other supply licensees, on the basis that:
- i. a resilient and reasonably profitable energy market, with a level playing field for responsible supply licensees, sustainable competition and investment relies upon there being clear and robust consequences for failing to meet minimum standards
 - ii. as this case demonstrates, a contravention of SLC.4B.1, can have both a material impact on other market participants
- 4.10. The Authority considers that it is necessary and reasonable in the circumstances to ensure that the proposed financial penalty has a sufficient deterrent effect to apply an uplift to the penal element of the proposed financial penalty to **£1,500,000.**

Step 5 – Apply a discount in settled cases

- 4.11. The Authority may offer a regulated person the opportunity to settle a case, where this would be in the interests of consumers. In cases, such as this one, where a provisional order has been made, and confirmed, and statutory time restrictions therefore apply, the voluntary settlement process will not apply.¹⁸

¹⁸ See paragraph 6.10 of the Authority's [Enforcement Guidelines](#) (28 March 2023), Ofgem website

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Step 6 – Establish total financial liability

- 4.12. Having considered all the relevant evidence and considerations as set out in our Policy Statement, as set out above, the Authority proposes to impose a penalty of **£1,500,000** on Tomato Energy.

5. The Authority's decision

- 5.1. The Authority is satisfied that Tomato Energy has been in contravention of SLC 4B.1 since at least 10 April 2025. Having considered the relevant facts and circumstances in its possession, and having regard to the Penalty Policy, the Authority hereby proposes to impose a penalty of **£1,500,000** on Tomato Energy, which it considers to be an amount that is reasonable in all the circumstances of the case.
- 5.2. In reaching its decision, the Authority took the relevant factors under the Penalty Policy into account, including but not limited to:
- i. The serious and ongoing nature of the contravention.
 - ii. The material financial benefit to Tomato Energy, and the corresponding financial and other detriment to Tomato Energy's creditors
 - iii. The aggravating factors
 - iv. The necessity of sending a strong deterrent message to Tomato Energy and the market.
- 5.3. The Authority hereby gives notice under section 27A (3) of the EA 89 of its proposal to impose a penalty of **£1,500,000** on Tomato Energy, in respect of the contraventions set out above.
- 5.4. Any written representations or objections to this notice must be received by **4pm on 3 November 2025**.
- 5.5. Any representations or objections duly made and not withdrawn by this date will be considered by the Authority before it makes a final decision on imposing a penalty. If as a result of representations or objections the Authority proposes to vary the penalty per section 27A(3)(a) EA 89, it will consult again in accordance with section 27A (4) EA 89.
- 5.6. Any representations or objections received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The

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Authority will consider whether to comply with any such requests on a case-by-case basis.

Dominic Alexander

Deputy Director (Enforcement)

Duly Authorised on behalf of the Gas and Electricity Markets Authority

Date: 10 October 2025