

NOTICE PURSUANT TO SECTION 49A(1)(c) OF THE ELECTRICITY ACT 1989

Reasons for the last resort supply direction issued by the Gas and Electricity Markets Authority under standard condition 29 of the electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 to npower Ltd

1. Introduction

- 1.1 The Gas and Electricity Markets Authority ('the Authority'), has the principal objective under section 3A(1) of the Electricity Act 1989 ('the Act') to protect the interests of consumers in relation to electricity conveyed by distribution systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity, and has a duty under section 3A(2)(a) of the Act to secure that all reasonable demands for electricity are met.
- 1.2 Standard condition 29 of the electricity supply licence ('the Licence') granted or treated as granted to npower ('the Licensee') contains provisions pursuant to which the Authority may direct the Licensee to supply electricity to the customers of another electricity supplier.
- 1.3 By Notice of 16th December 2005 (accompanied by a Notice of reasons) the Authority revoked the electricity supply licence of Eledor Limited ("Eledor").
- 1.4 It appears to the Authority that the Licensee could comply with a last resort supply direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its contractual obligations for the supply of electricity.

2. Direction

- 2.1 Pursuant to paragraph 1 of standard condition 29 ('the Condition') of the Licence, the Authority has directed the Licensee to supply electricity to the customers of Eledor at such premises as are specified or described in the

Schedule to the direction, and otherwise in accordance with the terms of the direction and the terms of the Condition.

3. **Reasons for the Direction**

3.1 The Authority has decided to revoke Eledor's electricity licence and appoint npower as supplier of last resort pursuant to its powers under standard condition 29 of the Standard Licence Conditions for Electricity Supply, in order to ensure continuity of supplies of electricity to Eledor's customers, and payment of appropriate charges.

3.2 In accordance with its 2003 Guidance relating to the appointment of Suppliers of Last Resort (SoLR), the Authority collected information from Eledor and subsequently sent information requests to 8 companies holding licences for the supply of electricity relating to their willingness to act as an SoLR, the capability to supply the customers, the proposed terms of any proposed deemed contracts and other related issues set out in the Guidance. 6 licensees had responded at the time of making a final decision, and there was no indication that the other 2 intended to respond.

3.3 In accordance with the guidance, a Panel was established to assess the information provided. The Panel discussed the material differences between offers by assessing them against the criteria as set out in appendix 5 to the 2003 Guidance. In the case of many criteria there were no material differences. Following clarification of certain aspect of the bids, the following points were established as material differences when assessed against the criteria in the Guidance:

- Of the licensees responding, 3 replied that they were not willing to act as SoLR (though would if required¹). Ofgem's Guidance points out that it would prefer to appoint a willing party as this is likely to be in the interests of customers.
- Of the three willing parties, one responded that it would impose a charge of £117.50 in the event of a customer terminating the arrangements. Referred to

¹ Indeed, while the Authority would prefer to appoint a willing supplier, it does have the power to appoint an SoLR without its consent or agreement.

as an “administration fee”, and reducing over the first 12 months (to zero, on a pro-rated monthly basis), in Ofgem’s view in reality this is a termination charge that would act so as to penalise any customer switching away from that company were it to be appointed SoLR². Ofgem had previously sought clarification as to whether the company in question would be willing to waive a similar fee in respect of the Team Group SoLR. The response was negative. Attempts were made to persuade the company in this instance to remove the charge, again with a negative response. While this aspect of the company’s pricing cannot be viewed entirely in the abstract (ie it may in some circumstances be *de minimis* – for example for larger customers such charges may be dwarfed over any realistic switching period³), in this case there is a potentially punitive element to switching away introduced by this pricing structure⁴. The impact will vary depending upon the number of MPANs of the particular customer, amongst other things.

- A key feature of the SoLR process is that customers are protected by an ability to switch by choosing another supplier (and, implicit in this, to do so without penalty), this was in the view of the Panel unacceptable and ruled that supplier out of contention.
- The second of the three willing parties had not ruled out the possibility of applying for a levy. As this is a somewhat open-ended process, with some potential distortion of incentives in terms of final pricing, this point counted strongly against them. Further, and in any event, their up-front prices were not particularly favourable to customers when compared with other companies.
- Prices and more specifically pricing structure varied to some extent such that any precise comparison across a portfolio of customers was difficult. It was considered that individual customers would be affected in different ways by the

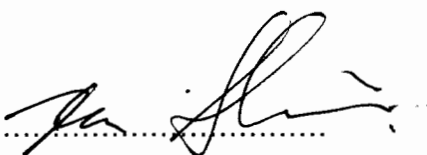
² As pointed out in its Guidance, in Ofgem’s view an SoLR should be able to compete against other companies once appointed (in particular as SoLR rates are unlikely to be the most favourable to all customers). The proposed termination payment would distort this process of competition. This is not to imply any criticism of the company concerned, as the charge may have been its best estimate of actual up-front costs.

³ Amongst other things, one would have to assume a consistently high demand profile.

⁴ In the time constraints, some analysis was done as to the materiality of the issue. That showed both that the charge would have a differential impact on customers, and was in many cases likely to be material. Further, it appeared that not only would in-depth analysis require significantly more time, but also would almost certainly be inconclusive (in the sense that some customers would be better off, some likely worse off, though this itself would depend upon the assumptions adopted).

appointment of different suppliers (in short, there would most likely be some customers better off than others under any single appointment arrangement when compared to any other appointment arrangement and no single appointment that would clearly benefit every customer). Nonetheless, aside from differences in the levy and the administration fee, Ofgem had some concerns about the level of pricing of its otherwise preferred SoLR (which was npower).

3.4 npower was the one of three licence holders that had sought to be appointed (and was thus one of the 3 parties that would be a willing participant), of those three was one of only two that had ruled out the ability to raise a levy, and out of those remaining two had not suggested a £117.50 charge (referred to by the company in question as an “administration fee” that would have to be paid by any customer moving away in respect of each MPAN). After some clarification of its prices (at which point npower lowered the prices it would offer under the deemed contract following appointment as SoLR), npower’s prices were broadly equivalent to any other potentially acceptable offer⁵. Following an assessment against the criteria in Ofgem’s Guidance, npower had therefore provided an outstanding offer. In light of this, and viewed more generally in light of the Authority’s principal duty to protect the interests of consumers, the appointment of npower as supplier of last resort was decided upon.

Signed.....

Duncan Sinclair

Authorised on behalf of the
Gas and Electricity Markets Authority

Dated: 19th December 2005

⁵ Once again, a precise comparison is possible, and indeed individual customers would be affected differently by different potential SoLR’s. Given at least broad comparability, the Authority placed greater weight on the remaining distinguishing factors.