

Electricity Act 1989

Section 6

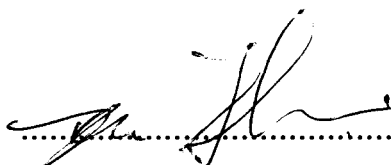
Notice of revocation of licence

Whereas

- A. Utility Link Limited (company registered no. 03478538) ("the licensee") is the holder of a licence (the licence) treated as granted under section 6(1)(d) of the Electricity Act 1989 (the Act).
- B. Section 6(8) of the Act provides that a licence granted or treated as granted under the Act may be revoked in accordance with any term contained in it. The terms of the licence (as set out in Schedule 2) provide that the Gas and Electricity Markets Authority (the Authority) may at any time revoke the licence on giving not less than 24 hours notice where, inter alia, the licensee has an administrator appointed in respect of all or part of its business (paragraph f has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
- C. In an email dated 17 January 2006 to Nigel Nash of the Office of the Gas and Electricity Markets it was confirmed by insolvency practitioners that they had been formally appointed as receivers in respect of the licensee company
- D. The Authority has decided that revocation of the licence shall take place for the reasons set out in the statutory Notice under s49a(1)(a) accompanying this Notice.

Notice of Revocation

The Authority hereby gives notice that with effect from 00.00hrs on the 19th January 2006 the licence shall be revoked.



17 January 2006

Duncan Sinclair, Legal Director (OFGEM) authorised to act on behalf of the Authority.

NOTICE PURSUANT TO SECTION 49A(1)(a) ELECTRICITY ACT 1989

Reasons for the decision of the Gas and Electricity Markets Authority revoking the Licence treated as granted under Section 6(1)(d) Electricity Act to Utility Link Limited

The Gas and Electricity Markets Authority ("the Authority"¹) was informed by the insolvency practitioners of Utility Link Limited (a company registered in England and Wales under company registration no. 03478538) ("the licensee") that it is in a position of insolvency.

Decision

The Authority has decided to revoke the Licence with effect from **00.00hrs on 19 January 2006**.

Notice of Revocation was issued to the Licensee on **17 January 2006**.

Reasons for Decision

OFGEM was informed in the afternoon of 17 January 2006 that it was unable to meet its debts and a receiver had been appointed.

By way of background, reference should be made to the insolvency of the Team Group of Companies and the reasons document for revocation of the licence available on OFGEM's website. The main creditor referred to in that document was Utility Link. Utility Link was in a default position as regards the industry charges owed (primarily imbalance charges arising out of the Team insolvency) since the failure of the Team Group.

Despite the commendable flexibility of the BSC Panel with regard to Utility Link since the failure of the Team Group (during December and into the New Year), the financial position of Utility Link had become more precarious over time, rather than less. On Friday 6 January 2006 the BSC Panel consulted on whether the Panel should instruct BSCCo to institute proceedings on behalf of the BSC against Utility Link Limited for the recovery of the Amount in Default. A resolution was also passed at the Panel meeting of the same date to suspend with effect from 15.00 hours on 6 January 2006 the right of

¹ The final decision was taken by the Authority under delegated powers. In practice, members of the Office of the Gas and Electricity Market (OFGEM) dealt with the relevant parties.

Utility Link to register further Metering Systems and BM Units (though expressly reserved the right to revoke this decision).

Further by way of background, Utility Link's business model requires description. It is a licensed supplier which enters into contracts with consumers. It does so as the principal party (as a matter of law) in any contract with consumers which are introduced to it by number of third party companies. The brands of these third party companies are used to promote the sales, and in certain cases these third party companies also buy the electricity on their own account (and then transfer it to the Utility Link account). Payment goes from the third parties to Utility Link for providing various services in relation to licence requirements. Payment in this direction is in contrast to what one would expect in a normal principal-agent relationship (where the agent would typically gain a commission on sales entered into on behalf of the principal); this is clearly not - in terms of economic reality at the very least - a normal principal-agent relationship.

It is also understood from our own analysis of the contracts between Utility Link and relevant third parties that in every relevant case the third party companies have the right to require Utility Link to assign the customers to another supplier in various circumstances, including, importantly, when Utility Link becomes insolvent. Further, Utility Link is expressed to be supplying electricity "on behalf of" the third party companies in the contracts.

A number of these third parties have represented to us that they view these contracts as their own assets and have already arranged to transfer (assign or novate) them to another licensed supplier. In light of the above, it is our view that a trade sale of Utility Link as a going concern is unlikely. This has now been confirmed by the administrators who have requested the SOLR process be commenced.

On Monday 9 January 2006, when it was still not entirely clear that insolvency was unavoidable (though this was looking increasingly likely) Ofgem obtained the consent of the Managing Director of Utility Link to refer to a "potential insolvency situation" in discussions with those parties which had contracted with Utility Link in order to explain, in context, the process for any SOLR situation that may arise. Ofgem has no regulatory role in respect of those companies, but only with Utility Link. Ofgem did not want to act prematurely in a manner which might precipitate an otherwise avoidable insolvency situation. Nonetheless, given the increasing likelihood of the insolvency of Utility Link, the interests of consumers was in our view best served by discussing with the third party companies our intended process should a Supplier of Last Resort position occur.

A number of communications were had with the third parties concerned and with the Company holding a supply licence that was in negotiations with a number of the parties concerned to (effectively²) take over the role of Utility Link. Ofgem's aim was to ensure transparency for both the Licensee and for the third party companies concerned, in order to facilitate such parties making contingency or other arrangements should they take the view that that was necessary.

In particular, an urgent email communication was sent by Ofgem in the early afternoon of 9 January 2006 to any of the third party companies which to our knowledge would be affected by appointment of an SOLR. The SOLR process was described in outline as follows:

² This summary does not go into the detail of any such arrangements entered into for reasons of confidentiality.

- Once informed of the failure of Utility Link, it is most likely that Ofgem will seek to revoke the licence as the first step in appointing an SOLR;
- Any receiver appointed may seek a sale of Utility Link. However, in the circumstances we believe a trade sale will be most unlikely. Nonetheless, we will follow our Guidance in respect of our dealings with any such party;
- We will also at that stage be seeking an SOLR to take over the customers of Utility Link;
- If we hear from another licensed supplier that they have either had transferred, or have agreed to have transferred to them (and will be transferring without delay) either all or certain parts of Utility Link's customer portfolio, then we would exclude any relevant part of the portfolio from the appointment of an SOLR.

Ofgem recognises that in principle a trade sale will be preferable to appointment of a Supplier of Last Resort (SOLR)³. However, it is apparent that a trade sale in this instance is at best unlikely. While it is for those parties that have contracted with Utility Link to protect their own positions through appropriate contractual arrangements, Ofgem also recognises that if quick action were to be taken by the unlicensed parties referred to above, customer disruption (and indeed the potential for other forms of consumer detriment) might be minimised. It therefore took the step (with the consent of Utility Link) of ensuring transparency of process in advance of actual insolvency by direct communication with those parties. Equally, for those who have managed to protect their position by finding another licensed supplier, it remains open – even at this late stage – of receiving confirmation from another licensed supplier in the terms referred to above.

Nonetheless, appointment of an SOLR is the only regulatory route open to the Authority which protects consumers, both directly and by reducing the level of likely “smeared” costs across industry given the failure of Utility Link. If another licensed supplier steps into the shoes of Utility Link for some or the entire portfolio of customers, this may be a satisfactory solution not requiring further intervention. However, Ofgem has been monitoring ongoing negotiations between various parties concerned with other licencees (some of which have not borne fruit due to financial issues after up to a year of negotiation⁴, making it clear that not every branded company can find such a solution).

It is abundantly clear from other recent insolvency situations that very substantial industry costs can arise very quickly from the insolvency of a licensed supplier and only the early appointment of an SOLR can minimise such effects⁵. While the decision to appoint an SOLR has yet to be finally taken, appointment of an SOLR requires as a first step the revocation of the supply licence of Utility Link. This has been requested by the receivers themselves. In light of the above considerations and facts as apparent from discussions with Utility Link and others, the decision was taken that consumers are best

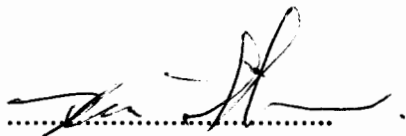
³ As set out in its 2003 Guidance.

⁴ Indeed, some caution regarding financial protection would be expected given the situation of Utility Link itself through exposure to the insolvency of one of its agents.

⁵ In the absence of a guarantee from any receiver that may be appointed or similar arrangement to satisfactorily cover any increase in the financial exposure facing the industry.

served by revocation of this licence, and for such revocation to take place within a short timeframe.

Signed:

A handwritten signature in black ink, appearing to read 'Duncan Sinclair', written over a horizontal dotted line.

(Duncan Sinclair)

Duly authorised on behalf of the Authority

17 January 2006