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## **MA ENERGY PROVISIONAL ORDER – REASONS**

1. This document sets out the reasons why, on 2 February 2011, Ofgem made a provisional order in respect of a contravention and likely on-going contravention by MA Energy Ltd ("MA Energy") of Standard Licence Condition ("SLC") 11 of its electricity supply licence. It is a document pursuant to section 49A of the Electricity Act 1989 ("the Act") which provides that the Authority shall publish a notice stating the reasons for the decision to make a provisional order.

### **Background**

2. MA Energy is a non-domestic electricity supplier. They have been in operation since September 2008.
3. Ofgem has been made aware by information received from ELEXON that MA Energy has been in persistent breach of the Balancing and Settlement Code (BSC) for failing to have sufficient credit cover (collateral) in place and for late payment of invoices. National Grid has also notified the Authority that MA Energy has defaulted on the payment of its Transmission Network Use of System (TNUoS) charges and are now in default pursuant to Section 5.3.1(a) of the Connection and Use of System Code (CUSC).
4. SLC 11.2(c) of MA Energy's electricity supply licence requires MA Energy to be a party to and comply with the CUSC and sub-paragraph (d) of MA Energy's electricity supply licence requires MA Energy to be a party to and comply with the BSC.
5. The BSC Panel asked MA Energy to attend the BSC Panel meeting on 1st December 2010 to impress upon it the serious nature of these breaches and to ensure greater compliance with the BSC in the future. MA Energy accepted that it was in breach of the BSC credit requirements and stated that it would correct the situation. The Panel passed resolutions that included a resolution that prevented MA Energy from registering any new metering points.
6. At the 13 January 2011 meeting, the BSC Panel decided that there had not been an improvement in MA Energy's performance to comply with the BSC. The BSC Panel voted to consult on expelling MA Energy from the BSC in accordance with the provisions of Section A5.2 of the BSC.
7. This consultation has gone out to all BSC Parties and Ofgem, and lasts for 28 days (ending 11 February). After this the Panel can serve a 28 day notice on MA Energy of their intention to expel the MA energy, but only with the consent of the Authority.
8. If MA Energy is expelled from the BSC, their customers will keep consuming energy but MA Energy will not be liable for this energy under the BSC. As a result, all charges accrued will be spread across other BSC Parties.

9. Further to the above, National Grid sent an Event of Default Notice to MA Energy on 26 January 2011 informing MA Energy that their failure to pay their outstanding debts constitutes an "Event of Default" under CUSC paragraph 5.3.1(a). National Grid informed MA Energy that if they failed to rectify the Event of Default within 48 hours of the letter then it may be minded to take further action under the CUSC.

#### **Contravention of SLC 11.2 (c) and (d)**

10. SLC 11.2 (c) and (d) states:

*"The licensee must be a party to and comply with:*

- (c) the Connection and Use of System Code; and  
(d) the Balancing and Settlement Code*

*From the earlier of the date on which it offers to supply electricity or the date on which it begins to supply electricity to premises in Great Britain.*

11. Section H, paragraph 3.1.1(c)(iii) of the BSC states:

*For the purposes of this paragraph 3, there shall have occurred a "**Default**" in relation to a Party (the "**Defaulting Party**") in any of the following events or circumstances:*

*(c)(iii) a Trading Party's Credit Cover Percentage, as determined by the ECVA, is not equal to or lower than 90% by the end of the same numbered Settlement Period on the second to next occurring Working Day after the Settlement Period during which the Trading Party was in Level 2 Credit Default and had a Credit Cover Percentage exceeding 100%.*

12. Section N, paragraph 8.1.1:

*Each BSC Debtor shall, in respect of each Payment Date on which it is under an obligation to make a payment under this Section N, make such arrangements as will ensure that the payment is credited to the Collection Account as soon as practicable and in any event no later than the end of the Business Day on that Payment Date.*

13. Section 5.3.1 Generic Events of Default of the CUSC states:

*It shall be an **Event of Default** if:-*

*(a) a **User** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by **The Company**, notified to that **User** and corrected within 2 **Business Days** thereafter) any amount properly due or owing from that **User** to **The Company** pursuant to the **CUSC** or any **Bilateral Agreement** and such failure continues unremedied for 7 **Business Days** after the due date for payment;*

#### **Reasons for enforcement action**

14. Section 25(1) of the Act 1989 provides that where Ofgem is satisfied that a licence holder is contravening or is likely to contravene any relevant condition, it can make such provision as is requisite for the purpose of securing compliance with that condition. Section 25(2) of the Act provides that Ofgem shall instead make a provisional order if it appears to Ofgem that:

- (a) a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and  
(b) it is requisite that a provisional order be made.

15. Ofgem considers that the duty imposed upon it makes it requisite to make a provisional order against MA Energy. This is because if MA Energy is expelled from the BSC, their customers will keep consuming energy but MA Energy will not be liable for this energy under the BSC. As a result, all charges accrued will be spread across other BSC Parties and ultimately be borne by the generality of consumers of electricity. By not having sufficient credit cover in place, MA Energy are exposing other BSC Parties to the risk of having to pay their debts if they are unable to. Further, by not paying their TNUoS charges, these charges will also be spread across other TNUoS chargees.
16. The Authority is aware that were MA Energy to breach the terms of the Order, then by virtue of section 27 of the Act 1989 any person that sustains loss or damage as a result of MA Energy's breach could bring an action for such loss or damage to the court. Additionally, the Authority could initiate, in accordance with Schedule 2 of MA Energy's Licence, the process to revoke its Licence. In the event of MA Energy's licence being revoked, its customers would be transferred to another supplier who would become liable for any charges they accrued from consuming energy, and so prevent such charges being spread across the industry.
17. In these circumstances the Authority, having considered section 25(3) of the Act, is of the view that it is requisite to issue a provisional order under section 25(2) of the Act to seek compliance by MA Energy with the relevant provisions of the BSC and the CUSC.
18. For these reasons, the Authority has made the provisional order attached. Pursuant to the Authority's duty under section 49A(1)(f) of the Act to publish a notice stating the reasons for its decision to make a provisional order, this notice of reasons is available on the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

#### **Content of the order**

19. The order requires MA Energy to ensure sufficient credit has been lodged with ELEXON in accordance with section M of the BSC and that it has paid any outstanding debt by 11 February 2011, and to pay any outstanding TNUoS charges in accordance with section 5 of the CUSC as soon as practicable.
20. In addition, the order also requires MA Energy to produce and send to the Authority a plan demonstrating the steps it will take to ensure that it is able to comply with its obligations in the future.

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**2 February 2011**