

## **Notice of reasons pursuant to section 38A(1)(f) of the Gas Act and section 49A(1)(f) of the Electricity Act for the decision of the Authority to make a provisional order under Section 28(2) of the Gas Act and Section 25(2) of the Electricity Act**

1. This document sets out the reasons why, on 14 February 2014, the Gas and Electricity Markets Authority ("the Authority") made a provisional order in respect of contraventions or likely contraventions by Economy Energy Trading Limited (company number 07513319) having its registered office at 181 Stoneleigh Park, Warwickshire CV8 2LG ("Economy Energy"), of its obligations under the Gas Act 1986 ("Gas Act") and the Electricity Act 1989 ("Electricity Act").
2. This is a document pursuant to section 38A(1)(f) of the Gas Act and section 49A(1)(f) of the Electricity Act which provides that the Authority shall publish a notice stating the reasons for the decision to make a provisional order.
3. Economy Energy is the holder of a licence granted under section 6(1)(d) of the Electricity Act and a licence granted under section 7A(1) of the Gas Act.

### **A. Background**

4. In November 2013, Ofgem was made aware by information received from Consumer Futures<sup>1</sup> that Consumer Futures had received a significant number of complaints from Economy Energy customers.<sup>2</sup> The nature of the complaints included that some customers had difficulty in contacting the supplier to resolve issues, including how to get back on supply.
5. Ofgem is aware of and are deeply concerned about problems being faced by customers of Economy Energy and has been in discussions with Consumer Futures and Economy Energy. Ofgem has been engaging with Economy Energy to try and assist its compliance with certain obligations imposed by its licence conditions and relevant requirements of the Gas Act and Electricity Act.
6. Ofgem notes that following its intervention, Economy Energy has taken steps towards improving its services; however, Ofgem continues to have concerns over its contravention and likely contravention of certain obligations (see below). As a result, Ofgem has taken the step of issuing a provisional order to Economy Energy which

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<sup>1</sup> Consumer Futures is a Non-Departmental Public Body. Within the legal framework of the National Consumer Council, it fulfils the responsibilities of the statutory consumer body in energy and postal services in Great Britain, water services in Scotland and postal services in Northern Ireland; it also has a wider role in applying learning and insight across other regulated markets. <http://www.consumerfutures.org.uk/>

<sup>2</sup> Consumer Futures has a duty under Section 13 of the Consumers, Estate Agents and Redress (CEAR) Act 2007 to deal with cases where the consumer has been disconnected or has been threatened with disconnection, including prepayment off-supply cases. Consumer Futures also has powers under Section 12 to deal with energy cases received from vulnerable consumers. The CEAR Act defines a vulnerable consumer as being someone that it is not reasonable to expect to pursue the complaint themselves.

sets out clear steps it needs to take within specified timescales to resolve issues and thereby be in compliance with its obligations.

## **B. Contravention or likely contravention**

7. Based on the information received by Ofgem, it appears to Ofgem that Economy Energy is contravening or is likely to contravene the following relevant condition or requirement (as applicable):
  - a. the standard conditions 14, 14A and 22.3 of the gas and electricity supply licences (collectively referred to as "SLC"); and
  - b. Regulations 3, 4, 5, and 7 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("Complaints Handling Regulations").
8. SLC 14.1<sup>3</sup> requires that the licensee must not prevent a proposed supplier transfer except in specific circumstances outlined in the condition.
9. SLC 14A<sup>4</sup> places an obligation on licensees to complete a supplier transfer within three weeks.
10. SLC 22.3<sup>5</sup> requires a licensee to supply gas and/or electricity in accordance with the terms of the domestic supply contract offered.
11. Regulations 3, 4, 5 and 7 of the Complaints Handling Regulations<sup>6</sup> contain requirements that a regulated provider must have a complaints handling procedure in place, record complaints on receipt, record the handling of complaints and allocate and maintain adequate resources for complaints handling.
12. Economy Energy has not demonstrated that it has discharged its full obligations in relation to these SLCs or Complaints Handling Regulations.

## **C. Reasons for provisional order**

13. Section 25(2) of the Electricity Act and section 28(2) of the Gas Act provides that where it appears to the Authority that:
  - a. a licence holder is contravening or is likely to contravene, any relevant condition or requirement; and
  - b. that it is requisite that a provisional order be made,the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement.
14. Ofgem considers that the duty imposed upon it makes it requisite to make a provisional order against Economy Energy. This is because of Economy Energy's continued failure to demonstrate to Ofgem that it is in compliance with SLC 14, 14A, 22.3 and regulations 3, 4, 5 and 7 of the Complaints Handling Regulations.

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<sup>3</sup> A copy of the relevant condition can be found on the Ofgem website at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

<sup>4</sup> A copy of the relevant condition can be found on the Ofgem website at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

<sup>5</sup> A copy of the relevant condition can be found on the Ofgem website at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

<sup>6</sup> A copy of the Complaints Handling Regulations can be found at: <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>

15. The information that led to the making of the provisional order included information obtained from complaints from domestic customers received from Consumer Futures' Extra Help Unit.<sup>7</sup> The particular behaviours of concern were reports that Economy Energy customers:
- a. were off electricity and/or gas supply or were at risk of being off electricity and/or gas supply during cold weather, which raised concerns about Economy Energy's compliance with the requirements of the Complaints Handling Regulations and SLC 22.3; and
  - b. were being blocked from switching away from Economy Energy when they requested to do so, which raised concerns about compliance with the provisions of SLC 14 and 14A.
16. In addition, it appeared to the Authority that Economy Energy's policies, processes and resource allocation were insufficient to ensure compliance across those areas, based on information provided by Economy Energy and Consumer Futures.
17. Prior to the issuing of the provisional order, both Ofgem and Consumer Futures were engaged in compliance discussions with Economy Energy and, as noted in paragraph 4 above, some improvements in Economy Energy's processes were observed. However, the Authority considered that the measures taken by Economy Energy were not sufficient to ensure compliance or likely to bring about compliance within a reasonable timeframe, and that persons were likely to have sustained loss or damage before a final order may be made. The Authority therefore considered<sup>8</sup> it appropriate and necessary to make the provisional order.
18. The aim of the provisional order is to ensure that steps are taken, within specified times, for the purpose of securing compliance with SLC 14, 14A, 22.3 and regulations 3, 4, 5 and 7 of the Complaints Handling Regulations.
19. The Authority has had regard to the fact that the effect of the provisions of sections 28 and 30 of the Gas Act and sections 25 and 27 of the Electricity Act that the making of a provisional order will exclude the availability of any remedy (apart from under the relevant provisions of the Acts or for negligence) in respect of any contravention of a relevant condition or requirement, pursuant to section 28(3)(b) of the Gas Act and section 25(3)(b) of the Electricity Act.
20. The Authority has considered that the duties imposed on it by sections 4AA, 4AB or 4A of the Gas Act and sections 3A to 3C of the Electricity Act do not preclude the making of the provisional order.
21. The Authority does not consider that it would be more appropriate to proceed under the Competition Act 1988 pursuant to section 28(5)(c) of the Gas Act and section 25(5)(d) of the Electricity Act.
22. The Authority has considered all of the circumstances and is of the view that it is requisite to issue a provisional order under sections 28(2) of the Gas Act and 25(2) of the Electricity Act for the foregoing reasons.
23. For all the reasons set out above, the Authority has made the provisional order.

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<sup>7</sup> <http://www.consumerfutures.org.uk/extra-help-unit>

<sup>8</sup> In accordance with the obligation set out in section 28(3)(a) of the Gas Act and section 25(3)(a) of the Electricity Act

**D. Content of the order**

24. The provisional order is available on the Ofgem website at:  
<https://www.ofgem.gov.uk/publications-and-updates/economy-energy-issue-provisional-order>

**Sarah Harrison**  
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**Duly authorised on behalf of the Gas and Electricity Markets Authority**

**Dated 21 February 2014**