

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 confirm a provisional order under Section 28(4) of the Gas Act and Section 25(4) of the Electricity Act

1. This document sets out the reasons why, on 13 May 2014, the Gas and Electricity Markets Authority ("the Authority") confirmed the provisional order in respect of contraventions or likely contraventions by Economy Energy Trading Limited (company number 07513319) having its registered office at 164 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 confirm the provisional order addressed to Economy Energy.
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, Ofgem¹ was made aware by information received from Consumer Futures² that Consumer Futures had received a significant number of complaints from Economy Energy customers.³ 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 Standard Licence Condition (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.

¹ Ofgem is the executive arm of the Gas and Electricity Markets Authority ("the Authority") and for the purposes of this document the two names are used interchangeably.

² 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/>

³ 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.

5. Ofgem was concerned about problems being faced by customers of Economy Energy and engaged in discussions with Consumer Futures and Economy Energy to highlight its responsibility to comply with certain obligations imposed by its licence conditions and relevant requirements of the Gas Act and Electricity Act.
6. Ofgem noted that following its intervention, Economy Energy had taken some steps towards improving its services; however, Ofgem continued, and continues, to have concerns over the existing and likely contravention of other licence obligations (see below). As a result, Ofgem issued a provisional order to Economy Energy on 14 February 2014 which set out clear steps Economy Energy needed to take within specified timescales to resolve outstanding issues and thereby be in compliance with its obligations.
7. A copy of the provisional order issued on 14 February 2014 and the document setting out the reasons for issuing the provisional order dated 21 February 2014 can be found at: <https://www.ofgem.gov.uk/publications-and-updates/economy-energy-issue-provisional-order>
8. Ofgem has continued to monitor information provided by Consumer Futures and Economy Energy since the provisional order came into force.

B. Contravention or likely contravention

9. On the basis of information received, the Authority is satisfied that Economy Energy is contravening or is likely to contravene the following relevant conditions or requirements (as applicable):
 - c. the standard conditions 14, 14A and 22.3 of the gas and electricity supply licences (collectively referred to as "SLC"); and
 - d. Regulations 3, 4, 5, and 7 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("Complaints Handling Regulations").
10. SLC 14.1⁴ requires that the licensee must not prevent a proposed supplier transfer except in specific circumstances outlined in the condition.
11. SLC 14A⁵ places an obligation on licensees to complete a supplier transfer within three weeks.
12. SLC 22.3⁶ requires a licensee to supply gas and/or electricity in accordance with the terms of the domestic supply contract offered.
13. Regulations 3, 4, 5 and 7 of the Complaints Handling Regulations⁷ 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.

⁴ 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>

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⁷ A copy of the Complaints Handling Regulations can be found at: <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>

14. Economy Energy has not demonstrated that it has sufficiently discharged all its obligations in relation to these SLCs or Complaints Handling Regulations.

C. Reasons for confirming provisional order

15. Section 25(4) of the Electricity Act and section 28(4) of the Gas Act provides that the Authority shall confirm a provisional order, with or without modifications, if— .

(a) it is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

16. While the Authority notes improvements have been made, Economy Energy has failed 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.

17. The information that led to the confirmation of the provisional order with modifications includes information obtained from complaints from domestic customers received from Consumer Futures' Extra Help Unit ⁸ as well as information provided by, and representations made by Economy Energy. Accordingly the Authority is satisfied that Economy Energy's policies, processes and resource allocation are at the present time insufficient to ensure compliance across those areas.

Complaints Handling Regulations and SLC 22.3

18. Regulation 3 Complaints Handling Regulations requires that a regulated provider must at all times have a complaints handling procedure in place (which contains certain mandatory provisions) and that it must comply with that complaints handling procedure at all times.

19. Economy Energy did not put an appropriate complaints handling procedure in place until February 2014 when ordered to do so in the provisional order issued on 14 February 2014. Economy Energy accepted in discussion and written correspondence in December 2013, that its processes at that time did not meet the requirements of the Complaints Handling Regulations.

20. Economy Energy has taken steps to improve their complaint-handling process, however, Ofgem considers that the complaints policy which has been introduced has not always been followed by Economy Energy with regard to recording whether a complaint has been fully resolved.

21. For these reasons, the Authority is satisfied that Economy Energy did not have in place an appropriate complaints procedure, nor did it comply with any such procedure at least for the period before February 2014 and it is likely that they will continue to contravene this provision. Consumers may have suffered harm as they were not given important information as required by regulation 3 of the Complaints Handling Regulations, including information on how to make a complaint, what remedies were available, how their complaint could be reviewed internally as well as information on where they can receive independent help, advice or information.

22. Regulation 4 of the Complaints Handling Regulations specifies the information that regulated providers must record upon receipt of a consumer complaint.

⁸ <http://www.consumerfutures.org.uk/extra-help-unit>

Regulation 5 requires that regulated providers also record information about consumer complaints that are not resolved by the end of one working day after the complaint is received.

23. Regulation 7 of the Complaints Handling Regulations requires that regulated providers must receive, handle and process complaints in an efficient and timely manner. In addition, it requires that providers allocate and maintain adequate resources to do so.
24. Economy Energy accepted in discussions with Ofgem that it did not record all complaints it received in accordance with the requirements of the regulations 4 and 5 of the Complaints Handling Regulations. Economy Energy has subsequently put in place internal procedures that have resulted in a significantly higher number of complaints being recorded. However, it is unclear whether all complaints are still being processed in accordance with the requirements of regulations 4 and 5 of the Complaints Handling Regulations. Economy Energy's measures for improving compliance have included and/or will include the recruitment of additional staff. Further to these steps, Economy Energy acquired a new telephony system and call centre facility in mid-April 2014. However, until such time as training is fully rolled out to all staff members such that they are fully aware of procedures there remains an ongoing likelihood of non-compliance.
25. Ofgem had particular concerns about Economy Energy's compliance with regulation 7 of the Complaints Handling Regulations due to the considerable difficulties and long waiting times that domestic customers were subject to when they wished to make complaints. For customers whose complaint was based on being off supply, there was a considerable risk of harm, particularly because many of Economy Energy's customers use prepayment meters and might be regarded as having a higher likelihood of vulnerability. There was also potential financial harm to consumers who were left on hold through pay-per-minute phone numbers, or who wasted time and effort during their attempts to contact Economy Energy.
26. As of mid-March 2014 Economy Energy were answering calls where customers indicated that there was a problem with their prepayment card, key or token within 30 seconds. For customer with other off-supply problems Economy Energy were generally answering calls within 5 minutes, in accordance with the provisional order. Performance has continued to improve during April and early May at which time Economy Energy were answering typically 90-100% of calls relating to off-supply problems within the time stipulated in the provisional order. To ensure Economy Energy reaches and maintains appropriate standards of call performance the Authority considers that it is requisite to maintain a provision in the provisional order requiring Economy Energy to answer calls in a timely and efficient manner.
27. SLC 22.3 requires a licensee to supply gas and/or electricity in accordance with the terms of the domestic supply contract offered.
28. Customers who are off supply and had considerable difficulty getting back onto supply were not supplied with energy in accordance with the terms of their domestic supply contract. Economy Energy have extended their call centre opening hours to ensure that off-supply customers are dealt with more quickly; also those customers are prioritised in the call queues. These measures should result in customers being back on supply more quickly and thus supplied in accordance with their contract.

29. While improvements have been made in this area, the standard reached by the company is not yet so that the Authority can be satisfied that the company is not contravening or is not likely to contravene this provision in the future.

Transfer Blocking

30. SLC 14.1 requires that Economy Energy must not prevent a proposed supplier transfer except in specific circumstances outlined in the condition.
31. SLC 14A places an obligation on licensees to complete a supplier transfer within three weeks.
32. Economy Energy accepted in conversations with Ofgem (and subsequently provided evidence) that it had been blocking customers from switching away from them if they were still within the 12 month period of their contract.
33. This issue was not addressed properly until 5 March 2014. Until this time, any customer who was unlawfully blocked from switching away from Economy Energy could have suffered detriment by way of missing out on savings offered by another supplier. In addition, it is arguable that there was wider harm to the market that may have arisen out of those customers becoming disengaged due to problems with the switching process. The improvements made by Economy Energy have meant that between 5 March and 7 May 2014 only one occasion of blocking contrary to the provisional order has occurred, however the transfer blocking policy of Economy Energy provided on 1 April 2014 did not demonstrate that the requirements under SLC14 and 14A have been addressed in full. The Authority considers that it is requisite to maintain a provision in the provisional order requiring Economy Energy to comply with SLC 14 and 14A.

Representations by Economy Energy

34. On 25 March 2014 Ofgem published Notice of its Proposal to Confirm the Provisional Order of 14 February, pursuant to Section 26(1) and (2) of the Electricity Act 1989 and 29(1) and (2) of the Gas Act 1986. The Notice can be found here: <https://www.ofgem.gov.uk/ofgem-publications/86774/noticeofproposaltoconfirmeconomyenergyprovisionalorder25march2014.pdf>
35. On 15 April 2014 Economy Energy made written representations in response to the Authority's proposal to confirm the provisional order, which included the following:

"We note Ofgem's concerns and accept that there have been instances of failings in our compliance with the stated Standard Licence Conditions and the Complaints Handling Regulations and the levels of service provided to some of our customers at times over the past 6 months.

We have responded to the concerns expressed by Ofgem to date by investing in significant improvements to key areas of our business and implementing revised policies and procedures that we believe safeguard our future compliance and the quality of service we can provide to our existing and any future customers. We do acknowledge that some improvements have been made relatively recently and as such Ofgem requires the opportunity to closely monitor our compliance and performance in the future while we continue our efforts to improve our service."

36. In their representations of 15 April 2014, Economy Energy acknowledged that the provisional order had a continuing role to play, and stated further that no objection was raised by Economy Energy to the proposed confirmation of the provisional order.
37. Economy Energy's representations of 15 April 2014 sought the Authority's reconsideration of the content of requirements at paragraph 1(a) and 1(b) of the proposed confirmed order, which sets time limits within which off-supply customers must be returned to supply. Economy Energy cited particular challenges faced by them in meeting this requirement for off-supply problems relating to gas cards. A modification was accordingly applied to the specified time limits at paragraphs 1(a) and 1(b) of the confirmed provisional order, allowing Economy Energy greater flexibility. In making this modification the Authority has had regard to the specific circumstances cited by Economy Energy and also to the current absence of cold weather concerns. The requirement to take whatever measures necessary so as to permit a supply of electricity and/or gas as soon as reasonably practicable is retained within the confirmed provisional order with modifications.
38. In relation to paragraphs 1(e) and 1(f) of the proposed confirmed provisional order, which specify the increased hours at which in-house and third-party call centre support must be made available, Economy Energy sought modifications which would enable Economy Energy greater discretion to use in-house call centre facilities in preference to third-party provider services. A modification was accordingly made to the proposed confirmed order which allows Economy Energy greater flexibility to organise its business but which maintains the same level and scope of requirement for an interactive service to be provided between 8am and 11pm each day.
39. As indicated at paragraphs 31-35 above, Economy Energy's representations were duly considered by the Authority and have resulted in modifications to the provisional order, following notification pursuant to Section 26(3) and (4) of the Electricity Act 1989 and 29(3) and (4) of the Gas Act 1986.

Improvements made by Economy Energy

40. The Authority notes improvements in the performance of Economy Energy across many of the areas covered by the provisional order. However, many of these improvements are yet to constitute full compliance with the requirements of the conditions and requirements. Those that do show compliance are likely to require a concerted effort on Economy Energy's part, to ensure compliance is maintained.
41. The Authority is therefore satisfied that Economy Energy is contravening or is likely to contravene the specified relevant conditions or requirements, and the provisions made by the order with modifications are requisite for the purpose of securing compliance with the relevant conditions or requirements.
42. The purpose of the Authority's decision to confirm the provisional order is to ensure that steps are taken, for the purpose of securing compliance with SLC 14, 14A, 22.3 and regulations 3, 4, 5 and 7 of the Complaints Handling Regulations.
43. The Authority has considered the duties imposed on it by sections 4AA, 4AB or 4A of the Gas Act and sections 3A to 3C of the Electricity Act and is satisfied that the duties do not preclude the confirming of the provisional order.

44. 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.
45. The Authority has considered all of the circumstances and is of the view that it is requisite to confirm the provisional order with modifications under sections 28(4) of the Gas Act and 25(4) of the Electricity Act.
46. For all the reasons set out above, the Authority has confirmed the provisional order, which will remain in force until such time as it is revoked in accordance with section 26(6) Electricity Act and section 29(5) Gas Act.

D. Content of the order

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

Anthony Pygram
Partner – Enforcement & Competition Policy
Duly authorised on behalf of the Gas and Electricity Markets Authority

Dated 23 May 2014