

Notice of intention to impose a financial penalty pursuant to section 30A(3) of the Gas Act 1986 and section 27A(3) of the Electricity Act 1989

Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into compliance by British Gas Trading Limited with Standard Licence Conditions 14 and 7A

10 April 2014

1 Summary

- 1.1 The Gas and Electricity Markets Authority ("the Authority") proposes to impose a financial penalty on British Gas Trading Limited ("BG") following an investigation by Ofgem into its failure to comply with Standard Licence Condition as set out below:
- SLC 14.1 which prohibits licensees from domestic and non-domestic customer transfer blocking ("objections") except in the circumstances set out in SLC 14.2 in relation to non-domestic customers;
 - SLC 14.3 which requires a licensee who makes an objection, to give a notice to that customer stating that a request to prevent a transfer has taken place, the grounds for that request and how that customer may dispute or resolve such grounds;
 - SLC 7A.13 which prohibits a licensee from extending the duration of a micro-business' fixed-term contract where the micro-business sends a notification in writing in order to prevent the extension, before a specified date in the contract.

The Authority finds that BG is in breach of SLC 14 and 7A.

- 1.2 These provisions are very important as they limit a supplier's ability to block non-domestic consumers from switching and provide significant regulatory protection to micro-businesses. SLC 14 limits a supplier's ability to block non-domestic customers from switching. SLC 7A provides protection to micro-businesses in fixed-term contracts by ensuring they are provided with relevant terms and conditions when they enter a contract and clear renewal terms before the contract ends. Switching fairly and easily is central to a well functioning market and helps facilitate competition to ensure good outcomes for consumers.
- 1.3 The Authority considers it appropriate to impose a penalty for these contraventions. The proposed penalty takes into account the fact that BG has admitted contravening SLCs 14 and 7A in the Relevant Period¹ and has agreed to

¹ The Relevant Period constitutes the following dates:

- In respect to SLC 14.1 breaches: November 2007 and February 2012 with the exceptions of BG's breach due to its systems incorrectly identifying leap years which occurred from November 2007 to 30 November 2011 and of BG's breach in relation to its secondary billing system (SAP) which occurred from November 2007 to September 2012

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make payments amounting to £3,200,000 into an Energy Efficiency Fund to benefit non-domestic micro-business consumers. The Authority considers that the payments offered by BG will benefit non-domestic micro-business consumers more than would be the case if a more significant penalty were imposed. The Authority therefore proposes to impose a reduced penalty of £800,000. In addition, BG has taken proactive steps to rectify its systems, processes and controls that resulted in the invalid objections.

1.4 This investigation arose out of a review of objections in the non-domestic market in the Retail Market Review ("RMR"), which raised compliance concerns with SLC 14. For BG in particular, there were concerns over the lack of information given to business consumers to enable them to resolve an objection to transfer; the high number of objections as a proportion of customers wishing to switch; repeat objections being made regarding the same customers by BG; and a number of complaints received by Ofgem regarding non-domestic objections made by BG even when considered relative to BG's market share.

1.5 The Authority finds that in the relevant period:

- BG raised invalid objections to requests to transfer supplier by non-domestic customers. An estimated² 39,000 invalid objections were made at non-domestic sites³ between November 2007 and February 2012⁴. This equates to 5.6% of all objections over this period. This was due to BG not having adequate systems, processes and controls in place to detect when objections to transfer were invalid. This resulted in BG invalidly objecting to customers' requests to transfer and therefore a breach of SLC 14.1;
- BG did not provide customers with sufficiently detailed information to allow them to understand the reasons for the objection and the specific steps they needed to take to resolve or dispute it. In addition BG included incorrect bank details on objection letters sent to customer with outstanding debt. These were in breach of SLC 14.3;
- BG auto-renewed micro-business customers despite receiving valid termination notices and therefore breached SLC 7A. This resulted in those customers being automatically renewed onto another BG fixed-term contract and being invalidly objected to when they attempted to change supplier.

1.6 Interim measures have already been implemented by BG to prevent these breaches re-occurring and ending the contraventions of SLC 14 and SLC 7A. BG is implementing an enduring solution by the end of 2014 to prevent these errors occurring and meet its obligations under SLC 14 and SLC 7A.

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- In respect to SLC 14.3 breach related to not providing sufficient details to customers: November 2007 and March 2012
 - In respect to SLC14.3 breach regarding invalid bank details: October 2012 to January 2013
 - In respect of SLC 7A breach: January 2010 to May 2011

² Invalid objections were identified in an initial sample of 1853 cancelled objections (from a total population of 27,008 cancelled objections). A further sample of 500 sites where an objection was initially upheld (from a total population of 126,258 sites) were reviewed for invalid objections.

³ Approximately 28,000 sites were affected. Non-domestic consumers, particularly large businesses, may have multiple sites and multiple objections can be raised at a single site.

⁴ BG's breaches of SLC14.1 due to its systems incorrectly identifying leap years occurred from November 2007 to 30 November 2011 and in relation to its secondary billing system (SAP) from November 2007 to September 2012.

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- 1.7 In the circumstances, the Authority hereby gives notice under section 30A(3) of the Gas Act 1986 and section 27A(3) of the Electricity Act 1989 of its proposal to impose a penalty of £800,000 on BG in respect of its failure to comply with SLC 7A and SLC 14 for the relevant period. In deciding on the level of the penalty, the Authority has taken into account the following facts:
- BG has admitted the breaches;
 - BG has fully investigated why the errors occurred;
 - BG worked with Ofgem to determine the consumer detriment suffered;
 - BG agreed to appoint an independent auditor to review its methodology for determining where invalid objections occurred and its methodology for calculating gain and detriment;
 - as BG decided not to contest Ofgem's findings, Ofgem did not have to spend additional resources on issuing a statement of case and preparing for a contested case;
 - BG's willingness (and agreement) to settle the investigation;
 - BG has offered to make redress payments of £3,200,000 into an Energy Efficiency Fund;
 - BG has provided Board level assurances that its interim and enduring solutions are fit for purpose to meet its obligations under SLC14 and 7A.

The penalty is a lower figure than would have been the case if BG had not taken the above steps.

- 1.8 Any written representations on the proposed penalty must be received by Maudlyn Darkwa at Ofgem (Maudlyn.Darkwa@ofgem.gov.uk) by 5.00pm on **8 May 2014**.
- 1.9 Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly.

2. Background

Customer transfer blocking "Objections" – SLC 14

- 2.1 Non-domestic consumers who search for the best energy deals and switch suppliers are an important driver of competition between energy suppliers.
- 2.2 Gas and electricity suppliers are able to object to a proposed supplier transfer only in specific circumstances. The rules governing non-domestic objections are set out in SLC 14. The only permissible reasons for objecting (SLC 14.2) are relevant contractual agreements⁵ or transfers initiated in error⁶. Electricity suppliers are, in addition, allowed to object for system reasons, namely if the new supplier has not applied for all relevant⁷ meter points on the same working day.

⁵ In other words, there must be a contract in place at the time the supply was objected to and must apply at the time of making the objection; and within the contract the circumstances in which the supplier can object to the transfer, such as having debt, must be set out.

⁶ In Gas, for contracts entered into before 05 January 2004, suppliers can object to a Change of Supply (CoS) if the customer has debt outstanding for more than 28 days, and if the customer is still in contract.

⁷ For example some meters may have two registers on them, with two related registered numbers. Both numbers would need to be given for the system to allow a transfer, so that two suppliers are not registered to the same physical meter.

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SLC 14 also requires that once an objection has been made, the supplier must provide the customer with written notice to inform them:

- that they have made a request to prevent the transfer (14.3(a));
- the grounds for the request (14.3(b)); and
- how the customer may dispute or resolve such grounds (14.3(c)).

- 2.3 The Retail Market Review (RMR) consultation of November 2011⁸, outlined concerns that the objections process was not being used as intended and that too many consumers spend a lot of time (and sometimes money) trying to switch suppliers. Because of this, consumers could potentially face financial harm, and a bad switching experience could negatively impact their perceptions of suppliers and the industry. This could lead to fewer consumers wanting to go through the process of switching supplier. Less switching could reduce competitive pressure in the market, which is needed to ensure good outcomes for consumers.

Protections for micro-businesses - SLC 7A

- 2.4 The Energy Supply Probe⁹ in 2008 found that smaller businesses needed more regulatory protections. A key area of concern was that smaller businesses were not fully aware of the terms of their contracts, especially regarding how and when they could move suppliers. As a result, Ofgem introduced a new licence condition SLC 7A on 18 January 2010. The aim of this licence condition was to help micro-business consumers by ensuring that certain relevant contractual information is provided to them, improving the visibility, transparency and timeliness of this contractual information and regulating contract roll-overs.

The Investigation

- 2.5 Information collected as part of the RMR indicated that some non-domestic suppliers (including but not limited to BG) objected to more than 50% of their customers that attempted to switch. While there may be valid reasons for the majority of these objections, this high figure did indicate the need for further investigation. We also received complaints from businesses and suppliers alleging misuse of the objections process¹⁰.
- 2.6 As part of the RMR, Ofgem issued a formal Information Request¹¹ to a number of suppliers. The suppliers were chosen based on their level of objections and/or objection withdrawals. A random sample of objections from each supplier was requested. The findings raised compliance concerns with some parts of SLC 14 for BG. Additionally Ofgem received complaints regarding BG's use of non-domestic objections.
- 2.7 As a result, a formal investigation was opened into BG in January 2012. Ofgem requested information from BG in order to determine the extent of the breaches, the detriment to consumers and action taken to ensure compliance with SLC 14 and 7A.

The Contraventions

- 2.8 After considering the relevant information of the case, the Authority finds that BG was in breach of SLC 14 and SLC 7A. These breaches have been admitted by BG.

⁸ The Retail Market Review: Non-domestic proposals, 23 November 2011. <https://www.ofgem.gov.uk/ofgem-publications/39654/rmrnon-domestic-proposalsconsultation.pdf>

⁹ <https://www.ofgem.gov.uk/ofgem-publications/38437/energy-supply-probe-initial-findings-report.pdf>

¹⁰ <https://www.ofgem.gov.uk/ofgem-publications/39654/rmrnon-domestic-proposalsconsultation.pdf> para 3.4

¹¹ The Authority requested information under SLC 5

SLC 14.1:

2.9 Between November 2007 and February 2012¹² an estimated¹³ 39,000 invalid objections were made at non-domestic sites¹⁴. This equates to 5.6% of all objections over this period. For the period November 2007 to 7th June 2010 this equates to around 24,000 objections (6% of all objections for this period). For the period 8 June 2010 to February 2012 this equates to around 15,000 objections (5% of all objections for this period). This was a breach of SLC 14.1. There were a number of different reasons for the objections being raised in error during the relevant period (some of these were identified by BG):

- BG's system was not automatically detecting all valid termination notices from customers on fixed-price contracts received prior to the renewal window opening (i.e. more than 135 days before contract end). These were not being systematically checked and so not all invalid objections were detected. This resulted in BG invalidly objecting and auto-renewing customers despite valid termination notices;
- BG's system incorrectly identified leap years. The contract would auto-renew for 366 rather than 365 days, incorrectly extending the new contract by 1 day. This meant when the new supplier attempted the transfer on the last day of the fixed-price arrangements with BG, BG would incorrectly object;
- external auditors reviewed a sample of 500 sites (pertaining to 1,500 objections) that BG had believed to have objected to correctly. This showed that 5.8% of these sites (2.6% of the 1,500 objections) had objections that were in fact raised in error. This was a result of either system or human errors on the part of BG. There were a number of reasons, including: the issue of auto-renewing despite valid termination notices; objections being raised despite the applicable contracts being deemed contracts and customers therefore being entitled to switch supply at any point with no notice; invalid objections being raised due to delays in BG processing the termination notices; invalid objections being raised due to errors in BG applying the termination notices to the relevant accounts on the system;
- BG had an issue with its secondary billing system (SAP) that affected gas debt objections. This issue was identified by BG during the course of the investigation. BG's terms and conditions stated that they would only object to gas debt greater than £10 and older than 28 days but the logic in the system was coded to automatically object to debt greater than £5 and older than 14 days. This resulted in BG objecting in error.

2.10 The following action was taken to address the above issues:

- BG has fully addressed the auto-renewal despite valid termination notices issue and the leap year issue by 30 November 2011. It reviewed and improved its reporting systems to ensure necessary data was available to management. BG staff that carried out the manual processing of objections were provided with additional training to ensure they fully understand their

¹² BG's breaches of SLC14.1 due to its systems incorrectly identifying leap years occurred from November 2007 to 30 November 2011 and in relation to its secondary billing system (SAP) from November 2007 to September 2012.

¹³ Invalid objections were identified in an initial sample of 1853 cancelled objections (from a total population of 27,008 cancelled objections). A further sample of 500 sites where an objection was initially upheld (from a total population of 126,258 sites) were reviewed for invalid objections.

¹⁴ Approximately 28,000 sites were affected. Non-domestic consumers, particularly large businesses, may have multiple sites and multiple objections can be raised at a single site.

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obligations under SLC 14. BG also updated its policy, procedures and guidance notes;

- BG took steps to address the issues with incorrectly upheld objections. This included controls, new guidance, training, management information and quality assurance;
- BG implemented a manual checking process for all SAP issues in September 2012 to ensure the system coding issue had been addressed. BG will introduce a new billing system that will replace SAP and BG has stated that this will result in a permanent solution.

SLC 14.3:

- 2.11 Between November 2007 and March 2012 BG did not provide customers with sufficiently detailed information to allow them to understand the reasons for the objection and the specific steps they needed to take to resolve or dispute the objection. This was in breach of SLC 14.3.
- 2.12 BG took action to resolve this issue. In March 2012 it introduced an improved version of the objections notice sent to customers. From November 2012 it had updated all objection letters to include more specific information about the customers' account and incorporated the remainder of Ofgem's "best practice"¹⁵ requirements.
- 2.13 In addition, there was a separate discrete issue whereby BG included incorrect bank details¹⁶ on objection letters sent to customers with outstanding debt between October 2012 and January 2013. BG reported this to Ofgem during the investigation. This issue affected 1,679 customers. Customers attempting to make a payment would not have been able to pay their debt and consequently the objection would not have been lifted.
- 2.14 BG took remedial action to address this issue including contacting affected customers and ensuring these customers did not lose out financially. All remedial steps were completed by March 2013.

SLC 7A:

- 2.15 From January 2010 to May 2011 BG auto-renewed micro-business consumers despite receiving valid termination notices. In this period an estimated 926 micro-businesses were impacted and 274 incurred detriment as a result¹⁷. This was a breach of SLC 7A.13. Specifically, due to a systems error BG was not able to automatically detect termination notices from micro-business consumers that submitted their termination notices early. This resulted in customers being automatically renewed onto BG's fixed-term contract and invalidly objected to when they tried to change supplier.
- 2.16 BG took steps in May 2011 to address this. This included a manual process to perform a weekly sweep of all micro-business termination notices to ensure this issue was addressed. Additionally further checks were carried out to capture micro-business termination notices logged since 1 November 2010.
- 2.17 In addition to the interim steps that BG has undertaken to address these issues, BG is employing an enduring solution through implementation of their new

¹⁵ <https://www.ofgem.gov.uk/ofgem-publications/39654/rmrnon-domestic-proposalsconsultation.pdf> Appendix 3, page 49

¹⁶ An incorrect digit in the Account Number where payments should be made by the customer to clear the debt.

¹⁷ Figures are based on sampling.

systems and processes by the end of 2014 to prevent these errors occurring in order to meet its obligations under SLC 14 and SLC 7A.

3. The Authority's decision on whether to impose a financial penalty

General background to the Authority's decision to impose a financial penalty

- 3.1 The Authority has considered whether a financial penalty is appropriate in accordance with the requirements of the Electricity Act 1989 and the Gas Act 1986, and its published Statement of Policy with respect to Financial Penalties (October 2003) ("the Policy")¹⁸.
- 3.2 The Authority is required to carry out all its functions, including the taking of any decision as to penalty, in the manner which it considers is best calculated to further its principal objective,¹⁹ having regard to its other duties.
- 3.3 In deciding whether it is appropriate to impose a financial penalty, the Authority has considered all the circumstances of the case including the following specific matters set out in the Policy. These matters are examined in more detail below.

Factors tending to make the imposition of a financial penalty more likely than not

Whether the contravention or the failure has damaged the interests of consumers or other market participants

- 3.4 The Authority considers that consumers suffered harm because:
 - customers were prevented from switching away from BG and benefitting from more competitive/suitable offers;
 - customers suffered inconvenience and incurred costs due to time spent on querying/resolving incorrect objections;
 - customers suffered financial loss as a result of the delay to transfer.
- 3.5 The Authority considers there was market detriment as BG's objection process and other systematic failures could have had a negative impact on consumer confidence and engagement with the market. Around 90% of BG's non-domestic customers are micro-businesses. The market for smaller businesses has features which are distinct from those seen in the market for larger business customers; for example, engagement levels are not as high.²⁰ Lower consumer engagement can lead to a reduction in the intensity of competition.

Whether imposing a financial penalty is likely to create an incentive to compliance and deter future breaches

- 3.6 The November 2011 "The Retail Market Review: Non-domestic proposals"²¹ document outlined our concerns that the objections process which is set out in

¹⁸ <https://www.ofgem.gov.uk/ofgem-publications/74207/utilities-act-statement-policy-respect-financial-penalties.pdf>

¹⁹The Electricity Act 1989 (section 3A) and the Gas Act 1986 (section 4AA) set out the Authority's principal objective for energy regulation, thereby defining the purpose of Ofgem's activities as to protect the interests of existing and future consumers, wherever appropriate by promoting competition. The Energy Act 2010 amended the principal objective to clarify that the interests of consumers should be taken as a whole, including their interests in the reduction of greenhouse gas emissions and ensuring security of supply.

²⁰ <https://www.ofgem.gov.uk/ofgem-publications/39355/retail-market-review-final-non-domestic-proposals22-marchfinal.pdf> page. 8

²¹ <https://www.ofgem.gov.uk/ofgem-publications/39654/rmrnon-domestic-proposalsconsultation.pdf>

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SLC 14 was not being used as intended. This could frustrate businesses from switching, resulting in harm to consumers and a detrimental impact on competitive pressure in the market. SLC 7A was brought in to improve regulatory protections for smaller business consumers. It is therefore very important that suppliers take these licence conditions very seriously and are incentivised to put appropriate systems, processes and controls in place to ensure compliance. The Authority considers that the imposition of a penalty in this case is necessary to have that effect.

Factors tending to make the imposition of a financial penalty less likely than not

If the contravention is trivial in nature

3.7 The Authority did not consider that BG's breaches of SLC 14 and SLC 7A were trivial. SLCs 7A and 14 are important conditions for ensuring the proper functioning of the non-domestic energy market. BG's contravention persisted for a significant period of time and affected a large number of non-domestic consumers.

That the principal objective and duties of the Authority preclude the imposition of a penalty

3.8 There is nothing in the Authority's principal objective and duties that precludes the imposition of a penalty in this case.

That the breach or possibility of a breach would not have been apparent to a diligent licensee

3.9 The Authority considers that a diligent licensee would have put appropriate systems, processes and controls in place to avoid breaching these licence conditions.

Conclusion

3.10 After consideration of the above factors, the Authority considers that it is appropriate to impose a financial penalty in this case.

4. Criteria relevant to the level of financial penalty

4.1 In accordance with section 27A(8) of the Electricity Act 1989 and section 30A(8) of the Gas Act 1986, the Authority may impose a financial penalty of up to 10 per cent of the annual turnover of the relevant licence holder. Annual turnover is defined in an Order issued by the Secretary of State.²² The relevant figure is the turnover shown in published or prepared accounts for the business year preceding the date of this notice. The most recent available set of BG's accounts are those prepared for the financial year ending 31/12/13 (showing BG had a total turnover of £12.443 billion, of which BG had a turnover of £2.855 billion for non-domestic gas and electric supply).

4.2 In deciding the appropriate level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the Policy.

Factors which are first considered when determining the level of penalty

²² The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

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The seriousness of the contravention and failure

- 4.3 The Authority considers that BG's failure to comply with SLC 14 and SLC 7A is serious and this has been taken into account in deciding the level of penalty to impose. These are very important obligations with which the Authority expects all licensees to comply. They provide significant regulatory protections to micro-business consumers and restrict suppliers' ability to block non-domestic customers from switching. Given the scale of BG's market share and the number of objections raised, the potential impact of the breaches which occurred is significant.

The degree of harm or increased cost incurred by customers or other market participants after taking into account any compensation paid

- 4.4 The Authority considers that consumers suffered harm (see section 3.4 for details).
- 4.5 The Authority considers there was market detriment as BG's objection process and other systematic failures could have had a negative impact on consumer confidence and engagement with the market. As noted in paragraph 3.5 around 90% of BG's customers are micro-businesses, amongst whom engagement levels are not as high. Lower consumer engagement can lead to a reduction in the intensity of competition.

The duration of the contravention or failure

- 4.6 The duration of the infringement was significant with some breaches starting at least from November 2007 to the last breach ending in January 2013.

The gain (financial or otherwise) made by the licensee

- 4.7 BG avoided the costs of having appropriate system, processes and controls in place which might have prevented the licence breach in the first place.
- 4.8 BG is likely to have benefited financially from customers whose request to transfer had erroneously been objected to by:
- retaining customers that should have left;
 - delaying the transfer of customers to another supplier;
 - customers paying higher out-of contract or rollover rates.

Factors tending to increase the level of penalty

Repeated contravention or failure or a continuation of failure after being aware of the contravention

- 4.9 The breaches occurred over the relevant period (see footnote 1). While the Authority was only able to impose a financial penalty in respect of the period from 8 June 2010 to January 2013, the Authority considered that BG's repeated contraventions over nearly 6 years was an aggravating factor which compounded the level of damage caused by the contraventions of the SLCs and which emphasised the lack of adequate systems, processes and controls in place to ensure compliance.
- 4.10 However, when BG were made aware of the breaches by Ofgem during the investigation, as well as identifying additional issues themselves, they proactively took action and introduced measures to ensure these breaches did not continue.

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The involvement of senior management in any contravention or failure

4.11 The Authority does not consider that senior management was involved in any deliberate actions in relation to the contravention. However, the Authority considers that implementing appropriate management systems, processes and controls was the responsibility of senior management at BG. The Authority therefore takes the view that the decisions taken by senior management in this area contributed to BG's failure to comply with SLC 14 and SLC 7A, particularly when considering the long duration of the contravention.

Absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure

4.12 The Authority considers that internal management systems, processes and controls to prevent contravention or failure were inadequate in this case. This is evidenced by the long duration of the contraventions during the relevant period. Furthermore, breaches of SLC 7A came to light during the course of the investigation.

The extent of any attempt to conceal the contravention or failure from Ofgem

4.13 BG did not attempt to conceal the contravention or failure from Ofgem.

Factors tending to decrease the level of penalty

The extent to which the licensee had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision

4.14 The Authority considers that internal management systems, processes and controls to prevent contravention or failure were inadequate in this case.

Appropriate action by the licensee to remedy the contravention or failure

4.15 Following the contravention BG took the following action:

- it reviewed its systems, processes and controls;
- it took some interim steps to address the issues with its systems, processes and controls (including manual checks and controls, correcting problems with IT programme and process workarounds) ending the contraventions of SLC 14 and SLC 7A;
- it is in the process of implementing an enduring solution (to be completed by the end of 2014) to meet its obligations under SLC 14 and SLC 7A. This involves a new replacement system and processes;
- it has provided specific information demonstrating how and when BG are addressing the issues that gave rise to the identified breaches. Additionally, it has provided Board level assurances that the interim and enduring solutions are fit for purpose to meet its obligations under SLC 14 and SLC 7A. It is for BG to ensure compliance with these licence conditions at all times and Ofgem does not endorse these. Ofgem does and will take seriously any future instances of breaches of SLC 14 and SLC 7A.

Evidence that the contravention or failure was genuinely accidental or inadvertent

4.16 While there is no evidence that the contravention was wilful, the contravention or failure cannot be regarded as genuinely accidental or inadvertent, as it was within BG's control to allocate appropriate resources to ensure that it had robust

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management systems, processes and controls in place to enable compliance with SLC 14 and SLC 7A.

Reporting the contravention or failure to Ofgem

4.17 BG did not self-report the contravention to Ofgem. The contravention was discovered by Ofgem (mainly from a review of non-domestic objections for the RMR and complaints to Ofgem). However after the initial breach was discovered BG self-reported additional issues to Ofgem as set out in section 2, paragraph 2.9 to 2.17.

Co-operation with Ofgem's investigation

4.18 The Authority notes that BG has co-operated with Ofgem during the investigation process as:

- BG admitted the breaches;
- BG investigated why the errors occurred;
- BG worked with Ofgem to determine the consumer detriment figures;
- BG agreed to appoint an independent auditor to review their methodology for determining where invalid objections occurred and their methodology for calculating gain and detriment;
- BG decided not to contest Ofgem's findings, Ofgem did not have to spend additional resources on issuing a statement of case and preparing for a contested case;
- BG was willing and agreed to settle the investigation;
- BG has offered to make redress payments of £3,200,000 into an Energy Efficiency Fund;
- BG has provided Board level assurances that its interim and enduring solutions are fit for purpose to meet its obligations under SLCs14 and 7A.

5. The Authority's decision

- 5.1 The Authority considered that the seriousness of the contravention, the degree of harm experienced by non-domestic consumers, the duration of the contraventions and the financial gain made by BG warranted a significant penalty.
- 5.2 However the Authority placed particular emphasis on the agreement by BG to settle this investigation and its commitment to implement an enduring solution by the end of 2014 as well as implement interim measures during the course of this investigation to ensure invalid objections do not reoccur in the meantime.
- 5.3 The Authority paid particular regard to the fact that BG agreed to pay redress in the sum of £3,200,000 for the purpose of providing energy efficiency measures to micro-business consumers. Specifically around 500 micro-businesses will benefit from receiving an on-site survey and energy efficiency measures up to the value of £6,000. This will be administered through a standalone fund, "the Energy Efficiency Fund". BG will administer this fund and disperse the redress in full to micro-business consumers within a two year period.
- 5.4 The Authority considers that the scale of the penalty and the redress payments will have a significant impact on BG's future compliance and act as a deterrent against future breaches by BG and other market participants.

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- 5.5 Taking account of all these factors and also mindful of its principle objective to protect the interests of existing and future consumers, the Authority hereby proposes to impose a financial penalty on BG of £800,000 in respect of the breaches it finds has occurred of SLC 14 and 7A, which it considers to be a reasonable figure in all the circumstances of the case, and which does not exceed 10% of applicable turnover. The penalty is a lower figure than would have been imposed if BG:
- had not admitted the breaches;
 - had not been co-operative and worked with Ofgem to determine the consumer detriment figures and appointed and funded an independent auditor to assist with this;
 - had not investigated why the errors occurred;
 - had not been willing to, and agreed to settle this investigation with Ofgem;
 - had not agreed to make redress payment of £3,200,000 into an Energy Efficiency Fund;
 - had not provided Board level assurances that its interim and enduring solutions are fit for purpose to meet its obligations under SLCs 14 and 7A.
- 5.2 Any written representations on the proposed penalty must be received by Maudlyn Darkwa at Ofgem (Maudlyn.Darkwa@ofgem.gov.uk) or Ofgem, 9 Millbank, London, SW1P 3GE) by **8 May 2014**.
- 5.3 Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly.

Gas and Electricity Markets Authority

10 April 2014