

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

Decision of the Gas and Electricity Markets Authority (“the Authority”) to impose a financial penalty, following an investigation into compliance by npower Northern Limited-Gas and npower Northern Supply Limited-Electricity (“npower”) with its obligations under conditions 25 (“SLC 25”) and 27 (“SLC 27”) of the Standard Conditions of the Electricity and Gas Supply Licences

25 February 2014

1 Summary

- 1.1 The Authority hereby gives notice that it has imposed a financial penalty on npower Northern Limited-Gas and npower Northern Supply Limited-Electricity (“npower”) following an investigation by Ofgem into npower’s compliance with SLC25 (Marketing Gas/Electricity to Domestic Customers) and SLC 27 (Provision of information to customers who pay for electricity/gas by way of regular direct debit payments of a fixed amount) of its gas and electricity supply licences.¹
- 1.2 npower admitted that it breached SLCs 25 and 27.15 in the Relevant Period² and offered a fuel poverty package amounting to £3.5m, which directly benefits consumers, as well as to contact and refund certain customers by 28 February 2014 and to commence contacting other customers who may have suffered financial detriment by 31 March 2014.³ In addition, npower has improved its systems and has remedied the issues raised.
- 1.3 In the light of these steps taken by npower, the Authority considered that rather than impose a significant penalty, it was appropriate in the circumstances of this investigation to impose a reduced penalty of £1, and for consumers to receive a fuel poverty package of £3.5m as well as refunds instead.
- 1.4 The Objective of SLC 25 is to ensure that all information provided to consumers during the course of Marketing Activities (that is, face-to-face sales activities including doorstep sales) and Telesales Activities (that is, sales activities conducted by telephone) is complete, accurate, capable of being easily understood, not misleading and otherwise fair. SLC 25 also requires that the company has appropriate training and management arrangements in place to ensure compliance with SLC 25.

¹ SLCs 25 and 27 have identical wording in the gas and electricity supply licences and are interpreted by the Authority in an entirely consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. The term “customer” in this notice refers to “Domestic Customers” as defined in SLC 25. Similarly, “telesales”, “charges”, “representatives” and “Marketing Activities” carry the same meaning as those defined terms in SLC 25. All terms used in this notice are deemed to have the same definitions as those in the electricity and gas supply licences unless indicated otherwise.

² The Relevant Period constitutes the following dates:

- in respect of the Matrix Breach: January 2010 to June 2012 for Marketing Activities,
- in respect of the Direct Debit breaches: January 2010 to September 2012,
- in respect of the Standard Tariff breach: October 2009 to April 2011.

³ npower will contact and refund customers who were affected by the Direct Debit discount breach and to contact customers who may have suffered financial detriment as a result of the Standard Tariff or Matrix breaches.

- 1.5 SLC 27.15 requires suppliers to take all reasonable steps to ensure that the fixed amount of a consumer's direct debit payment is based on the best and most current information available (or which reasonably ought to be available).
- 1.6 These provisions are extremely important to safeguard the interests of consumers. When these provisions are breached, consumers risk being misled as to the actual costs of energy; estimates of charges and comparisons (as compared with the customer's existing supplier) can potentially be inaccurate and misleading. As a consequence, consumers may switch to a more expensive energy tariff and/or may not benefit from savings that they are led to expect. As such, they can suffer harm (financial harm and non-financial harm) and over time they may lose faith in the market and become disengaged. Moreover, consumers' ability to make well-informed decisions and to actively participate in the market to drive effective competition can be hampered.
- 1.7 The Authority found that in the Relevant Period:
- information provided to prospective consumers by npower during the course of both Marketing and Telesales Activities did not meet the Objective of SLC 25 (and npower breached SLC 25.2 in respect of both Marketing and Telesales Activities, and SLCs 25.6a and 25.7a in respect of Marketing Activities). This included information on: estimates of consumption, estimates of annual Charges and comparisons against customers' current suppliers, information on how direct debit levels would be reviewed and when direct debit discounts would become payable;
 - npower did not take all reasonable steps to ensure that it used the best and most current information available when setting the level of direct debit payments (SLC 27.15);
 - npower did not take all reasonable steps in its training, monitoring, auditing and management arrangements to ensure that they were compliant with SLC 25.
- 1.8 A detailed description of the nature of these contraventions is provided in section 3.
- 1.9 This is the second time Ofgem has taken enforcement action against npower over compliance with SLC25 although the nature of the breaches in this case was less serious.
- 1.10 npower has improved its systems and has remedied the issues raised. The Authority has therefore not made an enforcement order in this case.
- 1.11 In the circumstances, and in recognition of the payments and reimbursements to be made to the benefit of certain consumers, the Authority hereby gives notice under section 27A(3) of the Electricity Act 1986 ("the Electricity Act") and section 30A(3) of the Gas Act 1986 ("the Gas Act") of its decision to impose a penalty of £1 on npower in respect of its failure to comply with SLCs 25 and 27.15 of its gas and electricity supply licences in the Relevant Period.
- 1.12 No representations were received on the proposed penalty. Therefore the Authority has decided to confirm the Penalty of £1 for npower. The penalty must be paid by 7 April 2014.

2 Introduction

- 2.1 Consumers are entitled to receive clear and accurate information which is fair both in terms of its content and in terms of how it is presented. Without such information, consumers are not able effectively to compare prices, identify value for money, and make active, informed decisions about whether to switch energy suppliers accordingly. Access to clear and accurate information also helps build consumer confidence. By contrast, where consumers receive misleading information they lose faith in the market and become disengaged. A market with more engaged and informed consumers, who make better choices and get better deals, is good in itself, but also leads to competitive pressures on suppliers, which results in a more efficient and innovative market.

The requirements under SLCs 25 and 27.15

- 2.2 Following a formal statutory consultation in August 2009, the Authority strengthened a number of supply licence obligations, including the condition relating to the marketing of gas and electricity (SLC 25).
- 2.3 In parallel, the Authority introduced supplier obligations in SLC 27 in January 2010 in respect of direct debits payments, in order to minimise unnecessary fluctuations in payment levels and improve communications between the supplier and the consumer.
- 2.4 The Objective of SLC 25, which took effect on 21 October 2009, is to ensure that all information which suppliers provide to Domestic Customers in the course of their Marketing or Telesales Activities:
- is complete and accurate
 - is capable of being easily understood by Domestic Customers
 - does not relate to products which are inappropriate for that particular Domestic Customer
 - does not mislead that particular Domestic Customer
 - is otherwise fair both in terms of its content and in terms of how it is presented.
- 2.5 Furthermore, the Objective of SLC 25 is to ensure that in their Marketing or Telesales Activities all contact with, and the behaviour of, suppliers towards customers during the course of those Activities is conducted in a fair, transparent, appropriate and professional manner.
- 2.6 Suppliers are also required to take all reasonable steps to secure the achievement of the Objective of SLC 25 and to avoid doing anything which jeopardises their ability to achieve the Objective.
- 2.7 More detailed requirements setting out minimum steps when conducting Marketing Activities took effect on 18 January 2010. These included the requirement to provide to the customer, before entering into a Domestic Supply Contract:
- an estimate of the total annual Charges for the supply of energy; and
 - a comparison of the offered Charges with the customer's currently payable Charges where that customer is being supplied through a prepayment meter ('PPM') or where the sales agent claims that the offered Charges will be lower than the customer's current Charges.

- 2.8 The detailed requirements also set out obligations for the selection and training of sales representatives (“Representatives”). Suppliers are also required to take all reasonable steps to establish management arrangements that facilitate the licensee’s compliance with its obligations under SLC 25.
- 2.9 SLC 27.15 requires energy suppliers to take all reasonable steps to ensure that the fixed amount of the regular direct debit payment is based on the best and most current information available (or which reasonably ought to be available) to the supplier, including information as to the quantity of electricity/gas which the supplier reasonably estimates has been or will be supplied under the relevant Domestic Supply Contract.
- 2.10 Compliance with the licence obligations is important as it allows consumers to make the right choice for their needs. This is crucial to healthy energy markets, giving consumers choice and value resulting in more competitive markets. By contrast, when these provisions are breached, consumers risk being misled as to the actual costs of energy and as a consequence they may switch to a more expensive energy tariff and/or may not benefit from the full amount of savings that they are led to expect. As such, they can suffer harm (financial harm and non-financial harm) and over time they may lose faith in the market and become disengaged. Moreover, consumers’ ability to make well-informed decisions and to actively participate in the market to drive effective competition can be hampered.

The Authority’s Investigation

- 2.11 This is the second investigation into npower in relation to the marketing of energy. On 22 December 2008 the Authority imposed a penalty of £1.8 million on npower for breaches of the marketing rules then in place.
- 2.12 The Authority opened this investigation into npower’s compliance with its SLCs in September 2010, along with investigations into compliance by SSE Energy Supply Limited and Southern Electric Gas Limited, EDF Energy Customers plc and Scottish Power Energy Retail Limited.⁴
- 2.13 At the same time, Ofgem instructed Consumer Direct to run a targeted hotline for 6 weeks and asked customers to contact the hotline if they had concerns or complaints about how suppliers undertook sales activities. The information from this exercise was considered as part of this investigation.
- 2.14 In addition, the Authority requested copies of relevant documents and information in relation to npower’s Marketing and Telesales Activities. This included obtaining samples of telesales calls conducted by npower as well as information on npower’s policies and procedures. The sum of this evidence has been considered in the making of this decision.

⁴In relation to SSE Energy Supply Limited and Southern Electric Gas Limited, see: <https://www.ofgem.gov.uk/publications-and-updates/notice-decision-impose-financial-penalty-sse-under-section-27a3-electricity-act-1989-and-section-30a3-gas-act-1986-following-investigation-compliance-marketing-obligations>

In relation to EDF Energy Customers plc, see: <https://www.ofgem.gov.uk/sites/default/files/final-edf-energy-penalty-notice-failure-comply-standard-licence-conditions-23-25-and-27.pdf>

In relation to Scottish Power Energy Retail Limited, see: https://www.ofgem.gov.uk/sites/default/files/scottish_power_slc_25_penalty_notice_22_oct_2013.pdf

Energy Retail Limited, see: https://www.ofgem.gov.uk/sites/default/files/scottish_power_slc_25_penalty_notice_22_oct_2013.pdf

3. The Authority's decision on breaches

- 3.1 On the basis of the evidence before it, the Authority found that, in the Relevant Period, npower breached SLCs 25 and 27.15. These breaches have been admitted by npower. Details of the contraventions are set out below.

The two-factor consumption matrix (Marketing Activities)

- 3.2 In relation to its Marketing Activities, npower used a matrix for estimating annual energy consumption in situations where customers were not able to provide details of their actual annual consumption (e.g. by providing a bill or annual statement). This matrix only took into account two factors: the number of bedrooms and the number of occupants per household, which resulted in a pre-formulated consumption estimate. By only taking into account these two factors, npower failed to take into account Ofgem's Guidance of April 2010 for providing 'best estimates' during Marketing Activities.
- 3.3 The Authority found that in relation to Marketing Activities, the information provided to prospective consumers, including estimates of charges and comparisons of charges, did not meet the Objective of SLC 25. A substantial number of consumption estimates were significantly inaccurate. The consumption estimates were then used by Representatives to provide estimates of charges and comparison of charges against the customer's current supplier, which were therefore also likely to be inaccurate and/or incomplete. Consumers therefore risked being misled as to the actual charges payable with npower, and as a consequence may have switched to a more expensive energy tariff or may have saved less than they were led to expect.
- 3.4 In relation to Marketing Activities, the Authority found that npower did not provide a 'best estimate' of the total annual charges as it did not use all available relevant information, such as the age of premises and type of heating used by the consumer, which can materially affect the level of energy consumption (SLC 25.6(a) and 25.7(a)).
- 3.5 Furthermore, for Marketing Activities, npower did not have in place measures that comprised 'all reasonable steps' as required by SLC 25 to ensure that the training, monitoring and auditing of staff was appropriate to ensure Representatives obtained or took into account other relevant available information which could materially affect the level of energy consumption.
- 3.6 The relevant period of infringement for this breach was, in respect of Marketing Activities, January 2010 to June 2012.⁵

Direct debit discounts (Marketing and Telesales Activities) and reviews (Marketing Activities)

- 3.7 Both in relation to its Marketing and Telesales Activities, the Authority found that information provided to consumers by npower in relation to when direct debit discounts could be payable did not meet the Objective of SLC 25. npower representatives marketed these discounts as annual discounts. However, they did not, in respect of customers who signed up to direct debit payment from the supply start date but there was a delay of more than three months in setting up

⁵ npower ceased doorstep sales in November 2011 but continued 'events sales' at a level of approximately 270 sales per month until June 2012.

the direct debit, clearly specify that the discount could become payable on the anniversary of commencing direct debit payments, rather than the anniversary of the supply start date thereby potentially misleading such customers who might switch suppliers after a year of supply, but before the date on which they were eligible for the discount. The Authority also found that npower did not use 'all reasonable steps' as per SLC 25 to ensure that the information provided to consumers, during the course of Marketing and Telesales Activities, regarding direct debit discounts met the Objective of SLC 25.

- 3.8 The relevant period of infringement for the Direct Debit discount breach was: January 2010 to June 2012 in relation to Marketing Activities, and January 2010 to December 2011 in relation to Telesales Activities.
- 3.9 The Authority found that, between January 2010 and June 2012, information provided to consumers by npower during Marketing Activities about the timing of the direct debit level review and the manner in which such reviews would take place did not meet the Objective of SLC 25. The material suggested that direct debit levels would be reviewed by energy specialists after 6 and 12 months, and thereafter twice a year. However, reviews were conducted through an automated system rather than an energy specialist. In addition, in practice the first mid-review generally occurred significantly later, with a consequent effect on the timing of subsequent reviews which took place every six months thereafter. A long delay in the direct debit reviews risked significant direct debit adjustments which may result in certain customers being unable to meet their payments.
- 3.10 Finally, the Authority found that between January 2010 to September 2012 npower breached SLC 27.15 by failing to ensure that customers' first direct debit payment amounts were based on the most current information available, as npower did not review and adjust accordingly direct debit payments on the basis of a customer's meter reading until a scheduled payment review process was due.

The Standard Tariff assumption (Telesales Activities)

- 3.11 The Authority found that between October 2009 to April 2011, information provided to some consumers, including estimates of charges and comparisons of charges provided during Telesales Activities, did not meet the Objective of SLC 25 and that npower failed to take all reasonable steps, as required by SLC 25, to ensure that the Objective was met.
- 3.12 npower's Representatives did not in every case ascertain a prospective customer's consumption level or current tariff before informing the customer what they would pay or how much they could save if they were to switch to npower. Instead, in some cases, npower's Representatives used the customer's current spend and assumed the customer was on a standard tariff when estimating consumption, and then made representations as to price and savings. In other cases, where npower may have had the customer's consumption details (e.g. when making 'winback' calls), they assumed the customer had switched to a competitor's standard tariff and then made representations as to savings.
- 3.13 By failing to ascertain what tariff a customer was on with their current supplier, it was likely that in a material number of cases npower Representatives provided inaccurate estimates and comparisons. As a consequence, consumers risked being misled as to the actual charges payable with npower, and whether they would result in a saving. Consumers may therefore have switched to a more expensive energy tariff with npower, or may have saved less than they were led to expect.

- 3.14 In addition, npower's management did not take all 'reasonable steps' to train sales agents and monitor and audit the sales process to ensure that sales agents were asking for a customer's current tariff before providing consumers with estimates and comparisons, so as to ensure that all information provided to the customer during Telesales Activities was complete and accurate and met the Objective of SLC 25. Further, the 'tool' used by 'outsourced' sales agents to calculate comparisons did not have the right safeguards in place to ensure that a prospective customer's current tariff was ascertained.
- 3.15 However, this was remedied when npower altered its training, monitoring and auditing.

4. The Authority's decision to impose a financial penalty

Background

- 4.1 Under section 27A(1) of the Electricity Act 1989 and section 30A(1) of the Gas Act 1986, where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, then it may impose a penalty of such an amount as is "reasonable in all the circumstances of the case".
- 4.2 In considering whether it would be appropriate to impose a penalty and, if so, what level of penalty, the Authority must have regard⁶ to the Statement of Policy with respect to financial penalties⁷ ("the Penalties Statement").
- 4.3 The Authority is required to carry out all of its functions, including the taking of any decision as to financial penalty, in the manner which it considers is best calculated to further its principal objective and having regard to its other duties. The principal objective is to protect the interests of existing and future customers in relation to electricity conveyed by distribution or transmission systems and in relation to gas conveyed by pipes.
- 4.4 In concluding the imposition and appropriate level of penalty in this notice, the Authority has taken full account of the particular facts and circumstances of the contraventions under consideration.
- 4.5 On the basis of the evidence available in its possession, the Authority found that the contraventions of the relevant licence obligations as described above were of a serious nature. In particular, npower risked providing customers with inaccurate estimates of total annual Charges payable and with inaccurate comparisons of such charges against the customer's existing supplier's charges.
- 4.6 As a result, consumers risked being misled as to the actual charges payable and may have switched to a more expensive energy tariff as a consequence, or may have achieved significantly lower savings than they were told they would. In addition, consumers' ability to make well-informed decisions and thereby drive effective competition in the market would have been hampered.

⁶ Electricity Act 1989, section 27B(2); Gas Act 1986, section 30B(2)

⁷ Available at <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

- 4.7 Given the scale of npower's sales activities and the number of contracts entered into, the Authority found that a significant number of customers were likely to be affected.
- 4.8 The Authority considered that the breaches should have been apparent to a diligent licensee and that they were not of a trivial nature. The Authority found that npower did not always have in place systems and processes in the Relevant Period that took all reasonable steps to identify these breaches or to prevent them from occurring.
- 4.9 This is the second investigation into npower's compliance with its obligations under the marketing of gas and electricity rules. The Authority considered that npower should have been aware of its obligations under those rules, not least because of the previous investigation into npower. In addition, npower and other licensees had been consulted on the proposed amendments to the marketing licence condition as part of the Probe in 2009.
- 4.10 It was npower's responsibility to take all reasonable steps to ensure that it had in place systems and processes to ensure that both it and its sales representatives complied with the relevant licence obligations. The extent to which npower was able to provide support and fund those systems and processes was entirely within its control. The Authority considered this to be the case in relation to contracted agency staff as well as in relation to npower's own staff.
- 4.11 In addition, the Authority considered that the breaches should have been apparent to npower. However, the Authority found that npower did not always have in place systems and processes in the Relevant Period to identify these breaches or to prevent them from occurring.
- 4.12 The Authority therefore considered it appropriate to impose a financial penalty in order to deter npower or any other licensees from engaging in the same or similar conduct. There is nothing in the Authority's principal objective and duties that precluded the imposition of a penalty in this case.

5. Criteria relevant to the level of financial penalty

- 5.1 In accordance with section 28A(8) of the Electricity Act 1989 and section 30A(8) of the Gas Act 1986, the Authority may impose a financial penalty of 10 per cent of the turnover of the legal entity holding the relevant licence.⁸
- 5.2 In setting the level of financial penalty, the Authority considered all the circumstances of the case, including the following specific matters set out in the Penalties Statement.

The seriousness of the contravention and failure

- 5.3 As set out above, the Authority considered that the contraventions by npower of SLCs 25 and 27 were of a serious nature and took this into account.
- 5.4 In particular, npower risked providing customers with inaccurate estimates of total annual Charges payable and with inaccurate comparisons of such charges against other suppliers' charges. As a result, consumers risked being misled as to the actual charges payable and may have switched to a more expensive energy

⁸ Electricity Act 1989, section 27A(8); Gas Act 1986, section 30A(8)

tariff as a consequence, or may have saved less than they were led to expect. In addition, consumers' ability to make well-informed decisions and thereby drive effective competition in the market would have been hampered.

- 5.5 Given the scale of npower's sales activities and the number of contracts entered into, the Authority found that a significant number of customers were likely to be affected by the contraventions.
- 5.6 Training, monitoring and auditing of sales activities is a matter of particular concern to the Authority. The Authority found that such management arrangements were not always adequate, and this may have allowed instances of mis-selling, particularly in relation to the provision of information about estimates and comparisons.

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

- 5.7 The Authority considered that certain customers and other market participants were likely to be harmed by the contraventions.
- 5.8 The Authority has set out in general terms at paragraph 5.4 the detriment that consumers would likely have suffered as a result of inaccurate estimates and comparisons provided to consumers. Furthermore, any licensees who lost consumers to npower as a result of the contraventions (including inaccurate estimates and comparisons provided by npower), would also have suffered financial harm.
- 5.9 The degree of consumer detriment would have varied by breach and depends on certain factors including: duration, the tariffs in question, the level and type of energy consumption, any variations in consumption, and the number of consumers affected. Some of the above factors would also have affected the level of detriment suffered by other licensees.
- 5.10 As set out above, consumers' ability to make well-informed decisions and thereby drive effective competition in the market would have been hampered as a result of the contraventions. The intensity of competition in the market may therefore have been decreased. In addition, potential distrust and reluctance to engage in these markets in the future, could conceivably mean that customers will miss out on potential available savings.
- 5.11 Finally, the breaches may have acted as a barrier to entry or created an uneven playing field for competitors who were willing to comply with marketing obligations.

The duration of contravention or failure

- 5.12 The duration of the infringements was significant, with some breaches starting with the introduction of the Objective in October 2009 to the last breach ending in September 2012.

The gain (financial or otherwise) made by the licensee

- 5.13 Energy suppliers engage in marketing and sales activities in order to maintain their existing customer base and to win new customers from their competitors. The Authority found that npower may have won some customers who may otherwise have stayed with their existing supplier or switched elsewhere had npower not acquired those customers through a breach of the license conditions

(which included providing customers with inaccurate estimates and comparisons). The revenue stream acquired by npower from these customers represented a financial gain made by npower.

- 5.14 In addition, npower may have gained financially by not devoting sufficient company resources to compliance procedures, for example:
- (a) providing or procuring sufficient training for sales agents; and/or
 - (b) providing or procuring adequate monitoring and auditing procedures to ensure compliance.

Factors tending to increase or decrease the level of financial penalty

- 5.15 The Authority also considered whether there are any aggravating or mitigating factors on the basis of which it should adjust the quantum of penalty which it would award, based on the considerations above, as set out in the Penalties Statement at paragraphs 5.3 and 5.4.

Factors tending to increase the level of financial penalty

Repeated contravention or failure or continuation of a contravention or failure after either becoming aware of the contravention or failure or becoming aware of the start of Ofgem's investigation

- 5.16 As set out in paragraph 2.11, this is the second time Ofgem has taken enforcement action against npower for compliance with the marketing licence condition, although the nature of the breaches in this case was less serious.
- 5.17 While the Authority found that npower did not reach the standards required by the licence condition to ensure compliance and assure itself of compliance by its Representatives, the Authority also noted that npower has improved its systems and processes while the investigation was ongoing and has remedied the breaches identified.

The involvement of senior management in any contravention or failure

- 5.18 The Authority saw no evidence that senior management at npower were involved in any deliberate actions in relation to the contraventions described above.
- 5.19 The Authority considered that planning and resourcing for licence compliance and the implementation of appropriate systems and processes to ensure compliance were the responsibility of senior managers at npower. The Authority expected that senior management would put in place systems that secure and incentivise compliance. The Authority considered that although npower had systems in place during the relevant periods, they were not adequate.
- 5.20 However, the Authority noted the steps that managers have taken to secure compliance.

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

- 5.21 While some systems and procedures were in place in order to prevent contravention or failure, the Authority found these systems and processes were not always adequate.

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

5.22 The Authority found no evidence that there was any attempt to conceal the contraventions.

Factors tending to decrease the level of financial 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 and action taken by the licensee in recognition of the contravention or failure

5.23 The Authority acknowledged that npower has taken steps during the investigation to secure compliance with the licence obligations.

5.24 npower has made improvements to its processes and the Authority has taken this into account. These improvements have included:

- crediting the direct debit discount in all instances with effect from the supply start date;
- using a more detailed consumption matrix where it is not possible to obtain details of the customer's actual consumption;
- carrying out the first direct debit review based on the earliest relevant meter reading rather than waiting until the first meter reading which is five months or more after the direct debit start date;
- improving its systems, training and monitoring to ascertain the customer's existing tariff details when carrying out comparisons.

Evidence that the contravention or failure was genuinely accidental or inadvertent

5.25 There is no evidence that the contraventions were deliberate or wilful. However, the contraventions cannot be regarded as accidental or inadvertent as it was within npower's control to allocate resources effectively and manage appropriate systems and processes to ensure compliance with its licence obligations.

Reporting the contravention or failure to Ofgem

5.26 npower did not report the contravention or failure to Ofgem.

Co-operation with Ofgem's investigation

5.27 The Authority noted npower's willingness to admit these breaches through settlement and the efforts it has made to put in place measures to remedy these breaches through the course of the investigation. The agreement to settle shortened the length of the investigation. The Authority also noted npower's willingness to contact and refund former customers who were affected by the Direct Debit discount breach and to contact customers who may have suffered financial detriment as a result of the Standard Tariff breach or Matrix Breaches.

6. The Authority's decision on penalty

- 6.1. The Authority considered that the seriousness of the contraventions, the degree of harm experienced by consumers, the duration of the contravention and the financial gain made by npower warranted a significant penalty.
- 6.2. However, the Authority placed particular emphasis on npower's admission of the breaches. It also placed emphasis on the commitment by npower to improve its processes and the steps taken to secure compliance through the course of the investigation.
- 6.3. The Authority also had particular regard to npower's agreement to offer a fuel poverty package amounting to £3.5m which will directly benefit consumers. These consumers have been identified through npower's Warm Homes Discount Scheme. npower will make a payment of at least £25 to each of its current customers who are a core group Warm Home Discount payment recipients. Current customers will receive a credit on their account or payment to top up a prepayment meter account.
- 6.4. Any money which is not paid out from the £3.5m fund, whether due to un-cashed Warm Home Discount cheques or any other reasons, will be paid into the npower Health Through Warmth scheme. This provides financial help and support for vulnerable homeowners with long term cold related illnesses who need heating repairs and installations that they cannot afford themselves. Beneficiaries do not have to be npower customers to benefit from the scheme.
- 6.5. In addition, npower has agreed to write to consumers who may have suffered financial detriment as a result of the issues relating to the Standard Tariff or Matrix breaches, and to credit those customers who were affected by the Direct Debit discount breach. This arrangement is in addition to npower's continuing consideration of any complaints which are made to it through its normal complaints process.
- 6.6. The Authority considered that the scale of these payments and measures will have a significant impact on npower's future compliance and a deterrent effect against future breaches.
- 6.7. Taking all these factors into account, in particular the payments and measures listed above for the benefit of consumers, and also mindful of its principal objective to protect the interests of existing and future consumers, the Authority decided to impose a nominal financial penalty of £1 which it considered reasonable in all the circumstances of the case.
- 6.8. The penalty would have been significantly higher if npower:
 - a) had not admitted the breaches
 - b) had not offered a fuel poverty package of £3.5m
 - c) had not proposed to contact former customers who were affected by the direct Debit Discount breach in order to refund customers' direct debit discounts
 - d) had not proposed to contact customers who may have suffered financial detriment as a result of the Standard Tariff and Matrix breaches
 - e) had not made changes to systems and processes to comply with the relevant license conditions.

6.9. No representations were received on the proposed penalty. Therefore the Authority has decided to confirm the Penalty of £1 for npower. The penalty must be paid by 7 April 2014.

Gas and Electricity Markets Authority

25 February 2014