

URE Energy Limited

Notice of reasons pursuant to Section 49A(1)(f) and 49A(2) of the Electricity Act 1989 ("EA89") for the decision of the Gas and Electricity Markets Authority ('the Authority') to make a Final Order under section 25(1) of the EA89

1 Background: the making of the Final Order

1.1 This document sets out the reasons why, on 8th March 2019, the Authority made a Final Order ("FO") in respect of contraventions by URE Energy Limited ("URE") (company number 10300613) of 2-4 Packhorse Road, Gerrards Cross, Buckinghamshire SL9 7QE.

1.2 URE is a holder of an Electricity Supply Licence issued by the Authority on 14th November 2016 under section 6(1)(d) of the EA89.

2 Background: Notice of Proposal to make the FO and inviting representations to the Authority

2.1 The Authority has published, pursuant to section 26(1) and (2) of the EA89, a notice of its proposal to make the FO, dated 11th February 2019, and invited representations and objections to the notice to be made to it. The Notice of Proposal to make the FO can be found at:

https://www.ofgem.gov.uk/system/files/docs/2019/02/ure_notice_of_proposed_final_order.pdf

2.2 As well as explaining the reasons why the Authority proposed to make the FO, the Notice of Proposal sets out the contravention the FO was made in respect of, namely URE's failure to comply with the Renewables Obligation ("RO") under article 7 of the Renewables Obligations Order 2015 ("ROO"). The Notice of Proposal explains in particular how URE failed to present Renewables Obligation Certificates ("ROCs"), and in the alternative to make payments, to the Authority in relation to the ROO obligation period 2017-2018 by the relevant deadlines.

2.3 Representations were received from SSE plc in response to the Authority's proposal to make the FO, supporting that proposal. In summary, and in the context of the consultation undertaken pursuant to section 26(1) of the EA89, SSE plc welcomed the proposed measures being taken by the Authority in order to protect the integrity of the RO scheme and shared the Authority's concern that compliant suppliers are penalised by shortfalls arising from non-compliant suppliers such as URE.

3 Reasons for the Authority's decision to make the FO

3.1 Pursuant to section 25(1) of the EA89:
where the Authority is satisfied that a regulated person is contravening, or likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement

3.2 URE has failed to acquire sufficient ROCs and/or make payments to discharge its RO, for the 2017-2018 obligation period, by 1st September 2018 as required by article 7 and as provided for in articles 67 and 68 of the ROO.

3.3 URE owes a total amount of £209,013.78 in relation to its RO, comprising the amount of £207,024.36 due by 1st September and late payment interest of £1,989.42 on that amount, which total amount remains unpaid to date.

3.4 The Authority considers it important to protect the integrity of the RO scheme, which is a government scheme designed to incentivise uptake of renewable electricity within the UK. A key aim of the scheme is to encourage UK electricity suppliers to obtain an increasing proportion of the electricity they supply from renewable sources.

3.5 Suppliers can comply with their obligations through presenting ROCs to Ofgem or making payments in lieu of presenting ROCs. ROCs and payments must be presented to Ofgem within timescales set out in the RO Orders. If a supplier fails to discharge its obligation on time, it is non-compliant under the scheme and this leaves a shortfall in scheme funds. The amount by which the supplier has defaulted is either absorbed in to the scheme funds (meaning that less money is recycled back to suppliers) or the amount is mutualised, whereby compliant and partially compliant suppliers are required to make further payments to make up the shortfall.

3.6 Mutualised funds are then redistributed amongst suppliers who presented ROCs. Where there is a shortfall, this affects suppliers who have presented ROCs as they receive less money back through the scheme's recycling mechanism. This means that compliant and partially compliant suppliers are penalised due to other suppliers' failure to comply with their obligations. Further to this, it means that generators, with whom suppliers have Power Purchase Agreements, are likely to receive less money back than they otherwise would due to lower ROC recycle value.

3.7 The Authority notes that URE has indicated that it intends to make payments in satisfaction of the outstanding sums but, despite various assurances provided to date, has not taken concrete steps make specific proposals of a repayment nor to make any actual repayments. The Authority is concerned that time is elapsing without resolution of this issue and repayment of monies due. Additionally it is concerned that URE will shortly be required to produce ROCs and/or make arrangements for payments in lieu to the Authority in respect of the obligation period of 1st April 2018 to 31st March 2019.

3.8 The Authority is satisfied that an imposition of a FO compelling payment of the monies outstanding for the 2017-2018 obligation period is requisite for the purposes of securing compliance with the ROO – in particular to encourage URE to make payments for its RO. The Authority considers that a deadline for payment of 31st March 2019 is sufficient to allow URE further time to complete any commercial arrangements necessary to meet its obligations whilst at the same time providing a finite cut-off point. After that point, the Authority may take further steps to enforce against URE in relation to any continued non-compliance, in order to protect the integrity of the RO scheme, other scheme participants and the wider energy market.

3.9 The Authority has noted the representations received from SSE plc in the context of the consultation undertaken pursuant to section 26(1) of the EA89. It has considered these representations carefully and has concluded that no modification is required to its findings nor to the proposed FO.

3.10 In reaching its conclusion to make the FO, the Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the EA89. Sections 25(4A) and (4B) relate to the question as to whether this matter should be investigated on the basis of a possible breach of the Competition Act 1998. The Authority does not consider that this case falls into that category. Section 25(5) of the EA89 refers to the Authority's principal objective as set out in section 3A of the EA89.

3.11 In preparing this notice the Authority has had regard to the matters set out in section 49A(4) of the EA89.

3.12 For the above reasons the Authority decided to make the FO in the form consulted upon.

Dated 8th March 2019

Elizabeth France – Chair
Andrew Long
Dr Philip Marsden

Enforcement Decision Panel
Duly authorised on behalf of the Gas and Electricity Markets Authority