

Notice of proposal to confirm and modify Provisional Order

The Electricity Act 1989

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to confirm and modify a Provisional Order pursuant to section 26(1) of the Electricity Act 1989 (“Electricity Act”)

9 July 2019

1. Summary

1.1. On 10 May 2019 under section 25(2) of the Electricity Act, the Authority issued a Provisional Order to Solarplicity Supply Limited (company number 08053210), previously known as Loco2 Energy Supply Limited, having changed its name to Solarplicity Supply Limited by notice dated 27 April 2017, and as Ganymede Energy Supply Limited having changed its name to Loco2 Energy Supply Ltd by change of name certificate dated 17 March 2014, having its registered office at Unit 8, Peerglow Centre, Marsh Lane, Ware, Hertfordshire, United Kingdom, SG12 9QL (“Solarplicity”), the holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act. The Provisional Order was issued in respect of contraventions or likely contraventions of Standard Licence Condition 33.2 of the electricity supply licence (“SLC”) and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33).

Unless otherwise stated, capitalised terms in this Notice are defined in the SLCs.

1.2. A copy of the Provisional Order issued on 10 May 2019 (“the Provisional Order”) and the document setting out the reasons for issuing (“Reasons Notice”) the Provisional Order can be found at:

https://www.ofgem.gov.uk/system/files/docs/2019/05/provisional_order_issued_to_solarplicity_-_10_may_2019.pdf

https://www.ofgem.gov.uk/system/files/docs/2019/05/solarplicity_-_reasons_document.pdf

1.3. The Authority now proposes to confirm the Provisional Order with modifications. The reasons for proposing (1) to confirm the Provisional Order and (2) to modify it are set out in paragraph 4.

1.4. The Authority is satisfied that Solarplicity is contravening or is likely to contravene the requirements of SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33. These provisions, with SLC 33.4, require a Voluntary Feed-In

Tariff (FIT) licensee to make FIT payments no less than quarterly, except in so far as otherwise agreed in the Statement of FIT terms.¹

1.5. The modifications to the Provisional Order are the deletion of paragraphs 1 and 2 of the Provisional Order dated 10 May 2019, as Solarplicity appears to have complied with those requirements, and certain consequential amendments. The Authority proposes to confirm the Provisional Order, with modifications, in the form set out in Annex 1 to this notice.

1.6. Pursuant to section 25(4) of the Electricity Act, the Authority shall confirm a Provisional Order with or without modifications if:

- a. The Authority is satisfied that the regulated person to whom the order related is contravening or is likely to contravene any condition or relevant requirement; and
- b. The provision made by the order is requisite for the purpose of securing compliance with that condition or requirement.

1.7. The Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the Electricity Act².

1.8. Prior to confirming the Provisional Order, in accordance with section 26(1) of the Electricity Act, the Authority hereby gives notice that:

- a. SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33) are the relevant conditions for the purpose of the Provisional Order;
- b. The acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of those conditions, and other factors which in the Authority's opinion justify the confirmation of the Provisional Order are those set out at paragraph 4 below;
- c. Any representations with respect to the proposed confirmation may be made to the Authority by 1 August 2019 (see paragraph 5 below).

2. Background

2.1. The background to the making of the Provisional Order is set out in the Reasons Notice.

¹ The Feed-in Tariffs (FIT) scheme requires certain Licensed Electricity Suppliers to pay fixed tariffs to micro and small renewable and micro-CHP generators for electricity generated and exported to the National Grid. These suppliers have specific obligations under SLCs 33 and 34 and the Feed-in Tariffs Order 2012. These licensees are obligated to register and make FIT payments to certain eligible generators. Licensed electricity suppliers cannot offer FIT to customers unless they are confirmed to be a FIT licensee either on a mandatory or voluntary basis. A Voluntary FIT licensee has less than 250,000 domestic electricity customers but elects to register and make FIT payments to certain eligible generators. <https://www.ofgem.gov.uk/environmental-programmes/fit/electricity-suppliers>. The Statement of Terms is part of the contract terms and conditions between the licensee and the generator concerning FIT Payments

² Section 25(5) of the Electricity Act 1989 refers to the Authority's principal objective as set out in section 3(A) of the Electricity Act including the duty on the Authority to have regard to the need to secure financeability.

3. Reasons for the Authority's decision to propose to confirm the Provisional Order with modifications

- 3.1. Based on the information received by the Authority directly from Solarplicity, other sources which are publicly available and online sources³ the Authority is satisfied that Solarplicity is contravening or is likely to contravene SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33).
- 3.2. The Authority is minded to confirm the Provisional Order with modifications on the grounds that it is satisfied, in light of the matters set out at paragraph 4 of this Notice, Solarplicity is contravening or is likely to contravene SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33. Consequently, the provisions made by the Provisional Order with modifications are still requisite for the purpose of securing compliance with the relevant conditions cited at paragraph 3.1.

4. The facts surrounding the Authority's decision on contraventions

- 4.1. The Authority has considered information obtained since the Provisional Order was made. The particular behaviours of concern relate to Solarplicity's:
- a. financial position which in the Authority's opinion makes it likely that Solarplicity will continue to fail to make FIT payments without the Provisional Order being confirmed. On the information obtained, Solarplicity appears to be in no better financial position than it was at the time of making the Provisional Order.
 - b. failure to pay generators, both domestic and non-domestic, some or all of the FIT generator payments for Quarter 3 of year 9 covering the period October to December 2018 by 28 June 2019 in accordance with the Statement of Terms and/or extended payment plan agreements. On or about 2 and 3 July 2019 Solarplicity contacted Ofgem and some FIT generators stating that FIT payments due on 28 June 2019 would not be made but delayed.
 - c. continuing pattern of behaviours as set out above and the impact this is likely to have on Solarplicity's future obligations to make upcoming FIT generator payments due to FIT generators which is likely to be impacted by its obligations to pay within a short time scale a range of significant payments in particular the Renewables Obligations and potentially under the FIT annual levelisation process.

Financial position and forthcoming payment obligations

- 4.2 The Provisional Order required Solarplicity, in particular, to make all future FIT Payments that become due to FIT generators, in terms of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33, when those FIT Payments become due, as well as making any overdue ones.
- 4.3 At the time of the making of the Provisional Order, Solarplicity had not made some FIT payments as they fell due and had put in place payment plans with some of their FIT

³ Full disclosure has been provided to Solarplicity.

generators and in doing so delayed the timeframe in which they made payments. From information obtained from the company, after the issue of the Provisional Order, Solarplicity complied with paragraphs 1 and 2 of the Provisional Order. However, the Authority notes that there were still a small number of late payments.

- 4.4 Thereafter, on or about 2 July 2019 Solarplicity wrote to at least 9 FIT generators stating that FIT payments due on 28 June 2019 would not be made but delayed. On 3 July 2019, Solarplicity also contacted Ofgem advising that it would not be making those FIT payments due to FIT generators.
- 4.5 The Authority understands that Solarplicity's financial position appears no better now than when the Provisional Order was issued. Given no improvement has been made in its financial position the behaviours referred to above have been and are likely to be repeated.
- 4.6 As referred to above, Solarplicity's continuing pattern of behaviours call into question Solarplicity's compliance with existing and future obligations to make FIT generator payments. In addition, further obligations within a relatively short period will require payment of significant amounts in respect of the Renewables Obligations and potentially under the FIT annual levelisation process.
- 4.7 **For these reasons**, the Authority is satisfied that Solarplicity is contravening or is likely to contravene the requirements of SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33, namely to make existing and future FIT generator payments within the required time limits unless the Provisional Order, with modifications, remains in place and is confirmed.
- 4.8 Also, the Authority is satisfied that generators and consumers are being and are likely to continue to be caused detriment by Solarplicity's likely non-compliance. In particular FIT generators are likely to be directly affected owing to the non-payment or delayed payment of their FIT payments. If Solarplicity failed to make FIT generation and export payments due to generators on time or at all, the generators would be disadvantaged because they would not receive the payments when they expect to receive them. In cases where the generators run a business, this can cause serious cash flow problems. In cases where the generators are domestic, it could affect their income flows and budgeting if payments are not paid on time. Generators may also seek to switch to another FIT licensee to make their payments instead of Solarplicity which creates a risk of double charging to the FIT scheme.
- 4.9 As such, the Authority considers that it is requisite for the Provisional Order, with modifications, to be confirmed and to require Solarplicity to make FIT payments and continue to make all future FIT payments that become due to FIT generators in terms of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33. In addition, the Authority considers that it is requisite for Solarplicity to provide a weekly report to the Authority evidencing such payments and when making FIT payments not to give preference to any FIT generator connected in any way to Solarplicity by virtue of its ownership or directorship. The Authority considers that this is proportionate and necessary in the circumstances given the risk of harm to generators and consumers.

5. Representations or Objections

- 5.1. The Authority invites representations or objections. Any representations or objections with respect to the proposed notice to confirm the Provisional Order with modifications must be made in writing on or before Thursday, 1 August 2019 (being not less than 21 days from the date of issue of this notice) and sent to Susan Paget, Enforcement Manager, Ofgem, Floor 3, Commonwealth House, 32 Albion Street, Glasgow, G1 1LH or by email to susan.paget@ofgem.gov.uk.
- 5.2. Responses will be published. If a respondent does not wish its response or part of its response to be published, it should clearly mark its response or the relevant parts “not for publication” and give reasons.
- 5.3. Any representations or objections which are duly made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated: 9 July 2019
Signed

ANDREW LONG
MEGAN FORBES
PETER HINCHLIFFE
ENFORCEMENT DECISION PANEL
Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex 1

Proposed Provisional Order as modified for confirmation (modifications shown in track changes)

The Electricity Act 1989

Provisional order confirmed as modified under section 25(42) of the Electricity Act 1989

To:

Solarplicity Supply Limited (company number 08053210), previously known as Loco2 Energy Supply Ltd, having changed its name to Solarplicity Supply Limited by notice dated 27 April 2017, and as Ganymede Energy Supply Limited having changed its name to Loco2 Energy Supply Ltd by change of name certificate dated 17 March 2014, having its registered office at Unit 8, Peerglow Centre, Marsh Lane, Ware, Hertfordshire, United Kingdom, SG12 9QL ("Solarplicity") the holder of an electricity supply licence granted or treated as granted under section 6(1) of the Electricity Act 1989.

WHEREAS:

~~A.~~ The Gas and Electricity Markets Authority ("the Authority") has received information regarding Solarplicity's compliance with its obligations under the standard conditions of the electricity supply licence (referred to as the "SLCs");

~~B.~~

~~A. Based on the information received by the Authority and its engagement with Solarplicity, it appears to the Authority that Solarplicity is contravening or is likely to contravene SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33);~~

~~C.B.~~ The Authority made a provisional order on 10 May 2019 under section 25(2) of the Electricity Act 1989.

~~C.~~ The Authority made a proposal to confirm the provisional order with modifications on [] July 2019 under section 26(1) of the Electricity Act 1986 ("the Proposal to Confirm").

~~D.~~ Having considered representations made to the Authority by Solarplicity [and] in response to the Proposal to Confirm and having had regard to the matters set out in Section 25 of the Electricity Act 1989, the Authority is satisfied that Solarplicity is contravening or is likely to contravene SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33), and that the provisions of the confirmed provisional order with modifications are requisite for the purpose of securing compliance with that SLC. Having had regard to the matters set out in section 25 of the Electricity Act, the Authority considers it is requisite to make a provisional order in exercise of the powers in section 25(2) of the Electricity Act.

NOW THEREFORE:

Unless otherwise defined herein, capitalised terms used in this confirmed Provisional Order with modifications have the same meanings as those defined in the SLCs.

The Authority, pursuant to section 25(4) of the Electricity Act, and for the purpose of securing compliance with SLC 33.2 and, in particular, the provisions of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 (applicable by virtue of paragraph 3.1 of Part 2 of Schedule A of SLC 33) ~~confirms~~ confirms ~~makes a the~~ provisional order with modifications requiring Solarplicity:

FIT Payments to Generators

- ~~1. To make all outstanding FIT Payments due to FIT Generators in terms of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 by 16 May 2019;~~
- ~~2. To provide a report to the Authority on 23 May 2019 evidencing that the FIT Payments due to FIT Generators in terms of provision 1 of this Order have been made. This report must include:

 - ~~2.1. The details of each FIT installation registered with Solarplicity as its FIT Licensee (including FIT ID, technology and generator name);~~
 - ~~2.2. For each of the installations referred to at 2.1, when the FIT Payment (or payments) were due by reference to the Statement of FIT Terms agreed between Solarplicity and the FIT Generator (or any variation to the Statement of FIT Terms agreed with the FIT Generator);~~
 - ~~2.3. The amount of the FIT Payment (or payments) due; and~~
 - ~~2.4. For each of the FIT installations referred to at 2.1, the amount of FIT Payment (or payments) made by 16 May 2019 and when payment for each was made.~~~~
- 3.1. To make all existing and future FIT Payments that are or become due to FIT Generators in terms of paragraph 3.2.5 of Part 1 of Schedule A of SLC 33 when those FIT Payments are or become due and to pay forthwith any payments that are overdue;
- 4.2. ~~From 27 May 2019, t~~ To continue to provide a weekly report to the Authority evidencing that FIT Payments that are or become due to FIT Generators in terms of provision 1 2 of this confirmed Order are being made on time in accordance with paragraph 3.2.5 of Part 1 of Schedule A of SLC 33. Such weekly reports are to include:
 - 4.1.2.1. The details of each FIT installation registered with Solarplicity as its FIT Licensee (including FIT ID, technology and generator name);
 - 4.2.2.2. For each of the installations referred to at 4.2.1, when the FIT Payment (or payments) were due by reference to the Statement of FIT Terms agreed between Solarplicity and the FIT Generator (or any variation to the Statement of FIT Terms agreed with the FIT Generator);
 - 4.3.2.3. The amount of the FIT Payment (or payments) due;
 - 4.4.2.4. For each of the installations referred to at 2.4.1, when the payment was made and the value of that payment.

5.3. When making FIT Payments under provisions 1 ~~or 3~~ of this confirmed Order, not to give preference to any FIT Generator connected in any way to Solarplicity by virtue of its ownership (being a part of Solarplicity’s group of companies) or Directorship.

Dated:

Signed

ANDREW LONG

MEGAN FORBES

PETER HINCHLIFFE

ENFORCEMENT DECISION PANEL

~~Charles Hargreaves~~

~~Deputy Director, Enforcement~~

Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex 2

Standard Licence Condition

Condition 33. Feed-in Tariffs

Application of Schedule A

SLC 33 paragraph 2 provides:

“Where the licensee is a Voluntary FIT Licensee, it shall comply with the provisions of Part 2 of Schedule A with effect on and after 1st April 2010”

FIT Payments by the Licensee to FIT Generators

SLC 33, paragraph 4 provides:

“Where the licensee is either a Mandatory FIT Licensee or a Voluntary FIT Licensee, it shall make FIT Payments to FIT Generators or Nominated Recipients in accordance with the provisions of Schedule A.”

Schedule A

Part 1 – Mandatory FIT Licensees

Paragraph 3 of Schedule A to SLC 33 provides:

“3. Payment of FIT”

Paragraph 3.2

‘In the event Part 1, clause 3.1 is satisfied, the Mandatory FIT Licensee shall be required as regards making FIT Payments to: [...]’

Paragraph 3.2.5 of Part 1 of Schedule A of SLC 33, provides that the licensee should:

'make FIT Payments no less than quarterly, except insofar as otherwise agreed in the Statement of FIT Terms;'

Part 2 – Voluntary FIT Licensees

“3 Applicability of principles in Part 1 to Voluntary FIT Licensees”

3.1 The Voluntary FIT Licensee shall be bound by the obligations set down in Part 1, clauses 3 to 10, the necessary changes having been made to adjust for the differing context, as regards:

3.1.1 FIT Generators falling into the category listed in Part 2, clause 2.1 which it is obliged to accept as a result of electing to become a Voluntary FIT Licensee;

3.1.2 FIT Generators which it elects to accept into the FIT Scheme pursuant to Part 2, clause 2.2;

3.1.3 FIT generators in respect of which it elects to accept requests following an event described in article 24A(1)(a) or 24B(1)(b) of the FIT Order.

Section 25(4) Electricity Act 1989

(4) Subject to [subsections [(4A) to] (5A)] and section 26 below, the [Authority] shall confirm a provisional order, with or without modifications, if—

(a) [it] is satisfied that the [regulated person] 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.

(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.