

Notice of reasons pursuant to sections 49A(1)(f) and 49A(2) of the Electricity Act 1989 for the decision of the Gas and Electricity Markets Authority to confirm a Provisional Order with modifications under section 25(4) of the Electricity Act 1989

1. Background: the making of the Provisional Order

- 1.1. This document sets out the reasons why, on 6 August 2019 the Gas and Electricity Markets Authority (“the Authority”) confirmed a Provisional Order with modifications in respect of the contraventions or likely contraventions by **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”) of its obligations under the Electricity Act 1989 (“Electricity Act”).
- 1.2. This is a document pursuant to section 49A (1)(f) and 49A (2) of the Electricity Act which provides that the Authority shall publish a notice stating the reasons for its decision to confirm the Provisional Order with modifications addressed to Solarplicity.
- 1.3. Solarplicity is the holder of electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act.

2. Background: Notice of proposals to confirm the Provisional Order with modifications and representations made to the Authority

- 2.1. The background to the reasons for issuing the Provisional Order of 10 May 2019 (“the Provisional Order”) are set out in the Reasons Notice dated 10 May 2019.
- 2.2. A copy of the Provisional Order issued on 10 May 2019 and the Reasons Notice 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

- 2.3. The Authority published a notice of its proposal to confirm the Provisional Order with modifications on 9 July 2019 and invited representations and objections to the notice to be made to the Authority. The notice to confirm the Provisional Order with modifications can be found at:

https://www.ofgem.gov.uk/system/files/docs/2019/07/notice_of_proposal_to_confirm_and_modify_provisional_order_-_solarplicity.pdf

2.4. As well as explaining the reasons why the Authority proposed to confirm the Provisional Order with modifications, the notice of proposal published on 9 July 2019 explains what contraventions or likely contraventions were originally made in respect of namely 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). The notice of proposal to confirm the Provisional Order also explains the reasons for the modifications to the original Provisional Order dated 10 May 2019. 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.

3. Reasons for confirming the Provisional Order with modifications

- 3.1. In response to the consultation, the Authority received three representations. These representations were from or made on behalf of non-domestic FIT generators who each confirmed that the FIT payments due to them had still not been paid on the due dates. One of the FIT generators referred to correspondence that it had received from Solarplicity in which Solarplicity referred to communications from Ofgem as justifying a delay in payment to that FIT generator. Ofgem has responded to that FIT generator to provide assurances that at no point has Ofgem suggested that Solarplicity should withhold payments or give preference to certain generators or creditors. In addition, the PO specifically states that Solarplicity when making FIT payments must not give preference to any FIT generator connected in any way to Solarplicity by virtue of its ownership (being part of Solarplicity’s group of companies) or Directorship.
- 3.2. During the consultation period (from 9 July 2019) the Authority received nine further complaints that Solarplicity had failed to make payments to FIT generators. Although these complaints were not made formally in response to the notice of the proposal to confirm the Provisional Order the Authority has taken these complaints into consideration when determining whether to confirm the Provisional Order.
- 3.3. Ofgem has also continued to monitor the information provided by Solarplicity. The information provided by Solarplicity demonstrated that no FIT payments have been made to FIT generators since 28 June 2019. Solarplicity remains in contravention of its requirement to pay FIT generators under the SLCs.
- 3.4. The Authority has taken the representations received into account in addition to the information from Solarplicity in reaching its decision.
- 3.5. 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 was requisite for the purpose of securing compliance with that condition or requirement.

3.6. Based on the information received by the Authority directly from Solarplicity and representations made to it, 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). Consequently, the provisions made by the Provisional Order with modifications are still requisite for the purpose of securing compliance with these relevant conditions.

3.7. In reaching its conclusion to confirm the Provisional order with modification, the Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the Electricity Act.

Dated: 6 August 2019

Signed

MEGAN FORBES

PETER HINCHLIFFE

ANDREW LONG

ENFORCEMENT DECISION PANEL

Duly authorised on behalf of the Gas and Electricity Markets Authority