

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

Date: 29 October 2019

1. Background: the making of the Final Order

- 1.1. This document sets out the reasons why, on 30 October 2019, the Authority made a Final Order ("FO") in respect of contraventions by GNERGY Limited (company number 06993060) of 110 Wren Way, Farnborough, Hampshire, GU14 8TA.
- 1.2. GNERGY Limited is a holder of an Electricity Supply Licence issued by the Authority 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 1 October 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/publications-and-updates/gnergy-limited-final-order>.
- 2.2. As well as explaining the reasons why the Authority proposed to make the FO, the Notice of Proposal sets out the likely contravention the FO was made in respect of, namely GNERGY Limited's anticipated failure to comply with the Renewables Obligations ("RO") under article 7 of the Renewables Obligation Order 2015 ("ROO") and article 5 of the Renewables Obligation (Scotland) Order 2009 ("ROS"). The Notice of Proposal explains in particular how GNERGY Limited is likely to fail to present Renewables Obligation Certificates ("ROCs"), and in the alternative to make payments, to the Authority in relation to the ROO and ROS obligation period 2018-19 by the relevant deadlines.
- 2.3. GNERGY Limited met with Ofgem and subsequently provided a written representation. The Authority received representations from a member of the public, which were broadly supportive of the proposals to make the final orders. The representations also commented on related issues of policy, which the Authority will take on board and consider separately.

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. GNERGY Limited has failed to acquire sufficient ROCs and/or make payments to discharge its RO, for the 2018-2019 obligation period, by 1st September 2019 as required by article 7 and as provided for in articles 67 and 68 of the ROO (and the equivalent provisions of ROS).
- 3.3. GNERGY Limited owes a total amount of £673,876.62, plus interest accrued by date of payment, in relation to the RO.
- 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 applicable legislation. 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. GNERGY Limited responded to the consultation and stated its intention to make its RO payment but was unable to provide sufficient reassurance that the payment would be made by 31 October 2019, as required by the ROO and ROS.

3.8. The Authority is satisfied that an imposition of a FO compelling payment of the monies outstanding for the 2018-19 obligation period is requisite for the purposes of securing compliance with the ROO and ROS – in particular to require GNERGY Limited to make the necessary payment for its RO. The Authority is therefore making the proposed final order to compel payment by the statutory late payment deadline of 31 October 2019. After that point, in the absence of payment being made, the Authority may take further steps to enforce against GNERGY Limited 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. This may include initiating the process to revoke GNERGY Limited’s electricity supply licence.

3.9. The Authority has noted the representations received from one member of the public in the context of the consultation undertaken pursuant to section 26(1) of the EA89. It has considered this representation 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 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 29 October 2019

Megan Forbes (Chair)

Dr Ulrike Hotopp

Dr Philip Marsden

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority