

## Notice of Proposal to make a Final Order

### The Electricity Act 1989 and Gas Act 1986

#### Notice of Proposal to make a Final Order

#### RE: Utilita Energy Supply Limited

**Proposal of the Gas and Electricity Markets Authority ("the Authority") to make a Final Order ("FO") pursuant to section 26 (1) and (2) of the Electricity Act 1989 ("the EA89") and section 29(1) and (2) of the Gas Act 1986 ("the GA86").**

### 1. Background

- 1.1. Utilita Energy Limited ("Utilita") (company number 04849181) whose registered office is situated at Hutwood Court, Bournemouth Road, Chandler's Ford, Eastleigh, Hampshire, SO53 3QB is the holder of an electricity supply licence issued by the Authority on 6 November 2003 under section 6(1)(d) of the EA89 and a gas supply licence issued on 30 November 2010 under section 7A(1) of the GA86 respectively.
- 1.2. Under standard licence condition ("SLC") 39.7 and SLC 33.7 of the electricity and gas supply licences (collectively referred to hereinafter as "the NRO Condition"), licensees must take all reasonable steps to ensure that at each domestic premises in respect of which the licensee is:
  - 1.2.1. the relevant electricity supplier,
  - 1.2.2. the first relevant electricity supplier,
  - 1.2.3. the relevant gas supplier, or
  - 1.2.4. the first relevant gas supplieras defined by SLC 39.22 and SLC 33.22 of the electricity and gas supply licences, any replacement electricity or gas meter and any new electricity or gas meter which is installed, or is arranged to be installed, by the licensee forms part of a smart metering system.
- 1.3. A smart metering system is defined by SLC 1 of the electricity and gas supply licences. It consists of an electricity or gas meter and associated or ancillary devices identified in the Metering Equipment Section of a version of the Smart

Metering Equipment Technical Specification (“SMETS”), including being within its Installation Validity Period as defined in Section A of the Smart Energy Code<sup>1</sup>. As per the installation end dates for SMETS1 meters, in order for a meter to be considered to form part of a smart metering system, it must comply with SMETS2<sup>2</sup> technical specifications.

1.4. Under SLC 54 and SLC 48 of the electricity and gas supply licences, licensees must take all reasonable steps to:

1.4.1. facilitate SMETS1 meters becoming eligible for enrolment as soon as reasonably practicable<sup>3</sup>; and

1.4.2. enrol eligible SMETS1 meters in the DCC within 12 months of the date on which each SMETS1 meter is first eligible for enrolment or the date that the licensee became the supplier responsible for the enrolment of that SMETS1 meter<sup>4</sup>,

or where a SMETS1 meter is not enrolled under SLC 54.5 and SLC 48.5 of the electricity and gas supply licences, the licensee must take all reasonable steps to replace the unenrolled SMETS1 meter with a SMETS2 meter by 31 December 2021<sup>5</sup>.

1.5. The roll-out of smart meters is a Great Britain (“GB”) wide project originally mandated by the Department of Energy and Climate Change. Responsibility in respect to smart metering was transferred to the Department for Business, Energy and Industrial Strategy in July 2016. Smart meters are vital for upgrading GB’s energy infrastructure, enabling customers to be better informed and engaged in managing their energy consumption by providing them with real time information on their energy use expressed in monetary terms; and enabling for the transition to a more flexible energy market and the move to a low carbon economy. Under SLC 39.1 and SLC 33.1 of the electricity and gas supply licences, licensed suppliers are required to take all reasonable steps to ensure that electricity and gas smart

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<sup>1</sup> The Smart Energy Code (SEC) is a multi-Party agreement which defines the rights and obligations of energy suppliers, network operators and other relevant parties involved in the end to end management of smart metering in GB. The specification is set out in Schedule 9 and the TS Applicability Tables in Schedule 11 set out Installation end dates for current versions of SMETS,

<sup>2</sup> [SMETS2](#).

<sup>3</sup> SLC 54.3 and SLC 48.3

<sup>4</sup> SLC 54.5 and SLC 48.5

<sup>5</sup> SLC 54.7 and SLC 48.7

metering systems are installed in each home and smaller business premise in GB by 30 June 2021<sup>6</sup>.

- 1.6. The roll-out of smart meters is being delivered in two stages; the Foundation Stage, which commenced in 2011, transitioning into the Main Installation Stage from 2016. Smart meters installed during the Foundation Stage complied with the first version of SMETS (“SMETS1”).
- 1.7. SMETS2 meters communicate with energy suppliers through the Data and Communications Company (“DCC”)<sup>7</sup> from installation. They are interoperable which means they maintain their smart functionality when a customer switches supplier. The DCC facilitates the flow of smart metering data to network operators and allows authorised third parties to provide consumers with information they have requested, such as how they can reduce their energy usage.
- 1.8. Unlike SMETS2 meters, energy suppliers who install SMETS1 meters provide their own communications systems to enable them to operate the smart meters. This means that customers may lose smart functionality of their SMETS1 meters when they switch to another supplier. From 28 July 2019, SMETS1 meters started to be enrolled in the DCC, enabling SMETS1 meters to become interoperable between energy suppliers, which means that they maintain their smart functionality when a customer switches supplier.
- 1.9. Ensuring all energy suppliers take all reasonable steps to install SMETS2 meters and to enrol their SMETS1 meters in the DCC is critical to the success of the smart meter rollout as it enables smart meters to operate reliably for all consumers regardless of their energy supplier.

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<sup>6</sup> The obligation under SLC 39.1 and SLC 33.1 was extended to 30 June 2021 by Government following a consultation, [Delivering a Smart System](#). From July 2021, when the current obligation under SLC 39.1 and SLC 33.1 comes to an end, it will be replaced by a new obligation under SLC 39A and SLC 33A: (Qualifying Metering System – Post-2020 Roll-out and Installation).

<sup>7</sup> The DCC is the holder of the Smart Meter Communication Licence authorised to provide communication services between smart meters and the business systems of energy suppliers, network operators and other authorised service users granted by the Authority pursuant to section 6(1A) and 6(1C) of the EA89 and section 7AB(2) and 7AB(4) of the GA86. The DCC provides services for energy suppliers in respect of second generation smart meters (“SMETS2”) from installation through commissioning, and first generation smart meters (“SMETS1”) once they have been enrolled in the DCC.

1.10. Since 2018, most licensees have been transitioning from installing SMETS1 meters to installing SMETS2 meters. However, in order to protect customers and drive the uptake and rollout of SMETS2 meters and further the transition to SMETS2 meters, Government:

- 1.10.1. mandated an end date of 5 December 2018<sup>8</sup> for SMETS1 credit meters and 15 March 2019 for SMETS1 prepayment meters, after which the installation of these SMETS1 meters would no longer count towards a licensee's smart metering portfolio<sup>9</sup>;
- 1.10.2. issued a Direction<sup>10</sup> on 2 April 2019 under SLC 39.9 and SLC 33.9 of the electricity and gas supply licenses to activate the NRO Condition with effect from 30 June 2019; and
- 1.10.3. modified SLC 54 and SLC 48 of the electricity and gas supply licences to require licensees to take all reasonable steps to:
  - 1.10.4. enrol eligible SMETS1 meters in the DCC within 12 months of the date on which each SMETS1 meter is first eligible for enrolment, or
  - 1.10.5. replace any unenrolled SMETS1 meters with a SMETS2 meters by 31 December 2021<sup>11</sup>.

1.11. In 2019 Utilita was the only Large Supplier<sup>12</sup> who did not install any SMETS2 meters. Utilita has continued to install SMETS1 meters at volume, notwithstanding the introduction of the NRO Condition, which came into effect from 30 June 2019. Furthermore, by continuing to install SMETS1 meters at volume, Utilita is increasing the number of SMETS1 meters that Utilita will need to enrol in the DCC or replace by 31 December 2021 in order to comply with its obligations under SLC 54 and SLC 48 of the electricity and gas supply licences.

1.12. The Authority is satisfied that Utilita is contravening the obligation to take all reasonable steps to ensure that any new or replacement electricity and gas meters are SMETS2 meters, being a relevant condition as defined in section 25(8) EA89 and section 28(8) GA86 and that the provisions in the FO set out in the Annex to this notice are requisite for the purposes of securing compliance by Utilita with the NRO Condition. The Authority therefore proposes to make the FO in the form set out in the Annex to this notice.

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<sup>8</sup> A number of licensees were granted a derogation, allowing them to install a limited number of SMETS1 credit meters up until 15 March 2019.

<sup>9</sup> [SMETS1 End Date](#)

<sup>10</sup> [BEIS Direction](#)

<sup>11</sup> [Response to Consultation](#)

<sup>12</sup> Suppliers with over 250,000 customers are subject to the larger supplier rollout reporting framework.

1.13. The Authority proposes to make a FO requiring Utilita:

- i. to install 15,000 SMETS2 meters into domestic premises by no later than 31 July 2021;
- ii. for the purposes of securing compliance with the requirement to install 15,000 SMETS2 meters, not to acquire any new customers or add any customer accounts by upgrading to dual fuel from 30 April 2021 until Utilita has satisfied the Authority that it has installed 250 SMETS2 meters; and
- iii. for the purposes of securing compliance with the requirement to install 15,000 SMETS2 meters, not to acquire any new customers or add any customer accounts by upgrading to dual fuel from 31 July 2021 until Utilita has satisfied the Authority that it has installed 15,000 SMETS2 meters.

1.14. In reaching its conclusion that it should propose to make the FO in the form set out in the Annex to this notice, the Authority has had regard to the requirements set out in section 25(4A), (4B), (5) and (5A) and section 26 of the EA89 and section 28 (4A), (4B), (5) and (5A) and section 29 of the GA86.

1.15. The Authority:

- i. has considered whether it would be more appropriate to proceed under the Competition Act 1998 and considers that it would not be more appropriate to do so;
- ii. is satisfied that the duties imposed on the Authority by sections 3A to 3C of the EA89 and sections 4AA, AB and 4A of the GA86 do not preclude the Authority from making the FO;
- iii. is satisfied that Utilita has not agreed to take and is not taking all such steps as it appears to the Authority for the time being to be appropriate for Utilita to take for the purpose of securing or facilitating compliance with the NRO Condition; and
- iv. is satisfied that the contravention is not of a trivial nature.

1.16. In accordance with section 26(1) of the EA89 and section 29(1) GA86, the Authority gives notice that:

- i. the NRO Condition is a provision imposing obligations which are enforceable by the Authority under section 25(1) EA89 and section 28(1) GA86. This is the requirement to take all reasonable steps to install or replace existing electricity meters and gas meters with SMETS2 meters;

- ii. the acts or omissions which, in the opinion of the Authority, constitute a contravention of the NRO Condition and other factors which in the opinion of the Authority justify the making of a FO are those set out at section 2 below; and
- iii. any representations or objections with respect to the proposed making of the FO may be made to the Authority by 10am 4 January 2021.

## **2. Reasons for the Authority's decision to propose to make a Final Order**

- 2.1. On 1 October 2020, the Authority's Enforcement Oversight Board met to discuss Utilita's non-compliance with the NRO Condition. The matter was referred to the Enforcement Decision Panel who met on 13 November 2020 and agreed to issue this Notice of Proposal to make a FO.
- 2.2. The Authority considers that Utilita has failed to take all reasonable steps since 30 June 2019 when the NRO Condition came into force, to ensure that any replacement electricity or gas meter or any new electricity or gas meter that it installs is a SMETS2 meter in accordance with the NRO Condition for the following reasons:
  - 2.2.1. Utilita has made negligible progress in transitioning from installing SMETS1 meters to SMETS2 meters despite the fact that the Authority has expressed concerns to Utilita about the delays in Utilita's transitioning to SMETS2 meters;
  - 2.2.2. The Authority notes Utilita's recent proposals provided to the Authority for transitioning to SMETS2 installations, and that by July 2021 Utilita's business model will be to only install SMETS2 meters to meet the NRO Condition. However, Utilita has previously provided the Authority with timescales for transitioning to SMETS2 installations on a number of occasions, none of which have been met, and Utilita has continued to install SMETS1 meters at scale. The Authority considers that without a FO in place to ensure that Utilita keeps to these proposals, timescales for transitioning will slip again;
  - 2.2.3. To date, Utilita has only installed a minimal number of SMETS2 test meters;

- 2.2.4. Utilita, compared with other Large Suppliers, is a significant outlier in progressing with installing SMETS2 meters at scale; and
  - 2.2.5. Utilita has failed to put in place key processes that are required before it can commence installation of SMETS2 meters at volume and which, on the previous timescales provided to the Authority indicate, should now be in place.
- 2.3. Ongoing non-compliance by Utilita risks causing detriment to consumers who have had a SMETS1 meter fitted by Utilita and subsequently switch from Utilita. They may lose their smart capability as a result of Utilita failing to install SMETS2 meters and will not be able to recover smart functionality until their new energy supplier has enrolled their SMETS1 meter in the DCC or replaced it with a SMETS2 meter. This could result in inaccurate bills, as manual reads would be needed, and the risk of confusion as the In-Home Display unit would show the old tariff information. It adds unnecessary additional cost for the new energy supplier and inconvenience for both the consumer and the new energy supplier. It also carries a risk of loss of confidence in the smart meter roll-out programme and the switching process itself.
- 2.4. The Authority considers it requisite to prohibit Utilita from acquiring any new customers or adding any customer accounts by upgrading to dual fuel from 30 April 2021 until Utilita has satisfied the Authority that it has installed 250 SMETS2 meters in order to encourage Utilita to take the necessary steps to ensure that it stays on track to meet the requirement of the FO to install 15,000 SMETS2 meters by 31 July 2021.
- 2.5. In order to encourage Utilita to meet the requirement of the FO to install 15,000 SMETS2 meters and to reduce the likely adverse impacts on consumers caused by the continued installation of SMETS1 meters where it is appropriate to install SMETS2 meters, the Authority considers it requisite to prohibit Utilita from acquiring any new customers or adding any customer accounts by upgrading to dual fuel from 31 July 2021 until Utilita has satisfied the Authority that it has installed 15,000 SMETS2 meters.
- 2.6. In accordance with its Enforcement Guidelines,<sup>13</sup> the Authority has considered how to use its enforcement powers in a targeted and proportionate manner in

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<sup>13</sup> [Ofgem Enforcement Guidelines](#)





## Annex

### Electricity Act 1989 and Gas Act 1986

#### **Final Order of the Gas and Electricity Markets Authority (“the Authority”) made under section 25(1) of the Electricity Act 1989 (“EA89”) and 28(1) of the Gas Act 1986 (“GA86”).**

To:

Utilita Energy Limited (“Utilita”) (company number 04849181) whose registered office is situated at Hutwood Court, Bournemouth Road, Chandler’s Ford, Eastleigh, Hampshire, SO53 3QB is the holder of an electricity supply licence issued by the Authority on 6 November 2003 under section 6(1)(d) of the EA89 and a gas supply licence issued on 30 November 2010 under section 7A(1) of the GA86.

#### **WHEREAS:**

A. Utilita Energy Supply Limited (“Utilita”) is a licensed supplier of electricity and gas to Domestic Premises in Great Britain and is subject to the requirement under standard licence condition (“SLC”) 39.7 and SLC 33.7 of the electricity and gas supply licences (collectively referred to hereinafter as “the NRO Condition”) to take all reasonable steps to ensure that at each domestic premises in respect of which the licensee is:

- a) the relevant electricity supplier,
- b) the first relevant electricity supplier,
- c) the relevant gas supplier, or
- d) the first relevant gas supplier

as defined by SLC 39.22 and SLC 33.22 of the electricity and gas supply licences, any replacement electricity or gas meter and any new electricity or gas meter which is installed, or is arranged to be installed, by the licensee forms part of a smart metering system<sup>14</sup>.

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<sup>14</sup> A smart metering system is defined by SLC 1 of the electricity and gas supply licences. It consists of an electricity or gas meter and associated or ancillary devices identified in the Metering Equipment Section of a version of the Smart Metering Equipment Technical Specification (“SMETS”), including being within its Installation Validity Period as defined in Section A of the Smart Energy Code. As per the installation end dates for SMETS1 meters, in order for a meter to be considered to form part of a smart metering system, it must comply with SMETS2 technical specifications.

- B. In order to protect customers and drive the uptake and roll-out of SMETS2 meters and further the transition to SMETS2 meters Government:
- a) mandated an end date of 5 December 2018<sup>15</sup> for SMETS1 credit meters and 15 March 2019 for SMETS1 prepayment meters, after which the installation of these SMETS1 meters would no longer count towards a licensee’s smart metering portfolio<sup>16</sup>;
  - b) issued a Direction<sup>17</sup> on 2 April 2019 under SLC 39.9 and SLC 33.9 of the electricity and gas supply licenses to activate the NRO Condition with effect from 30 June 2019; and
  - c) modified SLC 54 and SLC 48 of the electricity and gas supply licences to require licensees to take all reasonable steps to:
    - i. enrol eligible SMETS1 meters in the Data and Communications Company (“DCC”) within 12 months of the date on which each SMETS1 meter is first eligible for enrolment, or
    - ii. where a SMETS1 meter is not enrolled in accordance with SLC 54.5 and SLC 48.5 of the electricity and gas supply licences, to replace the unenrolled SMETS1 meter with a SMETS2 meter by 31 December 2021<sup>18</sup>.
- C. Notwithstanding this, Utilita has made very little progress in transitioning from SMETS1 meters to SMETS2 meters. In particular:
- a) to date, Utilita has only installed a minimal number of SMETS2 test meters;
  - b) Utilita, compared with other Large Suppliers, is a significant outlier in progressing with installing SMETS2 meters at scale;
  - c) Utilita has failed to put in place processes that are required before it can commence installation of SMETS2 meters at volume and which the previous timescales provided to the Authority indicate should now be in place.
- D. Utilita’s failure to make sufficient progress towards the installation of SMETS2 meters at scale in breach of the NRO Condition means that customers who have had a SMETS1 meter fitted by Utilita and subsequently switch from Utilita may

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<sup>15</sup> There was a derogation for some licensees until 15 March 2019.

<sup>16</sup> [SMETS1 End Date](#)

<sup>17</sup> [BEIS Direction](#)

<sup>18</sup> [Response to Consultation](#)

lose their smart capability and will not be able to recover smart functionality until their new energy supplier has enrolled their SMETS1 meter in the DCC or replaced it with a SMETS2 meter. This results in the risk of receiving inaccurate bills, confusion as the In-Home Display unit would display the tariff of the previous supplier, and the risk of loss of confidence in the smart meter programme and the switching process.

- E. The fact that Utilita continues to install SMETS1 meters at scale will put added pressure on the DCC enrolment system and may increase the cost of the DCC enrolment programme.
- F. The Authority is satisfied that:
  - a) Utilita is contravening the NRO Condition, by having failed to put in place the necessary processes to enable Utilita to be able to install SMETS2 meters; and
  - b) the inclusion of the obligations set out below upon Utilita within a Final Order, made under section 25(1) of the EA89 and section 28(1) of the GA86, are requisite for the purpose of securing Utilita's compliance with the NRO Condition.

#### **NOW THEREFORE:**

The Authority, pursuant to section 25(1) of the EA89 and section 28(1) of the GA86 makes a Final Order requiring Utilita:

- i. To install 15,000 SMETS2 meters into domestic premises by no later than 31 July 2021;
- ii. For the purposes of securing compliance with the requirement to install 15,000 SMETS2 meters, not to acquire any new customers or add any customer accounts by upgrading to dual fuel from 30 April 2021 until Utilita has satisfied the Authority that it has installed 250 SMETS2 meters; and
- iii. For the purposes of securing compliance with the requirement to install 15,000 SMETS2 meters, not to acquire any new customers or add any customer accounts by upgrading to dual fuel from 31 July 2021 until Utilita has satisfied the Authority that it has installed 15,000 SMETS2 meters.

The Enforcement Decision Panel agreed to make this final order in the form set out above on [ ].

Signature: [ ]

Name: [EDP secretariat staff member]

Job Title: [EDP secretariat staff member]

Signed for and on behalf of

Megan Forbes - Chair

Amelia Fletcher

Peter Hinchliffe

**Enforcement Decision Panel**