

Notice of Proposal to make a Final Order

DRAFT NOTICE UNDER Section 26(1) Electricity Act 1989

RE PROPOSED FINAL ORDER – Confidential and Commercially Sensitive

The Electricity Act 1989

Notice of Proposal to make a Final Order

Re URE Energy Limited

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to make a Final Order (FO) pursuant to section 26(1) and 26 (2) of the Electricity Act 1989 (“EA89”)

1 Background

1.1 URE Energy Limited (“URE”) (company number 10300613) of 2-4 Packhorse Road, Gerrards Cross, Buckinghamshire SL9 7QE is a holder of an Electricity Supply Licence issued by the Authority on 14th November 2016 under section 6(1)(d) of the EA89.

1.2 URE is a designated electricity supplier (“supplier”) subject to the requirement to discharge its Renewables Obligation (“RO”) under the arrangements set out in the Renewables Obligation Order 2015 (“the ROO”).

1.3 In order to discharge the RO, article 7 of the ROO requires each supplier to produce to the Authority the number of Renewables Obligation Certificates (ROCs) it has acquired, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period. Such a period is defined in article 2 of the ROO as the period starting on 1st April 2016 and ending on 31st March 2017 - or any subsequent period of 12 months - ending with the period of 12 months ending on 31st March 2037. This requirement to produce ROCs is subject to articles 67 and 68 of the ROO whereby payments can be made to the Authority as an alternative to production of ROCs.

1.4. Under these arrangements, a supplier was required to discharge its RO for the obligation period of 1st April 2017 to 31st March 2018 in full, via the acquisition of ROCs and/or via making a payment (or balancing payment, taking into account the value of any ROCs produced) to the Authority.

1.5. URE 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 of the ROO. Thereafter, URE failed to make payments as provided for under article 68 of the ROO, including interest, to discharge the RO by the late payment deadline of 31st October 2018.

1.6 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 as at the date of this Final Order.

1.7 The Authority proposes to make an FO requiring payment of the sum of £209,013.78 by no later than 31st March 2019 as it is satisfied that URE has contravened and is contravening a relevant requirement, namely the obligation to discharge the RO under article 7 of the ROO and that such a provision in the FO is requisite for the purposes of securing compliance by URE with that requirement. The Authority therefore considers it requisite to make the FO and accordingly proposes to do so in the form set out in the Annex to this notice.

1.8 In reaching its conclusion that it should propose to make the FO in the form at Annex to this notice, 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.

1.9 In accordance with section 26(1) of the EA89, the Authority gives notice that:

a. The ROO was made by the Secretary of State, inter alia, in exercise of the powers conferred by [sections 32](#) to [32K](#), [32LA](#) and [32M](#) of EA89, which, pursuant to section 25 of and Schedule 6A to EA89, are provisions imposing obligations enforceable as "relevant requirements" by the Authority. In this context, the requirement to discharge the RO is enforceable as a relevant requirement.

b. The acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of those requirements, and other factors which in the Authority's opinion justify the making of an FO are those set out at paragraph 2 below.

c. Any representations or objections with respect to the proposed confirmation may be made to the Authority by 6 March 2019 (see paragraph 3 below).

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

2.1 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 of the ROO. Thereafter, URE failed to make payments as provided for under article 68 of the ROO, including interest, to discharge the RO by the late payment deadline of 31st October 2018.

2.2 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.

2.3 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 part of the scheme requires UK electricity suppliers to source an increasing proportion of the electricity they supply from renewable sources.

2.4 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.

2.5 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.

2.6 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 to 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 if necessary make arrangements for payments in lieu to the Authority in respect of the obligation period of 1st April 2018 to 31st March 2019.

2.7 The Authority is satisfied that an imposition of a Final Order 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.

2.8 For these reasons the Authority proposes to make the FO in the form set out in the Annex to this notice.

3 Representation or Objections

3.1 The Authority invites representations or objections in relation to its proposal to make the FO in the form at the Annex to this notice.

3.2 Any representations or objections with respect to this proposed notice to make the FO must be made in writing on or before 4pm, 6 March 2019 and sent to James Crawford, Senior Manager, OFGEM, Floor 3, Commonwealth House, 32 Albion Street, Glasgow G1 1LT or by email to james.crawford@ofgem.gov.uk. Should you have any questions about this notice you can contact James on 0141 331 6042.

3.3 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. The Authority will consider such requests on case by case basis.

3.4 Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Dated: 11 February 2019

Elizabeth France – Chair
Andrew Long
Dr Philip Marsden

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex

Electricity Act 1989 Final Order of the Gas and Electricity Markets Authority ("the Authority") Made under section 25(1) of the Electricity Act 1989 ("EA89")

To:

URE Energy Limited (company number 10300613) of 2-4 Packhorse Road, Gerrards Cross, Buckinghamshire SL9 7QE holder of an Electricity Supply Licence issued by the Authority on 14th November 2016 under section 6(1)(d) of the EA89

WHEREAS:

A: URE Energy Limited ("URE") is a designated electricity supplier ("supplier") subject to the requirement to discharge its Renewables Obligation ("RO") under the arrangements set out in the Renewables Obligation Order 2015 ("the ROO");

B. Specifically, to meet the RO, article 7 of the ROO requires each supplier to produce to the Authority the number of Renewables Obligation Certificates (ROCs) determined in accordance with the ROO, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period, before the 1st September after the obligation period in question. An obligation period is defined in article 2 of the ROO as the period starting on 1st April 2016 and ending on 31st March 2017, or any subsequent period of 12 months ending with the period of 12 months ending on 31st March 2037. Article 7 is subject to articles 67 and 68 of the ROO whereby payments can be made to the Authority as an alternative to production of ROCs;

C. Under article 67 of the ROO, payments by a supplier, as an alternative to production of ROCs, are required to be made by no later than 1st September after the obligation period in question;

D. Under article 68 of the ROO, where a supplier has failed (in whole or part) to discharge its RO, by production of ROCs or by payments, before 1st September after the obligation period in question there is a further period, ("the late payment period"). This lasts from 1st September to 31st October after that obligation period, and suppliers are able to use it to pay the outstanding sums which correspond to the UK ROCs due under their RO, together with interest on a daily basis at 5 per cent above the Bank of England Base rate (article 68(3) and (4)).

E. Under article 68(6) of the ROO, where a supplier has paid to the Authority the outstanding sums due, together with interest, it will be treated as having discharged its RO for the relevant period;

F. Under article 68(7) of the ROO, if, by the end of the late payment period, a supplier has not paid to the Authority the outstanding sums due, together with interest, the supplier will not have discharged its RO for the relevant period;

G. Under these arrangements, a supplier was required to discharge its RO for the obligation period of 1st April 2017 to 31st March 2018 in full, via the acquisition of ROCs and/or via making a payment (or balancing payment, taking into account the value of any ROCs produced) to the Authority;

H. URE 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 article 67 of the ROO;

I. URE failed to make a payment of outstanding sums and interest as provided for under article 68 of the ROO in order to meet its RO within the late payment period in 2018;

J. 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 2018 and late payment interest of £1,989.42 on that amount, which total amount remains unpaid as at this date of this Final Order;

K. The ROO was made by the Secretary of State, inter alia, in exercise of the powers conferred by sections 32 to 32K, 32LA and 32M of EA89, which, pursuant to section 25 of and Schedule 6A to EA89, are provisions imposing obligations enforceable as "relevant requirements" by the Authority; and

L. The Authority is satisfied;

- a) that URE has contravened and is continuing to contravene the ROO, by failing to produce ROCs to the Authority by 1st September 2018, or to make payments as an alternative, sufficient to discharge its RO, which is an obligation enforceable by the Authority as a relevant requirement for the purposes of section 25 of EA89; and
- b) that the inclusion of an obligation upon URE within a Final Order, made under section 25(1) EA89, to compel payment to the Authority by 31st March 2019 of the outstanding monies including interest accrued, would be requisite for the purpose of securing URE's compliance with that relevant requirement.

NOW THEREFORE:

The Authority, pursuant to section 25(1) of the EA89 makes a Final Order requiring URE to:

1. make a payment to the Authority in full settlement of its RO, for the obligation period of 1st April 2017 to 31st March 2018, including interest, in the sum of £209,013.78 by no later than 31 March 2019; and
2. notify the Authority by email to james.crawford@ofgem.gov.uk of such payment immediately after it has been made.

Dated:

Elizabeth France – Chair
Andrew Long
Dr Philip Marsden

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority