

Notice of reasons pursuant to section 38A(1)(f) of the Gas Act 1986 and section 49A(1)(f) of the Electricity Act 1989 in respect of the decision of the Authority to make a provisional order under Section 28(2) of the Gas Act and Section 25(2) of the Electricity Act

1. This notice sets out the reasons why, on 24 September 2018, the Gas and Electricity Markets Authority ('the Authority') made a provisional order in respect of contraventions or likely contraventions by Npower Direct Limited (company number 03782443), Npower Limited (company number 03653277), Npower Northern Limited (company number 03432100), Npower Northern Supply Limited (company number 02845740), Npower Yorkshire Limited (company number 03937808), Npower Yorkshire Supply Limited (company number 04212116) all having their registered offices at Windmill Hill Business Park, Whitehill Way, Wiltshire, SN5 6PB (together, 'npower') of their obligations under the Gas Act 1986 ("Gas Act") and the Electricity Act 1989 ("Electricity Act").
2. This is a notice pursuant to section 38A(1)(f) and (2) of the Gas Act and section 49A(1)(f) and (2) of the Electricity Act which provides that the Authority shall publish a notice stating the reasons for its decision to make a provisional order.
3. Each of the entities listed above hold a supply licence granted under section 7A(1) of the Gas Act and a supply licence granted under section 6(1)(d) of the Electricity Act.

A. Background

4. On 30 January 2017 the Authority decided to introduce a new licence condition, standard licence condition 32A ('SLC 32A'), which gave the Authority the ability to direct licence holders to test consumer engagement measures. SLC 32A was introduced by the Authority as a response to the Competition Market Authority's final report on its Energy Market Investigation, one of the findings of which was that 70% of the six largest suppliers' customers were on relatively more expensive default tariffs, resulting in an adverse effect on competition and annual consumer detriment of £1.4 billion. One of the recommendations of the CMA's final report was that the Authority establish a programme of trials to provide customers, directly or through their own suppliers, with measures to prompt them to engage with the market more. This recommendation was implemented by introducing SLC 32A.
5. As part of its response to the CMA's findings in its final report and after the success of the first trial, the Authority decided to run a second collective switch trial to gauge customer response to potential future services available to them and to inform a database of customers who are disengaged from the market. The Authority selected a number of suppliers, one of whom was npower, to participate in the second trial in accordance with relevant criteria set out in SLC 32A. A draft direction was issued to each of the npower entities listed above and to the other suppliers selected to be

involved in the trial on 1 August 2018, directing them all to participate in the trial. The actual direction ('the Direction') came into force on 3 September 2018.

6. SLC 32A requires a licensee on whom a direction is issued to comply with the terms of that direction. The Direction requires npower to undertake a number of actions in order to implement the trial, in accordance with a timescale prescribed by the Direction.
7. One of the actions the Direction requires npower to carry out is to send a given quantum of customers initial notification of the commencement of the trial by noon on 20 September 2018 (the 'Collective Switch / Open Market Letters'). The Direction requires that this initial notification gives details of what the trial will entail for the customers that are notified and gives the option to those customers of opting out of the trial if they so wished. The Direction requires npower to carry out a number of actions subsequent to sending the Collective Switch / Open Market Letters in order to fully implement the trial.
8. Npower failed to send the Collective Switch / Open Market Letters to the given quantum of customers prescribed by the Direction by noon on 20 September 2018 as required by the Direction. On 24 September 2018, npower confirmed to the Authority that it would not send the Collective Switch / Open Market Letters to the given quantum of customers prescribed by the Direction as required by the Direction.
9. Npower's ability to comply with the other requirements of the Direction subsequent to the sending of the Collective Switch / Open Market Letters is dependent on npower complying with the Direction's requirement to issue the Collective Switch / Open Market Letters to the prescribed number of customers in the first place. If npower fail to issue the Collective Switch / Open Market Letters to the prescribed numbers of customers, npower will be unable to comply with rest of the Direction and the other elements of the trial cannot take place.

B. Contravention or likely contravention

10. Based on the information received by the Authority, it appears to the Authority that npower is contravening and is likely to contravene SLC 32A.
11. SLC 32A requires that the licensee must comply with a direction issued by the Authority requiring the licensee to test or evaluate consumer engagement measures, such as those detailed by the Direction.
12. It appears to the Authority that it is likely that npower has failed, and is continuing to fail, in its obligation under SLC 32A to comply with the Direction, in so far as it requires the Collective Switch / Open Market Letters to be sent by noon on 20 September 2018 to a prescribed quantum of customers and as a consequence npower is likely to fail to comply with its obligation under SLC 32A to comply with the other requirements of the Direction that are dependent on npower complying with its obligation to send the Collective Switch / Open Market Letters to that prescribed quantum of customers.

C. Reasons for provisional order

13. Section 25(2) of the Electricity Act and section 28(2) of the Gas Act provides that where it appears to the Authority that:
 - a. a licence holder is contravening or is likely to contravene, any relevant condition or requirement; and

b. that it is requisite that a provisional order be made,

the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement.

14. As set out in paragraph 12 it appears to the Authority that npower is contravening or is likely to contravene SLC 32A. The Authority considers it requisite to make a provisional order securing npower's compliance with the Direction because of the importance of the trial that the Direction requires npower to participate in, the importance of the trial being conducted in the form and scope prescribed by the Direction and the importance of the trial being conducted in that form and of that scope in the timeframes prescribed by the Direction.
15. As explained above, the trial is a response to the CMA's findings in its final report and is an essential means of testing potential ways of addressing those findings. The intended trial tests new methods of customer engagement concerning switching. Previous trials of similar methods have been conducted with fewer customers and different suppliers. It is essential that this trial is conducted with the number of customers the Authority intends, and the Direction requires, to test whether those methods are robust and capable of being used on a larger scale.
16. The trial is time sensitive. The effectiveness of the methods of customer engagement that are the subject of the trial are sensitive to prevailing policy and market conditions. The Authority is of the view that it is essential that the methods of customer engagement that the trial is intended to test are tested in the prevailing market and policy conditions prior to Christmas 2018. It is important that the trial is conducted before then, as customer behaviour and receptiveness to methods of customer engagement may be influenced and skewed by the time of year (previous trials have been conducted at different times of year). In order for the trial to be conducted and completed prior to Christmas 2018 in the form and on the scale considered necessary by the Authority, it is essential that npower send the Collective Switch / Open Market Letters as soon as possible, so that the other steps necessary to implement the trial can be carried out in a timescale that enables the trial to be completed prior to Christmas 2018. It is also essential that npower complies with the remainder of the Direction.
17. In determining whether it is requisite that a provisional order be made, the Authority has had regard to the provisions of section 28 (3) of the Gas Act and section 25 (3) of the Electricity Act.
18. The Authority has considered that the duties imposed on it by sections 4AA, 4AB or 4A of the Gas Act and sections 3A to 3C of the Electricity Act do not preclude the making of the provisional order.
19. The Authority does not consider that it would be more appropriate to proceed under the Competition Act 1988 pursuant to section 28(5)(c) of the Gas Act and section 25(5)(d) of the Electricity Act.
20. The Authority has considered all of the circumstances and is of the view that it is requisite to issue a provisional order under sections 28(2) of the Gas Act and 25(2) of the Electricity Act for the foregoing reasons.
21. For all the reasons set out above, the Authority has made the provisional order.

D. Content of the order

22. The provisional order is available on the Ofgem website at:
<https://www.ofgem.gov.uk/publications-and-updates/npower-provisional-order>

Charles Hargreaves
Deputy Director
Dated 26 September 2018