

## **The Electricity Act 1989 and Gas Act 1986**

### **Notice of proposal to revoke a confirmed provisional order**

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to revoke the confirmed provisional order pursuant to section 26(6) of the Electricity Act 1989 (“Electricity Act”) and section 29 (5) of the Gas Act 1986 (“Gas Act”).

1. The Authority issued a provisional order (“the Order”) to 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) (together, ‘npower’), all of Windmill Hill Business Park, Whitehill Way, Wiltshire, SN5 6PB on 24 September 2018, requiring npower to comply with a Direction issued to it on 30 August 2018 (“the Direction”). Npower refused to comply with the Order, and the Authority subsequently enforced compliance with the Order by way of injunctive proceedings in the High Court<sup>1</sup>.
2. After consultation, the Authority decided on 26 November 2018 to confirm the Order.
3. For the reasons set out below, the Authority now proposes to revoke the Order.
4. The Direction (as enforced by way of the Order and the injunction) required npower to participate in a consumer engagement trial. Further details of the trial are set out in the Authority’s Statements of Reasons for issuing and then confirming the Order<sup>2</sup>.
5. Npower did comply with the Direction after the Authority obtained an injunction in the High Court compelling it to do so, albeit in some instances after some delay or providing incomplete information. Ultimately, the consumer engagement trial was successful and provided the Authority with useful information, insight and data that will inform its future policy decisions. In addition, several thousand consumers previously on expensive default tariffs chose to avail themselves of an opportunity to switch their household gas and electricity supplies to a significantly cheaper tariff as part of the trial. The trial has now been completed and npower has done everything that was required of it by the Direction for that to occur, albeit, in some instances after some delay or providing incomplete information.

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<sup>1</sup> The order and details of the court proceedings may be found at <https://www.ofgem.gov.uk/publications-and-updates/npower-provisional-order>.

<sup>2</sup> Ibid.

6. The Authority remains disappointed with npower's conduct throughout this matter, which it hopes never to see repeated. This was the first occasion where a regulated entity refused to comply with a statutory order issued by the Authority, requiring the Authority to initiate enforcement proceedings in court. While the Authority respects the right of regulated entities to challenge its decisions, such challenges must be brought in the appropriate forum at the appropriate time. It is unacceptable to challenge a regulatory obligation by way of refusal to comply with it and the Authority makes clear that it will not hesitate to deal robustly with such conduct in future.
7. Pursuant to sections 26(6) Electricity Act and section 29(5) Gas Act, the Authority is satisfied that the Order is no longer requisite, as the trial in question has been completed and nothing further is required of npower to facilitate it.
8. Accordingly, the Authority hereby gives notice that it proposes to revoke the Order.
9. Any representations or objections in respect of this notice of the Authority's proposal to revoke the Order must be made in writing on or before 15 April 2019 (being not less than 28 days from the date of the publication of this notice) to Heather Swan, Senior Manager, Conduct & Enforcement, Ofgem, 32 Albion St, Glasgow G1 1LH, or by email to [heather.swan@ofgem.gov.uk](mailto:heather.swan@ofgem.gov.uk).
10. Responses will normally be published on the Ofgem website. Should you wish your response or part of your response to be confidential please indicate this clearly and give reasons for your request. Any such requests will be considered by Ofgem on a case by case basis.
11. Any representations or objections which are duly made within the timeframe specified above and not withdrawn will be considered by the Authority.

Date: 6 March 2019

Signed:

John Swift QC  
Trevor Jones  
Andrew Long

Enforcement Decision Panel  
Duly Authorised on behalf of the Gas & Electricity Markets Authority