

Avro Energy Limited

Notice of reasons pursuant to section 49A(1)(f) and 49A(2) of the Electricity Act 1989 ("EA89") and section 38A(1)(f) and (2) of the Gas Act 1986 ("GA86") for the decision of the Gas and Electricity Markets Authority ("the Authority") to make a Final Order under section 25(1) EA89 and 28(1)GA86.

1. Background: the making of the Final Order

1.1. This document sets out the reasons why, on 03 April 2019, the Authority made a Final Order ("FO") in respect of AVRO Energy Limited ("Avro") (company number 09174794) of Unit 8, The Courtyard Goldsmith Way, Eliot Business Park, Nuneaton, Warwickshire, CV10 7RJ.

1.2. Avro is the holder of an electricity and gas supply licence issued by the Authority on 27 July 2015 under section 6(1)(d) of the EA89 and section 7A(1) GA86.

2. Background: Notice of Proposal to make the FO and inviting representations to the Authority

2.1. The Authority published, pursuant to section 26(1) and (2) of the EA89 and section 29(1) and (2) GA86, a notice of its proposal to make the FO on 08 March 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/system/files/docs/2019/03/avro_notice_of_proposal_for_final.pdf

2.2. As well as explaining the reasons why the Authority proposed to make the FO, the Notice of Proposal set out the contravention the FO was made in respect of, namely Avro's failure to become a DCC User by 25 November 2017 in accordance with the requirement set out in standard licence conditions ("SLCs") 48.8 and 42.8 of the electricity and gas supply licences respectively. The Notice of Proposal explains in particular how Avro failed to complete the DCC User Entry Process to become a DCC User by the date specified in a direction made by the Secretary of State on 25 November 2016 pursuant to SLC 48.8 and 42.8 of the electricity and gas supply licences respectively.

3. Reasons for the Authority's decision to make the FO

3.1. Pursuant to section 25(1) of the EA89 and section 28(1) of the GA86, where the Authority is satisfied that a regulated person is contravening, or is 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. Under SLCs 33.1 of the gas supply licence and 39.1 of the electricity supply licence, all licensed suppliers are required to take all reasonable steps to ensure that a gas and electricity smart metering system is installed in each home and smaller business premises in Great Britain by the end of 2020. A smart metering system comprises a smart meter, a communications hub and an in-home display unit. Suppliers were required under SLCs 42.8 and 48.8 of the gas and electricity supply licences respectively to become a DCC User by 25 November 2017.

3.3. The Data and Communications Company (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. The DCC provides services for energy suppliers in respect to second generation (SMETS2) smart meters by providing interoperability for customers allowing them to maintain their smart functionality if they switch supplier. Smart meters installed earlier in the roll-out period have a functionality with the first version of the Smart Metering Equipment Technical Specification (SMETS1). However, unlike SMETS 2 meters, suppliers who have installed SMETS1 meters have provided their own communications systems to enable them to operate as smart meters. This means that customers may lose the smart functionality of their SMETS1 meters if they switch to another supplier unless the SMETS1 meter is enrolled into the DCC and that supplier is a DCC User.

3.4. A DCC User is an organisation, such as a supplier, that has completed all entry requirements and is able to communicate with DCC smart metering devices. To become a DCC User, a supplier must meet all of the steps of the DCC User Entry Process which is defined in Section H of the Smart Energy Code ("SEC"). This process must be completed by any organisation before it can use the DCC system. DCC User status provides protection for customers by confirming that the organisation meets core security, operational and financial requirements. The SEC Administrator and Secretariat (SECAS) monitors suppliers' progress through each stage of the User Entry Process and confirms when a supplier has completed all the necessary steps to become a DCC User.

3.5. SECAS provides a monthly report on suppliers' progress and informs the Authority when a supplier has become a DCC User.

3.6. Becoming a DCC User is critical to the success of the smart meter implementation programme as it enables smart meters to operate reliably for all consumers regardless of their energy supplier. It facilitates the flow of smart metering data to network operators and will allow authorised third parties to provide consumers with information they have requested, such as how they can reduce their energy usage.

3.7. In order to protect customers and drive the uptake and roll-out of SMETS2 meters the Government mandated an end date after which the installation of SMETS1 meters would no longer count towards the 2020 target for each supplier. The end date for credit SMETS1 was amended by way of a Direction issued on the 4 October 2018 by the Secretary of State, BEIS, pursuant to SLCs 39 and 33 of the electricity and gas supply licences, to 5 December 2018. Recognising that most suppliers had made less progress towards transitioning to SMETS 2 for prepayment customers, the end date for prepayment meters was set at 15 March 2019.¹

3.8. In order to ensure the smart capability of SMETS1 meters is not lost with the transition to SMETS2 meters, all suppliers must enrol their SMETS1 meters into the DCC. Under licence condition 13 of the Smart Meter Communication licence, the Secretary of State directed the DCC to produce plans for the purpose of enrolling SMETS1 meters into the DCC Systems. The DCC issued an updated plan for the enrolment of SMETS1 meters into the DCC system in three phases: the first (the Initial Operating Capability) was planned to commence on 26 May 2019;

¹This change was introduced through regulation amending section A 3.14 of the Smart Energy Code: <https://smartenergycodecompany.co.uk/download/9186>

the second phase (Middle Operating Capacity) on 30 September 2019, and the last phase (the Final Operating Capability) on the 12 December 2019.

3.9. With the planned enrolment dates for SMETS1 meters now published, Avro's continuing failure to complete the DCC User Entry process to become a DCC User in accordance with the relevant condition means that any customers switching to Avro with SMETS1 meters, in addition to those with SMETS2 meters, will lose their smart functionality.

3.10. The Authority notes the protracted period of time in which Avro has failed to take adequate steps to meet the relevant condition and also notes Avro's poor engagement with representatives of the Authority to keep them informed of progress. Avro submitted a DCC User mandate plan to the Authority in December 2017, in which it stated that it would be a DCC User by the week commencing 5 February 2018. Based on this plan, Avro was considered a low risk supplier at the time.

3.11. In April 2018, the Authority attempted to contact Avro to ascertain whether it had completed the DCC User Entry Process as we did not receive confirmation from SECAS that they had done so. Avro repeatedly failed to engage with the Authority despite repeated attempts to ascertain its DCC User status.

3.12. In September 2018 the Authority informed Avro that it was considering enforcement action and again requested information about its progress towards becoming a DCC User. This prompted an immediate response from Avro and a period of engagement, which resulted in the submission of a partial plan without an estimated date for becoming a DCC User. On requesting a full plan the Authority notes that it was promised a submission on 14th December 2018, but this did not arrive.

3.13. In January 2019 the Authority wrote to Avro informing it that it was being referred to the Enforcement Oversight Board and gave it a further opportunity to provide a plan. The Authority notes that the team responsible for smart metering received an immediate reply and Avro submitted a revised plan showing that it had signed a contract with a third party on 25 January 2019 and expected to be compliant by 25 July 2019.

3.14. The Authority notes that Avro has only engaged when the matter has been escalated. For this reason, the Authority is not confident that Avro will voluntarily complete the DCC User Entry process to become a DCC User by 25 July without a final order in place. There is further concern that the impending enrolment of SMETS1 meters into the DCC system, and the ramp up of SMETS2 meters during 2019, will have a detrimental impact on consumers who switch to Avro and would lose their smart functionality unless Avro is a DCC User.

3.15. For these reasons, the Authority is satisfied that the imposition of a FO requiring Avro to become a DCC User by no later than 25 July 2019, together with a prohibition on acquiring new customers from 26 May 2019, is requisite to secure compliance with the requirement to become a DCC User. The FO will protect SMETS2 consumers who would lose functionality of their smart meter immediately on switching to Avro and will protect SMETS1 consumers from the risk that they may lose the functionality of their smart meter after enrolment of SMETS1 meters into the DCC.

3.16. The decision to impose a sales ban to last until Avro can demonstrate that it is a DCC User, will protect customers with smart meters who may otherwise switch to Avro and lose their smart functionality. When considering the date from which the sales ban should take effect, the Authority has taken into account the increasing numbers of SMETS2 meters being

installed, hitting 250,000 in January 2019 and 500,000 in March 2019. As the number of SMETS2 meters increases, the likelihood of Avro acquiring customers with a SMETS2 meter (which would lose smart functionality immediately on becoming Avro customers) increases and therefore the number of customers affected by the immediate loss of functionality will also increase. Whilst harm for customers with a SMETS1 meter who join Avro will not begin until the DCC begins enrolling SMETS1 meters, customers with a SMETS1 meter who join Avro will potentially be affected when this happens. The longer the period before commencing the imposition of the prohibition on acquiring new customers also increases the number of customers with a SMETS1 meter who could potentially be impacted. At the same time, the Authority recognises that a prohibition on acquiring new customers reduces customer choice in the market. The Authority therefore decided the prohibition should start around late May in order to secure an appropriate balance between these competing impacts. When going out to consult on the FO, the specific date selected for the sales ban was 26 May 2019, the published date that the DCC would begin enrolling SMETS1 meters. Whilst the enrolment date may be put back, as now appears likely, the reason for the prohibition on acquiring new customers from a date around the end of May remains the same; balancing the harm caused to customers with smart meters against the reduction in choice. Accordingly, the Authority has decided to retain the date set out in the consultation notwithstanding the change to the enrolment date.

3.17. The Authority considers that the requirement in the FO to become a DCC User by no later than 25 July 2019 is appropriate as it accords with the plan submitted by Avro in January 2019. After that date, the Authority may take further steps to enforce against Avro in relation to any continued non-compliance, in order to protect the integrity of the wider smart meter implementation programme.

3.18. Avro made written representations objecting to the Authority's proposal to make the FO. Avro provided a summary of the chain of events, which it believed had given rise to the non-compliance. Avro said it initiated a project in October 2016 with the aim of achieving DCC User status. Avro stated that it recruited a trusted systems provider and employed a consultant, at extra cost, to oversee the project. Avro said that in the following months it was reassured during several reviews that the project was on track. Avro said it only became aware of problems after Ofgem queried its compliance in September 2018. Avro stated it then questioned the third parties and established there were problems; it said it then identified a new systems provider to help achieve compliance. Avro stated that it recognised that compliance was its responsibility but that its problems with third parties was a mitigating factor; it had not sought to avoid compliance. Avro stated that since January 2019 it had made good progress towards becoming compliant. In the circumstances Avro believed that the FO was not required and that it could, instead, implement the sales ban voluntarily should it not already be compliant by 26 May 2019.

3.19. Further representations made by Avro state that it recently became aware that the DCC would not meet its proposed date of the 26 May 2019 for the first migration of SMETS1 meters. Avro requested clarification on what impact this would have on the FO as, in its view, there would no longer be any detriment to consumers from 26 May 2019. Avro asked if the date of the proposed sales ban could be moved to align with DCC's revised date for initial SMETS1 migration, which Avro state is now 23 June 2019.

3.20. The Authority has noted the representations received from Avro in the context of the consultation undertaken pursuant to section 26(1) of the EA89 and section 29(1) GA86. It has considered these representations carefully and has concluded that no modification is required to its findings nor to the proposed FO.

3.21. Whilst Avro set out the steps it took to attempt to achieve compliance with SLCs 48.8 and 42.8 of the electricity and gas supply licences respectively, the fact remains that Avro is in clear breach of these SLCs. Avro's lack of engagement with Ofgem on this matter, other than when prompted by enforcement action, supports the view that a FO is requisite in all the circumstances of this case and to maintain Avro's focus on this matter. The Authority is of the view that, in order to protect current and future consumers, it is requisite that it orders that Avro is banned from taking on additional customers in terms of the FO and that, given Avro's track record, the Authority cannot rely on Avro's suggestion of not taking on further customers voluntarily.

3.22. In terms of the date the sales ban commences, whilst any delays to the timetable for enrolling SMETS1 meters in the DCC are a relevant consideration, there remain other reasons for maintaining the date that the sales ban is to come into force as 26 May 2019. The Authority's primary aim with the sales ban is to protect the interests of customers. Allowing Avro to acquire new customers until a date later than 26 May 2019 increases the potentially negative impact on those new customers with SMETS1 meters who join Avro. Customers with SMETS2 meters who join Avro are also potentially negatively affected and the rate of installation of SMETS2 meters is increasing rapidly. Another aim of the sales ban is to encourage Avro to achieve compliance as quickly as possible. Avro's response indicates that it is working to achieve compliance by 26 May 2019. Delaying the implementation of the sales ban would dis-incentivise Avro from working to this timescale and, potentially extend the period of non-compliance.

3.23. In reaching its conclusion to make the FO, the Authority has had regard to the matters set out in sections 25(4A), (4B), (5) and (5A), section 26 and section 49A(4) of the EA89 and sections 28(4A), (4B), (5) and (5A), section 29 and section 38A(4) of the GA86. Section 25(5) of the EA89 and 28(5) of the GA86 refer to the Authority's principal objective as set out in section 3A of the EA89 and section 4AA of the GA86.

3.24. For the above reasons the Authority decided to make the FO.

Dated 03 April 2019

Amelia Fletcher - Chair
Megan Forbes
Trevor Jones

Enforcement Decision Panel
Duly authorised on behalf of the Gas and Electricity Markets Authority