

Notice of decision not to confirm Provisional Order

The Electricity Act 1989 and Gas Act 1986

Decision of the Gas and Electricity Markets Authority (“the Authority”) not to confirm a Provisional Order.

22 May 2019

1. Summary

1.1. **On 22 February 2019 under section 25(2) of the Electricity Act 1989 (“Electricity Act”) and section 28(2) of the Gas Act 1986 (“Gas Act”) the Authority issued a Provisional Order to Solarplicity Supply Limited** (company number 08053210), previously known as Loco2 Energy Supply Ltd, having changed its name to Solarplicity Supply Limited by notice dated 27 April 2017, and as Ganymede Energy Supply Limited having changed its name to Loco2 Energy Supply Ltd by change of name certificate dated 17 March 2014 having its registered office at Unit 8, Peerglow Centre, Marsh Lane, Ware, Hertfordshire, United Kingdom, SG12 9QL (“Solarplicity”), the holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 and the holder of a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986. The Provisional Order was issued in respect of contraventions or likely contraventions of:

- a. Standard Licence Condition of the gas and electricity supply licences (“SLC”) 0.3c(i), (ii) and (iii)
- b. SLC 0.3d(i) and (ii);
- c. SLC 14A.1 and 14A.7;
- d. 22C.3 and SLC 22C.4
- e. SLC 27.5;
- f. Regulations 3, 4, 5, 6 and 7 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (“CHSR”).

Unless otherwise stated, capitalised terms in this Notice are defined in the SLCs.

1.2. A copy of the Provisional Order issued on 22 February 2019 (“the Provisional Order”) and the document setting out the reasons for issuing (“Reasons Notice”) the Provisional Order can be found at:

https://www.ofgem.gov.uk/system/files/docs/2019/02/provisional_order_issued_to_solarplicity.pdf

https://www.ofgem.gov.uk/system/files/docs/2019/02/notice_of_reasons_for_solar_plicity_po.pdf

1.3. Section 25(4) of the Electricity Act and section 28(4) of the Gas Act provide that the Authority shall confirm a Provisional Order with or without modifications if:

- a. The Authority is satisfied that the regulated person to whom the order relates is contravening or is likely to contravene any condition or relevant requirement; and*
- b. The provision made by the order is requisite for the purpose of securing compliance with that condition or requirement.*

1.4. The Authority issued a Notice of Proposal to confirm the Provisional Order on 17 April 2019 pursuant to section 26(1) of the Electricity Act and section 29(1) of the Gas Act proposing to confirm the Provisional Order as modified by deleting the requirements at paragraphs 10.1 to 10.7 of the Provisional Order as it was satisfied, as at that date, that Solarplicity was contravening or was likely to contravene the requirements of SLCs 0.3c(i), (ii) and (iii), 0.3d(i) and (ii), 14A.1, 14A.7 and 27.5 and regulations 3,4,5,6 and 7 of the CHSR. The Authority proposed to confirm the Provisional Order in the form set out in the Annex to that Notice. The Notice of Proposal to confirm the Provisional Order as modified invited representations or objections with respect to the proposed notice to confirm the Provisional Order, in writing, on or before 13 May 2019. A copy of the Notice of Proposal to confirm the Provisional Order can be found at:

[Notice of Proposal which contains modified Provisional Order - dated 17 April 2019](#)

1.5. The Authority received four representations:

1. Representation dated 24 April 2019 from a Solarplicity customer noting that Solarplicity had failed to give them the contractual notice of tariff changes and suggesting that the failure to notify customers of changes in tariffs be maintained on the Provisional Order. The Authority understood this to amount to a representation that the Authority confirm the Provisional Order insofar as it related to contract renewals (former SLC 22C). Given that this SLC is no longer in force in the same terms and given also that (as detailed at paragraph 1.7 below) the Authority is satisfied that Solarplicity is now issuing contract renewals in a timely manner, the Authority has decided not to confirm the Provisional Order despite the terms of this representation;
2. Representation dated 2 May 2019 and 3 May 2019 from a generator who had not received payment from Solarplicity. This representation was not relevant to the matters covered by the Provisional Order;
3. Representation dated 13 May 2019 from a third party supplier to Solarplicity noting the potential adverse impact on it if Solarplicity were to enter an insolvency process as a result of the Provisional Order. The Authority noted and considered these concerns;
4. Representation dated 13 May 2019 from Solarplicity stating its view that it is not contravening nor likely to contravene the relevant conditions and requirements set out in the Provisional Order and that it would not be lawful or requisite that the Authority confirm the Provisional Order. We noted and considered this representation as set out at paragraph 1.7 below.

- 1.6. The Provisional Order required Solarplicity to provide certain data, documentation and information (together “the Data”) to the Authority.
- 1.7. The Authority has reviewed and considered the Data and the four representations submitted to it. Having done so, the Authority notes that Solarplicity’s performance has improved since it issued the Provisional Order and the Authority is now satisfied that Solarplicity is no longer contravening or likely to contravene:
1. SLC 0.3c and d (customer contact);
 2. Regulations 3 to 7 of the CHSRs (complaints handling);
 3. SLC 0.3d (vulnerable customers);
 4. Former SLC 22C (contract renewals);
 5. SLC 14A.1 and 14.7 (Supplier Transfer).

Solarplicity has also provided a letter of undertaking dated 21 May 2019 (“the Undertaking”) to the Authority. As detailed at paragraph 1.9 of this Notice, in terms of the Undertaking, Solarplicity will continue to provide information and data to the Authority so that the Authority can ensure that it continues to comply with its obligations as required by the relevant conditions and requirements set out at 1,2,3 and 5 above.

- 1.8. The Authority is satisfied that Solarplicity is contravening or likely to contravene SLC 27.5. SLC 27.5 provides:

The licensee must offer each of the services set out in paragraph 27.6 when it becomes aware or has reason to believe that a Domestic Customer is having or will have difficulty paying all or part of the Charges.

SLC 27.6(a)(i) provides:

The services referred to in paragraph 27.5 are:

(a) the facility for a Domestic Customer to pay Charges:

(i) by using, where available, a means by which payments may be deducted at source from a social security benefit received by that customer;

Solarplicity confirmed to the Authority¹ that it does not offer the facility for the Domestic Customer to pay Charges by using, where available, a means by which payments may be deducted at source from a social security benefit received by that customer. However, Solarplicity has also confirmed to the Authority² that it is taking steps to implement this facility as a matter of urgency.

- 1.9. Section 25(5A) of the Electricity Act and section 28(5A) of the Gas Act provide:

The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied–

¹ By email from Solarplicity to the Authority dated 4 April 2019 and at paragraph 14.2 of its representations dated 13 May 2019.

² By email from Solarplicity to the Authority dated 14 May 2019, at paragraphs 14.2 and 14.3 of its representations dated 13 May 2019 and in its letter of undertaking dated 21 May 2019.

a. that the regulated person has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the regulated person to take for the purpose of securing or facilitating compliance with the condition or requirement in question

In the Undertaking provided to the Authority, Solarplicity agree to:

- a. (with regard to vulnerable customers – SLC 0.3d) - complete the roll-out of its Vulnerable Customers Policy. Solarplicity anticipates that this will be completed by 7 June 2019 and it will report to the Authority in this regard on 10 June 2019. Solarplicity will also take other steps to improve its process for identifying and providing services to Domestic Customers in a Vulnerable Situation and will keep the Authority updated in that regard. Solarplicity has also agreed to provide the information required by paragraph 8.1 of the Provisional Order on a weekly basis for the next two months and thereafter on a monthly basis or on any other reporting frequency agreed with the Authority;
- b. (with regard to customers in payment difficulty – SLC 27.5) - to take all steps necessary to comply with SLC 27.5 and anticipates being able to offer the required service by 23 May 2019. Solarplicity has agreed to report to the Authority and notify its customers when the service is available or provide a progress report on 28 May 2019 (whichever is earlier). Solarplicity has also agreed to update and improve the wording of the debt letters that it sends to customers and keep the Authority updated in that regard and also to provide the information required by paragraph 9.2 of the Provisional Order;
- c. (with regard to making it easy for customers to contact it – 0.3c) – provide the information required by paragraph 6.5 of the Provisional Order on a weekly basis for the next two months and thereafter on a monthly basis (or on any alternative basis deemed appropriate by the Authority thereafter);
- d. (with regard to customer complaints handling – regulations 3 to 7 of the CHSR) – provide the information required by paragraph 7.4 of the Provisional Order on a weekly basis for the next two months and thereafter on a monthly basis (or on any alternative basis deemed appropriate by the Authority thereafter);
- e. Not to take on any new customers from the general public until 5 August 2019 and to take on a maximum of 200 customers per week under community energy schemes and to provide reports to the Authority with regard to the number of customers that have transferred to it under these schemes;
- f. Not to increase the direct debits of vulnerable customers or use debt collection agents to pursue those customers until it has taken the steps it has agreed to with regard to vulnerable customers or if agreed to by the Authority.

Based on the Undertaking provided by Solarplicity, the Authority is satisfied that Solarplicity has agreed to take and is taking all such steps as it appears to the Authority appropriate for the time being for the purpose of securing or facilitating compliance with SLC 27.5. The Undertaking also allows the Authority to continue to engage with Solarplicity outside the Provisional Order process to ensure that it continues to: identify and provide services to Domestic Customers in a Vulnerable Situation in a manner compliant with SLC 0.3d; record, process and signpost customer complaints in a manner compliant with regulations 3 to 7 of the CHSR; make it easy for Domestic Customers to contact it in compliance with SLC 0.3c and d; and take the steps in order to offer the

required facility, to accept payment of Charges by deduction at source from social security benefit to its customers as soon as possible.

1.10. Therefore, because:

- a. the Authority is satisfied that Solarplicity is not contravening or likely to contravene SLC 0.3c and d, regulations 3 to 7 of the CHSRs, former SLC 22C and SLC 14A.1 and 14.7; and
- b. the Authority is satisfied that Solarplicity is contravening SLC 27.5 but is also satisfied, in terms of section 25(5A) of the Electricity Act and section 28(5A) of the Gas Act, that Solarplicity has agreed to take and is taking all such steps as it appears appropriate to the Authority for the time being for the purpose of securing or facilitating compliance with SLC 27.5;

the Authority has decided not to confirm the Provisional Order. The Provisional Order has therefore lapsed and ceased to have effect on 22 May 2019.

Dated: 22 May 2019

Signed

ANDREW LONG
MEGAN FORBES
PETER HINCHLIFFE
ENFORCEMENT DECISION PANEL
Duly authorised on behalf of the Gas and Electricity Markets Authority