

Notice of reasons pursuant to Section 49A(1)(f) of the Electricity Act for the decision of the Authority to make a provisional order under Section 25(2) of the Electricity Act 1989

1. This notice sets out the reasons why, on 10 May 2019, the Gas and Electricity Markets Authority (“the Authority”) made a provisional order in respect of contraventions or likely contraventions by Solarplicity Supply Limited (company number 08053210), previously known as Loco2 Energy Supply Ltd (“Loco 2”), 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”) of its obligations under: the standard conditions of the electricity supply licence (SLC) granted or treated as granted under section 6(1) of the Electricity Act 1989 (“the Electricity Act”)¹ which are relevant conditions in terms of section 25(8) of the Electricity Act.
2. This is a notice pursuant to section 49A(1)(f) and (2) of the Electricity Act which provide that the Authority shall publish a notice stating the reasons for the decision to make a provisional order as soon as reasonably practicable after making such a decision.

Background

3. The Feed-in Tariffs (FIT) scheme is a government programme designed to promote the uptake of renewable and low-carbon electricity generation technologies. Introduced on 1 April 2010, the scheme requires participating licensed electricity suppliers to make payments on both generation and export from eligible installations. FIT Licensees are energy suppliers who process applications submitted for small installations and make FIT payments to all installations. Mandatory FIT Licensees are those that have at least 250,000 domestic customers. Voluntary FIT Licensees are those that have less than 250,000 domestic electricity customers but elect to register and make FIT payments to certain eligible generators. Both Mandatory and Voluntary FIT Licensees are obligated to make FIT payments to certain eligible generators.
4. Loco2 gave notice to the Authority of its decision to act as a Voluntary FIT Licensee in terms of part 2, clause 1.2 of Schedule A to SLC 33 on 9 February 2017. On 31 January 2018 Solarplicity submitted a FIT Notification to the Authority stating that for FIT Year 9 (1 April 2018 – 31 March 2019) it was to be a Voluntary FIT Licensee in terms of part 3, clause 2.2 of Schedule A to SLC 33. On 29 January 2019 Solarplicity submitted a FIT Notification to the Authority stating that for FIT Year 10 (1 April 2019 – 31 March 2020) it is to continue to act as a Voluntary FIT Licensee.
5. Ofgem has been in contact with Solarplicity regarding this issue. Ofgem is aware that Solarplicity has attempted to put in place several payment plans for outstanding FIT Payments due to FIT Generators,

¹ Obligations under the standard conditions of the electricity supply licence are collectively referred to as the “SLCs”.

but it appears to Ofgem from the complaints it has received from FIT Generators that Solarplicity is not meeting those payment plans.

6. On 14 February 2019 Solarplicity received levelisation payments due to it in terms of article 30(1) of the Feed-in Tariffs Order 2012 as amended which includes monies to cover the payment of FIT Payments due to FIT Generators for Quarter 3 of Fit Year 9. It appears to the Authority that Solarplicity has not made all of those FIT Payments despite being in receipt of the levelisation payment for Quarter 3 of FIT Year 9.
7. Given Solarplicity's apparent failure to use levelisation funds paid to it in order to make FIT Payments due, it would appear to the Authority that it is likely that Solarplicity will not make FIT Payments falling due in the future once it receives forthcoming levelisation payments.
8. Ofgem is aware that a number of FIT Generators connected to Solarplicity, either through its corporate ownership or directorships, have registered with Solarplicity.

Reasons for provisional order

9. Section 25(2) of the Electricity Act provides that where it appears to the Authority:
 - a. that a regulated person 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.
10. The Authority considers that it is requisite to make a provisional order against Solarplicity. In reaching this decision, the Authority has considered the following factors pursuant to section 25(3)(a) of the Electricity Act:
 - a. it appears to the Authority that Solarplicity has acted and/or is likely to act in contravention of SLC 33;
 - b. FIT Generators appear to be have been and are likely to be incurring loss or damage in consequence of Solarplicity's contravention and likely ongoing contravention of SLC 33 before a final order may be made;
 - c. It is therefore requisite that Solarplicity is ordered to:
 - i. pay all outstanding FIT Payments to FIT Generators by 16 May 2019;
 - ii. pay future FIT Payments falling due to FIT Generators as and when they fall due;
 - iii. report to Ofgem on the payments due and made to FIT Generators in terms of the Order; and
 - iv. not give any preference to the payment of FIT Generators connected to Solarplicity (whether by ownership or directorship).

11. Pursuant to section 25(3)(b) of the Electricity Act, the Authority has had regard to the fact that the effect of the provisions of sections 25 and 27 of the Electricity Act is to exclude the availability of any remedy (apart from under those provisions of the Act or for negligence) in respect of any contravention of a relevant condition or requirement.
12. Pursuant to section 25(5) of the Electricity Act, the Authority has considered that the duties imposed on it by sections 3A to 3C of the Electricity Act do not preclude the making of this provisional order.
13. Pursuant to section 25(4A) of the Electricity Act, the Authority has considered that it would not be more appropriate to proceed under the Competition Act 1998.
14. Pursuant to section 25(5A) of the Electricity Act, the Authority is not satisfied (a) that Solarplicity has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for Solarplicity to take for the purposes of securing or facilitating compliance with the relevant condition in question; or (b) that the apprehended contravention(s) are of a trivial nature.
15. For the reasons set out above, the Authority has made the Provisional Order. It will cease to have effect on 10 August 2019 unless confirmed by the Authority on or before that date.

A. Content of the order

16. The Provisional Order is available on the Ofgem website at: <https://www.ofgem.gov.uk/investigations>

Charles Hargreaves
Deputy Director,
Enforcement

Duly authorised on behalf of the Gas and Electricity Markets Authority
Dated: 10 May 2019