

Notice of Proposal to make a Final Order

The Electricity Act 1989 and Gas Act 1986

Notice of Proposal to make a Final Order

RE: Better Energy Supply Limited

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to make a Final Order (“FO”) pursuant to section 26 (1) and (2) of the Electricity Act 1989 (“the EA89”) and section 29(1) and (2) of the Gas Act 1986 (“the GA86”).

1. Background

- 1.1. Better Energy Supply Limited (“Better Energy”) (company number 07176401) whose registered office is situated at 10 Castle Quay, Castle Boulevard, Nottingham, NG7 1FW is the holder of an electricity supply licence issued by the Authority on 9 September 2011 under section 6(1)(d) of the EA89 and a gas supply licence issued by the Authority on 16 August 2010 under section 7A(1) of the GA86 respectively.
- 1.2. All domestic suppliers are required, pursuant to standard licence condition (“SLC”) 48.8 and SLC 42.8 of the electricity and gas supply licences (collectively referred to hereinafter as “the Relevant Condition”), to be a DCC User (as defined in SLC 48.11 and SLC 42.11 of the electricity and gas supply licences) by 25 November 2017 or by the date that the supplier exits Controlled Market Entry (“CME”), whichever is later.¹
- 1.3. The roll-out of smart meters is a Great Britain (“GB”) wide project originally mandated by the Department of Energy and Climate Change. Responsibility in respect to smart metering was transferred to the Department for Business, Energy and Industrial Strategy (“BEIS”) in July 2016. Smart meters are vital for upgrading GB’s energy infrastructure, enabling customers to be better informed and engaged in managing

¹ In an [open letter](#) dated 1 December 2017, Ofgem stated that it would not take enforcement action against suppliers in CME.

their energy consumption by providing them with real time information on their energy use expressed in monetary terms; and enabling for the transition to a more flexible energy market and the move to a low carbon economy. Under SLC 39.1 and SLC 33.1 of the electricity and gas supply licences, licensed suppliers are required to take all reasonable steps to ensure that a gas and electricity smart metering system² is installed in each home and smaller business premise in GB by the end of 2020. The Government recently consulted³ on a new regulatory framework that will see the rollout continue beyond 2020. The results of the consultation have not yet been published. In its consultation, the Government has set out its proposals for a new regulatory framework that will continue to drive market-wide rollout of smart to domestic and smaller non-domestic premises. The proposals would mean that all energy suppliers in the market would have binding annual installation targets to roll out smart meters to their remaining non-smart customer base until they reach a minimum smart coverage of 85% in their trajectory towards market wide rollout by 31 December 2024. Under the proposed new obligation, the Authority will continue to provide the regulatory oversight of energy suppliers' compliance with the smart meter rollout.

1.4. 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 granted by the Authority pursuant to section 6(1A) and 6(1C) of the EA89 and section 7AB(2) and 7AB(4) of the GA86. The DCC provides services for energy suppliers in respect to second generation smart meters ("SMETS2") from installation through commissioning, and first generation smart meters ("SMETS1") once they have been enrolled with the DCC. Smart meters that are enrolled into the DCC are interoperable which means they maintain their smart functionality when a customer switches supplier.

1.5. The roll-out of smart meters is being delivered in two stages; the Foundation Stage (which commenced in 2011) transitioning into the Main Installation Stage (this was

² A smart metering system comprises a smart meter, a communications hub and an in-home display unit.

³ [Government Consultation: Smart meter policy framework post 2020](#)

initially set to coincide with the transition to SMETS2 meters from October 2016). Smart meters installed during the Foundation Stage complied with the first version of the Smart Metering Equipment Technical Specification (known as “SMETS1 meters”). Unlike SMETS2 meters, energy suppliers who install SMETS1 meters initially provide their own communications systems to enable them to operate the smart meters. This means that customers are likely to lose the smart functionality of their SMETS1 meters if they switch to another supplier. From 28 July 2019, SMETS1 meters started to be enrolled into the DCC, enabling SMETS1 meters to become interoperable between energy suppliers.

- 1.6. A DCC User is an organisation, such as a supplier, that has completed all DCC User Entry requirements. Once an organisation is a DCC User, it is able to communicate with smart metering devices (SMETS1 and SMETS2) via the DCC. The DCC User Entry Process provides protection for customers by confirming that the organisation meets core security, operational and financial requirements. 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”). The process is well established. The Smart Energy Code Administrator and Secretariat (SECAS) monitors energy 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. SECAS provides a monthly report to the Authority on energy suppliers’ progress and informs the Authority when a supplier has become a DCC User.
- 1.7. All energy suppliers are required to be a DCC User in accordance with SLC 48.6 (Large Energy Suppliers) or 48.8 (Other Energy Suppliers) and SLC 42.6 (Large Energy Suppliers) or 42.8 (Other Energy Suppliers) of the electricity and gas supply licences respectively. The Secretary of State for BEIS (“the Secretary of State”) issued a direction on 25 November 2016 requiring Large Energy Suppliers (as defined in the supply licences) to be DCC Users by 25 May 2017 and requiring other energy suppliers to be DCC Users by 25 November 2017.⁴
- 1.8. Ensuring all energy suppliers become a DCC User is critical to the success of the smart meter implementation programme as it enables smart meters to operate reliably for

⁴ [BEIS Smart Metering Direction, 25 November 2016](#)

all consumers regardless of their energy supplier. Being a DCC User will facilitate 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.

- 1.9. 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 Secretary of State issued a direction on 4 October 2018 amending the end date specified in SLC 39 and SLC 33 of the electricity and gas supply licences for SMETS1 credit meters to 5 December 2018. Recognising that most energy suppliers had made less progress towards transitioning to SMETS2 for prepayment customers, the direction amended the end date for SMETS1 prepayment meters to 15 March 2019.⁵
- 1.10. In order to ensure the smart capability of SMETS1 meters is not lost when customers switch energy suppliers and to return smart capability for customers that have already switched, all energy 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 system. 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) commenced on 28 July 2019; the second phase (Middle Operating Capacity) is split into two stages with MDS⁶ meters starting to be enrolled from March 2020 and Secure meters from June 2020. The last phase (the Final Operating Capability) will commence in July 2020.
- 1.11. With the numbers of SMETS1 meters being enrolled into the DCC increasing rapidly and the continued ramp up of SMETS2 installations, Better Energy's failure to complete the DCC User Entry process to become a DCC User in accordance with the Relevant Condition means that existing Better Energy customers with a SMETS1 or SMETS2 meter do not have smart functionality and customers with a SMETS1 or SMETS2 meter who switch to Better Energy will lose smart functionality on switching.

⁵ [BEIS Response to Consultation on SMETS1 End Date, 4 October 2018](#)

⁶ Morrison Data Services

1.12. Better Energy was required to be a DCC User by 25 November 2017.

1.13. The Authority is satisfied that Better Energy is contravening a relevant condition as defined in section 25(8) EA89 and section 28(8) GA86, namely the obligation to be a DCC User under the Relevant Condition, and that the provisions in the FO set out in the Annex to this notice are requisite for the purposes of securing compliance by Better Energy with the Relevant Condition. The Authority therefore proposes to make the FO in the form set out in the Annex to this notice.

1.14. Therefore, the Authority proposes to make a FO requiring Better Energy:

- i. to be a DCC User by no later than 31 March 2020; and
- ii. for the purposes of securing compliance with the requirement set out in subparagraph (i) not to acquire any new customers or add any customer accounts by upgrading to dual fuel from the date that the FO is made⁷ until Better Energy has satisfied the Authority that it has achieved the requirement set out at subparagraph (i).

1.15. In reaching its conclusion that it should propose to make the FO in the form set out in the Annex to this notice, the Authority has had regard to the requirements set out in section 25(4A), (4B), (5) and (5A) and section 26 of the EA89 and section 28 (4A), (4B), (5) and (5A) and section 29 of the GA86.

1.16. The Authority:

- i. has considered whether it would be more appropriate to proceed under the Competition Act 1998 and considers that it would not be more appropriate to do so;
- ii. is satisfied that the duties imposed on the Authority by sections 3A to 3C of the EA89 and sections 4AA, AB and 4A of the GA86 do not preclude the Authority from making the FO;
- iii. is satisfied that Better Energy has not agreed to take and is not taking all such steps as it appears to the Authority for the time being to be appropriate for Better

⁷ If a FO is made following consideration of representations, it is likely to be published in mid February 2020.

Energy to take for the purpose of securing or facilitating compliance with the Relevant Condition; and

- iv. is satisfied that the contravention is not of a trivial nature.

1.17. In accordance with section 26(1) of the EA89 and section 29(1) GA86, the Authority gives notice that:

- i. The Relevant Condition is a provision imposing obligations which are enforceable by the Authority under section 25(1) EA89 and section 28(1) GA86. This is the requirement to become a DCC User by the date specified in SLC 48.8(b) and SLC 42.8(a) of the electricity and gas supply licences or such later date as specified in a direction in respect to domestic premises issued by the Secretary of State. A direction was issued by the Secretary of State on 25 November 2016 requiring the relevant licensees to be DCC Users by 25 November 2017;
- ii. the acts or omissions which, in the opinion of the Authority, constitute or would constitute contravention of the Relevant Condition and other factors which in the opinion of the Authority justify the making of a FO are those set out at section 2 below; and
- iii. any representations or objections with respect to the proposed making of the FO may be made to the Authority by 10am 3 February 2020.

2. Reasons for the Authority's decision to propose to make a Final Order

2.1. Better Energy has failed to be a DCC User in accordance with the Relevant Condition by the date specified in the direction issued by the Secretary of State. While some information has been provided by Better Energy to Ofgem about its progress to becoming a DCC User, despite ample opportunity since 25 November 2017, Better Energy has failed to meet its obligation to become a DCC User. Energy suppliers, including Better Energy, have been on notice of the Government's policy for a phased transition to SMETS2 meters and their stated intention to set a SMETS1 end date since

2012. On 3 July 2018, BEIS consulted⁸ on setting the final end date for installing SMETS1 meters to encourage the uptake of SMETS2 meters in a timeframe which would allow energy suppliers to transition to the exclusive installation of SMETS2 meters and avoid a hiatus in the progress of the rollout. The evidence collected in response to that consultation and BEIS' own analysis led BEIS to conclude that there are no industry wide impediments to transitioning to SMETS2 meters and therefore mandated the end date for credit SMETS1 meters as 5 December 2018 and for replacement prepayment meters as 15 March 2019.
- 2.2. In March 2019, the Authority imposed a FO on Avro Energy Limited⁹ for being non-compliant with the requirement to be a DCC User. This signalled the Authority's intention to take enforcement action in similar cases and it was expected that it would act as a catalyst for the remaining non-compliant energy suppliers to become DCC Users. While this had some effect, Better Energy has failed to become a DCC User.
- 2.3. On 6 November 2019, the Authority's Enforcement Oversight Board discussed DCC User non compliance and was minded to pursue action against all domestic energy suppliers who were non-compliant with the Relevant Condition. Better Energy was referred to the Enforcement Decision Panel who met on 6 December 2019 and agreed to issue this Notice of Proposal to make a FO.
- 2.4. Better Energy has failed to be a DCC User by 25 November 2017. For this reason, the Authority has concluded that it is requisite to make a FO because the Authority is not confident that Better Energy will complete the DCC User Entry process to become a DCC User without a FO being in place. There is further concern that with the completion of the enrolment of SMETS1 meters into the DCC system, the continued ramp up of SMETS2 meters and the proposed new post-2020 smart meter rollout obligation, there will be a detrimental impact on consumers who switch to Better Energy, as they will lose their smart functionality unless Better Energy is a DCC User.
- 2.5. Ongoing non-compliance by Better Energy risks causing detriment to consumers who may switch to Better Energy with either a SMETS1 or SMETS2 meter and who will lose

⁸ Smart Metering Implementation Programme: [BEIS Consultation on the Final SMETS1 and Advanced Meter Exception End dates and draft legal text issued 3 July 2018](#)

⁹ [Ofgem: Avro Final Order, March 2019](#)

their smart capability as a result of Better Energy not being a DCC User, and customers with a SMETS1 or SMETS2 meter who have already switched to Better Energy will not be able to recover smart functionality until Better Energy is a DCC User. This could result in inaccurate bills as manual reads would be needed and the risk of confusion as the In-Home Display unit would show the old tariff information. It also carries a risk of loss of confidence in the smart meter roll-out programme and the switching process itself. If Better Energy is permitted to continue to take on new customers without having first attained DCC User status, the magnitude of Better Energy's breach of SLC 48.8(b) and SLC 42.8(a), as well as the likely adverse impacts caused by the breach, are likely to be amplified. Therefore, the Authority considers it requisite to prohibit Better Energy from acquiring any new customers or adding any customer accounts by upgrading to dual fuel from the date that the FO is made until Better Energy has satisfied the Authority that it has achieved DCC User status.

- 2.6. In accordance with its Enforcement Guidelines,¹⁰ the Authority has considered how to use its enforcement powers in a targeted and proportionate manner in light of the facts set out above, the new obligations under the proposed post-2020 smart meter rollout consultation and the impact of non-compliance on the wider smart meter implementation programme. The Authority has considered other options, but has formed the view that none of these options would drive Better Energy to take steps to remedy its ongoing non-compliance in a timely manner.

3. Representation or Objections

- 3.1. The Authority invites representations or objections in relation to its proposal to make the FO in the form set out in the Annex to this notice.
- 3.2. Any representations or objections with respect to this proposed notice to make the FO must be made in writing on or before 10am 3 February 2020 and sent to Susan Paget, Enforcement Manager, OFGEM 10 South Colonnade Canary Wharf London E14 4PU or by email to: Susan.Paget@ofgem.gov.uk. Should you have any questions about this notice you can contact Susan Paget on 0141 331 6045.

¹⁰ [Ofgem Enforcement Guidelines](#)

3.3. If a respondent does not wish its response or part of its response to be published, it should clearly mark its response or the relevant parts “not for publication” and give reasons. The Authority will consider such requests on case by case basis.

3.4. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Date: 8 January 2020

Signed:

Megan Forbes - Chair
Elizabeth France
Peter Hinchliffe

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex
Electricity Act 1989 and Gas Act 1986
Final Order of the Gas and Electricity Markets Authority (“the Authority”) made
under section 25(1) of the Electricity Act 1989 (“EA89”) and 28(1) of the Gas Act
1986 (“GA86”).

To:

Better Energy Supply Limited (company number 07176401) whose registered office is situated at 10 Castle Quay, Castle Boulevard, Nottingham, NG7 1FW is the holder of an electricity supply licence issued by the Authority on 9 September 2011 under section 6(1)(d) of the EA89 and a gas supply licence issued by the Authority on 16 August 2010 under section 7A(1) of the GA86.

WHEREAS:

- A. Better Energy Supply Limited (“Better Energy”) is a licensed supplier of electricity and gas to Domestic Premises in Great Britain and is subject to the requirement to be a DCC User by the date specified in accordance with standard licence condition (“SLC”) 48.8 and SLC 42.8 of the electricity and gas supply licences (collectively referred to hereinafter as “the Relevant Condition”).
- B. Specifically, all domestic energy suppliers are required to be a member of the Smart Energy Code (“SEC”) in accordance with SLC 48.1 and SLC 42.1 of the electricity and gas supply licences. This is one of the preconditions to the requirement for all energy suppliers (other than Large Energy Suppliers as defined in the electricity and gas supply licences) to be a DCC User (as defined in SLC 48.11 and SLC 42.11 of the electricity and gas supply licences) under the Relevant Condition.
- C. In accordance with the Relevant Condition, the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) issued a direction on 25 November 2016 requiring Large Energy Suppliers to be DCC Users by 25 May 2017 and requiring other energy suppliers to be DCC Users by 25 November 2017, with an

exemption for energy suppliers in the CME.¹¹ Better Energy is not a Large Energy Supplier and accordingly was required to be a DCC User by 25 November 2017.

- D. Better Energy has still not completed the DCC User Entry process. This process must be completed by all suppliers before they can use the DCC system and provides protection for consumers by confirming the supplier meets core security, operational and financial requirements. The DCC User Entry process is set out in Section H of the SEC. Completion of the DCC User Entry process is a precondition to becoming a DCC User in accordance with the Relevant Condition.
- E. Better Energy's failure to be a DCC User may result in the loss of smart functionality for customers who switch to Better Energy with a first generation smart meter or a second generation smart meter resulting in the risk of receiving inaccurate bills, confusion as the In-Home Display unit would display the tariff of the previous supplier and the risk of loss of confidence in the smart meter programme and the switching process.
- F. The Authority is satisfied that:
 - a) Better Energy is contravening the Relevant Condition, by not being a DCC User; and
 - b) the inclusion of the obligations set out below upon Better Energy within a Final Order, made under section 25(1) of the EA89 and section 28(1) of the GA86, are requisite for the purpose of securing Better Energy's compliance with the Relevant Condition.

NOW THEREFORE:

The Authority, pursuant to section 25(1) of the EA89 and section 28(1) of the GA86 makes a Final Order requiring Better Energy:

- i. to be a DCC User by no later than 31 March 2020; and

¹¹ In an [open letter](#) dated 1 December 2017, Ofgem stated that it would not take action against suppliers in CME.

- ii. for the purposes of securing compliance with the requirement set out at paragraph (i), not to acquire any new customers or add any customers accounts by upgrading to dual fuel from the date that the Final Order is made until Better Energy has satisfied the Authority that it has achieved the requirement set out at paragraph (i).

Date: 8 January 2020

Signed:

Megan Forbes - Chair
Elizabeth France
Peter Hinchliffe

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority