

Symbio 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) of the EA89 and 28(1) of the GA86.

1. Background: the making of the Final Order

- 1.1. This document sets out the reasons why the Authority made a Final Order ("FO") on 6 March 2020 in respect of contraventions by Symbio Energy Limited ("Symbio") (company number 07999360) whose registered office is situated at Room 103, Mansion House, Bucknalls Lane, Watford WD25 9XX.
- 1.2. Symbio is the holder of an electricity supply licence issued by the Authority on 30 August 2016 and a gas supply licence issued by the Authority on 1 September 2017 under section 6(1)(d) of the EA89 and section 7A(1) of the GA86 respectively.

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

- 2.1. Pursuant to section 26(1) and (2) of the EA89 and section 29(1) and (2) of the GA86, on 10 January 2020 the Authority published a notice of proposal to make the FO ("the Notice of Proposal") and invited representations and objections to be made to the Authority. The Notice of Proposal to make the FO can be found on the Authority [website](#).
- 2.2. As well as explaining the reasons why the Authority proposed to make the FO, the Notice of Proposal set out the contraventions the FO was made in respect of, namely Symbio's failure to become a DCC User by 23 June 2019, the date Symbio exited Controlled Market Entry ("CME"). 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 CME, whichever is later.¹

- 2.3. Symbio provided written representations to the Authority, which the Authority considered in reaching its decision to make the FO.

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 FO make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- 3.2. In breach of the Relevant Condition Symbio has failed to be a DCC User. The Authority notes the protracted period of time in which Symbio has failed to take adequate steps to meet the Relevant Condition.
- 3.3. The rollout of smart meters is a Great Britain ("GB") wide project.² Smart meters are vital for upgrading GB's energy infrastructure, enabling customers to be better informed and engaged in managing 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 system³ is installed in each home and smaller business premises in GB by the end of 2020. The Government recently consulted⁴ 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

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

² This project was 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.

³ A smart metering system comprises a smart meter, a communications hub and an in-home display unit.

⁴ [Government Consultation: Smart meter policy framework post 2020](#)

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. Under the proposed new obligation, the Authority will continue to provide the regulatory oversight of energy suppliers' compliance with the smart meter rollout.

- 3.4. 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.
- 3.5. The rollout of smart meters is being delivered in two stages; the Foundation Stage (which commenced in 2011) transitioning into the Main Installation Stage (this was 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.
- 3.6. 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.

- 3.7. 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 2017.⁵
- 3.8. Ensuring all energy suppliers become a DCC User is critical to the success of the smart meter rollout as it enables smart meters to operate reliably for 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.
- 3.9. In order to protect customers and drive the uptake and rollout 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 2019.⁶
- 3.10. 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

⁵ [BEIS Smart Metering Direction, 25 November 2016](#)

⁶ [BEIS Response to Consultation on SMETS1 End Date, 4 October 2018](#)

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 Capability) is split into two stages with MDS⁷ 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.

- 3.11. With the numbers of SMETS1 meters being enrolled into the DCC increasing rapidly and the continued ramp up of SMETS2 installations, Symbio's failure to become a DCC User in accordance with the Relevant Condition means that existing Symbio customers with a SMETS1 or SMETS2 meter do not have smart functionality and customers with a SMETS1 or SMETS2 meter who switch to Symbio will lose smart functionality on switching.
- 3.12. In March 2019, the Authority imposed a FO on a licensee⁸ 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, Symbio has failed to become a DCC User.
- 3.13. Symbio exited CME on 23 June 2019, which is the date that Symbio was required to be a DCC User. Symbio exited CME despite being aware of the obligation to be a DCC User when doing so.
- 3.14. For these reasons, the Authority is satisfied that the imposition of a FO requiring Symbio to be a DCC User by no later than 31 March 2020, together with a prohibition on acquiring new customers from the date of the FO, 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

⁷ Morrison Data Services

⁸ [Ofgem: Avro Final Order, March 2019](#)

switching to Symbio and will protect SMETS1 consumers from the risk that they may lose the functionality of their smart meter after enrolment of their SMETS1 meters into the DCC.

- 3.15. The Authority considers that the requirement in the FO to become a DCC User by no later than 31 March 2020 with a sales ban from the date of the FO is appropriate.
- 3.16. Symbio has failed to be a DCC User, despite being aware of its obligation to be a DCC User on exiting CME and despite being on notice since April 2019 that the Authority would take enforcement action against any non-compliant company. The Authority is not confident that Symbio will become a DCC User as quickly without a FO in place. There is further concern that with the ongoing 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 will have a detrimental impact on consumers who switch to Symbio as they will lose their smart functionality until such time as Symbio is a DCC User. Accordingly, a sales ban is necessary to prevent detriment to consumers with either a SMETS1 or SMETS2 meter who may switch to Symbio and who will lose their smart capability as a result of Symbio not being a DCC User and customers with a SMETS1 or SMETS2 meter who have already switched to Symbio will not be able to recover smart functionality until Symbio 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 could also result in a loss of confidence in the smart meter rollout programme and the switching process itself.
- 3.17. If Symbio is permitted to continue to take on new customers without having first attained DCC User status, the magnitude of Symbio'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 Symbio from acquiring any new customers or adding any customer accounts by upgrading to dual fuel from the date that the FO is made until Symbio has satisfied the Authority that it is a DCC User.

- 3.18. Symbio made written representations to the Authority. The Authority has noted the representations received from Symbio in the context of the consultation undertaken pursuant to section 26(1) of the EA89 and section 29(1) of the GA86.
- 3.19. The Authority notes that Symbio is close to becoming a DCC User, but the fact remains that Symbio is not currently a DCC User. The Authority remains of the opinion that it is requisite in all the circumstances of this case to make the FO to ensure that Symbio will remain focused on completion of the DCC User Entry Process to become a DCC User as quickly as possible. The imposition of the FO with a date for compliance by 31 March 2020 should enable Symbio to meet this requirement. As soon as the Authority is satisfied that Symbio has become a DCC User, the sales ban will no longer apply and the Authority will begin the process of revoking the final order.
- 3.20. The Authority has concluded that no modification is required to its findings nor to the proposed FO.
- 3.21. In reaching its conclusion that it should make the FO, 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.
- 3.22. In particular, 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, 4AB and 4A of the GA86 do not preclude the Authority from making the FO;
 - iii. is not satisfied that Symbio has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for Symbio 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.

3.23. In preparing this notice of reasons, the Authority has had regard to the matters set out in section 49A of the EA89 and section 38A of the GA86.

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

Date: 6 March 2020

Signed:

Megan Forbes - Chair
Elizabeth France
Peter Hinchliffe

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority