

Symbio Energy Limited

Electricity Act 1989

Final Order of the Gas and Electricity Markets Authority ("the Authority")

Made under section 25(1) of the Electricity Act 1989 ("EA89")

To: Symbio Energy Limited ("Symbio") (company number 07999360) of 103 Mansion House, Building Research Establishment, Bucknalls Lane, Watford, WD25 9XX, holder of an Electricity Supply Licence issued by the Authority under section 6(1)(d) of the EA89

WHEREAS:

- A. Symbio is a designated electricity supplier ("supplier") subject to the requirement to discharge its Renewables Obligation ("RO") under the arrangements set out in the Renewables Obligation Order 2015 ("the ROO") and the Renewables Obligation Order (Scotland) 2009 ("the ROS");
- B. Specifically, to meet the RO, article 7 of the ROO requires each supplier to produce to the Authority the number of Renewables Obligation Certificates (ROCs) determined in accordance with the ROO, in respect of each megawatt hour of relevant electricity that it supplies during an obligation period, before 1 September after the obligation period in question. An obligation period is defined in article 2 of the ROO¹ as the period starting on 1 April 2016 and ending on 31 March 2017, or any subsequent period of 12 months ending with the period of 12 months ending on 31st March 2037. Article 7 is subject to articles 67 and 68 of the ROO whereby payments can be made to the Authority as an alternative to production of ROCs;
- C. Under article 67 of the ROO, payments by a supplier, as an alternative to production of ROCs, are required to be made by no later than 1 September after the obligation period in question;
- D. Under article 68 of the ROO, where a supplier has failed (in whole or part) to discharge its RO, by production of ROCs or by payments, before 1 September after the obligation period in question there is a further period, ("the late payment period"). This lasts from 1 September to 31 October after that obligation period, and suppliers are able to use it to pay the outstanding sums which correspond to the UK ROCs due under their RO, together with interest on a daily basis at 5% above the Bank of England Base rate (article 68(3) and (4));
- E. Under article 68(6) of the ROO, where a supplier has paid to the Authority the outstanding sums due, together with interest, it will be treated as having discharged its RO for the relevant period;
- F. Under article 68(7) of the ROO, if, by the end of the late payment period, a supplier has not paid to the Authority the outstanding sums due, together with interest, the supplier will not have discharged its RO for the relevant period;
- G. Under these arrangements, a supplier was required to discharge its RO for the obligation period of 1st April 2019 to 31st March 2020 in full, via the acquisition of ROCs and/or via making a payment (or balancing payment, taking into account the value of any ROCs produced) to the Authority;

¹ And the equivalent provisions of the ROS

- H. Symbio failed to acquire sufficient ROCs and/or make payments to discharge its RO, for the 2018-2019 obligation period, by 1 September 2020 as required by article 7 and as provided for in article 67 of the ROO;
- I. The Authority has engaged with Symbio and sought suitable assurances (for example, a bank guarantee, confirmation of undrawn credit facilities, or confirmation of support from a parent company or other investor) that Symbio will be in a position to make payment of the outstanding sums and interest as provided for under article 68 of the ROO in order to meet its RO within the late payment period in 2020;
- J. Symbio has refused or failed to provide the Authority with satisfactory assurances that it will be able to make the necessary payment(s) within the late payment period as applicable;
- K. The ROO was made by the Secretary of State (and the ROS by the Scottish Ministers), inter alia, in exercise of the powers conferred by sections 32 to 32K, 32LA and 32M of EA89, which, pursuant to section 25 of and Schedule 6A to EA89, are provisions imposing obligations enforceable as "relevant requirements" by the Authority; and,
- L. The Authority is satisfied;
 - a. that Symbio is likely to contravene the ROO, by failing to produce ROCs to the Authority, or to make payments of £506,308.40 (plus accrued interest) by 31 October 2020 as an alternative, sufficient to discharge its RO, which is an obligation enforceable by the Authority as a relevant requirement for the purposes of section 25 of EA89;
 - b. that the inclusion of an obligation upon Symbio within a Final Order, made under section 25(1) EA89, to compel payment to the Authority of the outstanding monies including interest accrued within the late payment period (that is, by 31 October 2019), is requisite for the purpose of securing Symbio's compliance with those relevant conditions and requirements.

NOW THEREFORE: The Authority, pursuant to section 25(1) of the EA89 makes a Final Order requiring Symbio to:

- 1) make a payment to the Authority in full settlement of its RO, for the obligation period of 1 April 2019 to 31 March 2020, in the sum of £506,308.40 plus accrued interest² by no later than 31 October 2020;
- 2) notify the Authority by email to susan.paget@ofgem.gov.uk and megan.pickard@ofgem.gov.uk of such payment(s) immediately after they have been made.

Dated: 28 October 2020

Signed for and on behalf of Megan Forbes as Chair of the Enforcement Decision Panel

Name: Jennifer Todd

Job title: Senior Governance and Secretariat Manager

MEGAN FORBES
PETER HINCHLIFFE

² The amount of interest due will depend on the exact date of the payment – this may be confirmed with the Authority's Renewable Energy Compliance Team if required.

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