

## **The Electricity Act 1989 and Gas Act 1986**

### **Notice of decision not to make a Final Order**

#### **RE: Utilita Energy Supply Limited**

### **Decision of the Gas and Electricity Markets Authority (“the Authority”) not to make a Final Order pursuant to section 25(1) of the Electricity Act 1989 (“the EA89”) and section 28(1) of the Gas Act 1986 (“the GA86”).**

21 January 2021

1. Utilita Energy Supply Limited (“Utilita”) (company number 04849181) whose registered office is situated at Hutwood Court, Bournemouth Road, Chandler's Ford, Eastleigh, Hampshire, SO53 3QB is the holder of an electricity supply licence issued by the Authority on 6 November 2003 under section 6(1)(d) of the EA89 and a gas supply licence issued by the Authority on 30 November 2010 under section 7A(1) of the GA86 respectively.
2. On 25 November 2020 the Authority issued a Notice of Proposal to issue a Final Order (“the Notice of Proposal”) to Utilita pursuant to section 26(1) and (2) of the EA89 and section 29(1) and (2) of the GA86. The Notice of Proposal was published on 27 November 2020 and can be found on the Authority [website](#).
3. The Notice of Proposal was issued to Utilita because the Authority was satisfied that, in contravention of standard licence condition (“SLC”) 39.7 and SLC 33.7 of the electricity and gas supply licences (collectively referred to hereinafter as “the NRO Condition”), Utilita was failing to take all reasonable steps to ensure that any new or replacement electricity and gas meters it installs into domestic premises are SMETS2 meters. This is an obligation enforceable by the Authority as a relevant condition under section 25 of the EA89 and section 28 of the GA89.

4. On 4 January 2020 and on 6 January 2020, following the Prime Minister's announcement of a [national lockdown](#), Utilita provided written representations to the Authority. In reaching its decision, the Authority has considered the representations and the effect that the national lockdown will have on Utilita's ability to meet the timescales set out in the proposed Final Order.
5. Section 25(1) of the EA89 and section 28(1) of the GA86 provide that the Authority shall make a Final Order if it "is satisfied that a regulated person is contravening, or is likely to contravene, any relevant condition or requirement".
6. The Authority is of the view that Utilita has failed to take all reasonable steps to ensure that the installation of any new or replacement electricity and gas meters are SMETS2 meters and therefore remains in contravention of the NRO Condition.
7. Section 25(5A) of the EA89 and section 28(5A) of the GA86 provide that the Authority is not required to make a Final Order if it is satisfied that the regulated person has agreed to take or is taking all such steps as it appears to the Authority for the time being appropriate for the regulated person to take for the purpose of securing or facilitating compliance with the condition in question or that the contraventions were, or the apprehended contraventions are, of a trivial nature.
8. The Authority remains of the view that Utilita's breach of the NRO Condition is a serious contravention.
9. Notwithstanding Utilita's commitment to the Authority that Utilita would deliver against the plans and timescales provided to the Authority, under normal circumstances the Authority would consider that a Final Order would still be appropriate to secure compliance with the NRO. However, the Authority accepts that given the national lockdown restrictions currently in force and the dynamic nature of the situation, for the time being, it is not

appropriate to impose the proposed Final Order. The current national lockdown restrictions mean that Utilita's ability to take all the necessary steps to comply with the NRO Condition may be adversely affected for the time being. The Authority is therefore satisfied that,

- a. given the prevailing circumstances and
- b. Utilita's written commitment to do its best to deliver against its plan, subject to the effect of Government restrictions,

Utilita has agreed to take or is taking all such steps as it appears to the Authority for the time being appropriate for Utilita to take for the purpose of securing or facilitating compliance with the NRO Condition.

10. In the particular circumstances, the Authority has decided that it will take no further action against Utilita in respect of its compliance with the NRO Condition for the time being. However, Utilita's compliance with the NRO Condition will be kept under review and a further Notice of Proposal to make a Final Order and/or a Notice to impose a Penalty may be issued in due course if the Authority is satisfied that Utilita has or is contravening the NRO Condition and it is appropriate to do so in the prevailing circumstances at that time.

The Enforcement Decision Panel agreed to make this decision on 21 January 2021.

Signature: [ ]

Name: [EDP secretariat staff member]

Job Title: [EDP secretariat staff member]

Signed for and on behalf of

Megan Forbes - Chair

Amelia Fletcher

Peter Hinchliffe

**Enforcement Decision Panel**