

The Electricity Act 1989 and Gas Act 1986

Notice of proposal to confirm Provisional Order

Proposal of the Gas and Electricity Markets Authority (“the Authority”) to confirm a provisional order pursuant to section 26(1) of the Electricity Act 1989 (“Electricity Act”) and section 29(1) of the Gas Act 1986 (“Gas Act”)

25 March 2014

1 Summary

- 1.1 The Authority issued a provisional order to Economy Energy Trading Limited (company number 07513319) having its registered office at 181 Stoneleigh Park, Warwickshire CV8 2LG (“Economy Energy”), the holder of a licence granted under section 6(1)(d) of the Electricity Act and a licence granted under section 7A(1) of the Gas Act on 14 February 2014 under section 25(2) of the Electricity Act and section 28(2) of the Gas Act in respect of contraventions or likely contraventions of:
 - a. standard conditions 14, 14A, and 22 of the gas and electricity supply licences (collectively referred to as “SLC”); and
 - b. Regulations 3, 4, 5, and 7 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (“Complaints Handling Regulations”).
- 1.2 A copy of the provisional order issued on 14 February 2014 and the document setting out the reasons for issuing the provisional order dated 21 February 2014 can be found at: <https://www.ofgem.gov.uk/publications-and-updates/economy-energy-issue-provisional-order>.
- 1.3 The Authority proposes to confirm the provisional order dated 14 February 2014 imposed on Economy Energy, following its decision that Economy Energy is contravening or is likely to contravene the requirements of SLC 14, 14A and 22 and regulations 3, 4, 5 and 7 of the Complaints Handling Regulations. The Authority proposes to confirm the order in the form set out in the Annex to this notice.
- 1.4 Pursuant to sections 25(4) of the Electricity Act and section 28(4) of the Gas Act, the Authority shall confirm a provisional order with or without modifications if:
 - a. The Authority is satisfied that the regulated person to whom the order related is contravening or is likely to contravene any condition or relevant requirement; and
 - b. The provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- 1.5 The Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the Electricity Act and section 28(4A) (4B), (5) and (5A) and section 29 of the Gas Act.

- 1.6 Prior to confirming a provisional order, in accordance with section 26(1) of the Electricity Act and section 29(1) of the Gas Act, the Authority hereby gives notice that:
- a. For the avoidance of doubt, SLC 14, 14A, and 22 and Regulations 3, 4, 5, and 7 of the Complaints Handling Regulations are the relevant conditions and requirements for the purpose of the provisional order;
 - b. The acts or omissions which, in the Authority's opinion constitute or would constitute contraventions of those conditions and requirements, and other factors which in the Authority's opinion justify the confirmation of the provisional order are those set out at paragraph 4 below.
 - c. Any representations or objections with respect to the proposed confirmation may be made to the Authority by 15 April 2014 (see paragraph 5 below).

2 Background

- 2.1 In November 2013, Ofgem was made aware by information received from Consumer Futures¹ that Consumer Futures had received a significant number of complaints from Economy Energy customers.² A large proportion of Economy Energy's customers are prepayment customers. This type of customer faces a higher risk of losing supply of electricity and gas than other customers due to potential problems with their meters or their payment top-up system. The nature of the complaints received by Consumer Futures included that some customers (particularly prepayment customers) had difficulty contacting the supplier to resolve issues, including how to get back on supply when there were issues with their keys or meter. There were also reports of customers having difficulty switching away from Economy Energy when they made a request to do so.
- 2.2 Ofgem was aware of and was deeply concerned about problems being faced by customers of Economy Energy. It engaged in informal discussions with Economy Energy to try and assist Economy Energy's compliance with certain obligations imposed by its licence conditions and relevant requirements of the Gas Act and Electricity Act.
- 2.3 Ofgem notes that following its initial informal intervention, Economy Energy took steps towards improving its services; however, Ofgem continued to have concerns over the potential harm to consumers due to Economy Energy's contravention and likely contravention of certain obligations (see below). As a result, Ofgem took the step of issuing a provisional order to Economy Energy on 14 February 2014 which

¹ Consumer Futures is a Non-Departmental Public Body. Within the legal framework of the National Consumer Council, it fulfils the responsibilities of the statutory consumer body in energy and postal services in Great Britain, water services in Scotland and postal services in Northern Ireland; it also has a wider role in applying learning and insight across other regulated markets. <http://www.consumerfutures.org.uk/>

² Consumer Futures has a duty under Section 13 of the Consumers, Estate Agents and Redress (CEAR) Act 2007 to deal with cases where the consumer has been disconnected or has been threatened with disconnection, including prepayment off-supply cases. Consumer Futures also has powers under Section 12 to deal with energy cases received from vulnerable consumers. The CEAR Act defines a vulnerable consumer as being someone that it is not reasonable to expect to pursue the complaint themselves.

set out clear steps it needs to take within specified timescales to resolve issues and thereby be in compliance with its obligations.³

3 The Authority's decision on contraventions

- 3.1 Based on the information received by Ofgem from Economy Energy and Consumer Futures, the Authority is satisfied that Economy Energy is contravening or is likely to contravene the following relevant conditions and requirements (as applicable):
 - a. SLCs 14, 14A and 22.3 and
 - b. Regulations 3, 4, 5, and 7 of the Complaints Handling Regulations.
- 3.2 Economy Energy has not demonstrated that it has discharged its full obligations in relation to these SLCs or Complaints Handling Regulations.
- 3.3 In addition, the Authority considers that provision made by the order (with any modifications) is requisite for the purpose of securing compliance with the above mentioned relevant conditions and requirements.

4 The facts surrounding the Authority's decision on contraventions

- 4.1 The Authority has considered information obtained from complaints from domestic customers received from Consumer Futures' Extra Help Unit.⁴ The particular behaviours of concern were reports that Economy Energy customers:
 - a) were off electricity and/or gas supply or were at risk of being off electricity and/or gas supply during cold weather and were unable to contact Economy Energy to resolve the problem, which raised concerns about Economy Energy's compliance with the requirements of the Complaints Handling Regulations and SLC 22.3; and
 - b) were being blocked from switching away from Economy Energy when they requested to do so, which raised concerns about compliance with the provisions of SLC 14 and 14A.

Complaints Handling Regulations and SLC 22.3

- 4.2 Regulation 3 Complaints Handling Regulations requires that a regulated provider must at all times have a complaints handling procedure in place (which contains certain mandatory provisions) and that it must comply with that complaints handling procedure at all times.
- 4.3 Economy Energy did not put an appropriate complaints handling procedure in place until February 2014 when ordered to do so in the provisional order issued on 14 February 2014. Economy Energy accepted in discussion and written correspondence in December 2013, that its processes at that time did not meet the requirements of the Complaints Handling Regulations.

³ Original Provisional Order is available at <https://www.ofgem.gov.uk/ofgem-publications/86089/economyenergyprovisionalorder14february2014.pdf> and reasons document available at <https://www.ofgem.gov.uk/ofgem-publications/86208/provisionalorderreasonsdocument21february2014.pdf>.

⁴ <http://www.consumerfutures.org.uk/extra-help-unit>

- 4.4 Economy Energy has taken steps to improve their complaint-handling process, however, we consider that the complaints policy which has been introduced is not always followed by Economy Energy with regard to recording whether a complaint has been fully resolved.
- 4.5 For these reasons, the Authority is satisfied that Economy Energy did not have in place an appropriate complaints procedure, nor did it comply with any such procedure at least for the period before February 2014 and it is likely that they will continue to contravene this provision. Consumers may have suffered harm as they were not given important information as required by regulation 3 of the Complaints Handling Regulations, including information on how to make a complaint, what remedies were available, how their complaint could be reviewed internally as well as information on where they can receive independent help, advice or information.
- 4.6 Regulation 4 of the Complaints Handling Regulations specifies the information that regulated providers must record upon receipt of a consumer complaint. Regulation 5 requires that regulated providers also record information about consumer complaints that are not resolved by the end of one working day after the complaint is received.
- 4.7 Regulation 7 of the Complaints Handling Regulations requires that regulated providers must receive, handle and process complaints in an efficient and timely manner. In addition, it requires that providers allocate and maintain adequate resources to do so.
- 4.8 Economy Energy admitted in discussions with Ofgem that it did not record all complaints it received in accordance with the requirements of the regulations 4 and 5 of the Complaints Handling Regulations. Economy Energy have subsequently put in place internal procedures that have resulted in a significantly higher number of complaints being recorded. However, it is unclear whether all complaints are still being processed in accordance with the requirements of regulations 4 and 5 of the Complaints Handling Regulations. Economy Energy's measures for improving compliance have included and/or will include the recruitment of additional staff. Until such time as training is fully rolled out to all staff members such that they are fully aware of procedures there remains an ongoing likelihood of non-compliance.
- 4.9 Ofgem had particular concerns about Economy Energy's compliance with regulation 7 of the Complaints Handling Regulations due to the considerable difficulties and long waiting times that domestic customers were subject to when they wished to make complaints. For customers whose complaint was based on being off supply, there was a considerable risk of harm, particularly because many of Economy Energy's customers use prepayment meters and might be regarded as having a higher likelihood of vulnerability. There was also potential financial harm to consumers who were left on hold through pay-per-minute phone numbers, or who wasted time and effort during their attempts to contact Economy Energy.
- 4.10 As of mid-March 2014 Economy Energy were answering calls where customers indicated that there was a problem with their prepayment card, key or token within 30 seconds. For customer with other off-supply problems Economy Energy were generally answering calls within 5 minutes, in accordance with the provisional order. To ensure Economy Energy reaches and maintains appropriate standards of call performance the Authority considers that it is appropriate to maintain a provision in

the provisional order requiring Economy Energy to answer calls in a timely and efficient manner.

- 4.11 SLC 22.3⁵ requires a licensee to supply gas and/or electricity in accordance with the terms of the domestic supply contract offered.
- 4.12 Customers who are off supply and had considerable difficulty getting back onto supply were not supplied with energy in accordance with the terms of their domestic supply contract. Economy Energy have extended their call centre opening hours to ensure that off-supply customers are dealt with more quickly; also those customers are prioritised in the call queues. These measures should result in customers being back on supply more quickly and thus supplied in accordance with their contract.
- 4.13 While improvements have been made in this area, the standard reached by the company is not yet so that the Authority can be satisfied that the company is not contravening or is not likely to contravene this provision in the future.

Transfer blocking

- 4.14 SLC 14.1⁶ requires that Economy Energy must not prevent a proposed supplier transfer except in specific circumstances outlined in the condition.
- 4.15 SLC 14A⁷ places an obligation on licensees to complete a supplier transfer within three weeks.
- 4.16 Economy Energy admitted in conversations with Ofgem (and subsequently provided evidence) that it had been blocking customers from switching away from them if they were still within the 12 month period of their contract.
- 4.17 This issue was not addressed properly until 5 March 2014. Until this time, any customer who was unlawfully blocked from switching away from Economy Energy could have suffered detriment by way of missing out on savings offered by another supplier. In addition, there was harm to the market that may have arisen out of those customers becoming disengaged due to problems with the switching process. The Authority considers that it is appropriate to maintain a provision in the provisional order requiring Economy Energy to comply with SLC 14 and 14A.

Improvements made by Economy Energy

- 4.18 The Authority notes improvements in the performance of Economy Energy across many of the areas covered by the provisional order. However, many of these improvements are yet to constitute full compliance with the requirements of the conditions and requirements. Those that do show compliance have only shown it for a short period of time and it is likely that, without a concerted effort on Economy Energy's part, compliance will not be maintained.

⁵ A copy of the relevant condition can be found on the Ofgem website at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

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- 4.19 The Authority is therefore satisfied that Economy Energy is contravening or is likely to contravene the specified relevant conditions or requirements. For these reasons, the Authority proposes that it is minded to confirm the provisional order in the form set out in Annex 1 to this notice.

5 Representations or Objections

- 5.1 Any representations or objections with respect to the proposed notice to confirm the provisional order must be made in writing on or before 15 April 2014 (being not less than 21 days from the date of the publication of this notice) and sent to, Laila Benfaida, Senior Manager, Ofgem 9 Millbank London SW1P 3GE or by email to Laila.benfaida@ofgem.gov.uk.

All responses will be published on the Ofgem website and retained in the Ofgem Research and Information Centre. 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".

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

Dated:25 March 2014

Signed

**Andrew Wright
Senior Partner
Duly authorised on behalf of the Gas and Electricity Markets Authority**

Annex 1:

Proposed Provisional Order for confirmation

The Authority, pursuant to section 26(1) of the Electricity Act and 29(1) of the Gas Act, and for the purpose of securing compliance with the above-mentioned provisions of the SLCs and the Complaints Handling Regulations, hereby gives notice that it is minded to confirm the Provisional Order and orders Economy Energy to do the following:

Complaints Handling and SLC 22.3

- 1.** For the purpose of ensuring that Economy Energy can adequately receive, handle and process any expression of dissatisfaction, including, but not limited to, customers being off-supply, comply with regulations 3, 4, 5, and 7 of the Complaints Handling Regulations, and comply and continue to comply with its obligations in relation to SLC 22.3 (Duty to offer and supply under Domestic Supply Contract). This is to be achieved by ensuring that the following steps are taken:
 - a. In relation to any customer:
 - i. who notifies Economy Energy, between 8am Monday and 8pm Friday, that they are currently off-supply or they will be imminently off-supply; and/or
 - ii. who Economy Energy identifies, between 8am Monday and 8pm Friday, as being off-supply or will be imminently off-supply, due to a pre-payment meter not operating so as to permit a supply of electricity and/or gas to the customer's premises, Economy Energy shall take whatever measures necessary so as to permit a supply of electricity and/or gas to the customer's premises, as soon as reasonably practicable, but by no later than the next business day.
 - b. In relation to any customer:
 - i. who notifies Economy Energy, between 8pm Friday and 8am Monday, that they are currently off-supply or they will be imminently off-supply; and/or
 - ii. who Economy Energy identifies, between 8pm Friday and 8am Monday, as being off-supply or will be imminently off-supply, due to a pre-payment meter not operating so as to permit a supply of electricity and/or gas to the customer's premises, Economy Energy shall take whatever measures necessary so as to permit a supply of electricity and/or gas to the customer's premises, as soon as reasonably practicable, but by no later than the following Tuesday.
 - c. Ensure Economy Energy has a process in place to answer calls from customers, in a timely and efficient manner, and to prioritise calls from customers who have indicated that they are off-supply or who will be imminently off-supply.
 - d. Maintain options that allow customers to call Economy Energy using a standard geographic telephone number (that is, a telephone number prefixed with '01' or '02') and a non-geographic telephone number (prefixed with '0844').
 - e. Ensure the opening hours of Economy Energy's in-house staffed call centre so that an interactive service is provided:
 - i. from 8am to 6pm on a Saturday; and
 - ii. from 8am to 8pm Monday to Friday.

- f. Ensure that Economy Energy continues to engage its third party call centre support service to provide an interactive call centre service:
 - i. from 8am to 11pm Monday to Friday; and
 - ii. from 8am to 11pm Saturday and Sunday.

 - g. Maintain robust policies, procedures and systems as are necessary to ensure that Economy Energy:
 - i. records all expressions of dissatisfaction and resolution; and
 - ii. monitors call centre workload to allocate and maintain adequate resources for complaints handling.
- 2.** For the purpose of securing compliance with regulations 3, 4, 5, and 7 of the Complaints Handling Regulations and SLC 22.3, from the date the Authority publishes the confirmed provisional order and until Economy Energy has satisfied the Authority that it has implemented and maintained compliance with the above measures Economy Energy shall not acquire any new customers, or add any customer accounts by upgrading to dual fuel.

Transfer blocking

- 3.** Economy Energy shall comply and continue to comply with its obligations in relation SLC 14 (Customer transfer blocking) and SLC 14A (Customer transfer) by ensuring that it does not prevent a Proposed Supplier Transfer⁸ except in accordance with the provisions of SLC 14.

⁸ As defined by SLCs meaning 'in relation to any premises at which an Electricity and/or Gas Supplier is supplying electricity and/or gas, means the proposed transfer of responsibility for that supply from that Electricity and/or Gas Supplier to any other Electricity and/or Gas Supplier'