

Orbit Energy Limited

Notice of reasons pursuant to Section 49A(1)(f) of the Electricity Act 1989 for the decision to make a Provisional Order under Section 25(2) of the Electricity Act 1989

1. This Notice sets out the reasons why, on 12 November 2021, the Gas and Electricity Markets Authority (“the Authority”) made a Provisional Order in respect of contraventions by Orbit Energy Limited (“Orbit”), (company number 09933313) of St Dunstons House, 201 Borough High Street, London, England, SE1 1JA.
2. Orbit is the holder of an electricity supply licence issued by the Authority under section 6(1)(d) of the Electricity Act 1989 (“the Act”) and as such is bound by the Standard Licence Conditions (“SLCs”) for its electricity supply activities.
3. The Feed-in Tariffs (“FIT”) Scheme is a Government programme designed to promote the uptake of small-scale renewable and low-carbon electricity generation technologies. The FIT Scheme is now in FIT Year 12 which runs from 1 April 2021 to 31 March 2022.
4. SLC 33 (Feed-in Tariffs) stipulates that (among other things) all licensed electricity suppliers that have supplied electricity in Great Britain, within the relevant FIT year or relevant quarter, are obligated to participate in the FIT levelisation process. Suppliers have to declare the amount of electricity they have supplied and make a financial contribution towards the FIT Scheme in proportion to this. A licensed supplier is not obligated to make a levelisation submission if it has not supplied electricity within the relevant levelisation period, unless that licenced supplier is also a FIT licensee and has associated payment data.
5. Levelisation is the mechanism by which the total cost of the FIT Scheme is apportioned across licensed electricity suppliers. The cost is allocated between suppliers in proportion to their share of the electricity supply market of Great Britain, whilst taking into account any FIT contribution they have already made. Payments are made quarterly and annually.

6. Orbit is required to comply with SLC 33. In particular, SLC 33.3 provides that licensees shall comply with Part 3 of Schedule A (FIT obligations applicable to all licensees) with effect on and after 1st April 2010. Condition 3.1 of Part 3 of Schedule A to SLC 33 requires licensees to participate in the levelisation process as set out in Part 6 of the Feed-in Tariffs Order 2012 (“the Order”), in accordance with the Authority’s instructions. Condition 3.1.2 of Part 3 of Schedule A, requires licensees to make FIT levelisation payments in accordance with the Authority’s instructions. SLC 33.5 states that Section C and Schedule A to Standard Condition 33 are “Relevant Conditions” for the purposes of section 25(8) of the Act and a non-complying licensee shall be subject to the enforcement powers of the Authority under the Act.
7. The SLCs and the Order are enforceable as Relevant Conditions for the purposes of section 25 of the Act. They require each FIT licensee to make levelisation payments to the Authority at specified times of the year. The deadlines for when these payments are due for 2021/2022 are laid out in FIT levelisation process Schedule Year 12¹. Suppliers which fail to make the requisite payments by the deadlines, as instructed by the Authority, are in breach of SLC 33.3, the requirement to participate in and make levelisation payments under Condition 3.1 of Schedule A, Part 3 of SLC 33 and the Order.
8. In the Authority’s annual report on the FIT Scheme for 2019 – 2020², the Authority noted a continuation in the trend of suppliers submitting late or inaccurate data and late payments in respect of FIT levelisation, although the number of suppliers participating in the FIT Scheme had dropped. Suppliers exiting the market led to outstanding periodic and annual FIT levelisation payments leading to a shortfall in the fund. However, mutualisation was not triggered.
9. Mutualisation is the process whereby shortfalls in the fund above a threshold set annually by the Secretary of State are recovered from Licensed Electricity Suppliers. Compliant participants must address the shortfall by making additional payments. These payments are then redistributed to those licensees whose payments out of the FIT levelisation fund were reduced as a result of the shortfall in that fund.

¹ [Feed-in Tariff Levelisation Schedule Year 12 | Ofgem](#)

² <https://www.ofgem.gov.uk/publications/feed-tariff-fit-annual-report-2019-20>

10. Year 12, Quarter 2 levelisation payments were due to be paid to the Authority on or before 10 November 2021. This covers the period 1 July 2021 to 30 September 2021.
11. Orbit failed to make the necessary payment by 10 November 2021 for the period 1 July 2021 to 30 September 2021 in the sum of £451,296.14 in line with its obligations under the Relevant Conditions.
12. The Authority is concerned that the shortfall in levelisation payments may trigger mutualisation if sufficient late payments are not received by 17 November 2021. Accordingly, the Authority took the view that a Provisional Order (rather than a final order with the associated delay) was requisite on this occasion. The Authority views this as the most timely means of securing payment from Orbit, reducing the risk of triggering the mutualisation process and protecting the interests of consumers. The Authority does not consider it acceptable for Orbit to fail to meet its financial and regulatory obligations when other licensees make adequate provision for compliance.
13. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5) and (5A), and section 26 of the Act. In particular, the Authority:
 - a. does not consider that it would be more appropriate to proceed under the Competition Act 1998 (that Act has no application to the present circumstances);
 - b. is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act do not preclude the Authority from making the Provisional Order (on the contrary, it considers that its duties require it to make the Provisional Order); and
 - c. is satisfied that the contravention is not of a trivial nature.
14. The Authority:
 - a. Is satisfied that Orbit 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 Orbit to take for the purpose of securing or facilitating compliance with the Relevant Conditions;

- b. Notes that the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of Relevant Conditions, and other factors which in the Authority's opinion justify the making of a Provisional Order are those set out above; and
- c. Considers it requisite to make the Provisional Order to secure compliance with the FIT Scheme.

15. For the above reasons, the Authority decided to make the Provisional Order requiring the outstanding payment of £451,296.14 to be made forthwith.

16. The Provisional Order is available at: <https://www.ofgem.gov.uk/publications/orbit-energy-limited-provisional-order>

Dated: 12 November 2021

Signed:

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority