

Delta Gas and Power Limited: Notice of Reasons under section 49A of the Electricity Act 1989 for the decision of the Gas & Electricity Markets Authority to make a Provisional Order under section 25(2) of the Electricity Act 1989.

1. This Notice sets out the reasons why, on 29 November 2022, the Gas and Electricity Markets Authority (“Authority”) made a Provisional Order (“PO”) in respect of contraventions by Delta Gas and Power Limited (“Delta”) (company number 09933244) of 344-354 Gray’s Inn Road, London, England, WC1X 8BP, of its gas and electricity supply licences.
2. Delta 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”) of its electricity supply licence.
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 13 which runs from April 2022 to 31 March 2023.
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 toward the FIT Scheme in proportion to this.
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. Delta is required to comply with SLC 33. In particular, SLC 33.3 provides that licensees shall comply with Part 3 of Schedule A (FIT obligation applicable to all licensees) with effect on and after 1st April 2010. 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 non-complying licensee shall be subject to the enforcement powers of the Authority under the Act. 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 licenses to make FIT levelisation payments in accordance with the Authority’s instructions.
7. The SLCs 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 2022/2023 are laid out in FIT levelisation process Schedule Year 13.¹ 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 the levelisation process and make levelisation payments under Condition 3.1 of Schedule A, Part 3 of SLC 33 and the Order.
8. 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.
9. Year 13, Quarter 2 levelisation payments were due to be paid to the Authority on or before 10 November 2022. This covers the period 1 July 2022 to 30 September 2022.

¹ [Feed-in Tariff Levelisation Schedule Year 13 | Ofgem](#)

10. Delta was sent an invoice for the FIT levelisation payment due in respect of Year 13 Quarter 2 on 27 October 2022, remaining Delta of its obligation to make payment by 10 November 2022. Delta failed to make the necessary payment by 10 November 2022 for the period 1 July 2022 to 30 September 2022 in the sum of £56,707.09 in line with its obligations under the Relevant Conditions.
11. The Authority has taken the view that a Provisional Order (rather than a Final Order - FO- with the associated delay) is requisite on this occasion. The Authority views this as the most appropriate means of securing payment from Delta, upholding the integrity of the scheme, ensuring the timely flow of funds to other suppliers and in turn to the relevant customer generators, and protecting the interests of consumers. The Authority does not consider it acceptable for Delta to fail to meet its financial and regulatory obligations when other licensees make adequate provision for compliance. Considering that all other suppliers have paid up, the Authority does not find a good reason to allow Delta to get a de facto extension to the payment deadline through an FO process. In doing so, Delta would have an unfair advantage over other suppliers and ordering this payment urgently upholds the integrity of the scheme.
12. 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.

13. The Authority:

- a. Is satisfied that Delta 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 Delta 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.
14. For the above reasons, the Authority decided to make the Provisional Order requiring the outstanding payments of £56,707.09 to be made forthwith.

Dated: 29 November 2022

Signed:

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority