

Delta Gas and Power Limited: Notice of Reasons under section 49A of the Electricity Act 1989 and section 38A of the Gas Act for the decision of the Gas & Electricity Markets Authority to make a Provisional Order under section 28 (2) of the Gas Act 1986 and 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 gas and electricity supply licences (“Licences”) and as such is bound by the Standard Licence Conditions (“SLCs”) of those licences.
3. The Authority is the industry regulator and is charged by its enabling legislation with keeping the gas and electricity markets under review. In performing that function, it obtains information using a variety of sources and methods.
4. In particular, the Authority routinely monitors the financial situations of the businesses it regulates. Where it has concerns about the financial circumstances of a supplier, it seeks information from the supplier to better understand its circumstances. The fact that this is done does not necessarily mean the supplier is in financial difficulty.
5. The Authority also has responsibility for ensuring continuity of supply to the customers of a failed supplier via the Supplier of Last Resort (“SoLR”) process. In order to run this process effectively, the Authority requires certain information from suppliers such as customer lists and details of customer credit and debit balances. The fact that the Authority requests this information from any particular supplier does not necessarily mean that supplier is in financial difficulty – the Authority generally considers it prudent to

secure such information at an early stage so that it is prepared to intervene should such intervention becomes necessary.

6. SLC 5 of the Licenses relevantly provides:

"5.1 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested

5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court"

7. On 2 September 2022 the Authority issued a request for information ("RFI") to Delta for information necessary for the performance of its functions relating to the revocation of a supply licence, its functions relating to the issue of a Last Resort Supply Direction, or its functions relating to applications for an Energy Supply Company Special Administration Order, seeking the provision of the information specified in the annexes, appendices and attachments thereto.
8. The RFI issued stated that Delta are required to provide the information requested by noon on 6 September 2022. The RFI is constituted of four Appendices. Appendix 1 covers financial related aspects, including: balance sheets; cash flow forecasts; and profits and loss. Appendix 2 requires meter granular data in terms of: location; estimated annual consumption; and contact details for the account holders. In Appendix 3, suppliers should inform account granular data for credit balances, whilst a list of offered tariffs should be reported in Appendix 4.
9. Delta responded to the request on 6 September, indicating that they were aiming to solve their financial issues, and that they were not able to provide the requested information

within the deadline. A week after, given the lack of further engagement, the Authority sent an invitation to a Huddle site for the uploading of information in response to the RFI, as a reminder that the data needed to be provided. Delta did not respond. Later, on 26 September, the Authority sent an email to Delta about the pending RFI. Although a call was suggested, in case of question or clarification, Delta did not respond. Finally on 8 November, the SoLR team met Delta, given concerns regarding their situation having failed to comply with its Renewable Obligation.

10. Subsequently, the RFI was resubmitted, with a deadline of 17.30 on 10 November 2022. On 10 November, Delta replied to the RFI by sending only part of the information requested in Appendix 1. In consequence, on 11 November, the Authority wrote to Delta urging them to send the missing information by 17.30 on 14 November. On 14 November, Delta responded by only providing partial meter data (Appendix 2), which appear to contradict information provided in respect of total amounts of natural gas delivered. No further financial information related to Appendix 1 (hedging books, balance sheets, cashflow forecasts and profits and loss), or additional information regarding Appendix 2 (customers' emails and meter profile data for electricity), neither inputs to Appendix 3 (customer granular data for credit balances) and Appendix 4 (tariffs) were submitted. The information requested was standard financial information that suppliers should be able to obtain and provide within the timeframes specified in the RFI, which were in line with our standard practice.
11. Delta has not, to date, provided a substantive response to the RFI. Delta indicated that it was not able to provide the information within the deadline. Despite part of the information being provided, Delta has not confirmed to the Authority when it will be able to provide the outstanding information. The information requested is information which the Authority considers Delta should be in a position to obtain and provide within the timeframes specified in the RFI.
12. The Authority will always hear any concerns a supplier may have about an RFI it has issued or propose to issue. Where the RFI causes difficulties for the suppliers, the Authority may, in appropriate cases, be open to adjusting the scope of the RFI or

extending the timeframe for compliance. The authority expects that the companies it regulates will cooperate with its enquiries and comply with the information requests it issues. However, as noted above, Delta has provided no substantive response to the RFI.

13. Accordingly, it is apparent to the Authority that Delta is contravening SLC 5 and is likely to continue to do so by failing to respond to the RFI.

14. The Authority considers it requisite to issue a Provisional Order on this occasion as it is imperative that all of the information is provided to the Authority promptly, so that it may gain a better understanding of Delta's financial position and customer portfolio. Particularly, given its failure to pay its Feed-in Tariff Year 13 Quarter 2 periodic levelisation payment to date and its failure to pay its 2021/22 Renewables Obligation on time. The requested information becomes even more necessary in order to conduct a SoLR, should that be necessary, as a way of ensuring continuity of supply to Delta's customers in the case of a market exit. Besides the inherent need for such information to be provided and considered in a timely manner, the Authority presently has growing concerns that a SoLR could happen more imminently, therefore the information is needed urgently to devise a contingency plan. It is crucial that the Authority has reliable information that allows it to be prepared in this eventuality by appointing a SoLR quickly. The issue of a Provisional Order is then a prudent step, as it is urgent that Delta provides in full the information requested, so Ofgem can be well prepared to protect consumers.

15. The Authority has had regard to the matters in sections 25(3), (4A), (4B) (5) and (5A), and section 26 of the Electricity Act 1989 and the equivalent provisions in the Gas Act 1986¹. In particular,

- a. It 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);

¹ The equivalent provisions in the Gas Act 1986 being sections 28 (3), 28 (4A), 28 (4B), 28 (5), 28 (5A) and 29 of that Act.

- b. It is satisfied that the duties imposed on the Authority by sections 3A to 3C of the EA89 do not preclude the Authority from making the PO (on the contrary, it considers that its duties require it to make the order);
- c. It does not consider there is an acceptable cure plan in place; nor is the contravention trivial.

16. On this occasion, for the reasons set out above, the Authority has taken the view that a Provisional Order, rather than progressing a proposed Final Order, is requisite.

17. For those reasons, the Authority decided to make the Provisional Order to compel Delta to, by no later than 5pm on Monday 5th December 2022, comply with the RFI and provide all of the information requested.

Dated: 29 November 2022

Signed:

Charles Hargreaves
Deputy Director, Enforcement
Duly Authorised on behalf of the Gas & Electricity Markets Authority