

Provisional Order made under section 25(2) of the Electricity Act 1989 and 28(2) of the Gas Act 1986

To: Maxen Power Supply Limited ("Maxen Power") Company number: 10298693, having its registered office at Olympic House, 28-42 Clements Road, Ilford, Essex, England, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 ("the Electricity Act") and a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986 ("the Gas Act").

WHEREAS:

- (A) Maxen Power is the holder of gas and electricity supply licences granted by the Gas and Electricity Markets Authority ("the Authority") and is subject to the standard conditions thereunder, which are "relevant conditions" for the purposes of the Electricity Act and the Gas Act.
- (B) Based on the information received by the Authority and its engagement with Maxen Power regarding its compliance with its obligations under the Standard Conditions of the gas and electricity supply licences (collectively referred to as "SLC") it appears to the Authority that Maxen Power is contravening or is likely to contravene SLCs 0A.3(a), 0A.3(c)(iii), 4A.1 and 4A.2 (the "relevant SLCs").
- (C) The relevant SLCs provides the following:

0A.3- The Standards of Conduct are that the licensee:

(a) behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;

(c) in relation to customer service arrangements:

(i) makes it easy for a Micro Business Consumer to contact the licensee;

(ii) acts promptly to put things right when the licensee makes a mistake; and

(iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

4A.1- The licensee must ensure it has and maintains robust internal capability, systems and processes to enable the licensee to:

- (a) efficiently and effectively serve each of its Customers;*
- (b) efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks; and*
- (c) comply with relevant legislative and regulatory obligations.*

4A.2- The licensee must have Sufficient Control over the Material Economic and Operational Assets used or needed to run its supply business.

- (D) Based on information received by the Authority, including information provided by Maxen Power and intelligence from various non-connected sources operating in the non-domestic market, it appears to the Authority that Maxen Power is contravening or likely to contravene the relevant SLCs outlined above. Such contraventions are with respect to Maxen Power's Change of Tenancy ("CoT") process, and the behaviour of Third-Party Intermediaries ("TPIs")¹ acting on Maxen Power's behalf.
- (E) Maxen Power's "CoT" process appears to expose Customers moving into new premises to a disproportionate level of risk due to the significant volume of documentation requested to process the CoT:
- (E.1) The time taken to collate all the requested materials risks the Customer building up a significant balance, charged on Deemed Rates². This may place Customers in a position where they are unfairly incentivised to stay with Maxen Power once the CoT has been processed, as Maxen Power can then offer the Customer cheaper contracted rates backdated to the Customer's move-in date. If the Customer does not agree to enter a contract with Maxen Power and wishes to switch supplier, they

¹ TPI in this context is interchangeable with the definition of "Third Party" defined in SLC1 of the Gas and Electricity Supply licenses.

² Meaning the rates charged in terms of a deemed contract created by paragraph 3 of Schedule 6 to the Electricity Act 1989

would have to pay off the balance they accumulated during the CoT process before they can switch.

(E.2) Additionally, the Authority is not satisfied with the rationale provided by Maxen Power regarding the relevancy of much of the documentation they request to facilitate the CoT.

(F) The Authority has received intelligence from numerous sources alleging that TPIs, believed to be acting on behalf of Maxen Power, are contacting Non-Domestic Customers and professing to be their current supplier:

(F.1) In some instances, the TPIs allegedly present misinformation about the Customer's supplier (i.e., advising that they are increasing prices or intending to stop supply).

(F.2) Other allegations against these TPIs include enacting a change of supplier from the customer's previous supplier to Maxen Power without the customer's knowledge or consent.

(F.3) Based on engagement thus far, the Authority is not satisfied that Maxen Power have demonstrated sufficient control over TPIs in a way that protects Customers from potential harm.

(F.4) The alleged practices of these TPIs benefits Maxen Power due to the procurement of new Customers.

(G) It appears to the Authority from the information currently available to it that Maxen Power is contravening, or likely to contravene, SLC 0A.3(a), 0A.3(c)(iii), 4A.1(a), 4A.1(b) and 4A.2 by failing to (1) ensure that they behave and carry out actions in a Fair, honest, transparent, appropriate and professional manner; (2) ensure that customer service arrangements and processes are fit for purpose; (3) have and maintain robust internal capability, systems and processes enabling them to efficiently and effectively (a) serve each of its Customers, (b) identify risks of likely consumer harm and to mitigate such risks; and (4) demonstrate Sufficient Control over the Operational Assets used to run their supply business.

(H) Having had regard to the matters set out in section 25 of the Electricity Act and section 28 of the Gas Act, the Authority considers it is requisite to make a provisional order in exercise of the power in section 25(2) of the Electricity Act and section 28(2) of the Gas Act.

NOW THEREFORE:

The Authority, pursuant to section 25(2) of the Electricity Act and section 28(2) of the Gas Act, and for the purpose of securing compliance with the relevant SLCs, makes a provisional order requiring Maxen Power to:

- (1) Not act in contravention of SLC 0A and 4A.
- (2) By no later than 4pm on 24 May 2024 to provide the Authority with an updated CoT policy/process which is to the Authority's satisfaction. This must outline which documentation they will initially request with full written rationale as to why each document is necessary for progressing a CoT.
- (3) By no later than 4pm on 21 June 2024 to provide the Authority with either sufficient evidence of their control over TPIs acting on their behalf or a remedial action plan outlining the steps they will take to ensure they have sufficient control over Operational Assets.
- (4) By no later than 4pm on 21 June 2024 to provide the Authority with an independent audit report (commissioned by Maxen Power at its own expense and prepared by an independent professional acceptable to the Authority with a framework and remit also acceptable to the Authority³) regarding Maxen Power's start-to-end customer journey with relation to acquisition of new customers. The report should outline whether Maxen Power (and/or their representatives) behave and carry out actions in a fair, honest, transparent, appropriate, and professional manner, alongside a remedial action plan if the findings indicate the requirement for one.
- (5) By no later than 4pm on 10 July 2024 with regards to paragraphs (3) and (4) any remedial plan actions are to be implemented and a Director with responsibility for retail, individual with significant managerial responsibility or influence, or the Chief Operating Officer of Maxen Power is to confirm such implementation in writing to the Authority. The written confirmation should detail any steps already taken and steps Maxen Power will continue to take to ensure they comply with SLC 0A and 4A going forward.

³ Maxen Power must consult with the Authority's Responsible Officer(s) prior to a) engaging its proposed auditor, and b) providing its appointed auditor with remit for their audit. These steps must be taken by no later than 24 May 2024 (allowing at least four weeks for the audit to be undertaken). The Authority will provide Maxen Power with direction on the scope, data, and performance metrics to be included in the report.

- (6) Until the terms of this Provisional Order are met and the Authority has confirmed in writing to Maxen Power that the terms of the Provisional Order are met, Maxen Power shall refrain from all sales, marketing and new non-CoT Customer acquisition activity.
- (7) Until the terms of this Provisional Order are met and the Authority has confirmed in writing to Maxen Power that the terms of the Provisional Order are met, Maxen Power shall process all CoT Customers who are on Deemed Rates in a fair, reasonable, and timely manner, requesting only those documents which are necessary. Any failure to comply with this requirement will be considered by the Authority when deciding on the level of any penalty or consumer redress order it might impose.

Pursuant to section 27(7) of the Electricity Act and section 30(8) of the Gas Act, the Authority may seek to enforce compliance with the provisional order by application to the High Court (in England and Wales) or the Court of Session (in Scotland) for injunctive or other relief.

This provisional order will lapse on 10 August 2024 unless confirmed by the Authority on or before that date.

Dated: 10 May 2024

Signed:

Charles Hargreaves

Deputy Director, Enforcement

Duly authorised on behalf of the Gas & Electricity Markets Authority