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## Notice of reasons under section 49A of the Electricity Act 1989 for the decision to make a Provisional Order under section 25(2) of the Electricity Act 1989

**To: Tomato Energy Ltd** ("Tomato Energy") (company number 09735768) having its registered office at **Devonshire Business Centre Aviary Court, Wade Road, Basingstoke, England, RG24 8PE**, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 ("the Act").

- A. This Notice sets out the reasons why, on 10 April 2025, the Gas and Electricity Markets Authority ("the Authority") made a Provisional Order in respect of likely contraventions by Tomato Energy (the "Provisional Order").
- B. Tomato Energy is the holder of an electricity supply licence granted by the Authority and is subject to the conditions thereunder, which are "relevant conditions" enforceable for the purposes of section 25 of the Act.
- C. The Provisional Order was made as it appears to the Authority that Tomato Energy is contravening, or likely to contravene, relevant conditions as Tomato Energy appears to not have robust internal capability, systems and processes to enable it to comply with relevant legislative and regulatory obligations (including its reporting obligations under SLC.4B.8) as required by SLC 4A and appears to not maintain Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis as required by SLC 4B.1.<sup>1</sup>
- D. Standard Licence Condition 4A ("SLC 4A") provides the following:

### **Condition 4A Operational capability**

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

*(c) comply with relevant legislative and regulatory obligations.*

- E. Standard Licence Condition 4B ("SLC 4B") relevantly provides the following:

### **Condition 4B. Financial responsibility principle**

*4B.1 The licensee must ensure that it maintains Capital and Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis. [...]*

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<sup>1</sup> Capitalised words have the meaning given to them by SLC 4A and SLC 4B.

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## **Definitions [...]**

4B.28 [...]

**"Liquidity"** means the resources that suppliers can convert into 'cash' as soon as needed and with minimal loss in value to meet liabilities as they fall due, including under adverse circumstances. [...]

**"Quality"** mean characteristics that make a source of funding best suited to allow a firm to absorb losses unambiguously on an ongoing basis, including under adverse circumstances.

## **Monitoring and Reporting**

4B.8 The licensee must notify the Authority in writing:

- i.as soon as reasonably practicable but no later than 7 days after it becomes aware that there is a Material risk that any of the Trigger Points set out in sub-paragraphs (a) to (d) will occur; and*
- ii.as soon as reasonably practicable but no later than 7 days after it becomes aware that any of the following Trigger Points have occurred:*
  - a. any reduction in the licensee's Access to Funds, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6;*
  - b. any changes with respect to the licensee's contractual arrangements with counterparties, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6; or*
  - c. any change that could have a Material adverse effect in respect to the cash position of the licensee; [...]*

4B.9 Where the licensee notifies the Authority in accordance with standard condition 4B.8, it must, along with the notification, explain the impact that the relevant change will have, may have or has had on its ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6.

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- F. The Provisional Order was made as it appears to the Authority that Tomato Energy is contravening and likely to continue to contravene relevant conditions by virtue of the following:
- a. Since late 2024, the Authority has been contacted by multiple industry parties in relation to the late or non-payment of financial liabilities by Tomato Energy. The Authority has engaged with Tomato Energy in respect of its obligations under the financial responsibility principle and its business practices in relation to meeting its financial liabilities and met with the licensee on 13 February 2025, 5 March 2025 and 7 April 2025. The licensee has repeatedly sought to assure the Authority that while it acknowledged that it had experienced cashflow challenges which had led to the late payment of financial liabilities, effective action had been taken to prevent a recurrence. However, as of 10 April 2025 it has not provided evidence that it has taken the necessary action to bring itself into compliance with its ongoing obligations. If Tomato Energy fails to pay its debts, including to industry participants, this could increase the risk of Mutualised costs which are ultimately passed on to consumers through higher bills. The apparent failure of Tomato Energy to have Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis mean that Tomato Energy appears to be contravening SLC 4B.1.
  - b. The Authority also made clear to the licensee that a failure to meet reasonably anticipated financial liabilities in full and on time gave rise to obligations under SLC.4B.8-9 to notify the Authority in writing, with an explanation of the impact such failures would have, might have or have had on the licensee's ability to meet other elements of the financial responsibility principle. On 2 April 2025, the Authority was informed by multiple market participants that they were considering commencing legal proceedings against Tomato Energy for the recovery of unpaid liabilities totalling over £3m. The licensee has not submitted any notifications to the Authority under SLC.4B.8-9 and as such, Tomato Energy appears to have contravened SLC 4B.8.
  - c. Given the apparent failure of the licensee to submit the required notifications to the Authority under SLC 4B.8-9, it appears that the licensee is not maintaining robust internal capability, systems and processes to enable the licensee to comply with its relevant regulatory obligations contrary to SLC 4A.
- G. Having regard to the above, the Authority considers that Tomato Energy appears to be contravening, or is likely to contravene, SLC 4A, SLC 4B.1 and SLC 4B.8.
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- H. The Authority considers it requisite to issue a Provisional Order rather than consulting on a Final Order. It is not appropriate in these circumstances to allow the delay associated with a Final Order. The issuing of a Provisional Order is requisite for the purposes of section 25(2) of the Act to secure compliance with SLC 4A and with SLC 4B.1 at the earliest opportunity, by 1 May 2025 requiring Tomato Energy to take the actions set out therein which are necessary, proportionate and in the public interest. If the Authority does not require Tomato Energy to make improvements to its compliance immediately, by virtue of this Provisional Order and instead consults on a final order, it is more likely that Tomato Energy may fail to comply with SLC 4B.1, increasing the risk of potential Mutualised costs. The Authority needs to understand if Trigger Points have occurred and whether this may impact on the licensee's compliance with the broader SLC 4B and the licensee must have in place the capability to comply with these important relevant conditions. To that end, the Authority considers it is requisite to intervene immediately to secure compliance with SLC 4A, SLC 4B.1 and SLC 4B.8.
- I. The Provisional Order requires Tomato Energy to obtain and maintain Liquidity of a sufficient amount and Quality so that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis. This will help ensure that Tomato Energy is able to pay its debts as and when the fall due and help minimise the risk of Mutualised costs in the event of the licensee exiting the supply market (due to insolvency, licence revocation or in any other circumstances).
- J. The Provisional Order requires Tomato Energy to provide the Authority with an independent report (commissioned by Tomato Energy at its own expense and prepared by an independent professional acceptable to the Authority with a framework and remit also acceptable to the Authority) regarding its compliance with SLC 4B.1. The report must also outline recommendations of what remedial actions, if any, Tomato Energy should take to maintain compliance with its obligations under SLC 4B.1. The Authority considers requiring Tomato Energy to obtain the report to be reasonable and requisite in the circumstances to assist the Authority in assessing Tomato Energy's compliance with SLC 4B.1 and to help Tomato Energy take steps to comply with SLC 4B.1.
- K. The Provisional Order also immediately prohibits Tomato Energy from engaging in all sales, marketing and customer acquisition activity until it evidences to the Authority its compliance with SLC 4A and SLC 4B.1. The Authority has considered this provision (commonly referred to as a 'sales ban') very carefully, mindful of its likely
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impact on Tomato Energy's business. The Authority considers it requisite on this occasion to prohibit Tomato Energy acquiring new customers until it can satisfy the Authority that it is in compliance with SLC 4A and SLC 4B.1. Where Tomato Energy acquires new customers, its financial liabilities to industry bodies would be likely to increase. This in turn could increase the amount of costs at risk of being Mutualised. The Authority considers this 'sales ban' to be reasonable and proportionate in the circumstances to limit potential losses to consumers. The Authority also notes that the 'sales ban' will only apply until Tomato Energy can evidence that it is meeting the requirements of the Provisional Order and is therefore in compliance with SLC 4A and SLC 4B.1.

- L. The Provisional Order also immediately prohibits Tomato Energy from making any payment, providing any loan or transferring any asset to any third party (including its Directors, shareholders, unlicensed parent company or other companies in the same group of companies) unless that payment, loan or transfer is essential to Tomato Energy's operation as a supplier of electricity to consumers (i.e. a 'ban on non-essential payments'). The Authority has also carefully considered this provision, again mindful of its potential impact on Tomato Energy's business. If Tomato Energy makes non-essential payments, it is very likely to decrease the amount or Quality of Liquidity available to it to meet its reasonably anticipated financial liabilities on an ongoing basis, thereby increasing the costs at risk of being Mutualised in the event of its exit from the supply market (due to insolvency, licence revocation or in any other circumstances). The Authority therefore considers that this requirement is reasonable and proportionate in the circumstances, again noting that it should apply for a short period of time, while Tomato Energy brings itself into compliance with SLC 4A and SLC 4B.1.
- M. The Provisional Order also requires Tomato Energy to comply with SLC 4B.8 on an ongoing basis, which ensures the Authority receives important information from the licensee about indicators linked to supplier financial resilience ("Trigger Points") and to enable the Authority to monitor the licensee's ongoing compliance with SLC 4B. SLC 4B.8 is a key obligation element of the Authority's Supervisory Financial Monitoring; the processes by which the Authority obtains information about the financial position of licence holders with such information including, but not limited to, licensee hedging position, the level of assets and liabilities held by the licensee, and the licensee's ability to meet its debts as they fall due.

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- N. 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:
- 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);
  - b. it 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. it does not consider that the contraventions are trivial.
- O. For the above reasons, the Authority decided to make the Provisional Order requiring Tomato Energy to do the following:
- 1) By no later than **4pm on 1 May 2025** to provide the Authority with an independent report (commissioned by Tomato Energy at its own expense and prepared by an independent professional acceptable to the Authority with a framework and remit also acceptable to the Authority)<sup>2</sup> regarding the quantity and Quality of Tomato Energy's Capital and Liquidity, including its ability to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis. The report must also outline recommendations of what remedial actions, if any, Tomato Energy should take to maintain compliance with its obligations under SLC 4B.1.
  - 2) Obtain and maintain Liquidity of a sufficient amount and Quality so that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis by no later than **4pm on 8 May 2025**.
  - 3) From the date of this Provisional Order, put in place and maintain robust internal capability, systems and processes to enable the licensee to comply with relevant legislative and regulatory obligations (including, but not limited to, its reporting obligations under SLC 4B.8-9).
  - 4) Until compliance with SLC 4A and SLC 4B.1 is achieved in accordance with the preceding paragraphs and the Authority has confirmed in writing to Tomato Energy that compliance has been achieved, Tomato Energy must:

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<sup>2</sup> Tomato Energy must consult with the Authority's Responsible Office(s) prior to a) engaging an independent expert to provide the report, and b) providing its appointed expert with the remit for their report. The Authority will provide Tomato Energy with information about what the remit of the report must cover.

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- o refrain from all sales, marketing and customer acquisition activity, including the acquisition of any new domestic and non-domestic customers ("Sales Ban"); and
  - o refrain from making any payment, providing any loan or transferring any asset to any third party unless that payment, loan or transfer is one that:
    - i) it is required to make by virtue of a statutory requirement, court order or by virtue of a contractual requirement where making that payment is essential to enable Tomato Energy to run its business; ii) is essential to Tomato Energy's operation as a supplier of electricity to consumers; or iii) is otherwise approved in writing by the Authority ("Non-essential Payments Ban").
- 5) From the date of this Provisional Order, notify the Authority in writing as soon as reasonably practicable but no later than 7 days after it becomes aware that there is a Material risk that any of the Trigger Points (as set out in SLC 4B.8 (a) to (d)) will occur and/or as soon as reasonably practicable but no later than 7 days after it becomes aware that any of the Trigger Points have occurred.
- P. The Provisional Order is published online at: [Compliance and enforcement - Investigations, orders and penalties | Ofgem](#). The Provisional Order has been served to Tomato Energy on 10 April 2025.
- Q. The Authority will, in due course, consider whether to consult on confirming the Provisional Order (with or without modifications). Unless earlier confirmed or revoked by the Authority, the Provisional Order will lapse on 10 July 2025.
- R. The issuance of the Provisional Order is without prejudice to any further or other enforcement action the Authority may decide to take, in relation to this or any other outstanding or future breaches. The Authority is actively considering whether it is appropriate to impose a financial penalty on Tomato Energy in relation to this matter.

Dated: 10 April 2025

**Signed:**

**Dominic Alexander (Deputy Director)**

**Duly Authorised on behalf of the Gas & Electricity Markets Authority**