
Provisional Order made 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.

WHEREAS:

- A. Tomato Energy is the holder of an electricity supply licence granted by the Gas and Electricity Markets Authority ("the Authority") and is subject to the conditions thereunder, which are "relevant conditions" for the purposes of the Electricity Act 1989.
- B. 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.

- C. 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 ¹ 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. [...]

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. [...]

¹ Capitalised terms in this provisional order have the same meanings as those defined in the Standard Licence Conditions.

"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.

- D. 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.

- E. 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 an obligation under SLC.4B.8-9 to notify the Authority in writing.
- F. 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.
- G. The licensee has not submitted any notifications to the Authority under SLC.4B.8-9.
- H. Given the failure of the licensee to submit appropriate 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.
- I. Based on the information received by the Authority and its engagement with Tomato Energy regarding its compliance with its obligations under SLC 4A, SLC 4B.1 and SLC 4B.8 of the electricity supply licence, it appears to the Authority that Tomato Energy is contravening or is likely to contravene SLC 4A, SLC 4B.1 and SLC 4B.8.
- J. The information considered by the Authority, includes:
- Notifications from industry bodies owed money by Tomato Energy indicating that Tomato Energy had not met its reasonably anticipated financial liabilities as they fell due
 - A failure to submit the required notifications to the Authority when Trigger Points set out in SLC. 4B.8(a)-(c) have occurred
- K. The operational capability and financial responsibility principle rules are an important safeguard to energy consumers because they help to minimise the costs at risk of Mutualisation in the event of a market exit. Tomato Energy's actions i.e. a repeated failure to meet its reasonably anticipated financial liabilities on an ongoing basis and a repeated failure to meet its reporting obligations amount to serious breaches of the SLC 4A, SLC 4B.1 and SLC 4B.8.
- L. The issuing of a Provisional Order is requisite for the purposes of section 25(2) Electricity Act 1989 to secure compliance with SLC 4A, SLC 4B.1 and SLC 4B.8 at the earliest opportunity, by ensuring that the licensee puts in place robust internal
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capability, systems and processes to comply with its legislative and regulatory obligations (including the obligation to report to the Authority under SLC 4B.8) and to obtain and 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, which is necessary, proportionate and in the public interest.

M. Having had regard to the matters set out in section 25 of the Electricity Act 1989, the Authority considers it is requisite to make a provisional order in exercise of the power in section 25(2) of the Electricity Act 1989.

NOW THEREFORE:

The Authority, pursuant to section 25(2) of the Electricity Act, and for the purpose of securing compliance with SLC 4A, SLC 4B.1 and SLC 4B.8, makes a Provisional Order requiring Tomato Energy to:

- 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)² 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).

² 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.

- 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:
- refrain from all sales, marketing and customer acquisition activity, including the acquisition of any new domestic and non-domestic customers (“Sales Ban”); and
 - 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.

Pursuant to section 27(7) of the Electricity Act 1989, 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 July 2025 unless confirmed by the Authority on or before that date.

Dated: 10 April 2025

Signed:

Dominic Alexander (Deputy Director)

Duly authorised on behalf of the Gas & Electricity Markets Authority