

Statement by the Gas and Electricity Markets Authority ('the Authority'), following an investigation into compliance by Maverick Energy Limited ('Maverick') with the Renewables Obligation and Renewables Obligation Scotland under The Renewables Obligation Order 2002 (No. 914) and The Renewables Obligation (Scotland) Order 2002 (No. 163) ('the Orders')

09 March 2004

1. Ofgem has conducted an investigation into Maverick's compliance with the Orders, in respect of the first Renewables Obligation period (1 April 2002 to 31 March 2003).
2. Article 3 in the respective Orders requires each licensed electricity supplier to provide evidence in the form of certificates (Renewables Obligation Certificates ('ROCs')) that, during a period designated in the Orders, it has supplied to customers in Great Britain a specified percentage of electricity generated from renewable sources – or that another supplier has done so, or that they have done so jointly. The obligation is to provide the evidence before the 'specified day', which is the 1 October immediately following any obligation period.
3. The Electricity Act 1989 ('the 1989 Act') provides for an alternative to complying with the Orders by submission of ROCs¹. This is the 'buy-out' mechanism set out in article 7 of the respective Orders. Instead of producing ROCs, a supplier may make a payment to the Authority before the specified day relating to the relevant obligation period. During the first obligation period, the 'buy-out price' was £30 for each MWh of the obligation in respect of which the supplier did not produce ROCs.
4. The Orders do not provide for suppliers to discharge their Renewables Obligation after the specified day. Both the production of ROCs and the payment of any buy-out monies have to be made before the specified day for any obligation period.
5. Maverick, a licensed electricity supplier, went into administrative receivership in June 2003. On 25 September 2003, the Authority served a provisional enforcement order on Maverick, under section 25 of the 1989 Act. The order required them, before 1 October 2003, to comply with the Renewables Obligation.
6. Maverick failed to produce to the Authority, before 1 October 2003, evidence in the form of ROCs showing that, during the first Renewables Obligation period, it had supplied customers in Great Britain with electricity generated from renewable sources. Maverick made no payment under the 'buy-out' mechanism, as an alternative method of complying with the Renewables Obligation.

¹ EA 89, s. 32C

7. Maverick's obligation under the first Renewables Obligation period in respect of England and Wales was 17,188 MW, representing 17,188 ROCs or a buy-out liability of £515,640 at £30 per ROC.
8. Maverick's obligation under the first Renewables Obligation period in respect of Scotland was 459 MW, representing 459 ROCs or a buy-out liability of £13,770 at £30 per ROC.
9. The Authority is satisfied, and Maverick's Administrative Receivers have accepted, that Maverick was in breach of its obligations in respect of the first period of the Renewables Obligation and Renewables Obligation (Scotland).
10. Section 27A(1) of the 1989 Act provides that, where the Authority is satisfied that a licence holder has contravened or is contravening a relevant condition or requirement, the Authority may impose a financial penalty on the licence holder. Compliance with the Renewables Obligation is a 'relevant requirement', within the meaning of section 27A(1) of the 1989 Act².
11. Maverick's Administrative Receivers told the Authority that their prime duty is to realise the assets of Maverick in order to discharge the company's liabilities to its secured and, where appropriate, preferential creditors. Any liability in respect of the Renewables Obligation would be an ordinary, unsecured liability as would any penalty imposed by the Authority. The assessment of the Administrative Receivers was that there was no present prospect of funds being available for distribution to unsecured creditors.
12. The Authority, having taken full account of the particular facts and circumstances of the contravention outlined above, concluded that it is not justified to impose a penalty in this case. To do so would serve no practical purpose. However, the Authority has made it clear that, in any future instance of breach of the Renewables Obligation, and in the absence of similar circumstances, significant financial penalties would be likely.

² EA89, s.25(8) and s.64(1).