

Notice of Proposal to make a Final Order

The Electricity Act 1989 and Gas Act 1986

Notice of Proposal to make a Final Order

RE Avro Energy Limited

Proposal of the Gas and Electricity Markets Authority (the Authority) to make a Final Order (FO) pursuant to section 26 (1) and (2) of the Electricity Act 1989 ("EA89") and section 29(1) and (2) of the Gas Act 1986 ("GA86").

1. Background

- 1.1. Avro Energy Limited ("Avro") (company number 09174794) whose registered office is situated at Unit 8, The Courtyard Goldsmith Way, Eliot Business Park, Nuneaton, Warwickshire, CV10 7RJ is the holder of an electricity Supply licence and gas Supply licence issued by the Authority on 27 July 2015 under section 6(1)(d) of the EA89 and section 7A (1) of the GA86 respectively.
- 1.2. Avro was required, pursuant to standard licence condition ("SLC") 42.8 of the gas supply licence and 48.8 of the electricity supply licence, to become a DCC User (as defined in SLC 42.11 and 48.11 of the gas and electricity supply licences respectively) by 25 November 2017 for the purposes of the roll-out of smart meters.
- 1.3. The roll-out of smart meters is a Great Britain ("GB") wide project originally mandated by the Department of Energy and Climate Change ("DECC"). DECC's responsibilities in respect to smart metering were transferred to the newly created Department for Business, Energy and Industrial Strategy ("BEIS") in July 2016. Smart meters are vital for upgrading GB's energy infrastructure, enabling customers to be better informed and engaged in managing their energy consumption by providing them with real time information on their energy use expressed in monetary terms; and enabling for the transition to a more flexible energy market and the move to a low carbon economy. Under standard licence condition 33.1 of the gas supply licence and 39.1 of the electricity supply licence all licensed suppliers are required to take all reasonable steps to ensure that a gas and electricity smart metering system is installed in each home and smaller business premise in Great Britain by the end of 2020. A smart metering system comprises a smart meter, a communications hub and an in-home display unit.
- 1.4. The Data and Communications Company ("DCC") is the holder of the Smart Meter Communication Licence authorised to provide communication

services between smart meters and the business systems of energy suppliers, network operators and other authorised service users granted by the Authority pursuant to section 6(1A) and (1C) of the EA89 and section 7AB(2) and (4) GA86. The DCC provides services for energy suppliers in respect to second generation (“SMETS2”) smart meters from installation, and first generation (“SMETS1”) smart meters once they have been enrolled into the DCC. Smart meters (SMETS1 and SMETS2) that are enrolled into the DCC are interoperable which means they maintain their smart functionality when a customer switches supplier.

- 1.5. The roll-out of smart meters is being delivered in two stages; the Foundation stage (which commenced in 2011) transitioning into the Main Installation Stage (this was initially set to coincide with the transition to SMETS2 meters from October 2016). Smart meters installed during the Foundation Stage complied with the first version of the Smart Metering Equipment Technical Specification (known as “SMETS1 meters”). Unlike SMETS2 meters, suppliers who install SMETS1 meters initially provide their own communications systems to enable them to operate the smart meters. This means that customers are likely to lose the smart functionality of their SMETS1 meters if they switch to another supplier. From end May 2019, SMETS1 meters can start to be enrolled into the DCC. Once enrolled, SMETS1 meters will become interoperable between suppliers.
- 1.6. A DCC User is an organisation, such as a supplier, that has completed all DCC User Entry requirements. Once an organisation is a DCC User, it is allowed to communicate with smart metering devices (SMETS1 and SMETS2) via the DCC. The DCC User Entry Process provides protection for customers by confirming that the organisation meets core security, operational and financial requirements. To become a DCC User, a supplier must meet all of the steps of the DCC User Entry process which is defined in Section H of the Smart Energy Code (“SEC”). The process is well established. The Smart Energy Code Administrator and Secretariat (SECAS) monitors suppliers’ progress through each stage of the User Entry Process and confirms when a supplier has completed all the necessary steps to become a DCC User. SECAS provides a monthly report to the Authority on suppliers’ progress and informs the Authority when a supplier has become a DCC User.
- 1.7. All Suppliers were required to become a DCC User by a date specified in a direction issued by the Secretary of State, BEIS issued the direction on 25 November 2016. Large Energy Suppliers (as defined in the supply licences) were required to become DCC Users by 25 May 2017. Other Energy Suppliers (such as Avro) were required under SLC 42.8 and 48.8 of the gas and electricity supply licences respectively to become a DCC User by 25 November 2017¹.

¹ https://www.smartdcc.co.uk/media/2134/20161125_dcc_live_north_direction.pdf

- 1.8. Ensuring all suppliers become a DCC User is critical to the success of the smart meter implementation programme as it enables smart meters to operate reliably for all consumers regardless of their energy supplier. Being a DCC User will facilitate the flow of smart metering data to network operators and will allow authorised third parties to provide consumers with information they have requested, such as how they can reduce their energy usage.
- 1.9. In order to protect customers and drive the uptake and roll-out of SMETS2 meters the Government mandated an end date after which the installation of SMETS 1 meters would no longer count towards the 2020 target for each supplier. The end date for credit SMETS 1 credit meters was amended by way of a Direction issued on the 4 October 2018 by the Secretary of State, BEIS, pursuant to SLC 39 and 33 of the electricity and gas supply licences, to 5 December 2018. Recognising that most suppliers had made less progress towards transitioning to SMETS 2 for prepayment customers, the end date for SMETS 1 prepayment meters is set for 15 March 2019².
- 1.10. In order to ensure the smart capability of SMETS1 meters is not lost when customers switch suppliers, and to return smart capability for customers that have already switched, all suppliers must enrol their SMETS1 meters into the DCC. Under licence condition 13 of the Smart Meter Communication licence, the Secretary of State directed the DCC to produce plans for the purpose of enrolling SMETS1 meters into the DCC system. The DCC issued an updated plan for the enrolment of SMETS 1 meters into the DCC system in three phases, the first (the Initial Operating Capability) will commence on 26 May 2019; the second phase (Middle Operating Capacity) will commence on 30 September 2019 and the last phase (the Final Operating Capability) will commence on the 12 December 2019.
- 1.11. With the first phased enrolment dates for SMETS1 meters now confirmed to commence on 26 May 2019, Avro's continuing failure to complete the DCC User Entry process to become a DCC User in accordance with SLC 48.8 and 42.8 of the electricity and gas supply licences means that any existing Avro customer with a SMETS1 or SMETS2 meter or a customer with a SMETS 1 or 2 meter who switches to Avro will lose their smart functionality.

² <https://smartenergycodecompany.co.uk/latest-news/beis-response-to-consultation-on-smets1-end-date/>

1.12. Therefore, the Authority proposes to make a FO requiring Avro:

- 1) to become a DCC User by no later than 25 July 2019;
- 2) to notify the Authority within 24 hours of completion of each milestone, including completion of the final milestone, as set out in the Avro Implementation Plan³; and
- 3) for the purposes of securing compliance with (1) not to acquire any new customers or add any customer accounts by upgrading to dual fuel from 26 May 2019, the first “go-live” date for enrolling specified SMETS 1 meters into the DCC system, until Avro has satisfied the Authority that it has achieved the requirement set out at paragraph (1).

1.13. The Authority is satisfied that Avro has contravened and is contravening a relevant condition as defined in section 25(8) EA89 and section 28(8) GA86, namely the obligation to become a DCC User under SLC 48.8 and SLC 42.8 of the electricity and gas supply licences respectively and that the provisions in the FO are requisite for the purposes of securing compliance by Avro with the relevant condition. The Authority therefore considers it requisite to make the FO and accordingly proposes to do so in the form set out in the Annex to this notice.

1.14. In reaching its conclusion that it should propose to make the FO in the form set out in the Annex to this notice, the Authority has had regard to the matters set out in section 25(4A), (4B), (5) and (5A) and section 26 of the EA89 and section 28 (4A), (4B), (5) and (5A) and section 29 of the GA86. Sections 25(4A) and (4B) of the EA89 and section 28(4A) and (4B) of the GA86 relate to the question as to whether this matter should be investigated on the basis of a possible breach of the Competition Act 1998. The Authority does not consider that this case falls into the category. Section 25(5) of the EA89 and section 28(5) of the GA86 refers to the principal objective as set out in section 3A and section 4AA of the EA89 and GA86 respectively.

1.15. In accordance with section 26(1) of the EA89 and section 29(1) GA86, the Authority gives notice that:

- 1) SLC 48.8 of the electricity supply licence and SLC 42.8 of the gas supply licence are provisions imposing obligations which are enforceable as “relevant conditions” by the Authority. In this context, the relevant condition is the requirement to become a DCC User by the date specified in a direction in respect to domestic premises issued by the Secretary of State pursuant to SLC 48.8(b) and SLC 42.8(a) of the electricity and gas supply licences. The direction was issued by the Secretary of State on 25 November 2016 requiring the relevant licensees, such as Avro, to be DCC Users by 25 November 2017.

³ The Avro Implementation Plan was submitted by Avro on 31 January 2019. It sets out the key milestones to become a DCC User by 25 July 2019,

- 2) The acts of omissions which, in the opinion of the Authority, constitute or would constitute contraventions of these relevant conditions, and other factors which in the opinion of the Authority justify the making of a FO are those set out at paragraph 2 below.
- 3) Any representation or objections with respect to the proposed confirmation may be made to the Authority by 29 March 2019.

2. Reasons for the Authority's decision to propose to make a Final Order

- 2.1. Avro has failed to take adequate steps to meet the relevant condition and its representatives have failed to keep the Authority informed on a regular basis of the steps they have been taking to meet the relevant requirement. Avro submitted a DCC User mandate plan to the Authority in December 2017, in which it stated that it would be a DCC User by the week commencing 5 February 2018. Based on this plan, we determined that Avro was at low risk of non-compliance.
- 2.2. In April 2018, we attempted to contact Avro to ascertain whether they had completed the DCC User Entry Process. We did not receive confirmation from it or from SECAS that they had done so. Avro repeatedly failed to engage with us despite repeated attempts to ascertain their DCC User status.
- 2.3. In September 2018 we informed Avro that the Authority was considering enforcement action and again requested information about their progress to become a DCC User. This prompted an immediate response from Avro and a period of engagement, which resulted in the submission of a partial plan without an estimated date for becoming a DCC User. On requesting a full plan the Authority notes that it was promised a submission on 14th December, but this did not arrive.
- 2.4. In January 2019 the Authority wrote to Avro informing it that it was being referred to the Enforcement Oversight Board ("EOB") and giving it a further opportunity to provide a plan. The Authority received an immediate reply and Avro submitted a revised plan ("the Avro Implementation Plan") showing that it had signed a contract with a third party on 25 January 2019 and expected to be compliant by 25 July 2019.
- 2.5. Avro has only engaged when the matter has been escalated. For this reason, the Authority is not confident that Avro will complete the DCC User Entry process to become a DCC User by 25 July without a final order in place. There is further concern that with the impending enrolment of SMETS1 meters into the DCC system and the ramp up of SMETS2 meters during 2019 this will have a detrimental impact on consumers who switch to Avro as they will lose their smart functionality unless Avro is a DCC User.
- 2.6. Ongoing non-compliance from Avro risks causing detriment to consumers who may switch to Avro with either a SMETS1 or SMETS2 meter

and may lose their smart capability as a result of Avro not being a DCC User, and customers with a SMETS1 meter who have already switched to Avro will not be able to recover smart functionality until Avro become a DCC User. This could result in inaccurate bills as manual reads would be needed and the risk of confusion as the In Home Display unit would show the old tariff information. It also carries a risk of loss of confidence in the smart meter roll-out programme and the switching process itself.

2.7. Energy suppliers, including Avro, have been on notice of the Government's policy for a phased transition to SMETS2 meters and their stated intention to set a SMETS1 end date since 2012. On 3 July 2018 BEIS consulted⁴ on setting the final end date for installing SMETS 1 meters to encourage the uptake of SMETS 2 meters in a timeframe which would allow suppliers to transition to the exclusive installation of SMETS 2 meters and avoid a hiatus in the progress of the rollout. The evidence collected in response to that consultation and BEIS' own analysis led BEIS to conclude that there are no industry wide impediments to transitioning to SMETS 2 meters and therefore mandated the end date for credit SMETS1 meters as 5 December 2018 and for replacement prepayment meters for 15 March 2019.

2.8. In accordance with its Enforcement Guidelines⁵, the Authority has considered how to use its enforcement powers in a targeted and proportionate manner in light of the facts set out above, namely the impending enrolment of SMETS 1 meters, the lack of engagement on the part of Avro with Ofgem and the impact of non-compliance on the wider smart meter implementation programme. The Authority considered other options, but formed the view that none of these options would drive Avro to take steps to remedy its ongoing non-compliance in a timely manner.

3. Representation or Objections

3.1. The Authority invites representations or objections in relation to its proposal to make the FO in the form at the Annex to this notice.

3.2. Any representations or objections with respect to this proposed notice to make the FO must be made in writing on or before 5pm 29 March 2019 and sent to Bruno Sheldon, Senior Manager, OFGEM 10 South Colonnade Canary Wharf London E14 4PU or by email to: Bruno.sheldon@ofgem.gov.uk. Should

⁴ Smart Metering Implementation Programme: BEIS Consultation on the Final SMETS 1 and Advanced Meter Exception End dates and draft legal text issued 3 July 2018, available here:

<https://smartenergycodecompany.co.uk/latest-news/beis-response-to-consultation-on-smets1-end-date/>

⁵https://www.ofgem.gov.uk/system/files/docs/2017/10/enforcement_guidelines_october_2017.pdf

you have any questions about this notice you can contact Bruno Sheldon on 0207 901 7441.

3.3. If a respondent does not wish its response or part of its response to be published, it should clearly mark its response or the relevant parts “not for publication” and give reasons. The Authority will consider such requests on case by case basis.

3.4. Any representations or objections which are made within the timeframe specified above and not withdrawn will be duly considered by the Authority.

Date: 06 March 2019

Amelia Fletcher - Chair

Megan Forbes

Trevor Jones

Enforcement Decision Panel

Duly authorised on behalf of the Gas and Electricity Markets Authority

Annex
Electricity Act 1989 and Gas Act 1986
Final Order of the Gas and Electricity Markets Authority ("the Authority")
made under section 25(1) of the Electricity Act 1989 ("EA89") and 28(1) of
the Gas Act 1986 ("GA86")

To:

Avro Energy Limited (company number 09174794) whose registered office is situated at Unit 8 The Courtyard Goldsmith Way, Eliot Business Park, Nuneaton, Warwickshire, CV10 7RJ holder of an Electricity Supply licence and Gas Supply licence issued by the Authority on 27 July 2015 under section 6(1)(d) of the EA89 and section 7A (1) of the GA86 respectively.

WHEREAS:

- A. Avro Energy Limited ("Avro") is a licensed supplier of gas and electricity to Domestic Premises or Designated Premises in Great Britain subject to the requirement to become a DCC User by 25 November 2017 of standard licence condition ("SLC") 48.8 and 42.8 of the electricity and gas supply licences respectively except in the circumstances specified in SLC 48.9 and 42.9 of the electricity and gas supply licences apply.
- B. Specifically, all domestic energy suppliers were required to become a member of the Smart Energy Code ("SEC") under standard licence condition (SLC) 48.1 of the electricity and SLC 42.1 of the electricity and gas supply licences respectively. This is one of the preconditions to the requirement under SLC 48.8 of the electricity supply licence and SLC 42.8 of the gas supply licence (collectively referred to hereinafter as the relevant condition) to become a DCC User (as defined in SLC 48.11 and 42.11 of the electricity and gas supply licences respectively) by 25 November 2017 as directed by BEIS on 25 November 2016 pursuant to SLC 48.8(b) and 42.8(a) of the electricity and gas supply licences respectively.
- C. Avro became a member of the SEC on 12 May 2017 but at the date of this notice Avro had still not completed the DCC User Entry process. This process must be completed by all suppliers before they can use the DCC system and provides for protection for consumers by confirming the supplier meets core security, operational and financial requirements. The DCC User Entry process is set out in Section H of the SEC. Completion of the DCC User Entry process is a precondition to becoming a DCC User in accordance with the relevant condition.
- D. Avro's failure to become a DCC User may result in the loss of smart functionality for customers who switch to Avro with a first generation smart meter ("SMETS1") or a second generation smart meter ("SMETS 2") resulting in the risk of receiving inaccurate bills, confusion as the In-Home Display unit would display the tariff of the previous supplier and the risk of loss of confidence in the smart meter programme and the switching process.

- E. The Authority is satisfied;
- a) that Avro has contravened and is continuing to contravene SLC 48.8 of the electricity supply licence and SLC 42.8 of the gas supply licence by not being a DCC User at the date specified by the Secretary of State in a direction issued pursuant to SLC 48.8(b) and SLC 42.8(a) of the electricity and gas supply licences. The direction was issued by the Secretary of State on 25 November 2016 requiring the relevant licensees to be DCC Users by 25 November 2017; and
 - b) that the inclusion of the obligations set out below upon Avro within a Final Order, made under section 25(1) of the EA89 and section 28(1) of the GA86, would be requisite for the purpose of securing Avro's compliance with the relevant conditions.

NOW THEREFORE:

The Authority, pursuant to section 25(1) of the EA89 and section 28(1) of the GA86 makes a Final Order requiring Avro:

- 1) to become a DCC User by no later than 25 July 2019;
- 2) to notify the Authority within 24 hours of completion of each milestone, including completion of the final milestone, as set out in the Avro Implementation Plan; and
- 3) for the purposes of securing compliance with (1) not to acquire any new customers or add any customers accounts by upgrading to dual fuel from 26 May 2019, the first "go-live" date for enrolling specified SMETS 1 meters into the DCC system, until Avro has satisfied the Authority that it has achieved the requirement set out at paragraph (1).

Dated: 06 March 2019

Amelia Fletcher - Chair

Megan Forbes

Trevor Jones

Enforcement Decision Panel
Duly authorised on behalf of the Gas and Electricity Markets Authority