



Notice of Proposal to Confirm a Provisional Order made on 2 July 2019 in respect of Project Plug Limited

NOTICE UNDER ARTICLE 43(1) OF THE
ENERGY (NORTHERN IRELAND) ORDER
2003 (THE “ENERGY ORDER”) OF THE
UTILITY REGULATOR’S PROPOSAL TO
CONFIRM A PROVISIONAL ORDER MADE ON
2 JULY 2019 IN RESPECT OF PROJECT PLUG
LTD TRADING AS CLICK ENERGY

AUGUST 2019



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.




Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



Abstract

Project Plug Limited t/a Click Energy (“Project Plug Limited”) failed to meet their requisite number of Renewables Obligation Certificates required under Article 5 of the Renewables Obligation Order (Northern Ireland) 2009 (“the 2009 Order”) and did not make the required Buy-Out fee payment to Ofgem by 1 September 2018 in accordance with the requirements of Article 40 of the 2009 Order, for the obligation period 1 April 2017 to 31 March 2018. Furthermore they failed to meet the late payment deadline by 31 October 2018 in accordance with Article 41 of the 2009 Order. The Utility Regulator is therefore minded to seek to secure compliance by way of confirming a Provisional Enforcement Order under Article 42(2) of the Energy Order. Representations in respect of this may be made to Utility Regulator on or before **27 August 2019**.

Audience

Consumers, Energy suppliers, consumer bodies and those interested in renewable energy.

Consumer impact

Confirmation of the Provisional Order in respect of Project Plug Limited is intended to ensure the company fulfils their Renewables Obligation of 2017/18.



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Notice under Article 43(1) of the Energy Order

Utility Regulator's proposal to confirm the Provisional Order made on 2 July 2019 in respect of Project Plug Ltd's contravention of the Renewables Obligation Order (Northern Ireland) 2009

1 INTRODUCTION

- 1.1 The Northern Ireland Renewables Obligation ("NIRO") is a statutory requirement on electricity suppliers to source an increasing amount of their electricity from renewable sources.
- 1.2 For each obligation period (being the twelve month period from 1 April of one year to 31 March of the next year) suppliers can meet their obligation by either presenting renewable obligation certificates ("ROCs") which are issued directly to renewable generators under Article 5 of the 2009 Order or paying into a buyout fund (or a combination of both) before 1 September following the end of the obligation period, in accordance with Article 40 of the Order. Article 41 of the 2009 Order provides for a late payment period between 1 September and 31 October where late payment interest is due in addition to the buyout payment to be paid by 31 October.
- 1.3 In respect of the obligation period 1 April 2017 to 31 March 2018 (the 'relevant period'), Project Plug Ltd (which trades as, and therefore the remainder of this document refers to it as, Click Energy) failed to discharge its obligations under Article 5, Articles 40 and 41 of the 2009 Order.
- 1.4 That is it did not submit the requisite number of ROCs by before 1 September 2018 nor did it make a payment a payment equivalent to the shortfall in the number of ROCs that were required to be submitted, before 1 September 2018 ("the **equivalent buyout fee**"). Furthermore, it failed to pay the equivalent buyout fee with the late payment interest due by the late payment deadline of 31 October 2018 (together referred to as "the **buyout payment**").
- 1.5 On 2 July 2019, the Utility Regulator issued, under and in accordance with Article 42(2) of the Energy Order a provisional order requiring full payment of the buyout payment, together with the late payment interest due, by 9 July 2019 ("the **Provisional Order**").
- 1.6 On 22 July 2019, the Utility Regulator issued a Notice of Reasons for a Provisional Enforcement Order pursuant to Article 62(1)(f) and (2) of the Energy Order.
- 1.7 Click Energy has failed to comply with the Provisional Order (although it made a partial payment of £206,000 on 5 July 2019, the remainder of the amount due remains outstanding).
- 1.8 The Utility Regulator therefore proposes, pursuant to Article 42(4) of the Energy Order to confirm, with modifications, the Provisional Order.
- 1.9 This document gives notice, as required by Article 43(1) of the Energy Order, of the Utility Regulator's proposals to confirm, with modifications, the Provisional Order.

2 BACKGROUND

- 2.1 Click Energy is the holder of an electricity supply licence, as granted by the Utility Regulator on 13th January 2015 in accordance with Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (the “**Electricity Order**”).
- 2.2 Click Energy has a statutory requirement to comply with the 2009 Order. To date it has not done so in respect of the relevant period. It has not, as required and provided for by Articles 5, 40 and 41 of the 2009 Order, discharged its renewables obligation for the obligation period 1 April 2017 to 31 March 2018.
- 2.3 It did not submit the required number of ROCs (being 17,918) by before 1 September 2018, did not pay the equivalent buy out fee before 1 September 2018 (being £816,702.44) and did not make the buyout payment prior to end of the late payment period. It is continuing to be in contravention of the requirement to make the required payment.
- 2.4 On 4 October 2018, Click Energy notified the Utility Regulator that it would be unlikely to be in a position to make the buyout payment by 31 October 2018. It also contacted Ofgem (who administer the NIRO on the Utility Regulator’s behalf) on 8 October 2018 to advise that it would be unlikely that it would pay the buyout payment by 31 October 2018.
- 2.5 On 29 October 2018, the Utility Regulator wrote to Click Energy to confirm and advise it that if it did not to pay the buyout payment due by the late payment deadline of 31 October 2018 it would have failed to comply with its statutory obligations.
- 2.6 Click Energy failed to make the late payment deadline of 31 October 2018 and Ofgem notified the Utility Regulator of this on 5 November 2018.
- 2.7 On 9 November 2018, the Utility Regulator wrote to Click Energy in respect of the continuing non-compliance with the relevant requirements of the 2009 Order and confirmed it was formally commencing an investigation under and in accordance with its enforcement procedure. The Utility Regulator did not receive a response to this letter.
- 2.8 On 20 December 2018 the Utility Regulator wrote to Click Energy to confirm that in consequence of its continued non-compliance with the 2009 Order for the relevant period, the matter was to be referred to an enforcement committee for decision as to the exercise of the Utility Regulator’s enforcement powers, but that before the matter was so referred, Click Energy was being afforded a further opportunity to discharge its obligation for the relevant period and to do so by no later than 11 January 2019. The Utility Regulator did not receive a reply to this letter.
- 2.9 On 24 January 2019, the Utility Regulator issued a statutory information request (under Article 51 of the Energy Order) and a summary of its initial findings to Click Energy, in respect of its continuing non-compliance with the 2009 Order for the relevant period. Click Energy’s legal representatives submitted representations to the initial findings on 11 February 2019 (which the Utility Regulator has also treated as Click Energy’s response to the statutory information request).
- 2.10 Following this the Utility Regulator prepared a draft statement of case for the purposes

of referring the matter to the Utility Regulator's enforcement committee and provided an opportunity for Click Energy to submit representations on the statement of case. Click Energy did not submit any representations to the draft statement of case.

- 2.11 Accordingly, in June 2019, Click Energy's continuing non-compliance with the requirements of the 2009 Order was referred to the Enforcement Committee (as established by the Utility Regulator for this case) for consideration and decision.
- 2.12 On 21 June 2019, the Enforcement Committee made a provisional order requiring Click Energy to make the required payment. This provisional order was subsequently revoked and an amended provisional order was made. A copy of the provisional order is included at Appendix 1.
- 2.13 On 8 July 2019, Click Energy made a payment of £206,000 as part payment of the full amount due. By its letter of the same date it also offered to pay the outstanding balance of £618,550.61 in three equal monthly instalments of £206,183.53 (on 16 August, 20 September and 25 October 2019).

3 Proposed confirmation of the Provisional Order

- 3.1 Article 42(4) of the Energy Order provides that, subject to certain exceptions, a provisional order shall be confirmed (with or without modifications) if the Utility Regulator is satisfied that the company is contravening, or is likely to contravene, any relevant condition or requirement and the provision made by the order is requisite for the purpose of securing compliance.
- 3.2 Click Energy has failed and is continuing to fail to comply with Article 41 of the 2009 Order. The requirement on Click Energy to comply with the 2009 Order is a relevant requirement in accordance with the provisions of Article 41(2) and Articles 41A(1) and (4)(e) of the Energy Order (the '**relevant requirement**').
- 3.3 Click Energy has, in response to the making of the Provisional Order, made a part payment of the amount it was required to pay in accordance with the Provisional Order. However, it has not made payment of the full amount required.
- 3.4 It has not therefore discharged its NIRO obligation for the relevant period (being the obligation period 1 April 2017 to 31 March 2018).
- 3.5 The Utility Regulator is therefore satisfied that Click Energy is failing to comply with the 'relevant requirement', namely Article 41 of the 2009 Order.
- 3.6 Given that Click Energy has failed to comply with the Provisional Order, the Utility Regulator proposes to confirm, with modifications, the Provisional Order.
- 3.7 The proposed confirmation of the Provisional Order is to be made for the purposes of securing Click Energy's compliance with the relevant requirement (Article 41 of the 2009 Order).
- 3.8 In proposing to confirm the Provisional Order, the Utility Regulator has had regard to the matters set out in Article 42(5), (5A), (5B), and (6) of the Energy Order and does not consider that it would be more appropriate to proceed under the Competition Act 1998 or that there are any steps which Click Energy can take to comply with the relevant requirement other than make the full payment required under Article 41 of the 2009 Order. It is also not the case that the failure is trivial.
- 3.9 In the Utility Regulator's opinion, the facts which justify the confirmation of the Provisional Order are as follows:
 - (a) Click Energy has failed to comply with the 2009 Order and failed to comply with the Provisional Order.
 - (b) In its capacity as an electricity supplier, Click Energy is required, in respect of each relevant obligation period, either to submit the requisite number of ROCs in accordance with the requirements of Article 5 of the NIRO Order or to make a payment to the Utility Regulator in accordance with the requirements of Article 40 of the NIRO Order.
 - (c) Click Energy did not submit the requisite number of ROCs for the obligation period 1 April 2017 to 31 March 2018 (the 'relevant period') and failed to make the

payment required under Article 40 of the NIRO Order by 1 September 2018 (as required for the relevant period).

- (d) In accordance with Article 41 of the NIRO Order, on 29 October 2018 the Utility Regulator notified Click Energy Limited of the extent of Click Energy's default in respect of its failure to discharge its renewables obligation for the relevant period.
- (e) Click Energy's continued and ongoing failure to pay the required amount means that there is a shortfall in the buyout fund which is distributed among those suppliers that have met the obligation through submission of ROCs. This means that other suppliers are likely to be sustaining a loss in consequence of Click Energy failing to make the required payment as the amount they receive from the buyout fund is smaller than it should be.
- (f) While it may be the case that suppliers may ultimately be able to recover their loss through their supply charges to consumers and therefore NI consumers are also potentially affected by Click Energy's failure to comply with the relevant requirement.
- (g) Suppliers do not have a direct remedy against Click Energy as they cannot make a claim for loss unless and until Click Energy fails to comply with an enforcement order (either a provisional order or a final order as the case may be).
- (h) This is the second year running that Click Energy has failed to comply with the requirements of the 2009 Order. It also breached the same obligation in the previous year (i.e. for the obligation period 1 April 2016 to 31 March 2017).
- (i) A second successive breach of the 2009 Order demonstrates that Click Energy is not taking its regulatory and legal obligations seriously.

4 MODIFICATIONS TO THE PROVISIONAL ORDER

- 4.1 The Utility Regulator proposes to confirm the Provisional Order with modifications and accordingly proposes to do so in the form set out in Appendix 2 to this notice.

5 REPRESENTATIONS OR OBJECTIONS

- 5.1 The Utility Regulator is issuing this notice in accordance with Article 43(1) of the Energy Order. Representations or objections with respect to the proposed confirmation of the Provisional Order may be made in writing to the Utility Regulator on or before **27 August 2019**.
- 5.2 Responses should be sent to Frankie.dodds@uregni.gov.uk at the Utility Regulator at Queens House, 14 Queen Street, Belfast BT1 6ED.
- 5.3 Any representations or objections which are duly made within the timeframe specified above and not withdrawn will be duly considered by the Utility Regulator.

Appendix 1 - Provisional Order made on 2 July 2019

The Energy (Northern Ireland) Order 2003

Provisional Order under Article 42(2) of The Energy (Northern Ireland) Order 2003

To: Project Plug Limited (company number NI626418) having its registered office at 1st Floor Timberquay, 100-114 Strand Road, Derry, BT48 7NR (trading as Click Energy).

Whereas:

- (A) Project Plug Limited is the holder of an electricity supply licence granted under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (the Licensee).
- (B) The Licensee failed to submit the requisite number (being 17,918) of Renewables Obligation Certificates in accordance with the requirements of Article 5 of the Renewables Obligation Order (Northern Ireland) 2009 (the 2009 Order) or to make a payment to the Authority before 1 September 2018 in accordance with the requirements of Article 40 of the 2009 Order, for the obligation period 1 April 2017 to 31 March 2018 (the 'relevant period').
- (C) In accordance with Article 41 of the 2009 Order, on 29 October 2018 the Northern Ireland Authority for Utility Regulation (the Authority) notified the Licensee of the extent of the Licensee's default in respect of its failure to discharge its renewables obligation for the relevant period.
- (D) The Licensee failed to make payment to the Authority under Article 41 of the 2009 Order the amount referred to in the Authority's notification of 29 October 2018 and all interest required to be paid on that amount under paragraph (3) of Article 41 of the 2009 Order by 31 October 2018.
- (E) Having had regard to the matters set out in Article 42(3) of the Energy Order, the Authority considered it requisite to make, and made on 21 June 2019, a provisional order in exercise of its powers in Article 42(2) of the Energy Order.
- (F) The provisional order made on 21 June 2019 was not served on the Licensee in accordance with Article 43(5) of the Energy Order and is accordingly revoked by the Authority.
- (G) The Licensee has failed, and is continuing to fail, to discharge its renewables obligation for the relevant period and accordingly has contravened, and is failing to contravene, a requirement imposed on it by or under a provision in Part VII of the Energy (Northern Ireland) Order 2003 (the Energy Order) (a 'relevant requirement' pursuant to Article 41A(1)(4)(e) of the Energy Order).
- (H) Having had continued regard to the matters set out in Article 42(3) of the Energy Order, the Authority considers it requisite to make a provisional order in exercise of its powers in Article 42(2) of the Energy Order.

- (l) The making of a provisional order does not preclude the Authority from imposing a financial penalty for the same contravention under Article 45(1) of the **Energy Order**.

Now therefore:

The Authority:

1. Pursuant to Article 42(8)(c) of the Energy Order hereby revokes the provisional order made on 21 June 2019.
2. Pursuant to Article 42(2) of the Energy Order and for the purposes of securing compliance with the 2009 Order, makes a provisional order requiring Project Plug Limited to:
 - (i) Discharge its renewables obligation for the relevant period by making a payment to the Authority of £824,550.61 by no later than 9 July 2019; and
 - (ii) Notify the Authority by email to sarah.maybin@uregni.gov.uk of such payment immediately after it has been made.

This order shall take effect from 4 July 2019 and shall cease to have effect on 30 September 2019 unless confirmed by the Authority on or before that date.

Dated: 02 July 2019

Signed



Name

Sarah Maybin

For and on behalf of the Northern Ireland Authority for Utility Regulation

Appendix 2: Draft Confirmed Provisional Order

The Energy (Northern Ireland) Order 2003

Confirmation of Provisional Order under Article 42(4) of The Energy (Northern Ireland) Order 2003

To: Project Plug Limited (company number NI626418) having its registered office at 1st Floor Timberquay, 100-114 Strand Road, Derry, BT48 7NR (trading as Click Energy).

Whereas:

- (A) Project Plug Limited is the holder of an electricity supply licence granted under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (the **Licensee**).
- (B) The Licensee failed to submit the requisite number (being 17,918) of Renewables Obligation Certificates in accordance with the requirements of Article 5 of the Renewables Obligation Order (Northern Ireland) 2009 (the **2009 Order**) or to make a payment to the Authority before 1 September 2018 in accordance with the requirements of Article 40 of the 2009 Order, for the obligation period 1 April 2017 to 31 March 2018 (the '**relevant period**').
- (C) In accordance with Article 41 of the 2009 Order, on 29 October 2018 the Northern Ireland Authority for Utility Regulation (the **Authority**) notified the Licensee of the extent of the Licensee's default in respect of its failure to discharge its renewables obligation for the relevant period.
- (D) The Licensee failed to make payment to the Authority under Article 41 of the 2009 Order the amount referred to in the Authority's notification of 29 October 2018 and all interest required to be paid on that amount under paragraph (3) of Article 41 of the 2009 Order by 31 October 2018.
- (E) The Licensee has failed, and is continuing to fail, to discharge its renewables obligation for the relevant period and accordingly has contravened, and is failing to contravene, a requirement imposed on it by or under a provision in Part VII of the Energy (Northern Ireland) Order 2003 (the **Energy Order**) (a 'relevant requirement' pursuant to Article 41A(1)(4)(e) of the Energy Order).
- (F) On 2 July 2019, the Authority made a provisional order in exercise of its powers in Article 42(2) of the Energy Order requiring the Licensee to make the required payment by no later than 9 July 2019 (the **Provisional Order**).
- (G) The Licensee made a part payment of the amount it was required to pay in accordance with the Provisional Order on 5 July 2019 (being a part payment amount of £206,000).

- (H) The Licensee has failed to comply with the Provisional Order and has not discharged its renewables obligation for the relevant period.
- (I) The Authority gave notice, in accordance with Article 43(1) of the Energy Order, on [] July 2019 of its proposal to confirm the provisional order with modifications (the **Proposal to Confirm**).
- (J) Having considered representations made to the Authority in response to the Proposal to Confirm and having had regard to the matters set out in Article 42 of the Energy Order, the Authority is satisfied that the Licensee is contravening Article 41 of the 2009 Order which is a relevant requirement and that the provisions of the Provisional Order are requisite for the purposes of securing the Licensee's compliance with the relevant requirement [*This recital (J) is included for completeness to show the form of the Provisional Order if the Authority decides to confirm it and does not predetermine the Authority's decision to confirm or not confirm the Provisional Order in any way – the text in italics will not be included in the confirmed Provisional Order*].
- (K) The confirming of the Provisional Order does not preclude the Authority from imposing a financial penalty for the same contravention under Article 45(1) of the Energy Order.

Now therefore:

The Authority:

1. Pursuant to Article 42(4) of the Energy Order and for the purposes of securing compliance with the 2009 Order, confirms the Provisional Order requiring Project Plug Limited to:
 - (i) Discharge its renewables obligation for the relevant period by making a payment to the Authority of £618,550.61 immediate; and
 - (ii) Notify the Authority by email to sarah.maybin@uregni.gov.uk of such payment immediately after it has been made.

Dated: [] 2019

Signed
Name

For and on behalf of the Northern Ireland Authority for Utility Regulation