



# Project Plug Limited Provisional Order in respect of Renewable Obligation Order Notice of Reasons

Notice of reasons pursuant to Article 62(1)(f) and (2) of the Energy (Northern Ireland) Order 2003 for the decision to make a Provisional Order under Article 42 of the Energy (Northern Ireland) Order 2003.

**July 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 NIRO 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 NIRO 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 NIRO Order. The Utility Regulator sought to secure compliance by way of a Provisional Enforcement Order under Article 42(2) of the Energy Order.

## 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 OF REASONS PURSUANT TO ARTICLE 62(1)(F) AND (2) OF THE ENERGY ORDER FOR THE DECISION TO MAKE A PROVISIONAL ORDER UNDER ARTICLE 42 OF THE ENERGY ORDER.**

1. This notice sets out the reasons why on 2 July 2019, the Northern Ireland Authority for Utility Regulation (the “Utility Regulator”) made a provisional order in respect of a contravention by Project Plug Limited (company number NI626418) (trading as Click Energy) having its registered office at 1<sup>st</sup> Floor Timberquay, 100-114 Strand Road, Derry, BT48 7NR of its obligations.
2. This is a notice pursuant to Article 62(1)(f) and (2) of the Energy Order, which provide that the Utility Regulator shall publish a notice stating the reasons for the decision to make a provisional order as soon as reasonably practicable after making such a decision.

### **Background**

3. Project Plug Limited holds an electricity supply licence 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”).
4. Project Plug Limited has a statutory requirement to comply with the NIRO Order. Project Plug Limited did not, as required by Articles 5, 40 and 41 of the NIRO Order, discharge its renewables obligation for the obligation period 1 April 2017 to 31 March 2018. That is it did not submit the required number of Renewables Obligation Certificates (ROCs) or make an equivalent payment (the 'equivalent buyout fee') before 1 September 2018 nor did it pay the equivalent buyout fee and additional late payment interest due during the late payment period of 1 September 2018 to 31 October 2018 prior to end of the late payment period.
5. On 4 October 2018, Project Plug Limited notified the Utility Regulator that it would be unlikely to be in a position to pay the equivalent buyout fee and additional late payment interest 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 equivalent buyout fee and additional late payment interest by 31 October 2018.
6. Throughout October 2018, Project Plug Limited, Ofgem and the Utility Regulator communicated on a weekly basis via telephone to ensure Project Plug Limited understood its obligation to pay the equivalent buyout fee and additional late payment interest due by the late payment deadline of 31 October 2018.
7. On 9 November 2018, the Utility Regulator wrote to Project Plug Limited indicating that the investigation team had identified an issue of non-compliance and was commencing a formal investigation under and in

accordance with its enforcement procedure.<sup>1</sup> No response was received to that letter.

8. On 20 December 2018, the Utility Regulator wrote to Project Plug Limited to notify it of the outcome of the investigation, namely that matter should proceed to the making of a formal determination on enforcement action. Before proceeding to that stage, Project Plug Limited was given a further opportunity, namely until 11 January 2019 to discharge its outstanding obligation. A reply was not received to that letter.

### **Contravention**

9. In failing to comply with the requirements of Articles 40 and 41 of the NIRO Order, Project Plug Limited has failed to comply with a 'relevant requirement' – as defined in Article 41A of the Energy Order.
10. Article 42(2) of the Energy Order provides that where it appears to the Utility Regulator that a company is contravening, or likely to contravene, a relevant condition or requirement, and it is requisite that a provisional order be made, the Utility Regulator shall (instead of taking steps towards the making of a final order), by provisional order make such provision as appears to it requisite for the purpose of securing compliance with the relevant requirement.
11. Project Plug Limited has therefore 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 Order (a 'relevant requirement' pursuant to Article 41A(1)(4)(e) of the Order).

### **Reasons for provisional order**

12. Having had regard to the matters set out in Article 42(3) of the Order, the Utility Regulator considered it requisite to make a provisional order for the following reasons:
  - i. Project Plug Limited is the holder of an electricity supply licence granted under Article 10(1)(c) of the Electricity Order – it is an electricity supplier.
  - ii. In its capacity as an electricity supplier, Project Plug Limited 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.
  - iii. Project Plug Limited did not submit the requisite number of ROCs for the obligation period 1 April 2017 to 31 March 2018 (the 'relevant

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<sup>1</sup> [Available here](#)

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).

- iv. In accordance with Article 41 of the NIRO Order, on 29 October 2018 the Utility Regulator notified Project Plug Limited of the extent of the Project Plug Limited's default in respect of its failure to discharge its renewables obligation for the relevant period.
  - v. Project Plug Limited failed to make payment to the Utility Regulator under Article 41 of the NIRO Order the amount referred to in the Utility Regulator's notification of 29 October 2018 and all interest required to be paid on that amount under paragraph (3) of Article 41 of the NIRO Order by 31 October 2018.
  - vi. Project Plug Limited'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 Project Plug Limited failing to make the required payment as the amount they receive from the buyout fund is smaller than it should be.
  - vii. While it may be the case that suppliers may ultimately be able to recover their loss through their supply charges (i) they are unlikely to be able to do so in the short to medium term, and (ii) in any event should suppliers do so, it would result in NI consumers ultimately paying for Project Plug Limited's failure to comply with the relevant requirement.
  - viii. Suppliers do not have a direct remedy against Project Plug Limited as they cannot make a claim for loss unless and until Project Plug Limited fails to comply with an enforcement order (either a provisional order or a final order as the case may be).
  - ix. Additionally, a provisional order was considered requisite in this case as it is the second year running that Project Plug Limited has failed to comply with the requirements of the NIRO Order. It also breached the same obligation in the previous year (i.e. for the obligation period 1 April 2016 to 31 March 2017) and a second successive breach of a payment obligation establishes a pattern of non-compliance which gives the Utility Regulator cause for concern.
13. For all the reasons set out above, the Utility Regulator made a provisional order on 21 June 2019. Unfortunately, however this was not served on Project Plug Limited in accordance with Article 43(5) of the Order and it was accordingly revoked and a new provisional order was made on 2 July 2019.
14. The provisional order made on 2 July 2019 took effect from 4 July 2019 and shall cease to have effect on 30 September 2019 unless confirmed by the

Utility Regulator on or before that date.

15. 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.

### **Content of the order**

The provisional order is available at appendix 1

Dated: 22 July 2019

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# Appendix 1 - Provisional Order

## 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 1<sup>st</sup> 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.

- (I) 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

Jenny Pybel.

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