

**NOTICE OF REASONS PURSUANT TO ARTICLE 62(1)(F) AND (2) OF
THE ENERGY NORTHERN IRELAND ORDER 2003 (the “Energy Order”)
FOR THE DECISION TO CONFIRM WITH MODIFICATIONS THE
PROVISIONAL ORDER MADE ON 2 JULY 2019 UNDER ARTICLE 42(4)
OF THE ENERGY ORDER.**

1. This notice sets out the reasons why on 5 September 2019, the Northern Ireland Authority for Utility Regulation (the “Utility Regulator”) confirmed, with modifications, the provisional order made on 2 July 2019 in respect of a contravention of a 'relevant requirement' by Project Plug Limited (company number NI626418) (trading as Click Energy) having its registered office at 1st 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 provides that the Utility Regulator shall publish a notice stating the reasons for the decision to confirm 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 Renewables Obligation Order (Northern Ireland) 2009 (“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.¹ No response was received to that letter.

¹ [Available here](#)

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.
9. In accordance with its policy and procedures, the Utility Regulator established an Enforcement Committee to determine whether it was requisite to make an enforcement order in respect of Project Plug Limited's ongoing contravention of the relevant requirement, i.e. its failure to make the payment required under and in accordance with Article 41 of the NIRO Order.
10. On 2 July 2019, the Enforcement Committee made a provisional order requiring Project Plug Limited to make the required payment (the "Provisional Order"). A copy of the Provisional Order is available here:

<https://www.uregni.gov.uk/sites/uregni/files/media-files/Click%20Energy%20-%202022.07.19%20notice%20of%20reasons.DOCX.pdf>
11. On 5 July 2019, Project Plug Limited 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). Project Plug Limited made further payments of £206,000.00 on 23 August 2019.

Confirming a provisional order

12. Article 42(4) of the Energy Order provides that where the Utility Regulator has made a provisional order it shall confirm the provisional order with or without modifications if (i) it is satisfied that the regulated person to whom the provisional order relates is contravening, or likely to contravene, any relevant condition or requirement, and (ii) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with the relevant requirement.
13. Article 43(1) of the Energy Order provides that before confirming a provisional order the Utility Regulator shall give notice of its proposal to confirm the order, to specify the period within which any representations or objections may be made and to consider any representations or objections which are duly made and not withdrawn.
14. The Utility Regulator published its Article 43(1) notice on 2 August 2019 and served it (including as an Article 43(4) notice) on Project Plug Limited on the same date. The Utility Regulator did not receive any representations or objections to its proposals to confirm the Provisional Order (with modifications).

Reasons for confirming the provisional order

15. The Utility Regulator is satisfied that Project Plug Limited is continuing to fail to discharge its renewables obligation for the relevant period and accordingly is contravening the relevant requirement.
16. Having had satisfied itself of the matters set out in Articles 42(5) and(6) and having

complied with the procedural requirements in Article 43 of the Order, the Utility Regulator considered it requisite to confirm the Provisional Order (with modifications) 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 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. On 2 July 2019 the Utility Regulator made a provisional order for the purposes of securing compliance with the relevant requirement. Project Plug Limited in response to the Provisional Order, made a part payment of the amount it was required to pay in accordance with the Provisional Order but did not make and has not to date paid the full amount required.
- vii. 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.
- viii. 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.
- ix. 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).

- x. This 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).
 - xi. Furthermore, Project Plug Limited has failed to comply with the Provisional Order, which unless confirmed will cease to have effect on 30 September 2019.
 - xii. A second successive breach of a payment obligation and the failure to comply with the Provisional Order establishes a pattern of non-compliance which gives the Utility Regulator some cause for concern.
 - xiii. The Utility Regulator consulted on its proposals to confirm the Provisional Order (with modifications) and did not receive any representations or objections to its proposals from any party (including Project Plug Limited).
17. For the reasons outlined above, and in accordance with Article 42(4) of the Energy Order, on [insert date] the Utility Regulator confirmed the provisional order made on 2 July 2019.
18. The confirmed provisional order (with modifications), dated 5 September 2019, requires Project Plug Limited to comply with the relevant requirement and make a payment of £412,55.61 and to notify the Utility Regulator as soon as it has done so.

Confirmed provisional order

The confirmed provisional order (with modifications) is at Appendix 1.

Dated: 06 September 2019

Jenny Pyper
Chief Executive
For and on behalf of the Northern Ireland Authority for Utility Regulation.

**Appendix 1 –
Confirmed Provisional Order**

Confirmed Provisional Order

The Energy (Northern Ireland) Order 2003

Provisional Order confirmed (with modifications) 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 (and 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 is continuing to fail to discharge its renewables obligation for the relevant period and accordingly is contravening 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 £206,000.00). The Licensee made further part payments in the total sum of £206,000.00 on 23 August 2019.

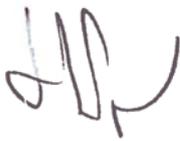
- (H) The Licensee has failed to comply with the Provisional Order and has not discharged its renewables obligation for the relevant period.
- (I) The Authority gave notice, in accordance with Article 43(1) and also Article 43(4) of the Energy Order, on 2 August 2019 of its proposal to confirm the provisional order with modifications (the **Proposal to Confirm**).
- (J) The Authority did not receive any representations or objections in response to the Proposal to Confirm. 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 provision made by the Provisional Order (with modifications) is requisite for the purposes of securing the Licensee's compliance with the relevant requirement.
- (K) The confirming of the Provisional Order does not preclude the Authority from imposing a financial penalty on the Licensee for the same contravention under Article 45(1) of the Energy Order.

Now therefore:

The Authority, 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 £412,550.61; and
- (ii) Notify the Authority by email to sarah.maybin@uregni.gov.uk of such payment immediately after it has been made.

Signed



Name

JENNY PARKER, CEO

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

5 September 2019