



15th June, 2022

Our Ref: D/22/13467

Mr. Gary Ryan
Managing Director of Energia Customer Solutions
Energia
Energia House
62 Newforge Lan
Belfast
BT9 5NF

Notice of Determination to Energia Customer Solutions Limited ('Energia') issued under Section 25 of the Electricity Regulation Act, 1999, as amended ('the Act')

Dear Mr Ryan,

On 9th March 2022, the Commission for Regulation of Utilities ('the CRU') issued a notice to Energia under Section 24(2) of the Act, stating that it considered that Energia may have contravened Condition 18(1)(a) of its electricity supply licence and Condition 21(1)(a) of its gas supply licence between 30th January 2014 and 15th March 2021 due to its failure to charge household electricity and gas customers in conformity with its approved terms and conditions.

The CRU received representations from Energia on 6th April 2022. The CRU has prepared this determination following consideration of the representations received from Energia in response to the Section 24(2) notice.

Reasons for Determination

Background

1. The CRU notes the following:
 - On 17th February 2000, in exercise of its powers under Section 14(1)(b) of the Act, the CRU granted Viridian Energy Limited an electricity supply licence.
 - On 28th April 2011, in exercise of its powers under Section 16(1)(a) of the Gas (Interim) (Regulation) Act, 2002 ('the 2002 Act'), the CRU granted Viridian Energy Limited a gas supply licence.
 - On 3rd May 2016, Energia wrote to the CRU pursuant to its obligation under Condition 17 of the Electricity Supply Licence and Condition 7 of the Natural Gas Supply Licence to inform it that I Squared Capital L.P. had acquired the Viridian Group Holdings Ltd.
 - On 31st May 2016, the CRU wrote that it had no objection to the change of control of Viridian Energy Limited to I Squared Capital L.P. This concerns both the electricity supply licence and gas supply licence.
 - On 27th June 2019, the CRU acknowledged the change of name from 'Viridian Energy Limited' to 'Energia Customer Solutions Limited'.

2. Condition 18(1)(a) of the electricity supply licence and Condition 21(1)(a) of its gas supply licence state that Energia, as the licensee, shall not enter into any contracts or agreements with its household customers except in conformity with the approved standard terms and conditions.
3. Energia's approved terms and conditions for household customers state:
 - 5.1 *In consideration of Energia selling Energy to you during the Supply Period, you shall pay Energia the Charges.*
 - 5.2 *Energia shall be entitled to vary the Tariff, standing charges and Pass through Charges and any other elements used to calculate the Charges from time to time. Energia will notify you on your bill, by email, by letter or by way of public advertisement of changes to the Tariff as soon as reasonably practicable and, no later than 30 days before the change comes into effect unless you have signed up to a more flexible arrangement.*
 - 5.3 *Up-to-date information on Tariffs and other elements used to calculate the Charges may be obtained on Energia's website: www.energia.ie.*
4. However, the use of two different systems to calculate a customer's standing charge led to customers not being charged in line with the quoted annual standing charge over the course of a year. This resulted in a situation whereby customers were not billed in line with the Charges as set out in the approved terms and conditions. As this issue was due to an unknown error, Energia did not notify customers of any variation in Charges.
5. Therefore, the CRU is of the opinion that between 30th January 2014 and 15th March 2021, Energia did not comply with Condition 18(1)(a) of its electricity supply licence and Condition 21(1)(a) of its gas supply licence due to its failure to charge household electricity and gas customers in conformity with its approved terms and conditions.

Energia's representations

Energia outlined that the fix to the billing system and resolution of the issue arose during the Covid pandemic, during which time Energia was not capable of operating at full capacity due to the pandemic restrictions. Energia stated that its chief concern was to ensure customers, especially those in vulnerable circumstances, could retain the ability to contact it and thus wanted to prevent a significant influx of customer calls at this time.

Energia further outlined that it did not attempt to contact lapsed customers for the purpose of requesting bank details as its position was that it would have potentially contravened certain conditions of its electricity supply licence and gas supply licence, as well as General Data Protection Regulation (GDPR) challenges posed by making such a request.

CRU's consideration

The CRU has reviewed the issue considering the scale of the impact and behaviour of the regulated entity as outlined in the CRU Compliance and Enforcement Policy Statement¹.

¹ CRU19134-CRU-Compliance-and-Enforcement-Policy-Statement.pdf



Aggravating Factors considered:

- All household electricity and gas customers supplied by Energia between 30th January 2014 and 15th March 2021 were impacted, with 62% of household accounts overcharged and 38% of household accounts undercharged.
- The issue persisted for seven years, during which time it was not detected by Energia.
- Energia did not make customers aware that it had made a mistake and that this was the cause of the refund and change in standing charge methodology.

Mitigating Factors considered:

- Energia brought this issue to the CRU's attention at the outset, cooperated fully with the CRU's investigation and provided all information requested.
- The CRU is satisfied that this was an unintentional error and that Energia has not gained financially from the contravention.
- The CRU notes that, once detected, the issue was addressed promptly by Energia.
- The CRU notes that some customers were overcharged, and others were undercharged. Of those overcharged, the CRU observes the low average value of this overcharge over the customer's lifetime with the supplier (€1.96 per account).
- The CRU observes that since the issue was detected, Energia has refunded existing customers and changed its methodology for calculating standing charges.

In addition, the CRU notes the following remedial actions that have been taken by Energia:

- A permanent fix to the billing system was implemented in March 2021. The standing charge is now entirely pro-rated. The CRU is satisfied that this fix addresses the cause of the issue.
- Overcharged existing Energia customers were refunded in early 2021.
- A bill insert was provided to all household customers to outline the change to the way in which the annual standing charge is applied and included a set of frequently asked questions.
- In lieu of refunding former overcharged customers, Energia made two charitable donations to the Community Foundation of Ireland in 2021. The administration fee of the charity was paid separately by Energia, and did not subtract from the amount directed to the charity on behalf of overcharged former customers.
- Having considered these remedial actions, the CRU is satisfied that no further action is required to be taken by Energia to address this issue.

Representations considered:

- The CRU acknowledges that the pandemic restrictions impacted suppliers' operations. However, as outlined in the Suppliers' Handbook, suppliers must ensure that customers are dealt with in a transparent, honest and fair manner and that communications are complete and accurate. When a supplier becomes aware of an issue impacting customers, it must ensure that it communicates the issue in a way that meets these principles.
- The CRU acknowledges Energia's concerns regarding GDPR and has taken into consideration the fact that Energia made two charitable donations in lieu of refunding former customers.



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Commission for
Regulation of Utilities

The CRU hereby determines, pursuant to Section 25(1) of the Act, that Energia has committed specified breaches of conditions of licences which it holds, detailed above. This notice of determination shall be published on the CRU's website on 20th June 2022.

Energia is requested to publish this notice of determination on the Energia website in order to inform its customers. Please acknowledge receipt of this determination to the Compliance & Enforcement Team at compliance@cru.ie.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul McGowan', written in a cursive style.

Paul McGowan

Commissioner

For and on behalf of the

Commission of Regulation of Utilities