

# **Revocation of Open Electric's Licence to Supply Electricity and Appointment of a Supplier of Last Resort**

The Utility Regulator ("**UR**") was informed on 15 December 2016 that Open Electric Ltd had been placed into administration.

On 16 December 2016, the UR made two related decisions – (i) to revoke the electricity supply licence of Open Electric ("**the Licence**"), and (ii) to appoint Power NI as the Supplier of Last Resort ("**SoLR**") in relation to the customers of Open Electric.

In accordance with formal notices issued by the UR on 16 December 2016 and subsequently published on its website, both the Licence revocation and appointment of the SoLR took effect at 00:01 on 18 December 2016.

## **Reasons for the revocation of the Open Electric licence and the appointment of Power NI as the SoLR**

1. Under Schedule 2 of the Licence, the UR was entitled to revoke the Licence in the event of the insolvency of Open Electric, by giving not less than 24 hours' notice to the company.
2. The UR was informed on 15 December that an event of insolvency had occurred in the form of the appointment of an administrator of the company. On 16 December it received documentary proof to this effect.
3. On 16 December, the UR met with the administrator of Open Electric and considered what he had to say about the business of the company, its ability to continue to trade, and its prospects of sale as a going concern.
4. Taking into account the information disclosed at this meeting, the UR was unable to be satisfied that Open Electric had the resources to be able to continue to trade for more than a short period of time, or that there were plans in place which were likely to lead to the sale of the business as a going concern in the immediate future.
5. The UR was satisfied that, in the circumstances of the insolvency, it was entitled to revoke the Licence. In addition, it was satisfied that, if it were minded to do so, it would also be entitled to direct the appointment of Power NI to act as the SoLR in

relation to the customers of Open Electric, with that direction to take effect from the time of revocation.

6. The question of whether or not to exercise each of these powers entailed the making of two legally separate, but closely and directly related, decisions. The revocation of the Licence was a necessary pre-requisite to the appointment of a SoLR, and both decisions arose from the same background facts and raised the same considerations of fact and law.
7. The UR was required to take each decision in accordance with its principal objective and general duties under Article 12 of the Energy (Northern Ireland) Order 2003.
8. It considered that the following aspects of its objective and duties were particularly relevant to the decisions –
  - a. the objective of protecting the interests of consumers,
  - b. the objective of promoting effective competition,
  - c. the duty to have regard to the need to secure that all reasonable demands for electricity are met,
  - d. the duty to have regard to the need to protect the interests of certain groups of vulnerable customers.
9. It took into account in particular the following facts and matters –
  - a. It was important to ensure that there was no risk to the continuation of supply of electricity to the customers of Open Electric, particularly bearing in mind the fact that the insolvency had occurred in winter.
  - b. A proportion of the customers of Open Electric relied on keypad (prepayment) meters. At least some of those customers could be expected to fall into one or more of the vulnerable customer categories, and it was essential that they be able to continue to top-up their meters.
  - c. The insolvency of Open Electric necessarily posed a threat to the continuity of supply, since it had the potential to trigger a termination of the commercial arrangements on which various aspects of the supply activity relied.
  - d. The administrator had been unable to provide adequate assurances to the UR that the company had the resources to continue to trade in administration

for more than a short period of time or that there were any plans in place which would be likely to lead to the sale of the business as a going concern in the immediate future.

- e. Both the proximity of the Christmas and New Year holidays, and the comparatively small number of customer accounts held by Open Electric, did not encourage the conclusion that it would be possible to achieve a quick commercial sale of the business as a going concern.
  - f. If the company were to cease trading and any of its customers consequently lost electricity supply, that could be expected to have a damaging effect on the confidence of consumers generally in the competitive market in electricity, and therefore on the long-term prospects for effective competition between suppliers.
10. Having regard to all of these considerations, the UR decided to make the connected decisions to revoke the Licence and direct the appointment of a SoLR.
  11. In particular it did so because it had regard to the overriding importance of ensuring that all of the customers of Open Electric could be guaranteed continuity of electricity supply during the mid-winter period, and because it could not be adequately assured that such continuity of supply would take place if Open Electric continued to trade in administration.
  12. Taking into account all the uncertainties associated with the future of the company in administration, the UR was satisfied that it was necessary to intervene by making these decisions in the furtherance of its principal objective and fulfilment of its other statutory duties.
  13. The UR decided to direct the appointment of Power NI as the SoLR in accordance with the conditions of its licence. It did so because existing industry arrangements in place with both Power NI and Northern Ireland Electricity Networks ensured that the companies had systems and procedures, being both agreed and tested, designed to ensure a smooth transition of customers – including in particular prepayment meter customers – to Power NI as part of the SoLR process. It was satisfied that Power NI had adequate resources to act as SoLR in relation to the customers of Open Electric, and without disruption to supply to its existing customers.