

Notice of the Authority's decision under regulation 29 of the Electricity Industry (Enforcement) Regulations 2010

Under regulation 29(1) of the Electricity Industry (Enforcement) Regulations 2010 (Regulations) the Electricity Authority (Authority) must publicise every decision made under regulation 23(3) of the Regulations, together with the reasons for the Authority's decision.

Background

The Utility Company Limited (TUC, a consumer agent) lawfully requested that Ecotricity Limited Partnership (Ecotricity, a retailer) provide electricity consumption data for five of Ecotricity's customers between 4 August 2020 and 7 June 2021.

Ecotricity refused to provide the requested consumption data to TUC and, in doing so, is alleged to have breached the Electricity Industry Participation Code 2010 (Code).

Alleged breaches of the Code by Ecotricity were reported by Meridian Energy Limited (Meridian) and TUC on 15 December 2020 and 1 April 2021 respectively.

The consumption data was properly requested by TUC in accordance with clauses 11.32A, 11.32B, 11.32E, 11.32EA and 11.32EB of the Code. These clauses regulate the provision of consumption information when the request is made by the consumer's agent.

Fact finding and investigation process

In May 2021, the Authority sent a fact-finding letter to Ecotricity. In response, Ecotricity denied the alleged breaches and advised it considered there was a fundamental issue with the electricity wholesale market that allowed other retailers to price lower.

In March 2022, the Authority appointed an investigator and issued a notice of investigation to Ecotricity.

In response, on 23 March 2022, Ecotricity admitted breaching the Code and acknowledged it had breached the Code on purpose.

The investigator then sought notices from parties that might seek to be joined to the investigation. No parties provided such notice, therefore the parties to the investigation were Ecotricity, Meridian and TUC.

The investigator endeavoured to effect a settlement by agreement between the parties but a settlement could not be reached. The investigator formed the view that Ecotricity had likely breached the Code clauses contained in Table 1 and recommended that the Authority lay a formal complaint with the Rulings Panel.

Table 1 Clauses the investigator considers were breached by Ecotricity

Code clause	Topic
11.32A	Retailers must give information about consumer electricity consumption when requested by a consumer
11.32B	Requirements for retailers responding to a request for information
11.32E	A consumer may authorise an agent to act on their behalf

11.32EA	Retailer actions on receipt of requests from agents
11.32EB	Circumstances in which a retailer may decline to provide consumption information

On 13 October 2022, the Authority's Compliance Committee received a report and approved recommendations from the investigator to:

- recommend to the Board that it lay a formal complaint with the Rulings Panel under regulation 23(3)(b) of the Regulations concerning the alleged breaches of the Code clauses listed in Table 1.

The Authority's decision

On 13 December 2022, the Authority decided to lay a formal complaint with the Rulings Panel against Ecotricity under regulation 23(3)(b) of the Regulations concerning alleged breaches of the Code clauses listed in Table 1.

Reasons for the Authority's decision

The reasons for the Authority's decision to lay a formal complaint with the Rulings Panel are that:

- Ecotricity has admitted it wilfully breached its Code obligations related to provision of consumption information in five cases
- The free and prompt flow of customer consumption data from an incumbent retailer to a competitor retailer seeking to win the customer with an attractive retail offer is fundamental to supporting thriving competition in the retail electricity market in the long-term interests of consumers.
- The matters raised by Ecotricity as justification of its actions to deliberately breach the Code by not providing consumption data for some of its customers when properly requested, are not relevant to any Code obligation.
- An informal settlement between the three parties was not able to be reached.

Given these circumstances, the alleged Code breaches would benefit from a decision by the Rulings Panel, along with the associated deterrence and transparency that would provide.