

### Appendix 3 – Supplier of Last Resort

In RIIO-ED2 Ofgem has removed the Materiality Threshold and licence drafting around SoLR costs in SLC 38B, which allowed us to amend tariffs out with the 15 month notice period for SoLR costs in excess of this threshold, protecting us from significant cashflow risk. Although we understand that we still have the right to apply for a derogation from the 15 month notice period under the DCUSA we believe the proposed ED2 licence drafting increases risk and uncertainty to DNOs as there is no explicit reference to this within the licence and/or no clear process set out anywhere on how the DCUSA derogations process interacts with the SoLR process and wider allowed revenue.

At the very least we would request that the drafting that appears in the current SLC 38B is added back in to confirm that after receipt of a Valid Claim the licensee has the right to request a derogation to increase its Use of System Charges and there is no threshold to trigger this. This will provide additional certainty and clarity on the face of the licence that licensees would not be expected to pay out the Valid Claims without a corresponding increase in their charges.

We note that via the issue logs, Ofgem has said that a ‘process would be valuable but in our view it is not necessary on the face of the licence’. If Ofgem are not going to change the licence or another licence instrument to also clarify the process Ofgem and DNOs will follow when applying for and assessing a derogation then they should draft a guidance document or letter that sets out:

- That there is no trigger point by which DNOs should request a derogation in relation to SoLR costs, this can be done for any amount.
- The steps the licensee should follow to request a derogation to increase charges out with the 15 month noticed period, after receipt of a Valid Claim.
- The evidence required from a DNO in order to justify the derogation
- The criteria that will be used to accept/reject the derogation request and how this links to the SoLR event.
- The timelines involved

If this was provided it would give DNOs the tools and knowledge they require to be able request a derogation and understand the circumstances under which it can be reasonably assumed to be granted and save time and resources across both DNOs and Ofgem. Setting out this process clearly will reduce DNOs’ risk exposure in absence of the SoLR materiality threshold. Without further clarity on the derogation process DNOs are likely to respond in different ways when receiving valid claims, leading to unnecessary uneven outcomes, the current situation also leaves DNOs with potentially unfinanceable obligations under SLC38B (for example the £1.8bn of SoLR claims in 2021).

It should be noted that we believe this guidance should be applicable for all allowed revenues items, however SoLR is the most material concern given the potential magnitude of claims and that these are unrelated to DNO activity