

March 2001

Supplier of Last Resort

Guidance on current arrangements

Summary

This document sets out the issues that Ofgem will need to consider in the event of a gas or electricity supplier failure or the failure of a gas shipper. It explains the position in both industries before and after the implementation of the Utilities Act 2000 licensing schemes and standard licence conditions (currently expected to be in June 2001).

The document explains the framework within which Ofgem acts and how it may use its discretionary powers when considering whether to revoke a failing supplier's licence and whether and who to appoint as a Supplier of Last Resort (SoLR) to take over responsibility for supplying customers. It also explains the principles that Ofgem is likely to use when dealing with a supplier failure.

The document explains the circumstances under which a licence might be revoked if a supplier is insolvent. The criteria and procedures that Ofgem is likely to use when selecting a supplier (or suppliers) to be a SoLR are also explained.

The document also explains how some industry procedures and agreements are affected by the appointment of a SoLR. It also outlines the risk to other industry parties under the current arrangements for gas balancing and under the New Electricity Trading Arrangements (NETA) when a supplier or a shipper fails.

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1. Introduction

Purpose of this document

- 1.1 From time to time, companies in competitive markets fail. On the one hand, failure is regrettable, in that investors lose money, jobs are lost and inconvenience is caused to customers. On the other hand, failure can be a sign that competition is working effectively. This is because in many cases it is the degree of rivalry between companies and the extent to which customers exercise choice that inevitably leads to success for some companies and failure for others.
- 1.2 This logic applies as much in relation to the gas and electricity supply markets as it does to other markets. It is therefore inevitable that some gas and electricity suppliers will fail. However the difference between gas and electricity and other sectors is that gas and electricity are services that are generally regarded as essential, especially for domestic customers. This is why it is important that Ofgem, in conjunction with other bodies where appropriate, takes all reasonable steps to address the risk of gas and electricity suppliers failing. Not every failure will require regulatory intervention – the business may be sold in a trade sale. However, it is for Ofgem to take all reasonable steps within its available powers to secure continuity of supply for all customers.
- 1.3 The purpose of this document is threefold. First, to set out the steps Ofgem is likely to take when licensed electricity suppliers, licensed gas suppliers and licensed gas shippers fail. Second, to describe under what circumstances Ofgem is likely to give notice to revoke a supply licence. Third, to describe the steps Ofgem would expect to take to appoint another supplier (usually referred to as the Supplier of Last Resort (SoLR)) if notice to revoke a supplier's licence was given.

Rationale

- 1.4 Ofgem is publishing guidance on the issue of supplier failure for three reasons:-
 - in response to calls for greater clarity as to Ofgem's role in the selection and appointment of a Supplier of Last Resort;

- it should provide a firmer basis on which companies can undertake trade sales; and
- as competition increases, so too does the likelihood of supplier failure.

These reasons are amplified below.

- 1.5 Ofgem sees trade sales as generally more desirable than regulatory intervention. However the current regulatory regime gives Ofgem some discretion as to when it revokes a licence, and how it selects and appoints a SoLR. Amongst other things, this can make it difficult for those contemplating purchasing a failing business to commit finance because they may not be sure whether or not the regulator is likely to revoke the business' licence. Further clarity as to Ofgem's role in the event of a supplier failure should help facilitate trade sales.
- 1.6 Saturn Gas (a licensed gas supplier with around 2,000 Industrial and Commercial customers) and Independent Energy (a licensed gas and electricity supplier and gas shipper with around 80,000 gas customers and 240,000 electricity customers) both went into receivership in 2000. In each case, the businesses were sold to another licensed supplier before Ofgem took action to revoke any licences. However, the failure of Independent Energy raised a number of issues about what happens when a supplier fails. This all points to the need for clear procedures to deal effectively with failures when they happen.
- 1.7 New Electricity Trading Arrangements ('NETA') are due to be introduced on 27 March 2001. These arrangements will facilitate a more competitive wholesale electricity supply market. This should provide a further spur to competition in retail markets, ultimately bringing benefits to electricity customers. This is a positive development, but again highlights the need for effective arrangements in the event of supplier failure.
- 1.8 As part of the introduction of new standard licence conditions for gas and electricity suppliers, there has been considerable debate with interested parties as to how Ofgem will interpret the licence conditions relating to the appointment of a SoLR. This document is designed to help clarify how Ofgem might use its powers to appoint a SoLR.

Context

- 1.9 In October 2000 Ofgem consulted on final proposals for new standard licence conditions under the Utilities Act 2000 (the Utilities Act). These included new standard conditions for gas and electricity supply licences. Among other things, these proposals included conditions relating to the appointment of electricity SoLR to match equivalent obligations in gas suppliers' licences. Taking comments from interested parties into account, Ofgem redrafted these conditions to improve their clarity. They were subsequently submitted to the Secretary of State on 31 January 2001. Some slight re-drafting has since taken place; the relevant conditions are at Annex 1.
- 1.10 It is for the Secretary of State to determine the standard conditions. However the Department of Trade and Industry (DTI) has indicated that the new standard licence conditions are expected to take effect from June 2001; new licensing schemes will be introduced at the same time. If the licence conditions relating to supplier failure were to change substantially, Ofgem will produce revised guidance relating to the period beyond June 2001.
- 1.11 This document explains the position in both industries before and after the new licensing schemes and standard licence conditions.
- 1.12 As well as finalising the standard conditions of the gas and electricity supply licences, in January 2001 Ofgem issued a letter to all potential gas SoLRs asking them to confirm their willingness to be considered as a SoLR.
- 1.13 This document does not cover detailed consideration of the principles for setting the bond or other security against which a SoLR may make a claim for otherwise unrecoverable costs. This will be the subject of separate document in May 2001.
- 1.14 Consultation on possible changes to the credit cover regime in either gas or electricity will be the subject of separate consultation in June 2001. Ofgem will issue a decision document on this issue in October 2001.

Structure of this document

- 1.15 The rest of this document is structured in the following way:

- ◆ Chapter 2 explains the legal and regulatory framework relevant to the insolvency of a gas or electricity supplier or a gas shipper.
- ◆ Chapter 3 explains Ofgem's role in revoking a licence and deciding whether to appoint a SoLR.
- ◆ Chapter 4 explains what actions Ofgem is likely to take if a gas supplier fails before the full provisions of the Utilities Act licensing schemes and standard licence conditions come into force.
- ◆ Chapter 5 explains what actions Ofgem is likely to take if an electricity supplier fails before the full provisions of the Utilities Act licensing schemes and standard licence conditions come into force.
- ◆ Chapter 6 explains what actions Ofgem is likely to take if an electricity or gas supplier fails after the full provisions of the Utilities Act licensing schemes and standard licence conditions come into force.
- ◆ Chapter 7 explains the procedure and criteria that Ofgem will use in selecting a SoLR.
- ◆ Chapter 8 explains what happens when a gas shipper becomes insolvent.
- ◆ Chapter 9 outlines some of the current credit cover requirements in gas and electricity as they relate to a SoLR.
- ◆ Chapter 10 explains the arrangements for bonds and levies for a SoLR before and after the full provisions of the Utilities Act licensing schemes and standard licence conditions come into force.
- ◆ The Annexes provide further background information. In particular Annex 2 provides an overview of the supply chain in both industries and Annex 3 explains the terms and abbreviations used in this document.
- ◆ Throughout the document reference is made to some industry codes and agreements to provide examples of the impact of supplier/shipper failure

on other industry parties. The examples are not exhaustive. Ofgem's June Consultation Document will examine the issues raised in more detail.

- 1.16 This document is not a formal consultation document although we welcome views on any aspects of it. Comments should be sent to:-

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- 1.16 It is open to respondents to mark all or part of their response as confidential. However, we would prefer, as far as possible, that responses are made available in the Ofgem library, and on our website (www.ofgem.gov.uk).

2. Legal and Regulatory Framework

2.1 This section explains the legal and regulatory framework relevant to the insolvency of a gas or electricity supplier or a gas shipper. It covers the circumstances under which the Authority may:

- ◆ grant a licence;
- ◆ monitor a licensee's financial position;
- ◆ revoke a licence; and
- ◆ appoint a SoLR.

The section also explains the relevance to the appointment of a SoLR of:

- ◆ deemed contracts; and
- ◆ securities and levies.

The Gas and Electricity Markets Authority

2.2 The principal objective of the Gas and Electricity Markets Authority (the Authority) in carrying out its functions is to protect the interests of consumers, wherever appropriate by promoting effective competition¹. The Authority must carry out its functions in the manner it considers is best calculated to further that principal objective having regard to:

- ◆ the need to secure that all reasonable demands for gas and electricity are met; and
- ◆ the need to secure that licence holders are able to finance their activities which are the subject of obligations under the Utilities Act 2000 (the Utilities Act) or, as the case may be, the Gas Act 1986 or the Electricity Act 1989.

¹ Gas Act 1986 s4 and Electricity Act 1989 s3 (as inserted by the Utilities Act 2000)

Granting licences

2.3 The Authority has granted licences to:

- ◆ some electricity generators;
- ◆ some electricity suppliers;
- ◆ Public Gas Transporters;
- ◆ gas shippers; and
- ◆ gas suppliers.

2.4 The Authority must ensure that a licence holder can finance its proposed activities when a licence application is being assessed. Application Regulations specify the information that must be provided as part of a licence application. This includes, amongst other things, the following information:

- ◆ three years' audited statutory accounts from both the applicant and, where appropriate, its parent company;
- ◆ where appropriate, a letter of comfort from the parent company;
- ◆ a credit report; and
- ◆ some business plan information about the activities specified in the application.

2.5 However Ofgem does not consider that any check it could perform on a potential licensee at the time its application is being considered will provide continuing comfort about its financial viability once the licensee commences operations.

Monitoring of licensees' financial situation

2.6 At the moment Public Electricity Suppliers (PESs) must provide a yearly audited availability of resources certificate. They also provide a certificate when they declare a dividend or make a distribution that confirms that the distribution will not cause them to breach their availability of resources licence condition. After

the introduction of the full provisions of the Utilities Act and the separation (and separate licensing) of former PES distribution and supply businesses, this information will only be required from distribution licensees.

- 2.7 There are provisions within the licences of transmission, transportation and distribution businesses regarding the monitoring of the licensee's financial position. There are no such provisions in supply or shipper licences; the competitive nature of these activities means that there will be entry to and exit from the markets.

Utilities Act

- 2.8 The Utilities Act, when fully commenced, will introduce new licensing schemes and new standard licence conditions for gas and electricity licensees. This document explains in detail the effect of those parts of the schemes and standard conditions that are relevant to supplier failure, both before and after the full commencement of the Act.

Licence revocation

- 2.9 The Secretary of State for Trade and Industry can revoke a Public Electricity Supplier's licence in certain circumstances. The Authority can, in certain circumstances, revoke other electricity suppliers' licences, gas supply and shipper licences and other licences.
- 2.10 There are various reasons why a licence may be revoked. However for the purposes of this document a licence can be revoked (either by the Secretary of State or the Authority) when a receiver is appointed or an administration order is made or a High Court winding up order is made. It can also be revoked when a supplier or shipper is unable to pay its debts (within the meaning of the Insolvency Act 1986 s123(1) or (2)). The supply licence revocation terms are at Annex 4.
- 2.11 A gas supply or shipper licence can be revoked by giving not less than 24 hours' notice in the case of insolvency. An electricity supply licence can currently only be revoked by giving not less than 30 days' notice in any event. After the full

provisions of the Utilities Act licensing schemes come into force this will change to not less than 24 hours' notice in the case of insolvency.

Deemed contracts

- 2.12 The Gas Act has provisions covering deemed contract schemes² in certain circumstances. When a customer uses gas otherwise than under a contract, a deemed contract comes into existence between the gas supplier and the customer. For example a deemed contract may exist when someone moves into a house and starts to use gas even though they have not agreed a contract with a gas supplier. A deemed contract will also exist when a supplier starts to supply gas as a SoLR.
- 2.13 Gas suppliers must currently have deemed contract schemes for customers with an annual consumption of less than 73,200 kWh (usually domestic customers). Schemes are optional for customers with an annual consumption between 73,200 kWh and 2,196,000 kWh (usually Industrial and Commercial premises). Public Electricity Suppliers must currently have deemed contract schemes in the event that they start to supply a customer whose previous supplier's licence has been revoked³. The Utilities Act will introduce a requirement on all gas and electricity suppliers to have deemed contract schemes for all customers.
- 2.14 The DTI has in preparation a further Commencement Order. As we understand it, one of the effects of the Order will be to alter the deemed contract provisions in Schedule 6A (which were commenced in December) in the following ways:
- ◆ all electricity suppliers will (if directed by the Authority) have to prepare a deemed contract scheme in the event that they start to supply a customer whose previous supplier has been served a Notice of Revocation of its licence. It is likely that the Authority would only direct PESs, their associated second tier supply businesses and those companies that have purchased PES supply businesses to prepare such a scheme;

² Suppliers must make a scheme for determining the terms and conditions which are to be incorporated into the contracts

³ Utilities Act (Commencement No 4 and Transitional Provisions) Order 2000

- ◆ deemed contracts will come into effect when a Notice of Revocation is served on a supplier (rather than when the Notice comes into effect 30 days later); and
- ◆ PESs and those companies that have purchased PES supply businesses will be able to supply on deemed contracts in the PES authorised areas. Outside these areas their associated second tier supply businesses will be able to supply on deemed contracts.

2.15 Deemed contract schemes are explained in more detail in Annex 5

Supplier of Last Resort

Gas

2.16 Under the current licence conditions the Authority can arrange for a gas supplier to take over responsibility for customers of a supplier whose licence has been revoked (ie to become a SoLR). For customers whose annual consumption is reasonably expected to be less than 73,200 kWh the Authority can direct a supplier to be a SoLR even if it does not want to be one. For customers whose annual consumption is reasonably expected to be between 73,200 kWh and 2,196,000 kWh the Authority can only direct a supplier to be a SoLR with its consent. There is no provision for appointing a SoLR (by consent or otherwise) for customers whose annual consumption is reasonably expected to be more than 2,196,000 kWh.

Electricity

2.17 Although there are currently no provisions for appointing a SoLR if an electricity supplier's licence is revoked the Authority can take other measures to try to ensure that a failed supplier's customers have continuity of supply. If the Authority has served a notice revoking an electricity supplier's licence, and considers that another supplier (or suppliers) can supply the failed supplier's customers without significantly prejudicing the supplies of electricity that it is contracted to make, the Authority can direct the other supplier(s) to write to the failed supplier's customers to tell them:

- ◆ that the failed supplier will not be supplying them with electricity after its licence is revoked; and
- ◆ that the customer must enter into a new contract with another supplier from the date the licence is revoked; and
- ◆ the terms on which the supplier is prepared to supply electricity to the customer if requested⁴.

The expected amendments to Schedule 6A to the Utilities Act (see paragraph 2.14) mean that Ofgem is likely to seek agreement from appropriate suppliers also to inform the failed supplier's customers that they can be supplied on its relevant deemed contract terms from the date that the Notice of Revocation was given.

Utilities Act

- 2.18 After the Utilities Act standard licence conditions come into force the Authority will be able to direct one or more suppliers to be a SoLR to cover all groups of gas and electricity customers.
- 2.19 The circumstances in which a SoLR can be appointed now and after the full provisions of the Utilities Act standard licence conditions comes into force are explained in more detail in Sections 4, 5 and 6.
- 2.20 There is no provision (either now or after the Utilities Act standard licence conditions come into force) to appoint a "Shipper of Last Resort" if a gas shipper's licence is revoked but there are other licence and statutory provisions intended to assist gas transporters and gas suppliers if a shipper fails (see Section 8).

Bonds

- 2.21 All domestic gas suppliers are required to maintain a bond (or other form of security instrument) that may be used by a Trustee appointed by the Authority in the event of the supplier's failure. The money from the bond may be paid to a

⁴ Electricity supply licence "Arrangements for informing customers on revocation of licence"

SoLR in certain circumstances, agreed by the Authority, where a SoLR in carrying out its role has incurred otherwise unrecoverable costs.

- 2.22 If the value of the bond is not sufficient to cover any or all of the otherwise unrecoverable costs of the SoLR, then it can also make a claim for its remaining costs from Public Gas Transporters (PGTs) (in effect this is likely to be Transco and perhaps one or two larger independent PGTs (iPGTs) as the licence conditions rules out claims to PGTs who supply less than 0.25% of all domestic premises). PGTs are in turn permitted by their licence conditions to recover the costs of making a levy payment to a SoLR from their transportation charges.
- 2.23 The Utilities Act standard licence conditions are expected to introduce a requirement for domestic electricity suppliers to have a bond or other similar security.
- 2.24 Details of the current and future arrangements for bonds and levies are explained in more detail in Section 10. In May Ofgem will publish a document that discusses the amount of security that should be provided in the future by gas and electricity suppliers.

Exemptions

- 2.25 In gas a number of exemptions orders are relevant to a supplier or shipper failure.

Standard Condition 37 undertakings

- 2.26 These state that a supplier must provide the PGT with an undertaking to pay for gas charges in the event of its shipping arrangements being terminated.

Consumer's shipping exemption⁵

- 2.27 A consumer whose annual consumption is more than 73,200 kWh is allowed to ship gas (ie contract direct with a PGT) either where there is no shipping arrangement or no arrangements have been made under Standard Condition 37 of the gas supplier's licence. This exemption lasts for 35 days only.

Supplier's shipping exemption⁶

- 2.28 A supplier is allowed to ship gas where there are no shipping arrangements but where it has in place undertakings under Standard Condition 37 of the gas supplier's licence.

Exemption for supply of gas by PGT on failure of shipper⁷

- 2.29 Where a consumer contracts direct with the PGT, the PGT does not require a supply licence in order to supply gas to the consumer's premises.

⁵ Article 8 of Gas Act 1986 (Exemptions)(No 1) Order 1996

⁶ Article 10 of Gas Act 1986 (Exemptions)(No 1) Order 1996

⁷ Article 11 of Gas Act 1986 (Exemptions)(No 1) Order 1996

3. Ofgem's role

Experience to date

- 3.1 Ofgem's experience to date is that we have had advance warning that a supplier is in difficulty and have had contact with the failing company and the receiver. Other industry parties are aware of Ofgem's role with failing companies and have provided a valuable "early warning" system that a supplier is in difficulty.
- 3.2 Gas shippers have to maintain credit cover with Transco for their transportation charges and their energy balancing charges. (All these issues are explained in more detail in Section 9).
- 3.3 Electricity suppliers should maintain credit cover with Distribution Companies for their Distribution Use of System charges. Distribution companies may notify Ofgem if a supplier has not paid its distribution charges. However, there is no formal mechanism for alerting Ofgem to potential problems. (All these issues are explained in more detail in Section 9).
- 3.4 If a supplier has gone into receivership Ofgem believes that a trade sale is more likely to achieve the best deal for customers than the appointment of a SoLR. A trade sale should ensure that customers are purchased by the supplier that values them the most (ie is prepared to pay the highest price for them). It is likely that customers would pay higher charges on a deemed contract to a SoLR than if a trade sale took place and another supplier charged the customers its normal contract prices. A trade sale may also reduce regulatory involvement in the operation of the market.

Industry codes and agreements

- 3.5 There are a number of industry codes and agreements that suppliers and shippers must sign. For instance:
 - ◆ gas shippers are required to sign a gas transporter's Network Code;
 - ◆ gas shippers must provide credit cover to Transco for their transportation charges;

- ◆ electricity Trading Parties must sign the Balancing and Settlement Code;
- ◆ electricity suppliers must meet the requirements of the Master Registration Agreement and Elexon; and
- ◆ electricity suppliers must have Distribution Use of System Agreements (DUoSA) with Distribution Companies.

Many of these codes and agreements provide that the supplier or shipper may be excluded from the code or agreement in certain circumstances or for its customers to be disconnected. For example the DUoSA allows the National Grid Company or Elexon to serve notice on a distribution business to de-energise customers for unpaid transmission or settlement charges.

- 3.6 If it appeared that a licensee might have breached a licence condition or had been excluded from an industry code Ofgem would need to consider what, if any, enforcement action it would be appropriate to take. If enforcement action was considered necessary this could take some time. In any event, Ofgem may not have any grounds to revoke the supplier's licence and appoint a SoLR.
- 3.7 At the moment there is no licence or statutory requirement for industry parties to provide credit cover for post-receivership debt in either gas or electricity. In June Ofgem will issue a Consultation Document that will consider in depth the credit cover requirements (and the effectiveness of any sanctions) of these industry codes and agreements. In the meantime, amendments to the codes can be proposed in the usual way.

Receivership

- 3.8 If a receiver is appointed or an administration order is made or a High Court winding up order is made then Ofgem would be able to consider whether it should revoke a supplier's licence. Ofgem cannot consider whether or not a supplier is "unable to pay its debts", nor can it pre-empt the outcome of a resolution for winding up. Both these issues are matters that must be decided by a court. In these circumstances Ofgem would wait until a court has made a decision. For instance, if a creditor issues a Statutory Demand on a supplier, Ofgem will wait for the 21 day period allowed to satisfy the demand or until a

court has decided that the demand is valid before considering whether the supplier or shipper's licence should be revoked, even though this extends the time that the debts may be increasing.

- 3.9 The receiver may decide that he will not pay for gas or electricity supplies for the failed supplier's customers (or, for example, for distribution costs or a shipper's gas transportation charges). Nevertheless, the customers will continue to use gas and/or electricity. If this happens other industry parties are exposed to the failed supplier's increasing post-receivership debts. The gas shipping community is exposed to gas imbalance charges; distribution and transportation charges are not paid; under NETA, all BSC parties are exposed to the post-receivership debts. This is explained in further detail in Section 9.
- 3.10 Ofgem does not consider that it is acceptable for a company in receivership to continue to supply gas and/or electricity without agreeing to pay the appropriate charges. If a receiver agrees to pay the post-receivership charges it is likely that Ofgem would consider that he should be given time to sell the company's assets. However, if such agreement is not forthcoming it is likely that Ofgem will revoke a licence as soon as possible and appoint a SoLR in order to ensure continuity of supply to customers and to protect other industry parties from ongoing exposure to debt.
- 3.11 Revocation of a licence may be a determination of a civil right for the purposes of the Human Rights Act 1998 and consequently Article 6 (the right to a fair and public hearing) may be relevant. Ofgem has to balance this right with the interests of consumers in the particular circumstances (especially if there is a risk of disconnection of vulnerable consumers due to the delay). Consequently, in some circumstances it may not be possible to arrange a hearing with the failing supplier prior to licence revocation.

Ofgem's principles

- 3.12 Ofgem cannot guarantee that the failed supplier's customers will not have to pay more for their gas or electricity, whether they are on a deemed contract scheme with the SoLR or when they enter into a contract with the SoLR or another supplier.

3.13 In considering whether to revoke a failing supplier's licence and whether and who to appoint as a SoLR, Ofgem will consider the following general principles in order to fulfil its statutory duty to protect customers:

- ◆ continuity of supply for the failed supplier's customers and the SoLR's existing customers should be maintained wherever possible. Disruption to customers of the failed supplier should be kept to a minimum;
- ◆ the effect on other industry parties of the failed supplier's customers continuing to take gas and/or electricity in the event that a receiver does not agree to pay post-receivership charges will be relevant in deciding when to revoke a licence;
- ◆ the deemed contract price offered by the SoLR for different groups of the failed supplier's customers will be taken into account when deciding which supplier(s) to appoint;
- ◆ the SoLR's (or its shipper's) ability to buy gas and/or electricity and deal with the numbers of new customers will be taken into account when deciding which supplier(s) to appoint;
- ◆ the effect on competition will be considered, but this is not to say that a dominant supplier would not be appointed SoLR if it was appropriate to do so in the circumstances.

Ofgem's work so far

Standard licence conditions

3.14 In October 2000 Ofgem consulted on final proposals for new standard licence conditions for gas and electricity supply for the Secretary of State to determine and implement. Among other things, these proposals included conditions relating to the appointment of an electricity SoLR to match equivalent obligations in gas suppliers' licences. Taking comments from interested parties into account, Ofgem redrafted these conditions to improve their clarity. They were subsequently submitted to the Secretary of State on 31 January 2001. Some slight re-drafting has since taken place; the relevant conditions are at Annex 1.

Supplier of Last Resort

- 3.15 In January Ofgem invited gas suppliers to indicate whether they would be interested in being a SoLR if another supplier's licence was revoked. Several suppliers indicated that they would be interested; they cover both domestic and Industrial and Commercial customers. Ofgem has now set up a database of these suppliers. The information will be reviewed on a regular basis to ensure it is up to date and to provide suppliers with the opportunity to opt in or out of the list. It is unlikely that Ofgem will consider appointing a supplier that either has not responded to our invitation or indicated that it does not want to be a SoLR. But it is possible that there might be circumstances in which we would have to direct a supplier (or suppliers) to be a SoLR even though it had indicated that it did not want to be one. In doing so we would have to consider whether it could comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying electricity or gas.
- 3.16 Ofgem is in the process of preparing drafts of the documents that would need to be used if a licence is (or is about to be) revoked. These include draft information requests to industry parties, draft revocation notices and draft directions.
- 3.17 When the Utilities Act standard licence conditions come into force Ofgem will ask electricity suppliers whether they would want to be considered as a SoLR.

Electricity

- 3.18 Ofgem instigated a project in June 2000 to consider appropriate arrangements in the Balancing and Settlement Code (BSC) and Master Registration Agreement (MRA) for supplier failure in electricity. The aim of the project was to ensure that the provisions in the BSC and MRA accommodate the requirements of the new licence conditions. The project has benefited from considerable support from Elexon, Master Registration Agreement Service Company (MRASCo) and the NETA programme team, as well as representatives from the industry.
- 3.19 The project developed a set of requirements for the BSC and MRA to enable a supplier of last resort mechanism to operate within the constraints of the existing

electricity systems and processes. They include a proposal to allow the transfer of financial liability for balancing charges to be made when the SoLR's appointment becomes effective, but for the registration of meter points to be made by the SoLR over the following three month period. The proposals also provide arrangements for dealing with trade sales. The project influenced the proposed draft licence conditions dealing with supplier failure. (Copies of the requirements papers produced by the project are available on the Ofgem website.)

3.20 In December 2000 these proposals were discussed in a consultation document jointly produced by the NETA Programme and Elexon ('The New Electricity Trading Arrangements: Addressing Supplier Failure within the BSC'). A conclusions paper was published February 2001.

3.21 MRASCo is consulting on the arrangements that a SoLR would adopt for the registration of metering points and management of the required dataflows. There are two principal proposals. A SoLR can:

- ◆ use the normal customer transfer processes over a period of three months following the transfer of BSC liabilities; or
- ◆ trigger a bulk transfer of supply points.

Each method presents operational risks for a SoLR to manage. The MRASCo consultation will lead to change proposals being put to the MRA Development Board (probably in May 2001). Currently it is thought that only minor system changes will be proposed.

Gas

3.22 Ofgem has discussed with Transco its bulk transfer procedure for moving customers from a failed supplier to a SoLR. This has highlighted some operational issues. This procedure and the issues are explained in more detail in Section 7.

4. Gas - position before Utilities Act standard licence conditions

- 4.1 This section explains what actions Ofgem is likely to take before the Utilities Act licensing schemes and standard licence conditions come into force (currently expected to be in June 2001) if a gas supplier goes into receivership. Annex 6 summarises the position. The section covers some aspects of shipper insolvency, but the position for gas shippers before and after the full provisions in the Utilities Act come into force is explained in more detail in Section 8.

Credit cover and disconnection

- 4.2 Transco requires credit cover to be in place from each shipper for 63 days' transportation charges (these charges are relatively easy to predict). There are some provisions for credit cover for gas balancing charges. If a shipper goes into receivership and gas balancing charges are not met then the whole gas shipping community is exposed to gas imbalance charges. If these are not paid then they are smeared across all shippers. Shippers may then pass these on to their respective suppliers who may in turn pass them on to their customers. When Independent Energy went into receivership, its gas post-receivership debt was less than that in electricity (estimated to be around £2m a day) but would still have been substantial. If Innogy had not agreed to pay all post-receivership costs this debt would have been passed on to other shippers.
- 4.3 If a supplier and its shipper go into receivership Exemption Orders allow a PGT (for instance Transco) to contract directly with customers whose annual consumption is more than 73,200 kWh and for the customer to ship gas (see Section 2). However, these agreements may take some time to put in place. If a customer refused to enter into such a contract the PGT can disconnect those customers after giving them 21 days' notice⁸. All customers would continue to use gas until either they had signed a contract with the PGT, or found another supplier or been disconnected. Customers using less than 73,200 kWh would also continue to use gas. The cost of the gas used would be smeared across other

⁸ Gas Act 1986 Sch 2B(14(1))

shippers and could (subject to contractual provisions) be passed on to their suppliers and customers.

Ofgem's role

- 4.4 Based on previous experience Ofgem would expect to have contact with the failing company and the potential receiver before the company is actually put into receivership. In this case Ofgem is likely to ask for some information from relevant industry parties about the failing supplier's portfolio. This information is likely to be given to suppliers that have indicated that they want to be considered as a SoLR in advance of actual receivership. By doing this Ofgem would be able to appoint a SoLR quickly if necessary if the supplier did fail.
- 4.5 If Ofgem does not have advance warning that a company is in difficulty any information required will have to be requested after receivership. This might delay its ability to appoint a SoLR and, consequently, any decision to revoke a licence.
- 4.6 At best, Ofgem considers that it would have all the information it needed to revoke a failing supplier's licence in these circumstances and appoint a SoLR in about 48 hours. Otherwise it would take 72 hours or longer.

Licence revocation

- 4.7 The Authority can revoke a gas supplier's or a gas shipper's licence in not less than 24 hours in certain circumstances. For the purposes of this document, the relevant terms for revocation of a gas supplier's licence are when the supplier either:
- ◆ is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or

- ◆ has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- ◆ has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it; or
- ◆ passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
- ◆ becomes subject to an order by the High Court for winding-up.

Receivership

- 4.8 As soon as a receiver is appointed Ofgem would seek an urgent meeting with him to discuss his intentions and explain Ofgem's role and powers, particularly its ability to revoke a licence and appoint a SoLR.
- 4.9 When a receiver is appointed, the failed supplier's customers will continue to take gas. If a supplier and its shipper have failed then Ofgem would seek the receiver's agreement to pay the post-receivership gas purchase, balancing and transportation costs in order to protect customers from the threat of disconnection and to minimise the risks to the rest of the shipping community and, potentially, to other suppliers and customers.
- 4.10 Transco can prevent further nominations or confirmations of supply points by a supplier's shipper if the shipper exceeds 85% of its Credit Code Limit (Section 9 explains this in more detail). If the supplier had not already done so, Ofgem would expect the receiver to stop processing the registration of new sites if possible so that ongoing exposure did not increase. There is, however, no statutory or contractual provision for this.

Circumstances where Ofgem would consider revoking a supply licence

- 4.11 Ofgem does not consider that it is acceptable for the receiver to continue to supply gas without agreeing to pay the appropriate balancing and transportation charges. If a receiver agrees to pay the post-receivership charges it is likely that Ofgem would consider that he should be given some time to sell the company's

assets in a trade sale. If the receiver does not agree to pay these post-receivership debts then Ofgem would have to assess the practicality of revoking a licence and appointing a SoLR, balancing the interests of all the failed supplier's customers.

4.12 In practice Ofgem would seek agreement from one or more suppliers to be a SoLR. However, if none wanted to take on this role we could direct a supplier (or suppliers) to be a SoLR for customers whose annual consumption is less than 73,200kWh. In doing so we would have to have regard to its ability to comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying gas.

4.13 Examples of the types of circumstances Ofgem might have to consider are:

- ◆ one or more other gas suppliers meet Ofgem's criteria for SoLRs (see Section 7) and are willing to supply all groups of the failed supplier's customers up to an annual consumption of 2,196,000 kWh.

In this case it is likely that Ofgem would revoke the supplier's licence in order to ensure continuity of supply to the failed supplier's customers and to protect other industry parties from ongoing exposure to debt;

- ◆ one or more suppliers meet Ofgem's criteria for SoLRs and are willing to be considered for the failed supplier's customers with an annual consumption up to 73,200 kWh (usually domestic customers) but none is willing to be SoLR above that level.

In this case Ofgem would have to consider the balance between the effect on all the failed supplier's customers of revoking the licence. Customers with an annual consumption of more than 73,200 kWh would have to find a new supplier and the failed supplier's shipper would be liable for all costs in the meantime;

- ◆ no supplier is willing to be a SoLR for any group of customers.

In this case Ofgem could direct a supplier (against its will) to be a SoLR for customers with an annual consumption up to 73,200 kWh. Customers with an annual consumption of more than 73,200 kWh

would have to find a new supplier and the failed supplier's shipper would be liable for all costs in the meantime. Ofgem would have to consider the balance between the effect on all customers of revoking the licence against the risk to the shipper and the subsequent effect on the industry as a whole because of the unpaid gas balancing charges; and

- ◆ In any circumstances, if the supplier's shipper has also gone into receivership (for instance because both were part of the same company) Ofgem would also have to consider the losses to the shipping community as a whole (and the potential for these to be passed on to customers).

Supplier of Last Resort

- 4.14 This section explains when a SoLR can be directed to supply gas to different groups of the failed supplier's customers. A direction to be a SoLR lasts no longer than 6 months.
- 4.15 The process for selecting and appointing a SoLR and the process by which customers would be transferred to it are explained in detail in Section 7.

Obligations on the SoLR and its shipper

- 4.16 If appointed a SoLR the supplier must use its reasonable endeavours to get a meter reading within 14 days from the failed supplier's former customers except in certain circumstances⁹. Ofgem considers that the reading should be obtained from the customers wherever it is possible to do so.
- 4.17 The SoLR must write to each of the failed supplier's customers as soon as reasonably practical to explain:
- ◆ its SoLR deemed contract charges; and
 - ◆ that the failed supplier is no longer supplying the customer from the date of revocation¹⁰.

⁹ Standard Condition 5(4)

¹⁰ Standard Condition 5(5)

- 4.18 Within 6 days of licence revocation (or 15 days of being appointed, whichever is first) the SoLR must give the Authority copies of the letter to customers, details of the deemed contract charges and an indication of any likely changes in those charges¹¹. (In practice Ofgem would have asked the suppliers that wanted to be a SoLR to provide a draft letter as part of the SoLR selection process (see Section 7).)
- 4.19 The SoLR must (as far as reasonably practical) give the Authority notice of any increase in its deemed contract charges at least 5 days before the increase comes into effect¹². The Authority may direct the SoLR to reduce its charges if it considers that domestic customers would experience hardship¹³. Ofgem will consider further what the hardship provision might involve.
- 4.20 In some circumstances the SoLR may be able to make a claim against the failed supplier's bond or to a PGT for a levy on transportation charges for otherwise unrecoverable costs (see Section 10).
- 4.21 Shippers are obliged by their licence to comply with any direction given by the Authority in order to facilitate the SoLR process¹⁴.

Customers with an annual consumption of less than 73,200kWh

- 4.22 The Authority can direct a gas supplier (or suppliers) by notice in writing to supply gas to another supplier's domestic customers (ie be a SoLR) if it considers that:
- ◆ circumstances have arisen that would allow it to revoke a gas supplier's licence; and
 - ◆ it considers that the other supplier(s) could comply with the direction without significantly prejudicing its ability to supply its own customers and fulfil its contractual obligations for the supply of gas.
- 4.23 The direction to be a SoLR takes effect on the date when the failing supplier's licence is revoked and lasts for up to 6 months. The SoLR would supply

¹¹ Supply Licence - Standard Condition 5(6)

¹² Supply Licence - Standard Condition 5(6)

¹³ Supply Licence - Standard Condition 5(7)

¹⁴ Shipper Licence – Standard Condition 11(1)

customers on its deemed contract rate until they agreed a normal contract with the SoLR or entered into a contract with another supplier. After six months the SoLR can continue to supply a customer who has not signed a contract (with the SoLR or another supplier) on its normal deemed contract rate.

Customers with an annual consumption between 73,200 kWh and 2,196,000 kWh

- 4.24 The Authority can only direct a supplier(s) to be a SoLR for this group of customers if the supplier consents. There is no provision to make a claim against the failed supplier's bond or to a PGT for a levy on transportation charges. Nor is there any provision for the Authority to direct a SoLR to lower its charges.
- 4.25 If no supplier consents to being a SoLR then the Authority has no power to make a direction. In this case the former supplier's shipper will still be liable for all gas and transportation charges (providing it has not also become insolvent). If the shipper has become insolvent as well then customers can contract direct with the PGT for a maximum of 35 days¹⁵ (see Section 2).

Customers with an annual consumption of more than 2,196,000kWh

- 4.26 There is currently no power (whether by consent or otherwise) to appoint a SoLR for this group of customers.
- 4.27 For all customers whose annual consumption is more than 73,200kWh (including those whose consumption is more than 2,196,000kWh) the customer can contract direct with the PGT for a maximum of 35 days¹⁶ (see Section 2).

¹⁵ Article 7&8 of Gas Act 1986 (Exemptions)(No 1) Order 1996. The PGT is allowed by Article 11 of the same order to supply gas to that consumer's premise.

¹⁶ Article 7&8 of Gas Act 1986 (Exemptions)(No 1) Order 1996. The PGT is allowed by Article 11 of the same order to supply gas to that consumer's premise.

5. Electricity - position before Utilities Act licensing schemes and standard licence conditions

5.1 This section explains what would happen in the electricity industry if an electricity supplier goes into receivership before the Utilities Act licensing schemes and standard licence conditions come into force. Annex 7 summarises the position.

5.2 The main differences compared to the gas industry are:

- ◆ an electricity supply licence cannot be revoked with less than 30 days' notice in any circumstances; and
- ◆ although there are currently no provisions for appointing a SoLR if an electricity supplier's licence is revoked the Authority can take other measures to try to ensure that a failed supplier's customers have continuity of supply. If the Authority has served a notice revoking an electricity supplier's licence and considers that another supplier (or suppliers) can supply the failed supplier's customers without significantly prejudicing the supplies of electricity that it is contracted to make the Authority can direct the other supplier(s) to write to the failed supplier's customers to tell them:
- ◆ that the failed supplier will not be supplying them with electricity after its licence is revoked; and
- ◆ that the customer must enter into a new contract with another supplier from the date the licence is revoked; and
- ◆ the terms on which the supplier is prepared to supply electricity to the customer if requested¹⁷.

The expected amendments to Schedule 6A to the Utilities Act (see paragraph 2.14) mean that Ofgem is likely to seek agreement from appropriate suppliers to also inform the failed supplier's customers that they can be supplied on its

¹⁷ Electricity supply licence "Arrangements for informing customers on revocation of licence"

relevant deemed contract terms from the date that the Notice of Revocation was given.

- 5.3 There is no requirement for electricity suppliers to maintain a bond. Nor is there any provision for a levy on distribution companies.

Credit cover and disconnection

- 5.4 After Independent Energy went into receivership its post-receivership debt was estimated to be increasing at £2m a day. This would have resulted in scaled back payments to generators.
- 5.5 After NETA is introduced if electricity balancing charges are not paid then the losses are smeared across all BSC trading parties. These may then be passed on to customers. This is explained in more detail in Section 9.
- 5.6 If a supplier defaults on DUoS payment (for instance when a receiver is appointed), a distribution business can issue notice of termination of distribution services¹⁸. Customers may then be disconnected. The DUoSA also allows NGC or Elexon to serve notice on a distribution business to de-energise customers for unpaid transmission or settlement charges.

Ofgem's role

- 5.7 Based on previous experience Ofgem would expect to have had contact with the failing company and the likely receiver before the company is actually put into receivership. Even though Ofgem cannot appoint a SoLR, if Notice has been (or is about to be) given to revoke a licence we can direct another electricity supplier(s) to write to the failed supplier's customers. We would therefore be likely to ask for some information from relevant industry parties about the failing supplier's portfolio of sites. This information could then be provided quickly to the electricity suppliers who would be likely to be directed to write to customers if the failing supplier's licence was revoked. They could then indicate whether they could obtain sufficient electricity to supply the customers.

¹⁸ DUoSA clause 18

- 5.8 If Ofgem does not have advance warning that a company is in difficulty any information required will have to be requested after receivership. This might delay giving the direction to other suppliers and, consequently, any decision to revoke a licence.

Supply licence revocation

- 5.9 The Authority can revoke any second tier electricity supplier's licence in certain circumstances. Only the Secretary of State can revoke a PES's licence. In either case, the revocation takes effect 30 days after a notice of revocation has been issued.
- 5.10 For the purposes of this document, the relevant terms for revocation of an electricity supplier's licence are when the supplier either:
- ◆ is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the [Authority/Secretary of State]; or
 - ◆ has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
 - ◆ has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it; or
 - ◆ passes any resolution for winding-up other than a resolution previously approved in writing by the [Authority/Secretary of State]; or
 - ◆ becomes subject to an order by the High Court for winding-up.

Receivership

- 5.11 As soon as a receiver is appointed Ofgem would seek an urgent meeting with him to discuss his intentions and explain Ofgem's role, particularly its ability to revoke a licence.

- 5.12 When a receiver is appointed, the failed supplier's customers will continue to take electricity. Ofgem would seek the receiver's agreement to pay the failed supplier's post-receivership electricity purchase, balancing and distribution costs as well as agree to the requirement to maintain credit cover under the BSC in order to protect customers from the threat of disconnection and to minimise the risks to other industry parties and, potentially, other supplier's customers.
- 5.13 Under the BSC rules if a trading party (for instance a supplier) reaches 90% of its credit cover (Level 2 default), further contract notifications that would increase the level of indebtedness will be refused or rejected. (This is discussed in more detail in Section 9.) If the supplier had not already done so, Ofgem would expect the receiver to stop processing the registration of new sites if possible. There is, however, no statutory or contractual provision for this.

Circumstances where Ofgem would consider revoking a supply licence

- 5.14 Ofgem does not consider that it is acceptable for the receiver to continue to supply electricity without agreeing to pay the appropriate charges. If a receiver agrees to pay the post-receivership charges it is likely that Ofgem would consider that he should be given some time to sell the company's assets.
- 5.15 If such an agreement is not given, Ofgem would have to consider whether the supplier's licence should be revoked even though revocation would not be effective for 30 days. In considering whether to revoke an electricity supply licence in these circumstances Ofgem is likely to consider the following:
- ◆ the likelihood of the receiver being able to sell the company's assets within a reasonable time (a matter of days);
 - ◆ the ongoing exposure to debt of other industry parties;
 - ◆ the possibility that some the failed supplier's customers might be cut off (these are likely to be the supplier's larger customers) by Distribution Companies because of, for example, unpaid and increasing arrears of DUoS charges; and

- ◆ the ability of other suppliers to supply electricity to the failed supplier's former customers.

Direction to other suppliers

5.16 If the Authority has served or is about to serve a notice revoking an electricity supplier's licence and considers that another supplier (or suppliers) can supply the failed supplier's customers without significantly prejudicing the supplies of electricity that it is contracted to make, the Authority can direct the other supplier(s) to write to the failed supplier's customers to tell them:

- ◆ that the failed supplier will not be supplying them with electricity after its licence is revoked; and
- ◆ that the customer must enter into a new contract with another supplier from the date the licence is revoked; and
- ◆ the terms on which the supplier is prepared to supply electricity to the customer if requested¹⁹.

At the moment if the customer does not enter into a contract with either the PES or another supplier he will be deemed to have a contract with the PES when the licence revocation takes effect²⁰. The expected amendments to Schedule 6A to the Utilities Act (see paragraph 2.14) mean that Ofgem is likely to seek agreement from appropriate suppliers to also inform the failed supplier's customers that they can be supplied on its relevant deemed contract terms from the date that the Notice of Revocation was given.

5.17 If the customer enters into a contract with a 2nd tier supplier before the licence revocation takes effect then that contract continues unaffected by the previous supplier's licence revocation.

¹⁹ Electricity supply licence condition "Arrangements for informing customers on revocation of licence"

²⁰ Schedule 6A to Electricity Act 1989 as inserted by Article 8 of Utilities Act (Commencement (No 4) Order 2000

- 5.18 Designated supply contracts (ie those for customers whose annual consumption is less than 12,000 kWh) must contain the provision that they can be terminated immediately by either party at any time after a licence has been revoked²¹.
- 5.19 Customer transfers will be carried out under the two-stage transfer scheme described in Section 7.

²¹ Electricity supply licence condition "Termination of contracts in specified circumstances"

6. Position with Utilities Act Standard Licence Conditions

- 6.1 This section explains what will happen in the gas and electricity industries after the Utilities Act licensing schemes and standard licence conditions come into effect (currently expected to be June 2001). Annex 8 summarises the process.
- 6.2 As part of the consultation on standard licence conditions, Ofgem proposed obligations relating to the appointment of a supplier of last resort in electricity. These proposals mirrored the existing provisions in gas. After making some changes regarding the policy in response to comments received, we then undertook to review the drafting of the conditions. We have now redrafted the conditions in both gas and electricity in order to make the obligations clearer (see Annex 1).
- 6.3 The exposure to risk for unpaid charges remains the same as that previously described for gas and electricity before the Utilities Act if a SoLR is not appointed.

Main differences under the Utilities Act 2000

Electricity supply licence revocation

- 6.4 After the licensing schemes come into force the Authority will be able to revoke any electricity supplier's licence in not less than 24 hours in the case of insolvency.

Electricity Supplier of Last Resort

- 6.5 After the standard licence conditions come into force the Authority will be able to appoint a SoLR for all the electricity customers of a failed supplier on revocation of its licence. The Authority will also be able to direct a supplier to be a SoLR for any customer group even if it does not wish to be one. In doing so the Authority must have regard to the supplier's ability to comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying electricity.

Gas Supplier of Last Resort

- 6.6 After the standard licence conditions come into force the Authority will be able to appoint a SoLR for all gas customers when a failed supplier's licence is revoked. The Authority will be able to direct a supplier(s) to be a SoLR for any customer group even if it does not wish to be one. In doing so the Authority must have regard to the supplier's ability to comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying gas.

Deemed contracts

- 6.7 After the standard licence conditions come into force all gas and electricity suppliers will have to have deemed contract schemes to cover all types of customers including where they are directed to be a SoLR. The schemes can make different charges for different classes of customer and for different areas.

Gas transporter levy

- 6.8 After the standard licence conditions come into force all gas transporters whose licences have in effect Transportation Services Obligations will pay in proportion to the number of premises conveyed by the transporter. (At the moment only PGTs that convey gas to more than 0.25% of all premises have to raise the levy.)

Ofgem's role

Receivership

- 6.9 As before, if a receiver is appointed or an administration order is made or a High Court winding up order is made then Ofgem would be able to consider whether it should revoke a supplier's licence. Ofgem cannot consider whether or not a supplier is "unable to pay its debts", nor will it pre-empt the outcome of a resolution for winding up. Both these issues will remain matters that must be decided by a court before it considers whether it should revoke a licence.
- 6.10 As soon as a receiver is appointed Ofgem would seek an urgent meeting with him to discuss his intentions and explain Ofgem's role, particularly its ability to revoke a licence and appoint a SoLR in both gas and electricity in a minimum of

24 hours. If the supplier had not already done so, Ofgem would expect the receiver to stop processing the registration of new sites if possible. There is, however, no statutory or contractual provision for this.

- 6.11 Ofgem would seek the receiver's agreement to pay the failed supplier's post-receivership gas and electricity costs in order to minimise the risk of customers being disconnected and to limit the exposure to debt of the rest of the industry and, potentially, other suppliers' customers.

Circumstances where Ofgem would consider revoking a supply licence

- 6.12 As before Ofgem will not consider that it is acceptable for the receiver to continue to supply gas and electricity without agreeing to pay the appropriate charges. If a receiver agrees to pay the post-receivership charges it is likely that Ofgem would consider that he should be given some time to sell the company's assets.
- 6.13 If such an agreement is not given, Ofgem would have to consider whether the supplier's licence should be revoked and whether and who to appoint as a SoLR.
- 6.14 In practice, Ofgem would seek agreement from one or more suppliers to be a SoLR for appropriate groups of the failed supplier's customers. However, if none wanted to take on this role we would consider directing a supplier to be a SoLR to protect customers from the threat of disconnection and to reduce other industry parties' exposure to the failed supplier's indebtedness. The process for selecting and appointing a SoLR is explained in detail in Section 7.
- 6.15 In considering whether to revoke a licence and appoint a SoLR Ofgem is likely to consider the balance between the following:
- ◆ the risk to customers of being disconnected. This applies particularly to Industrial and Commercial customers with a large annual consumption. It is logistically easier (because of the smaller number of premises involved) for the relevant transportation and distribution companies to disconnect these customers than, for example, large numbers of domestic premises; and

- ◆ if one or more other suppliers meet Ofgem's criteria for SoLRs (see section 7) and are willing to supply all groups of the failed supplier's customers it is likely that Ofgem would revoke the supplier's licence in order to ensure continuity of supply to the failed supplier's customers and to protect other industry parties from ongoing exposure to debt.

6.16 There is no provision to appoint a replacement shipper if a shipper goes into receivership. Section 8 describes in more detail what happens when a shipper fails.

Supplier of Last Resort

6.17 The revocation and the effective date of appointment of the SoLR will always coincide; this is likely to be at midnight to facilitate customer billing as well as the balancing and settlement processes.

6.18 The process by which customers would be transferred to a SoLR is explained in **Section 7** of this document.

6.19 The Authority will be able to direct a gas or electricity supplier (or suppliers) by notice in writing to supply gas or electricity to another supplier's customers (ie be a SoLR) if it considers that:

- ◆ circumstances have arisen that would allow it to revoke a gas or electricity supplier's licence; and
- ◆ it considers that the other supplier(s) could comply with the direction without significantly prejudicing its ability to supply its own customers and fulfil its contractual obligations for the supply of gas or electricity.

6.20 The direction to be a SoLR takes effect when the failing supplier's licence is revoked and lasts for up to 6 months. The SoLR would supply customers on its deemed contract rate until they signed a contract with the SoLR or entered into a contract with another supplier. After six months the SoLR can continue to supply a customer who has not signed a contract (with the SoLR or another supplier) on its normal deemed contract rate.

Obligations on the gas and electricity SoLR

- 6.21 If appointed a SoLR the supplier must use its reasonable endeavours to secure a meter reading within 14 days from the failed supplier's former customers except in certain circumstances²². Ofgem considers that the reading should be obtained from the customers wherever it is possible to do so.
- 6.22 Within 2 working days of being appointed, the SoLR must send to Ofgem a draft written notice that it intends to send to the failed supplier's customers. (In practice, wherever possible, Ofgem would ask potential SoLRs to provide draft copies of this notice as part of the selection process in advance of their appointment so that it could be sent to customers as soon as possible.)
- 6.23 The SoLR must write to each of the failed supplier's customers as soon as reasonably practical after Ofgem has approved the draft notice to explain:
- ◆ that the failed supplier is no longer supplying the customer from the date the direction to be a SoLR took effect;
 - ◆ that it is supplying the customer from the date the direction took effect; and
 - ◆ the charges payable (which will probably be deemed contract charges) or an explanation of how the charges are determined and other elements of the service²³.
- 6.24 The SoLR must (as far as reasonably practical) give the Authority notice of any increase in its charges at least 5 days before the increase comes into effect²⁴.
- 6.25 If the Authority decides that the charges proposed would cause hardship to domestic customers it can direct the SoLR not to increase them above a certain level in order to avoid or mitigate the hardship. But the Authority cannot make the SoLR charge less than its normal deemed contract price for comparable premises. Ofgem will consider further what the hardship provision might involve.

²² Standard Licence Condition 29(10)

²³ Standard Licence Condition 29(7) &(8)

²⁴ Standard Licence Condition 29(9)

- 6.26 In certain circumstances agreed by the Authority the SoLR can make a claim for its otherwise unrecoverable costs against the failed supplier's bond or other security cover. If the bond is insufficient to cover the claim the SoLR may be able to make a claim to the gas transporter or electricity distribution company under the arrangements for a levy for the under recovery²⁵ (see Section 10).
- 6.27 Although the bond has to be maintained by domestic suppliers only, it may be paid to a SoLR of non-domestic customers in certain circumstances.
- 6.28 Gas and electricity contracts must specify that they will terminate when the direction to be a SoLR comes into effect²⁶.

²⁵ PGT/Supplier SLCs

²⁶ SLC 29B

7. Selection and appointment of a Supplier of Last Resort

- 7.1 The circumstances that can lead to licence revocation and the appointment of a SoLR have been explained in the previous section. This section explains the procedure and criteria that Ofgem will use in deciding which supplier(s) to select to be a SoLR. The process applies in gas now for those customers for whom a SoLR can be appointed and will apply in electricity after the Utilities Act licensing schemes and standard licence conditions come into force. Annex 9 gives an overview of the processes involved.
- 7.2 If an electricity supplier fails before the Utilities Act standard licence conditions come into force Ofgem will take into account the proposed amendments to Schedule 6A to the Utilities Act (see paragraph 2.14). This means that Ofgem is likely to seek agreement from appropriate suppliers to tell the failed supplier's customers that they can be supplied on its relevant deemed contract terms from the date that the Notice of Revocation was given.

Gas – customer groups

- 7.3 Transco can provide information about a gas supplier's portfolio by:
- ◆ Local Distribution Zone (LDZ); and
 - ◆ Domestic/Industrial and commercial (based on an annual consumption level of below and above 73,200 kWh).
- 7.4 Ofgem would ask potential SoLRs to indicate which group or groups of customers and areas they wanted to supply. Under the Utilities Act the customer definition that uses an annual consumption level is no longer used; the definition of a customer will be based on the type of usage at a premise. Currently information from Transco can only be provided using the 73,200 kWh definition (and not as Domestic or Industrial and Commercial premises). This has implications for which supplier could be appointed as a SoLR. With the commencement of the new licence conditions under the Utilities Act, an Industrial and Commercial premise may have an annual consumption of less than 73,200kWh or a domestic premise may have a consumption higher than 73,200 kWh. If a supplier that only had an Industrial and Commercial supply

licence was appointed as a SoLR (using the Transco information) it could be in breach of its licence (because it could be supplying domestic customers with high consumption levels). Ofgem will therefore have to consider the type of licence that the potential SoLR has in considering whether it could be appointed.

- 7.5 Pre-payment customers cannot be identified separately at this stage although Ofgem will take into account the deemed contract rate for PPM customers when considering whether to appoint a supplier as a SoLR.
- 7.6 Transco's bulk transfer system for transferring the failed supplier's customers to the SoLR is described later in this section.

Electricity – customer groups

- 7.7 Registration system constraints mean that the smallest area for which a SoLR will be able to be appointed is a GSP group. Within each GSP group the SoLR will have to take on all customers. There are likely to be three main customer groups in each GSP identified by their profile/measurement class:

- ◆ domestic (ie profile classes 1 and 2);
- ◆ Industrial and Commercial (ie profile classes 3 - 8); and
- ◆ Half Hourly (ie profile class 00).

- 7.8 This means that in selecting a SoLR Ofgem will have to consider its ability to supply all groups of customers.

- 7.9 Pre-payment customers cannot be identified separately at this stage although Ofgem will take into account the deemed contract rate for PPM customers when considering whether to appoint a supplier as a SoLR.

Ofgem's role

- 7.10 Ofgem would always try to seek a supplier's consent before directing it to be a SoLR for any group of customers. But if no suitable supplier consented we may have to consider directing a supplier against its will in order to ensure that customers are not disconnected, to cap the industry's indebtedness and to reduce the risk of those debts being passed on to customers. In doing so the

Authority would also have regard to the supplier's ability to comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying electricity.

- 7.11 Ofgem has a list of potential gas SoLRs that it updates regularly. This will be expanded to include electricity suppliers when the Utilities Act standard licence conditions come into force.

Information about the failed supplier's portfolio

- 7.12 If Ofgem has advance warning that a supplier is likely to go into receivership (as it had with both Saturn Gas and Independent Energy), Ofgem is likely to ask for information in advance of receivership. It will ask for information about the failing supplier's customer and registration information from:

- ◆ the failing gas or electricity supplier;
- ◆ Transco (in the case of a failing gas supplier); and
- ◆ Distribution Companies (in the case of a failing electricity supplier).

Licensees are obliged to provide the information requested. Ofgem would expect the information to be provided quickly. Transco has indicated that the information we would need from it (see Annex 10) could be produced in about 24 hours depending on the number of sites affected. Views are invited on how long it would take the Distribution Companies to produce this information.

- 7.13 If Ofgem does not have advance warning that a receiver may be appointed it is likely to serve the information requests soon after the receiver is appointed.
- 7.14 The service of an information request does not indicate that the failing supplier's licence is about to be revoked. Ofgem regards a request for information as a prudent measure to ensure that as much information as possible is available to potential SoLRs in the event that a licence is revoked.
- 7.15 Once it has the necessary information (before or after receivership) Ofgem will consider what information can properly be provided to the suppliers that have

indicated that they would like to be a SoLR. We expect that potential SoLRs are likely to be given information about:

- ◆ customer groups and numbers for each LDZ or GSP; and
- ◆ the volume of gas or electricity supplied to each group.

Giving information about the failing supplier's portfolio of sites to potential SoLRs will enable them to tell Ofgem whether they wish to continue to be considered. If they confirm that they do wish to proceed they will be asked to provide the additional information in paragraph 7.19 at the same time.

- 7.16 It will be in potential SoLR's own interests to respond quickly, but in any event Ofgem will provide a deadline for responses which we expect will allow suppliers about 4-6 hours to provide all the information needed. It is unlikely that suppliers that do not provide the required information (or provide incomplete information) by the specified deadline will be considered as SoLRs.
- 7.17 If no suitable suppliers wish to continue to be considered as a SoLR Ofgem will consider using its powers to direct a supplier without its consent. In doing so the Authority will consider the supplier's ability to comply with the direction without significantly prejudicing its ability to continue to supply its customers and to fulfil its existing contractual obligations for supplying electricity. This is likely to delay the appointment of a SoLR since it is likely that Ofgem would have to serve Information Requests on a number of suppliers in order to obtain the information it needed on which to base a decision.
- 7.18 At best, Ofgem considers that it would have all the information it needed to revoke a failing supplier's licence in these circumstances and appoint a SoLR in about 48 hours. Otherwise it would take 72 hours or longer.

Information from potential SoLRs

- 7.19 Suppliers that want to continue to be considered as SoLRs will be asked to provide information about their :

- ◆ ability to continue to provide gas and/or electricity to their own customers while also supplying those groups of the failed supplier's customers for which they want to be a SoLR;
- ◆ ability to operate industry processes;
- ◆ plans to deal with the failed supplier's customers;
- ◆ whether they might wish to use the bond or levy arrangements; and
- ◆ deemed contract prices for the relevant customer groups.

Ability to provide gas and electricity

7.20 In appointing a SoLR the Authority has to consider whether the SoLR could comply with the direction without significantly prejudicing its ability to supply its own customers and fulfil its contractual obligations for the supply of gas and electricity.

7.21 Ofgem will therefore ask potential SoLRs to say how they will continue to provide gas and/or electricity to their own customers while also supplying those groups of the failed supplier's customers for which they want to be a SoLR.

Industry processes

7.22 Ofgem wants to keep to a minimum the disruption to the failed supplier's customers. We will therefore ask for information to allow us to judge how a SoLR will operate the necessary industry processes and agreements to transfer customers to them.

7.23 Potential SoLRs will also need to provide information about how they will manage the change of supplier process so that customers are transferred as quickly as possible from the failed supplier to the SoLR. This will include their arrangements for obtaining a meter reading within 14 days.

7.24 In gas the information needed is likely to include confirmation of the supplier's ability (and that of its shipper) to use Transco's bulk transfer process. A potential SoLR will also need to explain how its shipper will co-ordinate a smooth transfer process with the failed supplier's shipper.

- 7.25 In electricity Elexon and MRA testing must be complete for a supplier in respect of all customer types. Potential SoLRs will need to explain how they will deal with the failed supplier's agents. (Ofgem recognises that there is a risk that upon appointment the SoLR will have to use the failed supplier's agents that they either have no contract with or have not qualified with that agent as a valid Supplier Hub. Under the BSC rules, a derogation may be sought at the time of appointment as SoLR in order to overcome the issue of operating as an invalid Supplier Hub.)
- 7.26 In addition, potential SoLRs will be asked for information about how they (or their gas shipper) will maintain adequate current and increased credit cover under existing industry agreements (eg DUoS, TUoS, transportation charges).
- 7.27 Transco can prevent a shipper that has reached 85% of its credit cover limit from confirming further sites. In electricity the BSC provides for a derogation from credit cover requirements for up to two weeks after the SoLR is appointed so that it is not immediately in breach of the Code.

Customers

- 7.28 Ofgem considers that the provision of information to the failed supplier's customers will be a very important part of the SoLR's role.
- 7.29 Potential SoLRs are therefore likely to be asked how they will:
- ◆ tell customers about what has happened;
 - ◆ deal with written and telephone enquiries from the failed supplier's customers;
 - ◆ ensure that each new customer receives a timely and accurate bill;
 - ◆ ensure that arrangements are in place to enable customers to move onto a contract with the SoLR or to move from the SoLR to a contract with the supplier of their choice.

Bond/levy

- 7.30 The role of SoLR represents a significant logistical challenge to a supplier. It is likely to incur increased administration costs and will have to implement additional energy purchasing arrangements. These will have to be activated and managed within a very short period of time. But there are potentially valuable commercial benefits to a SoLR. It will not have the normal acquisition costs (for example paying commission to doorstep sales agents) and will have the opportunity to convert the customers it has acquired as a SoLR to normal contracts.
- 7.31 It is likely therefore that a number of suppliers will volunteer to be a SoLR. Ofgem does not consider that it would be appropriate, where a supplier is volunteering for the role of SoLR, for the supplier to base its proposals for its deemed contract charges on the anticipation that there will be a subsidy from the failed suppliers bond or the levy arrangements.
- 7.32 Ofgem consider that a volunteer SoLR should set its charges for customers at a level that reflects the supplier's fair assessment of the expected costs involved in supplying those customers. It would not be appropriate for the customers of a failed supplier to be charged less than the actual cost of supplying them with the difference being funded by all other customers through the levy arrangements on distribution and transportation.
- 7.33 Therefore Ofgem will, in the first instance, seek to appoint a SoLR that has agreed in advance not to make a claim on the failed supplier's bond or the distributor/transporter for unrecovered costs. On this basis, Ofgem will be able to compare suppliers' proposed tariffs for acting as a SoLR on an equal basis. The agreement of a supplier not to make a claim would be based on the assumption that Ofgem does not require the SoLR to reduce its charges to domestic customers where Ofgem considers that customers would experience hardship. Where Ofgem does require such a reduction in proposed charges²⁷, these reductions in charges would be funded from the failed suppliers bond. If this proved to be insufficient, the remainder would be funded from the levy arrangements.

²⁷ new SC29(14)

Terms of the deemed contracts by customer grouping

- 7.34 If a supplier provides information on the above criteria that indicate that it would be an acceptable SoLR, Ofgem will then consider the deemed contract terms for each potential SoLR.
- 7.35 Once appointed any SoLR will be able to charge the customers of the failed supplier on the basis of its deemed contract rate. This will cover the period from appointment until customers have agreed a replacement contract rate with the SoLR or another supplier of their choice, or the 6-month period of SoLR appointment expires.
- 7.36 Ofgem does not consider that the failed supplier's customers (whether domestic or Industrial and Commercial) should be protected from all price increases when a SoLR is appointed. We will consider the SoLR's deemed contract prices in terms of what is best overall for the customer groups involved. Potential SoLRs will therefore be asked for details of their deemed contract prices for all relevant customer groups.
- 7.37 Ofgem will consider whether the charging mechanism is relatively simple to understand. For domestic customers we would expect tariffs to be based on a pence per kWh charge with or without a standing charge. Ofgem will consider which supplier or suppliers offer the best deal for the various groups of the failed supplier's customers.
- 7.38 In electricity SoLRs can only be appointed by GSP group. However within each GSP group there will be a variety of customer groups. In gas, the failed supplier's portfolio can be divided by LDZ and then by domestic and Industrial and Commercial customers (based on a definition of an annual consumption of 73,200 kWh).
- 7.39 When deciding which SoLRs to appoint Ofgem is therefore likely to consider:
- ◆ the relative balance of deemed contract prices for each group of customers at different consumption levels; and
 - ◆ the number of customers in each group.

- 7.40 In both gas and electricity we are also likely to consider the SoLR's deemed contract rate for PPM customers although these will not necessarily be able to be identified separately at this stage.

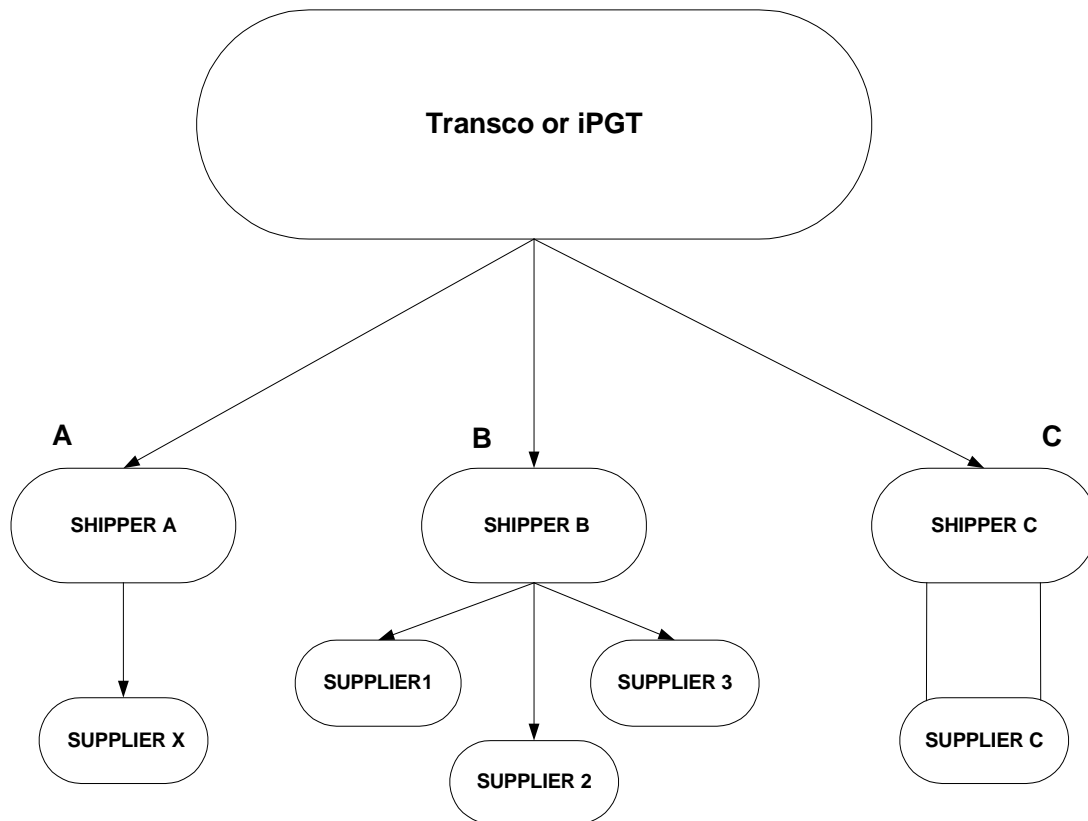
Customer transfer to the SoLR

- 7.41 Transco has a defined process – 'The Bulk Transfer Process' -, which can support the appointment of a SoLR by allowing the transfer of a portfolio of supply points to another shipper, without the need for individual sites to be nominated/confirmed. The process also allows for the portfolio of the failed supplier to be divided amongst a number of SoLR's because it can be split by LDZ and by I&C/domestic customers (using the 73,200 kWh definition). However the process takes 7 working days to complete the registration of the supply points in the name of the SoLR.
- 7.42 Transco has told Ofgem that during this period there are currently no facilities for a SoLR to input gas and therefore balance its portfolio. If the failed supplier's shipper remains in place it will be responsible for the transportation and energy balancing charges until the sites are transferred. If the failed supplier's shipper had also gone into receivership the rest of the shipping community would be exposed to the imbalance charges until the sites had been transferred.
- 7.43 Ofgem proposes that an expert group of Transco, shippers and Ofgem should be established to identify solutions to this issue.
- 7.44 In electricity, the BSC permits a two stage transfer to the SoLR. The transfer of financial responsibility takes place when the appointment of the SoLR becomes effective; the registration of supply points can be done within three months of the effective date.

8. Gas shippers

- 8.1 This section explains what happens when gas shipper becomes insolvent. The position is the same both before and after the Utilities Act licensing schemes and standard licence conditions come into effect.
- 8.2 There is no provision in either the current gas legislation or under the Utilities Act standard licence conditions for the Authority to appoint a “Shipper of Last Resort”.
- 8.3 A supplier must give a deed of undertaking to its relevant transporter (normally Transco but other gas transporters should be given similar undertakings) as soon as reasonably practical within one month of being granted a licence²⁸. The deed’s terms state that if the arrangements between the supplier’s shipper and the transporter end and no arrangements with another shipper are put in place then (after notice from the Transporter) the supplier will be responsible to the transporter for the charges that the shipper would otherwise have paid. This includes transportation charges and charges for gas.
- 8.4 The gas supplier must use its best endeavours to get another shipper in place within 35 days.
- 8.5 There are three general structures under which a shipper ships gas for suppliers:

²⁸ Current Licence – Standard Condition 37; Utilities Act Standard Licence Condition 22B – see Annex 11



Structure A

8.6 This assumes that:

- ◆ Shipper A and Supplier X are separate legal entities;
- ◆ that Shipper A only ships for Supplier X; and
- ◆ Shipper A goes into receivership but Supplier X does not go into receivership at the same time.

8.7 In this case Supplier X would be liable under its undertakings to its transporter to pay all the charges for transportation and gas until it entered into a contract with another shipper.

8.8 When Supplier X has a new shipper, supply points are transferred to that shipper using Transco's bulk transfer process (see Section 7). Under current arrangements financial liability remains with the failed shipper until the sites have been registered to the new shipper.

Structure B

- 8.9 This assumes that:
- ◆ Shipper B ships gas for several different suppliers and goes into receivership; and
 - ◆ Shipper B and its suppliers are separate legal entities.
- 8.10 In this case each supplier would be liable under its undertakings to its transporter to pay the relevant proportion of Shipper B's charges for transportation and gas until it entered into a contract with another shipper. Each supplier could enter into a contract with a different new shipper.
- 8.11 In this case, Transco cannot operate its bulk transfer process and the normal confirmation process has to be used.

Structure C

- 8.12 This assumes that:
- ◆ Shipper C ships gas for Supplier C;
 - ◆ Shipper C and Supplier C are the same legal entity; and
 - ◆ Shipper C and Supplier C both go into receivership.
- 8.13 In this case, the Authority can appoint a SoLR, subject to the circumstances described previously. An incoming SoLR would be expected to have shipping arrangements in place that were adequate to deal with the additional premises under the SoLR direction.

Obligations on shippers

- 8.14 Gas shippers must comply with directions to facilitate:
- ◆ the commencement of the supply of gas by the SoLR; or

- ◆ the making or arrangements by the SoLR's shipper for conveying gas to the premises²⁹.

General

- 8.15 There are no provisions for requiring credit cover to be given to the gas transporter within the current deed of undertaking provided by suppliers.
- 8.16 Although suppliers must use their best endeavours to find a shipper within 35 days the undertakings are not time-limited.
- 8.17 Undertakings can be revised by the Authority in certain circumstances.

²⁹ Shipper Standard Licence Condition 11 (current); 12 (Utilities Act)

9. Credit cover

- 9.1 This section explains some of the credit cover requirements for suppliers and shippers in gas and electricity. The position for shippers is considered only in relation to Transco as the relevant transporter; it does not go into detail about the position of IPGTs.
- 9.2 The position for electricity balancing only covers England and Wales. In Scotland the settlement body, SESL, provides data to enable the energy traded between parties to be settled. Financial settlement is carried out via bilateral contracts. Therefore, SESL can only facilitate the SoLR Financial Transfer requirements in Scotland by providing details to the SoLR of the energy used by the customers of the failed supplier. Financial settlement must still be carried out via contracts put in place by the SoLR.

Gas

- 9.3 Diagrams at Annex 12 and Annex 13 give an overview of the credit cover arrangements for gas transportation and balancing charges.

Shippers' transportation charges

- 9.4 Gas shippers are required by the Network Code (NWC) to provide Transco with 63 days credit cover for their transportation charges. Transco and the shipper agree a Credit Code Limit based on 85% of the shipper's peak trading requirement.
- 9.5 If the shipper exceeds 70% of its Credit Code Limit, Transco gives a formal notification as a warning to the shipper. The shipper should then take appropriate measures to reduce its credit utilisation.
- 9.6 If the shipper exceeds 85% of its Credit Code Limit Transco can:
- ◆ give a formal notification as a warning to the shipper;
 - ◆ ask the shipper to increase its credit limit;
 - ◆ apply sanctions by rejecting or refusing any or all of the following:

- an application for system capacity or increased capacity at any system point;
- a system capacity trade where the shipper is the transferee; and
- nominations or confirmations of supply points.

This means that the shipper cannot register any new customers or increase the amount of gas it puts into the system until it has reduced its level of indebtedness.

- 9.7 If the shipper does not take appropriate action to reduce its level of indebtedness Transco can issue a Notice of Default to the shipper. It can then call upon any security provided by the shipper. If the shipper does not take appropriate action after the Notice has been issued, Transco can terminate the shipper's membership of the Network Code (NWC).

Shippers' energy balancing charges

- 9.8 Shippers are also required to provide separate credit cover for its Energy Balancing Indebtedness. If a shipper reaches 85% of its secured limit Transco issues a Cash Call Notice to the shipper to reduce its indebtedness. If the Cash Call is not paid by the following business day Transco issues a Failure to Pay Cash Call Notice to the shipper. This Notice requires the shipper to make a payment to reduce its indebtedness within three business days. If this is not done Transco (on instruction from the industry's Energy Balancing Credit Committee (EBCC)) can terminate the shipper's membership of the NWC.

Effect of Network Code termination

- 9.9 Termination from the NWC does not, of itself, necessarily mean that Ofgem could take rapid action against a shipper. Shippers' standard licence conditions require them to ship on NWC terms or on terms that comply with the licence condition "Conveyance of gas otherwise than on network code or similar terms". Ofgem would consider whether it was appropriate for it to take enforcement action against the shipper if it appeared that it might have breached a licence condition. Enforcement action can lead to licence revocation but usually only

after a considerable period of time. In general, Ofgem's approach is to work with licensees to remedy any breach, rather than revoke a licence.

- 9.10 If Transco terminated the shipper's membership of the NWC this would mean that the shipper could no longer put gas into the system. This would immediately lead to an imbalance and charges would be smeared across other shippers who could pass them on to suppliers and, potentially, to other customers. If Ofgem is not in a position to revoke the licence this situation would continue until the shipper's supplier found a new shipper. The effect of termination from the NWC is likely, in many cases, to lead to a failure of the shipper's business.

Shipper receivership

- 9.11 There are no provisions for the appointment of a "Shipper of Last Resort". If a shipper goes into receivership, Transco (and iPGTs) must rely on the undertakings given by suppliers (see Section 8 for further details and explanation).

Electricity

Distribution Use of System Agreements

- 9.12 Suppliers are required to sign Distribution Use of System Agreements (DUoSA) with each Distribution Company that they use. Typically these agreements require credit cover to be provided by the supplier to the Distribution Company for 60 days' Use of System Charges.
- 9.13 A Distribution Company can serve a notice of termination of the DUoSA if relevant charges are not paid. Once a termination notice has been served, the Distribution Company can de-energise (cut off) the supplier's customers.
- 9.14 Unlike Transco, distribution companies have no powers to prevent suppliers from registering more sites if they fail to maintain adequate credit cover.
- 9.15 When an electricity supplier goes into receivership, if the receiver does not agree to pay its post-receivership DUoS charges the Distribution Companies may therefore be able to disconnect customers.

- 9.16 DUoS agreements do not currently allow Distribution Companies to charge a SoLR until a site is registered to it. Nevertheless, distribution businesses could propose a variation to the agreement to allow them to recover the DUoS amount from SoLR from the date its appointment takes effect.

New Electricity Trading Arrangements (NETA)

- 9.17 Under the BSC, the settlement of imbalance positions³⁰ and payments to and from Trading Parties for bids and offers accepted in the balancing mechanism, and other trading charges that relate to a settlement period on any given day take place on average 29 calendar days afterwards. At any time, therefore, trading parties may have debts (or be due payments) under the BSC in respect of settlement periods over the previous 29 days. In the event that a trading party defaults, the debts, net of any due payments (the indebtedness) are covered in most circumstances by collateral deposited by that Trading Party with the Funds Administration Agent (the FAA).
- 9.18 The BSC does not require a Trading Party to provide a particular level of credit cover. Instead each BSC party is free to decide how much collateral to provide. The level provided will affect the trading positions that a Trading Party can take. If the estimate of a Trading Party's indebtedness indicates that the party will always be owed (rather than owe) payments under the BSC then the Trading Party does not need to provide any credit cover and can never go into credit default (unless to goes into receivership).
- 9.19 If a BSC party reaches 80% of its credit cover (Level 1 credit default) it will be asked to increase its credit cover. If it does not do so a credit warning will be issued. If energy indebtedness reaches 90% of a party's credit cover (Level 2 credit default), further contract notifications that would increase the level of indebtedness will be refused or rejected. This will affect counter-parties to the trading party. For instance if a supplier has a bilateral contract with a generator and the generator reaches Level 2 credit default, the BSC would reject the generator's notification (thereby reducing its potential indebtedness). But that action would increase the supplier's potential indebtedness because it would

³⁰ Imbalances are the major payment flow

then have to buy the electricity it needed at the System Buy Price through the imbalance mechanism.

9.20 If a supplier goes into receivership it is automatically in default of the BSC. However there is no specific trigger within the BSC that cancels all the supplier's contracts. Each individual contract notification may specify the circumstances in which it can be revoked.

9.21 On receivership the BSC Panel may:

- ◆ suspend Trading Party rights;
- ◆ require de-energisation (with agreement from Ofgem);
- ◆ expel the Trading Party from the BSC; and
- ◆ notify the FAA to treat the party as a Defaulting Party (so that any amounts due to it are credited to its reserve account to be set against the debt).

9.22 If the receiver will not agree to pay the trading charges incurred by the failing supplier the resulting bad debt will be recovered from other Trading Parties on a pro-rata basis based on parties' previous BSC costs.

10. Bond and levy arrangements

- 10.1 This section explains the current arrangements for a gas SoLR to make a claim against a failed supplier's bond. It also covers the arrangements in gas and electricity after the Utilities Act standard licence conditions come into force.
- 10.2 The obligation to be a SoLR represents a potential financial risk to a supplier. This is mitigated to some extent because the Authority has to take into account the supplier's ability to continue to supply its own customers and fulfil its contractual obligations for the supply of gas. Nevertheless it could present a financial risk in respect of the costs of fulfilling the SoLR role. In addition to some administrative costs, SoLRs may also be exposed to the prevailing gas and/or electricity spot prices and bad debt by the failed supplier's customers.

Current arrangements

- 10.3 Domestic gas suppliers are required by their licences to take out and maintain a bond or other instrument (the bond) to provide adequate security cover. The bond can be claimed against by a SoLR in certain circumstances. The Authority sets the required amount of security, but there is a maximum amount – a cap – determined in the licence condition (a maximum of £4 per customer and 0.0511821p per kWh).
- 10.4 The purpose of the requirement to maintain security cover for a supplier's domestic customers is recognition that the licence conditions allow for an assessment of hardship in respect of domestic customers being supplied by a SoLR. Where Ofgem considers that the charges for domestic customers would result in hardship, it can require the SoLR to reduce its proposed SoLR deemed contract charges for these customers, but not below that of its standard deemed contract charges which it would normally apply to comparable premises. Hardship is not defined but Ofgem will consider further what the hardship provision might involve.
- 10.5 In addition a SoLR, in carrying out that role, may incur costs that exceed its income (ie otherwise unrecoverable costs). In such a case, the SoLR may make a claim against the failed supplier's bond.

- 10.6 If the value of the bond is not sufficient to cover any or all of the otherwise unrecoverable costs of the SoLR, then it can also make a claim for its remaining costs from Public Gas Transporters (PGTs) (in effect this is likely to be Transco and perhaps one or two larger independent PGTs (iPGTs) as the licence conditions rules out claims to PGTs who supply less than 0.25% of all domestic premises). PGTs are in turn permitted by their licence conditions to recover the costs of making a levy payment to a SoLR from their transportation charges.
- 10.7 Where a supplier consents to act as SoLR for customers with an annual consumption between 73,200kWh and 2,196,000 kWh (non-domestic customers) there is no provision for that supplier to make a claim either against the failed supplier's bond or the levy from the transporter for any costs it incurs as the supplier will have consented to act as a SoLR, presumably for sound commercial reasons.

New arrangements

- 10.8 Similar principles are used in the new standard licence conditions for both gas and electricity. The key differences are:
- ◆ the Authority is able to direct a supplier to be a SoLR for all customer groups;
 - ◆ the requirement to maintain a bond as security cover is restricted to supply to domestic customers;
 - ◆ a SoLR is permitted to make a claim for unrecovered costs in respect of all customers; and
 - ◆ where a supplier consents before its appointment as a SoLR there is provision in its licence that the claim against a bond or levy will not be made³¹. This allows the Authority and potential SoLRs to agree not to make use of the bond or levy where this makes commercial sense.

³¹ new SLC 29A

Annex 1 – Redrafted SoLR licence conditions

Gas

Condition 28. Deemed Contracts

1. This condition sets out the obligations placed on the licensee in relation to its deemed contracts.
2. The licensee shall use its reasonable endeavours to ensure the terms of its deemed contracts are not unduly onerous.
3. In the case of any class of domestic customers or of any class of non-domestic customers, the terms of a deemed contract shall be taken to be unduly onerous if the revenue derived from supplying gas to customers of the class in question on those terms -
 - (a) significantly exceeds the costs of supply of gas; and
 - (b) exceeds such costs of supply by significantly more than the licensee's revenue exceeds costs of supply in the case of the generality of its domestic customers or, as the case may be, in the case of the generality of its non-domestic customers (excluding in each case customers supplied in accordance with standard condition 29 (Supplier of Last Resort)).
4. For the purposes of paragraph 3 "costs of supply" shall not include any costs attributable to any promotional, marketing or advertising activities of the licensee.
5. The licensee shall, as soon as is reasonably practicable after determining or revising (in whole or in part) any of the terms of its deemed contracts, send a copy to the Authority.
6. At the request of any person, the licensee shall supply that person with a copy of the terms of its deemed contracts.

7. The licensee shall ensure that the terms of its deemed contracts are such that, in their application to gas supplied under a last resort supply direction, the amount of any charges for gas so supplied complies with the provisions of paragraphs 13, 14 and 16 of standard condition 29 (Supplier of Last Resort).
8. Where the licensee supplies a customer with gas under a deemed contract, it shall use its reasonable endeavours to furnish the customer with -
 - (a) details of the principal terms of that deemed contract;
 - (b) written notice that contracts on terms other than deemed contracts may be available and as to how information can be obtained as to any such terms; and
 - (c) where the customer is a domestic customer, an accurate summary of the principal terms of domestic supply contracts available.
9. The licensee shall ensure the terms of its deemed contracts -
 - (a) include such term as is mentioned in paragraph 4 of standard condition 14 (Security and Emergency Arrangements);
 - (b) where the customer is a non-domestic customer, include such term as is mentioned in paragraph 3 of standard condition 14 (Security and Emergency Arrangements);
 - (c) make the like provision as is required in the case of a contract by paragraph 1 of standard condition 29B (Provision for Termination upon a Direction);
 - (d) where the customer is a domestic customer, make the like provision as is required in the case of a contract by standard condition 45 (Security Deposits);
 - (e) where the customer is a domestic customer, make the like provision as is required in the case of a contract by paragraph 1 of standard condition 47 (Termination of Contracts in Specified Circumstances); and

- (f) provide that where the customer intends to be supplied with gas at the premises under a contract with the licensee or another gas supplier, the deemed contract does not terminate but continues to have effect until the time when the licensee or, as the case may be, the other gas supplier begins to supply gas under a contract, at which time the deemed contract ceases to have effect.
10. Subject to paragraph 17 of standard condition 29 (Supplier of Last Resort), nothing in paragraph 9 shall be construed as preventing the inclusion of terms providing for the termination of a deemed contract which are additional to and do not derogate from those required by sub-paragraphs (c), (e) and (f) of paragraph 9.
11. In determining the number of kilowatt hours of gas which are to be treated as supplied or taken under a deemed contract, the licensee shall act on a reasonable basis, taking into account available gas consumption data for the premises in question and other relevant factors.
12. Paragraphs 2 to 4 and 8(b) shall not apply in relation to customers supplied with gas in accordance with standard condition 29 (Supplier of Last Resort).
13. Where, in preparation for a restriction or revocation of its licence, the licensee is making arrangements for securing continuity of supply for its customers supplied with gas in pursuance of deemed contracts, it shall, except in so far as the Authority otherwise consents –
- (a) in making those arrangements, reasonably endeavour to select one or more new suppliers which offer or will offer comparable services at the lowest available cost; and
 - (b) use its reasonable endeavours to give its customers likely to be affected reasonable notice of those arrangements.

Condition 29. Supplier of Last Resort

1. Where this paragraph applies, the Authority may, by notice, direct the licensee to supply gas in accordance with this condition ("the last resort supply direction").
2. Paragraph 1 applies where it appears to the Authority that -
 - (a) circumstances have arisen which would entitle the Authority to revoke the supply licence of a gas supplier other than the licensee ("the other supplier"); and
 - (b) the licensee could comply with the last resort supply direction without significantly prejudicing its ability -
 - (i) to continue to supply its customers; and
 - (ii) to fulfil its contractual obligations for the supply of gas.
3. The last resort supply direction shall take effect from the date of revocation of the other supplier's licence and shall continue for such period (being no longer than 6 months) specified in the direction.
4. The licensee shall supply gas to customers of the other supplier at such premises as are specified or described in the last resort supply direction.
5. The licensee shall not be required under this condition to supply gas to a particular customer at particular premises which it would not be required to supply by virtue of paragraph 3 of standard condition 32 (Duty to Supply Domestic Customers).
6. Within 2 working days of the last resort supply direction taking effect, the licensee shall send to the Authority, for its approval, a draft of the notice the licensee proposes to send to each of the premises specified or described in the direction.
7. As soon as reasonably practicable after the Authority has approved the form and content, except as to the level of charges payable for supply of electricity under the

direction or an explanation of how the charges are determined, of the notice sent to it pursuant to paragraph 6, the licensee shall send a copy of the notice to each of the premises specified or described in the last resort supply direction.

8. The notice to be sent to all premises specified or described in the last resort supply direction, shall -
 - (a) inform the customer in question that, notwithstanding any contract or deemed contract the customer may have had with the other supplier, the customer is no longer supplied by that supplier and has not been supplied by the other supplier since the date on which the direction took effect;
 - (b) inform the customer in question that the licensee became the supplier of gas to the customer from the date the direction took effect; and
 - (c) set out the charges payable for the supply of gas under the direction or an explanation of how the charges are determined.
9. Unless the Authority otherwise consents, the licensee shall, so far as is reasonably practicable, give the Authority at least 5 days' notice of any increase in charges for the supply of gas to premises in accordance with the last resort supply direction.
10. The licensee shall use all reasonable endeavours to secure a meter reading at each of the premises specified or described in the last resort supply direction within 14 days of the direction taking effect.
11. The licensee is not obliged to secure a meter reading where-
 - (a) the Authority accepts that it would not be feasible or economic to do so; or
 - (b) to do so would necessitate the entering of particular premises without the consent of the occupier or the seeking of entry on more than one occasion.
12. The licensee may charge for the supply of gas to the premises specified or described in the last resort supply direction at a rate which is no greater than -

(a) such charges as may be expected, in aggregate, approximately to equal the licensee's reasonable costs of supply (including such costs attributable to the purchase of gas at short notice) together with a reasonable profit; or

(b) the charges set out in the notice given by the Authority under paragraph 13.

13. Where, within 5 days of receipt by the Authority of the notice given by the licensee under paragraph 9, the Authority determines that charges proposed by the licensee would be likely to cause hardship to domestic customers, it may direct by notice in writing to the licensee that licensee's charges shall not exceed those which it specifies in the notice as being likely to avoid or mitigate such hardship.

14. The licensee shall not be required by paragraph 12(b) to make charges which are less than those which would be made under the licensee's deemed contract for comparable premises with similar metering arrangements supplied with gas otherwise than in accordance with a last resort supply direction.

15. Unless the Authority otherwise consents, the licensee shall ensure that its terms and conditions (including charges) for a supply pursuant to a last resort supply direction do not show any undue preference or undue discrimination as between any persons or classes of persons.

16. Notwithstanding anything in standard condition 28 (Deemed Contracts), the terms of the licensee's deemed contract scheme for the supply of gas to premises in accordance with a last resort supply direction may provide that, until the direction ceases to have effect, the customer may not terminate his deemed contract except:

(a) with the consent of the licensee;

(b) on taking a supply at the premises under a contract with the licensee or another gas supplier; or

(c) on ceasing to take gas at the premises.

17. Where the licensee enters into any new contract for the purchase of gas in order to comply with its obligations under this condition, it shall use reasonable endeavours to make the purchase as economically as possible in all the circumstances.

Condition 29A. Supplier of Last Resort Supply Payments

1. This condition sets out how, and how much, the licensee may recover in respect of any losses it incurs in complying with a last resort supply direction given under standard condition 29 (Supplier of Last Resort).
2. Except in relation to a claim made following a direction by the Authority pursuant to paragraph 13 of standard condition 29 (Supplier of Last Resort), paragraphs 3 to 12 of this condition shall not have effect in this licence in relation to any claim under sub-paragraph 3(a), sub-paragraph 3(b) or both those sub-paragraphs if before a last resort supply direction is issued to the licensee it gives notice of consent to that effect to the Authority.
3. Where the licensee intends to make a claim for the payment of monies ("last resort supply payments") pursuant to –
 - (a) standard condition 33 (Last Resort Supply: Security for Payments), as incorporated in the licence of the other supplier (as defined in paragraph 2 of standard condition 29 (Supplier of Last Resort));
 - (b) standard condition 48 (Last Resort Supply: Payment Claims) of the standard conditions of the gas transporters licence,

the licensee shall in respect of each claim made notify the proposal to the Authority. The notification must include a calculation of the relevant amount with supporting information and must be received by the Authority within 6 months of the last resort supply direction to which it relates ceasing to have effect.
4. Subject to paragraphs 5 and 6, the total sum of last resort supply payments claimed by the licensee ("the relevant amount") shall not exceed the amount by which -
 - (a) the aggregate costs (including interest on working capital) reasonably incurred by the licensee in supplying gas to premises in pursuance of the last resort supply direction, together with a reasonable profit,

are greater than

(b) the aggregate amounts recovered by the licensee by way of charges for gas supplied to premises in pursuance of the last resort supply direction (after taking all reasonable steps to recover such charges).

5. The Authority may, within 3 months of the notification under paragraph 3 and after consulting the licensee, determine that an amount other than that notified to it by the licensee is a more accurate calculation of the relevant amount.
6. Where the Authority makes a determination in pursuance of paragraph 5, the amount specified in the determination shall be treated as the relevant amount for the purposes of the following paragraphs of this condition.
7. In respect of a claim of the type mentioned in sub-paragraph 3(a), the licensee shall, within 6 months of the last resort supply direction to which it relates ceasing to have effect, submit the claim to the trustee appointed by the Authority pursuant to standard condition 33 (Last Resort Supply: Security for Payments) of the supply licence of the other supplier (as defined in paragraph 2 of standard condition 29 (Supplier of Last Resort)) specifying the relevant amount.
8. Where a last resort supply payment made to the licensee by the trustee referred to in paragraph 7 is less than the relevant amount, the licensee may claim from the relevant gas transporters further last resort supply payments pursuant to paragraphs 9 and 10.
9. Last resort supply payments claimed by the licensee from the relevant gas transporters shall not in aggregate exceed the amount by which the payment (if any) made to the licensee by the trustee referred to in paragraph 7 fell short of the relevant amount (the "under payment").
10. In respect of a claim of the type mentioned in sub-paragraph 3(b), the licensee shall, within 6 months of the last resort supply direction to which it relates ceasing to have

effect, submit the claim to each relevant gas transporter (so far as is reasonably practicable all claims shall be submitted at the same time) specifying -

(a) their respective proportion of the under payment (as defined in paragraph 9);
and

(b) whether payment is to be made by quarterly or monthly instalments.

11. The respective proportion shall be the same as the proportion of the total number of premises in Great Britain to which gas is conveyed by the relevant transporter in question.

12. In this condition "relevant transporter" means a transporter in whose licence Section C has effect.

Condition 29B. Provision for Termination Upon a Direction

1. The licensee shall not enter into a contract for the supply of gas to any premises whether or not the contract is for a specified period unless it provides that it shall terminate upon a last resort direction given to a gas supplier other than the licensee, in pursuance of standard condition 29 (Supplier of Last Resort) of that supplier's licence coming into effect in relation to the premises in question.
2. Where a domestic supply contract is for both the supply of gas and the provision of other goods or services, any reference in this condition to its termination is a reference to its termination in respect of the supply of gas alone.

Condition 33. Last Resort Supply: Security for Payments

1. The licensee shall establish and maintain arrangements (“security arrangements”) in accordance with this condition.
2. If licensed to supply gas to domestic customers, the licensee shall establish security arrangements by -
 - (a) taking out a bond or other instrument approved by the Authority; or
 - (b) making other arrangements as the Authority may approve,to secure such sum of money as is calculated in accordance with principles determined by the Authority and notified to the licensee but in any case not exceeding the maximum sum set out in paragraph 7.
3. The security arrangements established by the licensee shall provide that, in the event of the Authority giving directions to one or more other gas suppliers under standard condition 29 (Supplier of Last Resort) as incorporated in those suppliers’ licences to supply the licensee’s domestic customers, there shall be payable, to such person as the Authority may appoint (“the trustee”), such sums, or instalments of sums, as the trustee may (after consulting the Authority) request, subject, however, to paragraphs 4 and 5.
4. The Authority may, at any time, vary the principles determined under paragraph 2 following consultation with the licensee, all other suppliers and the Consumer Council.
5. The licensee shall maintain the security arrangements and shall –
 - (a) ensure that the arrangements are not terminated or varied (save for the purpose of extending their duration or in accordance with sub-paragraph (b)) other than with the prior consent of the Authority; and
 - (b) at least once in each year –

- (i) consider whether the sum secured by the arrangements requires to be revised in order to ensure that it continues to be set in compliance with the principles determined by the Authority (as varied from time to time); and
 - (ii) where such sum requires revision, establish and thereafter maintain additional or amended arrangements with the approval of the Authority.

- 6. Where the Authority reasonably considers that the security arrangements established and maintained by the licensee do not secure a sum calculated in accordance with the principles determined by the Authority (as varied from time to time), it may at any time, issue a direction to the licensee requiring the licensee to establish and thereafter maintain additional or amended arrangements to secure such sums as may be specified in the direction.

- 7. Subject to paragraph 8, the maximum sum referred to in paragraph 2 shall be determined for each calendar year and shall be the aggregate of –
 - (a) the product of the number, in that year, of domestic premises expected to be supplied and such sum, in respect of each premises, not exceeding £4, as may have been approved by the Authority-
 - (i) for that year, and
 - (ii) for the purposes of this condition generally,

and have been so approved for the calendar year beginning on 1 January 2001, not later than 1 month after the date on which the Secretary of State determines these standard conditions pursuant to sub-section 81(2) of the Utilities Act 2000, and for any subsequent calendar year, not later than 30 September in the previous year; and
 - (b) the product of the amount of gas expected to be supplied, expressed in kilowatt hours, and such sum per kilowatt hour, not

exceeding 0.05p per kilowatt hour, as may have been approved by the Authority as aforesaid,

so, however, that if the Authority fails to approve, for the purposes of sub-paragraph (a) or (b) and as therein mentioned, an amount for any year, this paragraph shall have effect as if it had approved, for that year, the amount last so approved by it for a previous year.

8. In the application of paragraph 7, each of the maximum amounts specified in sub-paragraphs (a) and (b) (separately the "specified amount") thereof shall be adjusted in accordance with paragraph 9 to produce the adjusted amount.
9. The adjusted amount referred to in paragraph 8 shall be the specified amount multiplied by x , where x is obtained by dividing the retail price index for the first month of the year beginning with an anniversary of [1 April 2001] by the retail price index for the month beginning with [1 April 2001]; and any reference in this paragraph to the retail price index is a reference to the general index of retail prices (for all items) published by the Office for National Statistics; and if that index is not published for any month that reference shall be read as a reference to any substituted index or index figure published by that office for that month.

Condition 48. Last Resort Supply: Payment Claims

1. This condition sets out the circumstances in which the licensee shall increase its transportation charges in order to compensate any gas supplier (a "claimant") which claims for losses that it has incurred in complying with a last resort supply direction.
2. The following provisions apply where the licensee receives from a claimant a valid claim for a last resort supply payment.

3. For the purposes of this condition –

"last resort supply direction" and "last resort supply payment" have, respectively the meanings given to them in standard conditions 29 (Supplier of Last Resort) and 29A (Supplier of Last Resort Supply Payments) of the standard conditions of the gas suppliers licence.

"price control condition" means any condition of the licence which places a monetary limitation on the transportation charges which may be levied or the transportation revenue which may be recovered by the licensee during a given period;

"relevant year" means, in relation to any valid claim -

- (a) where the claim was received by the licensee at least 60 days before the beginning of a year, that year; or
- (b) where the claim was received by the licensee less than 60 days before the beginning of a year, the next year.

"specified amount" means the amount specified on a valid claim together with interest calculated in accordance with paragraph 4;

"valid claim" means a claim for which a claimant has been give a consent by the Authority pursuant to standard condition 29A (Supplier of Last Resort Supply Payments) of the standard conditions of the gas suppliers licence; and

“year” means a period of 12 months beginning with 1st April.

4. The interest referred to in paragraph 3 is simple interest for the period commencing with the date on which the claim was received by the licensee and ending with the date which is 61 days before the start of the relevant year, except where that period is of 30 days or less, in which case no interest shall be payable.
5. Where the licensee receives a valid claim it shall, during the relevant year, increase its transportation charges during that year which relate to the conveyance of gas to premises (and secondary sub-deduct premises to which gas is conveyed as contemplated by sub-deduct arrangements) to such an extent as it reasonably estimates to be appropriate to secure that the consequential increase in its revenue equals the specified amount.
6. The licensee shall, during, or as soon as practicable after the end of, the relevant year, pay to the claimant, by quarterly or monthly instalments (as specified in the claim), the amount of that consequential increase in revenue mentioned in paragraph 5 to the extent that it does not exceed the specified amount.
7. If the amount paid to the claimant under paragraph 6 is less than the specified amount, the licensee shall in the following financial year –
 - (a) pay to the claimant (in accordance with any directions given by the Authority) the shortfall together with 12 months’ interest thereon; and
 - (b) increase the charges referred to in paragraph 5 during the year following the relevant year to such extent as it reasonably estimates to be appropriate to secure that the consequential increase in its revenue equals the amount of that shortfall together with 12 months’ interest thereon.

8. If the amount of the consequential increase mentioned in paragraph 5 exceeds the specified amount, the licensee shall, during the year following the relevant year, decrease the charges referred to in paragraph 5 to the extent that it reasonably estimates to be necessary in order to reduce its transportation revenue for that year by an amount equal to the excess together with 12 months' interest thereon.
9. Any question whether any estimate for the purposes of paragraph 5, 7 or 8 is a reasonable one shall be determined by the Authority.
10. The licensee shall not enter into any transportation arrangements with a gas shipper which do not permit variation of its transportation charges in pursuance of this condition.
11. The provisions of this condition shall have effect notwithstanding any of the provisions of standard condition 4 (Charging of Gas Shippers – General).
12. In calculating the licensee's transportation revenue during any period for the purposes of a price control condition any increase or decrease in revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.
13. The licensee shall prepare, in respect of each year in which it increases or decreases charges in pursuance of paragraph 5, 7 or 8, a statement showing -
 - (a) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 5;
 - (b) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 7;

- (c) the aggregate amount of the decrease in its revenue resulting from decreases in charges in pursuance of paragraph 8, and
- (d) in the case of each last resort supply payment, the aggregate payments to the claimant made in respect of the year in question (whenever those payments were made).

14. The licensee shall give the statements referred to in paragraph 13 to the Authority within the first 4 months of the year following that to which they relate.

15. On giving the statement mentioned in paragraph 13(d) to the Authority, the licensee shall publish it in such manner as, in the reasonable opinion of the licensee, will secure adequate publicity for it.

16. Where the licensee receives more than one claim for a last resort payment, this condition (other than sub-paragraphs 13(a), (b) and (c)) shall apply separately as respects each separate claim but in so far as it results in changes to the licensee's transportation charges it shall have the cumulative effect of such separate applications.

Electricity

Condition 28. Deemed Contracts

1. This condition sets out the obligations placed on the licensee in relation to its deemed contracts.
2. The licensee shall use its reasonable endeavours to ensure the terms of its deemed contracts are not unduly onerous.
3. In the case of any class of domestic customers or of any class of non-domestic customers, the terms of a deemed contract shall be taken to be unduly onerous if the revenue derived from supplying electricity to customers of the class in question on those terms -
 - (c) significantly exceeds the costs of supply of electricity; and
 - (d) exceeds such costs of supply by significantly more than the licensee's revenue exceeds costs of supply in the case of the generality of its domestic customers or, as the case may be, in the case of the generality of its non-domestic customers (excluding in each case customers supplied in accordance with standard condition 29 (SoLR)).
4. For the purposes of paragraph 3 "costs of supply" shall not include any costs attributable to any promotional, marketing or advertising activities of the licensee.
5. The licensee shall, as soon as is reasonably practicable after determining or revising (in whole or in part) any of the terms of its deemed contracts, send a copy to the Authority.
6. At the request of any person, the licensee shall supply that person with a copy of the terms of its deemed contracts.
7. The licensee shall ensure that the terms of its deemed contracts are such that, in their application to electricity supplied under a last resort supply direction, the

amount of any charges for electricity so supplied complies with the provisions of paragraphs 13, 14 and 16 of standard condition 29 (Supplier of Last Resort).

8. Where the licensee supplies a customer with electricity under a deemed contract, it shall use its reasonable endeavours to furnish the customer with -

(d) details of the principal terms of that deemed contract;

(e) written notice that contracts on terms other than deemed contracts may be available and as to how information can be obtained as to any such terms; and

(f) where the customer is a domestic customer, an accurate summary of the principal terms of domestic supply contracts available.

9. The licensee shall ensure the terms of its deemed contracts -

(g) make the like provision as is required in the case of a contract by paragraph 1 of standard condition 29B (Provision for Termination upon a Direction);

(h) where the customer is a domestic customer, make the like provision as is required in the case of a contract by standard condition 45 (Security Deposits);

(i) where the customer is a domestic customer, make the like provision as is required in the case of a contract by paragraph 1 of standard condition 47 (Termination of Contracts in Specified Circumstances); and

(j) provide that where the customer intends to be supplied with electricity at the premises under a contract with the licensee or another electricity supplier, the deemed contract does not terminate but continues to have effect until the time when the licensee or, as the case may be, the other electricity supplier begins to supply electricity under a contract, at which time the deemed contract ceases to have effect.

10. Subject to paragraph 17 of standard condition 29 (Supplier of Last Resort), nothing in paragraph 9 shall be construed as preventing the inclusion of terms providing for

the termination of a deemed contract which are additional to and do not derogate from those required by sub-paragraphs (a), (c) and (d) of paragraph 9.

11. In determining the number of kilowatt hours of electricity which are to be treated as supplied or taken under a deemed contract, the licensee shall act on a reasonable basis, taking into account available electricity demand data for the premises in question and other relevant factors.
12. Paragraphs 2 to 4 and sub-paragraph 8(b) shall not apply in relation to customers supplied with electricity in accordance with standard condition 29 (Supplier of Last Resort).
13. Where, in preparation for a restriction or revocation of its licence, the licensee is making arrangements for securing continuity of supply for its customers supplied with electricity in pursuance of deemed contracts, it shall, except in so far as the Authority otherwise consents –
 - (c) in making those arrangements, reasonably endeavour to select one or more new suppliers which offer or will offer comparable services at the lowest available cost; and
 - (d) use its reasonable endeavours to give its customers likely to be affected reasonable notice of those arrangements.

Condition 29. Supplier of Last Resort

18. Where this paragraph applies, the Authority may, by notice, direct the licensee to supply electricity in accordance with this condition ("the last resort supply direction").
19. Paragraph 1 applies where it appears to the Authority that -
- (c) circumstances have arisen which would entitle the Authority to revoke the supply licence of an electricity supplier other than the licensee ("the other supplier"); and
 - (d) the licensee could comply with the last resort supply direction without significantly prejudicing its ability -
 - (iii) to continue to supply its customers; and
 - (iv) to fulfil its contractual obligations for the supply of electricity.
20. The last resort supply direction shall take effect from the date of revocation of the other supplier's licence and shall continue for such period (being no longer than 6 months) specified in the direction.
21. The licensee shall supply electricity to customers of the other supplier at such premises as are specified or described in the last resort supply direction.
22. The licensee shall not be required under this condition to supply electricity to a particular customer at particular premises which it would not be required to supply by virtue of sub-paragraphs 2(b) to (e) of standard condition 32 (Duty to Supply Domestic Customers).
23. Within 2 working days of the last resort supply direction taking effect, the licensee shall send to the Authority, for its approval, a draft of the notice the licensee proposes to send to each of the premises specified or described in the direction.

24. As soon as reasonably practicable after the Authority has approved the form and content, except as to the level of charges payable for supply of electricity under the direction or an explanation of how the charges are determined, of the notice sent to it pursuant to paragraph 6, the licensee shall send a copy of the notice to each of the premises specified or described in the last resort supply direction.
25. The notice to be sent to all premises specified or described in the last resort supply direction, shall -
- (d) inform the customer in question that, notwithstanding any contract or deemed contract the customer may have had with the other supplier, the customer is no longer supplied by that supplier and has not been supplied by the other supplier since the date on which the direction took effect;
 - (e) inform the customer in question that, the licensee became the supplier of electricity to the customer from the date the direction took effect; and
 - (f) set out the charges payable for the supply of electricity under the direction or an explanation of how the charges are determined.
26. Unless the Authority otherwise consents, the licensee shall, so far as is reasonably practicable, give the Authority at least 5 days notice of any increase in charges for the supply of electricity to premises in accordance with the last resort supply direction.
27. The licensee shall use all reasonable endeavours to secure a meter reading at each of the premises specified or described in the last resort supply direction within 14 days of the direction taking effect.
28. The licensee is not obliged to secure a meter reading where-
- (c) the Authority accepts that it would not be feasible or economic to do so; or

(d) to do so would necessitate the entering of particular premises without the consent of the occupier or the seeking of entry on more than one occasion.

29. The licensee may charge for the supply of electricity to the premises specified or described in the last resort supply direction at a rate which is no greater than -

(c) such charges as may be expected, in aggregate, approximately to equal the licensee's reasonable costs of supply (including such costs attributable to the purchase of electricity at short notice) together with a reasonable profit; or

(d) the charges set out in the notice given by the Authority under paragraph 13.

30. Where, within 5 days of receipt by the Authority of the notice given by the licensee under paragraph 9, the Authority determines that charges proposed by the licensee would be likely to cause hardship to domestic customers, it may direct by notice in writing to the licensee that licensee's charges shall not exceed those which it specifies in the notice as being likely to avoid or mitigate such hardship.

31. The licensee shall not be required by paragraph 12(b) to make charges which are less than those which would be made under the licensee's deemed contract for comparable premises with similar metering arrangements supplied with electricity otherwise than in accordance with a last resort supply direction.

32. Unless the Authority otherwise consents, the licensee shall ensure that its terms and conditions (including charges) for a supply pursuant to a last resort supply direction do not show any undue preference or undue discrimination as between any persons or classes of persons.

33. Notwithstanding anything in standard condition 28 (Deemed Contracts), the terms of the licensee's deemed contract scheme for the supply of electricity to premises in accordance with a last resort supply direction may provide that, until the direction ceases to have effect, the customer may not terminate his deemed contract except –

(d) with the consent of the licensee;

(e) on taking a supply at the premises under a contract with the licensee or another electricity supplier; or

(f) on ceasing to take electricity at the premises.

34. Where the licensee enters into any new contract for the purchase of electricity in order to comply with its obligations under this condition, it shall use reasonable endeavours to make the purchase as economically as possible in all the circumstances.

Condition 29A. Supplier of Last Resort Supply Payments

11. This condition sets out how, and how much, the licensee may recover in respect of any losses it incurs in complying with a last resort supply direction given under standard condition 29 (Supplier of Last Resort).

12. Except in relation to a claim made following a direction by the Authority pursuant to paragraph 13 of standard condition 29 (Supplier of Last Resort), paragraphs 3 to 12 of this condition shall not have effect in this licence in relation to any claim under sub-paragraph 3(a), sub-paragraph 3(b) or both those sub-paragraphs if before a last resort supply direction is issued to the licensee it gives notice of consent to that effect to the Authority.

13. Where the licensee intends to make a claim for the payment of monies ("last resort supply payments") pursuant to –
 - (a) standard condition 33 (Last Resort Supply: Security for Payment), as incorporated in the licence of the other supplier (as defined in paragraph 2 of standard condition 29 (Supplier of Last Resort));

 - (b) standard condition 48 (Last Resort Supply: Payment Claim) of the standard conditions of the electricity distribution licence,

the licensee shall in respect of each claim made notify the proposal to the Authority. The notification must include a calculation of the relevant amount with supporting information and must be received by the Authority within 6 months of the last resort supply direction to which it relates ceasing to have effect.

14. Subject to paragraphs 5 and 6, the total sum of last resort supply payments claimed by the licensee ("the relevant amount") shall not exceed the amount by which -

(b) the aggregate costs (including interest on working capital) reasonably incurred by the licensee in supplying electricity to premises in pursuance of the last resort supply direction, together with a reasonable profit,

are greater than

(b) the aggregate amounts recovered by the licensee by way of charges for electricity supplied to premises in pursuance of the last resort supply direction (after taking all reasonable steps to recover such charges).

15. The Authority may, within 3 months of the notification under paragraph 3 and after consulting the licensee, determine that an amount other than that notified to it by the licensee is a more accurate calculation of the relevant amount.

16. Where the Authority makes a determination in pursuance of paragraph 5, the amount specified in the determination shall be treated as the relevant amount for the purposes of the following paragraphs of this condition.

17. In respect of a claim of the type mentioned in sub-paragraph 3(a), the licensee shall, within 6 months of the last resort supply direction to which it relates ceasing to have effect, submit the claim to the trustee appointed by the Authority pursuant to standard condition 33 (Last Resort Supply: Security for Payment) of the supply licence of the other supplier (as defined in paragraph 2 of standard condition 29 (Supplier of Last Resort)) specifying the relevant amount.

18. Where a last resort supply payment made to the licensee by the trustee referred to in paragraph 7 is less than the relevant amount, the licensee may claim from the relevant electricity distributors further last resort supply payments pursuant to paragraphs 9 and 10.

19. Last resort supply payments claimed by the licensee from the relevant electricity distributors shall not in aggregate exceed the amount by which the payment (if any) made to the licensee by the trustee referred to in paragraph 7 fell short of the relevant amount (the "under payment").

20. In respect of a claim of the type mentioned in sub-paragraph 3(b), the licensee shall, within 6 months of the last resort supply direction to which it relates ceasing to have effect, submit the claim to each relevant electricity distributor (so far as is reasonably practicable all claims shall be submitted at the same time) specifying -

(c) their respective proportion of the under payment (as defined in paragraph 9);
and

(d) whether payment is to be made by quarterly or monthly instalments.

21. The respective proportion shall be the same as the proportion of the total number of premises in Great Britain which is located within that relevant distributor's distribution services area.

22. In this condition "relevant distributor" means a distributor in whose licence Section C has effect.

Condition 29B. Provision for Termination upon a Direction

1. The licensee shall not enter into a contract for the supply of electricity to any premises whether or not the contract is for a specified period unless it provides that it shall terminate when a last resort supply direction given to an electricity supplier other than the licensee in pursuance of standard condition 29 (Supplier of Last Resort) of that other supplier's licence comes into effect in relation to the premises in question.
2. Where a domestic supply contract is for both the supply of electricity and the provision of other goods or services, any reference in this condition to its termination is a reference to its termination in respect of the supply of electricity alone.

Condition 33. Last Resort Supply: Security for Payments

4. The licensee shall establish and maintain arrangements (“security arrangements”) in accordance with this condition.

5. If licensed to supply electricity to domestic customers, the licensee shall establish security arrangements by -
 - (a) taking out a bond or other instrument approved by the Authority; or
 - (b) making other arrangements as the Authority may approve,to secure such sum of money as is calculated in accordance with principles determined by the Authority and notified to the licensee but in any case not exceeding the maximum sum set out in paragraph 7.

3. The security arrangements established by the licensee shall provide that, in the event of the Authority giving directions to one or more other electricity suppliers under standard condition 29 (Supplier of Last Resort) as incorporated in those suppliers’ licences to supply the licensee’s domestic customers, there shall be payable, to such person as the Authority may appoint (“the trustee”), such sums, or instalments of sums, as the trustee may (after consulting the Authority) request, subject, however, to paragraphs 4 and 5.

10. The Authority may, at any time, vary the principles determined under paragraph 2 following consultation with the licensee, all other suppliers and the Consumer Council.

11. The licensee shall maintain the security arrangements and shall –
 - (c) ensure that the arrangements are not terminated or varied (save for the purpose of extending their duration or in accordance with sub-paragraph (b)) other than with the prior consent of the Authority; and
 - (d) at least once in each year –

- (iii) consider whether the sum secured by the arrangements requires to be revised in order to ensure that it continues to be set in compliance with the principles determined by the Authority (as varied from time to time); and
 - (iv) where such sum requires revision, establish and thereafter maintain additional or amended arrangements with the approval of the Authority.

- 12. Where the Authority reasonably considers that the security arrangements established and maintained by the licensee do not secure a sum calculated in accordance with the principles determined by the Authority (as varied from time to time), it may at any time, issue a direction to the licensee requiring the licensee to establish and thereafter maintain additional or amended arrangements to secure such sums as may be specified in the direction.

- 13. Subject to paragraph 8, the maximum sum referred to in paragraph 2 shall be determined for each calendar year and shall be the aggregate of –
 - (a) the product of the number, in that year, of domestic premises expected to be supplied and such sum, in respect of each premises, not exceeding £4, as may have been approved by the Authority-
 - (i) for that year, and
 - (ii) for the purposes of this condition generally,and have been so approved for the calendar year beginning on 1 January 2001, not later than 1 month after the date on which the Secretary of State determines these standard conditions pursuant to sub-section 33(1) of the Utilities Act 2000, and for any subsequent calendar year, not later than 30 September in the previous year, and
 - (b) the product of the amount of electricity expected to be supplied, expressed in kilowatt hours, and such sum per kilowatt hour, not

exceeding 0.21p per kilowatt hour, as may have been approved by the Authority as aforesaid,

so, however, that if the Authority fails to approve, for the purposes of sub-paragraph (a) or (b) and as therein mentioned, an amount for any year, this paragraph shall have effect as if it had approved, for that year, the amount last so approved by it for a previous year.

14. In the application of paragraph 7, each of the maximum amounts specified in sub-paragraphs (a) and (b) (separately the "specified amount") thereof shall be adjusted in accordance with paragraph 9 to produce the adjusted amount.

15. The adjusted amount referred to in paragraph 8 shall be the specified amount multiplied by x , where x is obtained by dividing the retail price index for the first month of the year beginning with an anniversary of [1 April 2001] by the retail price index for the month beginning with [1 April 2001]; and any reference in this paragraph to the retail price index is a reference to the general index of retail prices (for all items) published by the Office for National Statistics; and if that index is not published for any month that reference shall be read as a reference to any substituted index or index figure published by that office for that month.

Condition 48. Last Resort Supply: Payment Claims

1. This condition sets out the circumstances in which the licensee shall increase its use of system charges in order to compensate any electricity supplier (a “claimant”) which claims for losses that it has incurred in complying with a last resort supply direction.
2. The following provisions apply where the licensee receives from a claimant a valid claim for a last resort supply payment.

3. For the purposes of this condition –

“last resort supply direction” and “last resort supply payment” have, respectively the meanings given to them in standard conditions 29 (Supplier of Last Resort) and 29A (Supplier of Last Resort Supply Payments) of the standard conditions of the electricity supply licence;

“price control condition” means any condition of the licence which places a monetary limitation on the use of system charges which may be levied or the use of system revenue which may be recovered by the licensee during a given period;

“relevant year” means, in relation to any valid claim -

(c) where the claim was received by the licensee at least 60 days before the beginning of a year, that year; or

(d) where the claim was received by the licensee less than 60 days before the beginning of a year, the next year;

“specified amount” means the amount specified on a valid claim together with interest calculated in accordance with paragraph 4;

“valid claim” means a claim for which a claimant has been give a consent by the Authority pursuant to standard condition 29A (Supplier of Last Resort Supply Payments) of the standard conditions of the electricity supply licence; and

“year” means a period of 12 months beginning with 1st April.

4. The interest referred to in paragraph 3 is simple interest for the period commencing with the date on which the valid claim was received by the licensee and ending with the date which is 61 days before the start of the relevant year, except where that period is of 30 days or less, in which case no interest shall be payable.
5. Where the licensee receives a valid claim it shall, during the relevant year, increase its use of system charges in respect of that year which relate to the distribution of electricity to premises to such an extent as it reasonably estimates to be appropriate to secure that the consequential increase in its revenue equals the specified amount.
6. The licensee shall, during, or as soon as practicable after the end of, the relevant year, pay to the claimant, by quarterly or monthly instalments (as specified in the claim), the amount of that consequential increase in revenue mentioned in paragraph 5 to the extent that it does not exceed the specified amount.
7. If the amount paid to the claimant under paragraph 6 is less than the specified amount, the licensee shall in the following year –
 - (c) pay to the claimant (in accordance with any directions given by the Authority) the shortfall together with 12 months' interest thereon; and
 - (d) increase the charges which relate to the distribution of electricity to premises during the year following the relevant year to such extent as it reasonably estimates to be appropriate to secure that the consequential increase in its revenue equals the amount of that shortfall together with 12 months' interest thereon.
11. If the amount of the consequential increase mentioned in paragraph 5 exceeds the specified amount, the licensee shall, during the year following the relevant year, decrease the charges which relate to the distribution of electricity to premises to the extent that it reasonably estimates to be necessary in order to reduce its use of system revenue for that year by an amount equal to the excess together with 12 months' interest thereon.

12. Any question whether any estimate for the purposes of paragraph 5, 7 or 8 is a reasonable one shall be determined by the Authority.
13. The licensee shall not enter into any use of system agreement with an electricity supplier which does not permit variation of its use of system charges in pursuance of this condition.
17. The provisions of this condition shall have effect notwithstanding any of the provisions of standard condition 4 (Basis of Charges for Use of System and Connection to System: Requirements for Transparency).
18. In calculating the licensee's use of system revenue during any period for the purposes of a price control condition any increase or decrease in revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.
19. The licensee shall prepare, in respect of each year in which it increases or decreases charges in pursuance of paragraph 5, 7 or 8, a statement showing -
- (a) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 5;
 - (b) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 7;
 - (c) the aggregate amount of the decrease in its revenue resulting from decreases in charges in pursuance of paragraph 8; and
 - (d) in the case of each last resort supply payment, the aggregate payments to the claimant made in respect of the year in question (whenever those payments were made).

20. The licensee shall give the statements referred to in paragraph 13 to the Authority within the first 4 months of the year following that to which they relate.
21. On giving the statement mentioned in paragraph 13(d) to the Authority, the licensee shall publish it in such manner as, in the reasonable opinion of the licensee, will secure adequate publicity for it.
22. Where the licensee receives more than one claim for a last resort payment, this condition (other than sub-paragraphs 13(a), (b) and (c)) shall apply separately as respects each separate claim but in so far as it results in changes to the licensee's use of system charges it shall have the cumulative effect of such separate applications.

Annex 2 – Overview of supply chains

Electricity Supply Chain

Generator	A company licensed to generate electricity.
NGC	National Grid Company plc – the company that owns and operates the high voltage electricity transmission system in England and Wales, mostly carried on pylons.
Transmission	The movement of electricity at high voltage from a generator to a sub-station. High voltage cables are normally suspended from pylons.
Distributor	The company that distributes electricity within a local PES area. Under the Utilities Act 2000, PES Supply and Distribution are separately licensable activities
PES	Public Electricity Supplier – the 14 companies in England, Wales and Scotland that, from privatisation in 1990 until 1998, had a monopoly of electricity supply and distribution in their designated areas. Local distribution is still a monopoly. Competition has been introduced in supply. After the full provisions of the Utilities Act come into force there will no longer be such a thing as a PES.
2nd tier Supplier	A company (other than a PES) that arranges for electricity to be supplied to a customer's meter and bills the customer. Ofgem licenses all suppliers.

Gas Supply Chain

PGT	Licensed Public Gas Transporter providing the conveyance of gas through a network of pipes.
Transco	An operating division of the Lattice Group. Owns and operates most of the gas pipeline systems throughout England, Scotland and Wales. It is regulated by Ofgem.
IPGT	Independent Public Gas Transporter. Any company, other than Transco, licensed to install and maintain gas pipelines/networks.
Shipper	A company licensed to convey gas on a PGT network to individual supply points. Shippers must balance their input and customer offtake from the NTS (National Transmission System) each day. Ofgem licenses all shippers.
Supplier	The company that arranges for gas to be supplied to a customer's meter and bills the customer. Ofgem licenses all suppliers.

Annex 3 – Explanation of terms and abbreviations

Bond	All domestic gas suppliers are required to maintain a bond (or other form of credit cover) that may be used by a Trustee in the event of the supplier's failure. The Utilities Act 2000 (UA) introduces a requirement for domestic electricity suppliers to have a bond or other similar security.
Balancing and Settlement Code (BSC)	Specifies the requirements for the operation of the balancing mechanism and imbalance settlement to facilitate bilateral electricity trading.
Deemed Contract	When a customer uses gas or electricity otherwise than under a contract, a deemed contract comes into existence between the supplier and the customer. For example a deemed contract may exist when someone moves into a house and starts to use gas even though they have not agreed a contract with a gas supplier. A deemed contract will also exist when a supplier starts to supply gas or electricity as a SoLR.
Designated Premises	Domestic premises or premises at which the normal annual consumption of electricity will amount to no more than 12,000 kWh.
Distribution Company	A licensed company responsible for the distribution of electricity from the transmission network to individual metering points.
DUoS Agreement	Distribution Use of System Agreement. The contract between electricity Suppliers and Distributors which sets out the terms for charges to suppliers.
Elexon	An industry owned company. Aspects of Elexon's functions include the efficient delivery of the BSC, implementation of NETA and managing the modifications process.
Failing Supplier	A Supplier that has, or is about to have, its licence revoked by the Regulator.
Grid Supply Point (GSP)	A Systems Connection Point at which the Transmission System is connected to a distribution system.
Independent Public Gas Transporter (IPGT)	A company, other than Transco, licensed to install and maintain gas pipelines/networks.
kWh	Kilowatt hour.
Local Distribution Zone (LDZ)	A geographic area supplied by one or more National Transmission System offtakes (gas).
Levy	If the value of the bond is not sufficient to cover the otherwise unrecoverable costs of the SoLR (applicable to gas before the UA), then it can make a claim for its remaining costs from PGTs. After the UA, where there is a voluntary SoLR a claim against the levy can only be made if the Authority issues a direction if it considers that domestic customers will be caused hardship.

Licence Revocation Date	The calendar date and time on which the revocation of a Failing Supplier's Licence takes effect. This will normally be the end of a Settlement Day.
Master Registration Agreement (MRA)	Electricity industry agreement to provide governance for the operation of MPAS services and the processes and practices used for customer transfers.
Metering Point Administration Service (MPAS)	Register of data and services necessary to facilitate supply by any electricity supplier to all metering points within the relevant Distributor's area
Metering Point Reference Number (MPRN)	A unique 10 digit reference number for identifying gas metering points.
MRASCo	Master Registration Agreement Service Company
Network Code (NWC)	Contractual agreement between PGT and a shipper setting out terms for the transportation of gas and associated activities.
New Electricity Trading Arrangements (NETA)	To provide the mechanisms for near real time clearing and settlement of the imbalances between contractual and physical positions of those buying, selling, producing and consuming electrical energy.
National Grid Company (NGC)	The company that owns and operates the high voltage electricity transmission system in England and Wales, mostly carried on pylons.
The Pool	The Electricity Pool of England and Wales is a mechanism to allow trading between generators and suppliers and to operate a settlement process for determining the amounts due by each supplier. A separate agency, Scottish Electricity Settlements fulfils a similar function for Scotland.
Profile Class	A classification (electricity) which represents a category of customers whose consumption can be reasonably approximated to a common profile.
Registration	Notice given by an incoming supplier of its intention to take over responsibility for supplying a site.
Supplier of Last Resort (SoLR)	A supplier directed by the Authority to take over responsibility for supplying the customers of a failed supplier.
Transportation	Conveyance of gas through a network of pipes.

Annex 4 – Revocation terms

Electricity Supply Licence – Revocation terms

1. The [Authority/Secretary of State] may at any time revoke this Licence by not less than 30 days' notice in writing to the Licensee:
 - a) if the Licensee agrees in writing with the [Authority/Secretary of State] that this Licence should be revoked;
 - b) if any amount payable under Condition 29 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the [Authority/Secretary of State] has given the Licensee notice that the payment is overdue. Provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - c) if the Licensee fails to comply with a final order (within the meaning of Section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the [Authority/Secretary of State] within three months after the [Authority/Secretary of State] has given notice of such failure to the Licensee. Provided that no such notice shall be given by the [Authority/Secretary of State] before the expiration of the period within which an application under Section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - d) if the Licensee fails to comply with any order made by the [Authority/Secretary of State] under Section 56, 73, 74 or 89 of the Fair Trading Act 1973 or under Section 10(2)(a) of the Competition Act 1980;
 - e) if the Licensee ceases to carry on its business as a [public] electricity supplier;
 - f) if the Licensee:

- (i) is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 2 of this Schedule) or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the [Authority/Secretary of State]);
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
 - (iii) has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it;
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the [Authority/Secretary of State]; or
 - (v) becomes subject to an order by the High Court for winding-up; or
- g) if the Licensee is convicted of having committed an offence under Section 59 of the Act in making its application for this Licence.
2. For the purposes of paragraph 1(f)(i) of this Schedule Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Authority may from time to time determine by notice in writing to the [Authority/Secretary of State] and the Licensee.
3. The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(f)(i) of this Schedule if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in

any notice given by the [Authority/Secretary of State] under paragraph 1 of the Schedule.

4. The provisions of Section 109 of the Act shall apply for the purposes of the service of any notice under this Schedule.

Gas supply licence – revocation terms

1. The Authority may at any time revoke this Licence by the requisite period of notice in writing to the Licensee in any of the following circumstances-
 - a) if the Licensee requests or otherwise agrees in writing with the Authority that the licence should be revoked;
 - b) if any amount payable under standard condition 32 of this Licence (payments by licensee to Authority) is unpaid 30 days after it becomes due, and remains unpaid for a period of 14 days after the Authority notifies the Licensee that the amount is overdue, such notification not to be given earlier than the sixteenth day after the day on which the amount payable became due;
 - c) if the Licensee fails to comply with a final order (within the meaning of section 28 of the Act) or a provisional order (within the meaning of that section) which has been confirmed under that section and such failure is not rectified to the satisfaction of the Director within 3 months after the Authority has given notice in writing of such failure to the Licensee, provided that no notice under this sub-paragraph shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before any such application, if made, is finally adjudicated upon;
 - d) if the Licensee fails to comply with any order made by the Secretary of State under section 56, 73, 74 or 89 of the Fair Trading Act 1973 or section 10 of the Competition Act 1980 or by the court under section 34 of the Competition Act 1998 which relates to the business authorised by this Licence;
 - e) if the Licensee ceases to carry on its business as a gas supplier;

- f) if the Licensee shall not have commenced business as a gas supplier within the period of three years from the date on which this Licence takes effect;
- g) if the Licensee -
 - i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 (c.45), but subject to paragraph 2(2) below) or any voluntary arrangement is proposed in relation to it under section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Director);
 - ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
 - iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
 - iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
 - v) becomes subject to an order by the High Court for winding-up.

2. For the purposes of sub-paragraph (1)(g)(i) above, section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for the sum there mentioned there were substituted "£10,000" or such higher figure as the Authority may from time to time determine and the said section 123(1) (a) shall not apply if the demand therein referred to is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if the demand is satisfied prior to the expiry of the notice to the Licensee given by the Authority.

3. The requisite period of notice shall be-

- a) for the purpose of sub-paragraph (1)(g) above, 24 hours; and
- b) for all other purposes, 30 days.

Annex 5 - Deemed contracts

General³²

- 1.1 When a customer uses gas otherwise than under a contract, a deemed contract comes into existence between the gas supplier and the customer. For example a deemed contract may exist when someone moves into a house and starts to use gas even though they have not agreed a contract with a gas supplier. A deemed contract will also exist when a supplier starts to supply gas or electricity as a SoLR.
- 1.2 The Utilities Act 2000 (when commenced) will require all electricity suppliers to have deemed contract schemes for all customer groups. These schemes will apply in a variety of circumstances, including when a supplier becomes a SoLR. In addition Schedule 4(3)(4) to the Utilities Act will require the Authority to publish a document containing provision for determining the “appropriate supplier” for deemed contracts in certain cases.
- 1.3 In general, deemed contracts terms must not be unduly onerous Subject to certain conditions, terms are considered to be unduly onerous if the revenue derived from supplying to customers:
 - ◆ significantly exceeds the costs incurred in supplying the customers; and
 - ◆ exceeds such costs by significantly more than the licensee’s revenue exceeds costs in the case of the generality of its domestic customers or in the case of the generality of its non-domestic customers (under the Utilities Act standard Licence Conditions, this clause applies except in each case when customers are supplied by a SoLR).
- 1.4 In addition, under the Utilities Act the supplier must use its reasonable endeavours to provide customers on deemed contract schemes with information about its other contractual terms. Neither of these conditions applies if the supplier is supplying gas or electricity as a SoLR.

³² Standard Licence Condition 4 (current) and 28 (Utilities Act)

- 1.5 Deemed contract schemes may make different provision for different cases or classes of cases or for different areas. This means, for instance, that there can be different charges for domestic, Industrial and Commercial customers, prepayment meter customers and (electricity) Half Hourly customers. The charges can vary depending on which part of the country the customer is situated.

Gas

- 1.6 The Gas Act 1995 introduced a new schedule 2B into the Gas Act 1986 that provided for deemed contract in certain cases. A deemed contract scheme is compulsory in the domestic gas market (currently defined as annual consumption below 73,000kWh). A gas supplier can elect to have a deemed contract scheme for annual consumption between 73,000 kWh and 2,196,00 kWh³³.

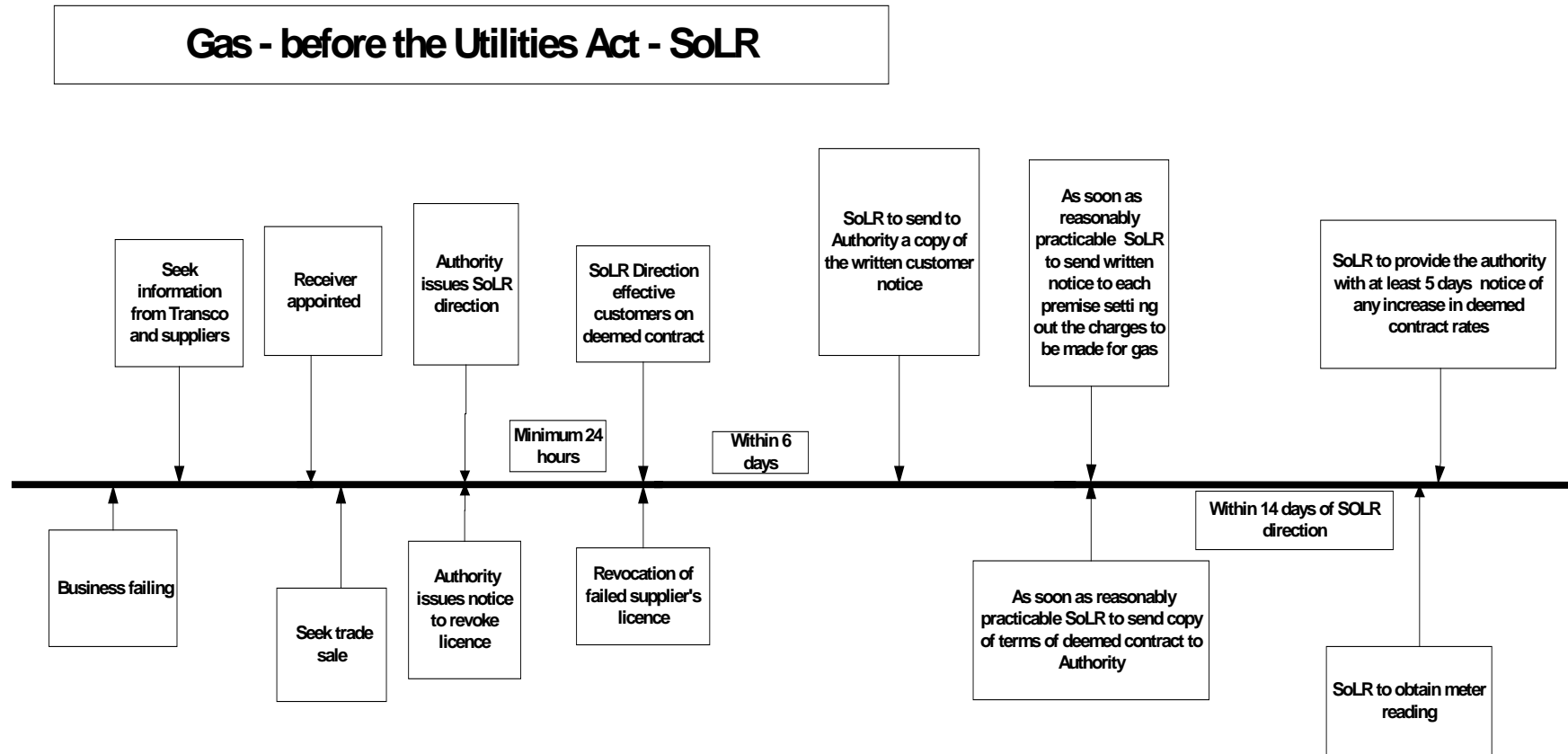
Electricity

- 1.7 Prior to 20 December 2000 there was no provision for deemed contracts in electricity. The Utilities Act 2000 (Commencement No 4 and Transitional Provisions) Order 2000 commenced (on a temporary basis) some of the deemed contract provisions in Schedule 4 to the Utilities Act as a new Schedule 6A to the Electricity Act 1989.
- 1.8 The DTI has in preparation a further Commencement Order. As we understand it, one of the effects of the Order will be to alter the deemed contract provisions in Schedule 6A (which were commenced in December) in the following ways:
- ◆ all electricity suppliers will (if directed by the Authority) have to prepare a deemed contract scheme in the event that they start to supply a customer whose previous supplier has been served a Notice of Revocation of its licence. It is likely that the Authority would only direct PESs, their associated second tier supply businesses and those companies that have purchased PES supply businesses to prepare such a scheme;

³³ Gas Act 1986 Schedule 2B 8

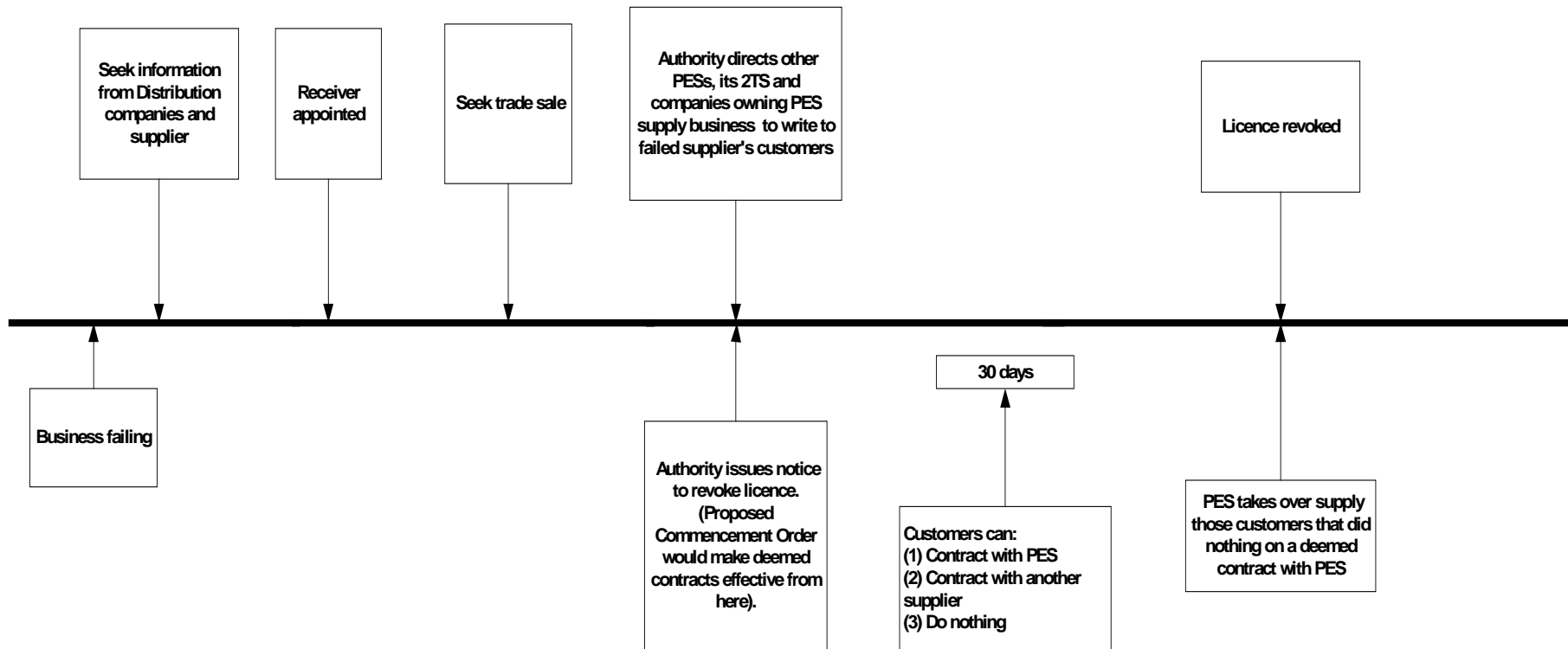
- ◆ deemed contracts will come into effect when a Notice of revocation is served on a supplier (rather than when the Notice comes into effect 30 days later); and
- ◆ PESs will be able to supply on deemed contracts in their authorised areas. Outside these areas their associated second tier supply businesses of PESs and those companies that have purchased PES supply businesses will be able to supply on deemed contracts.

Annex 6 – Gas SoLR before Utilities Act



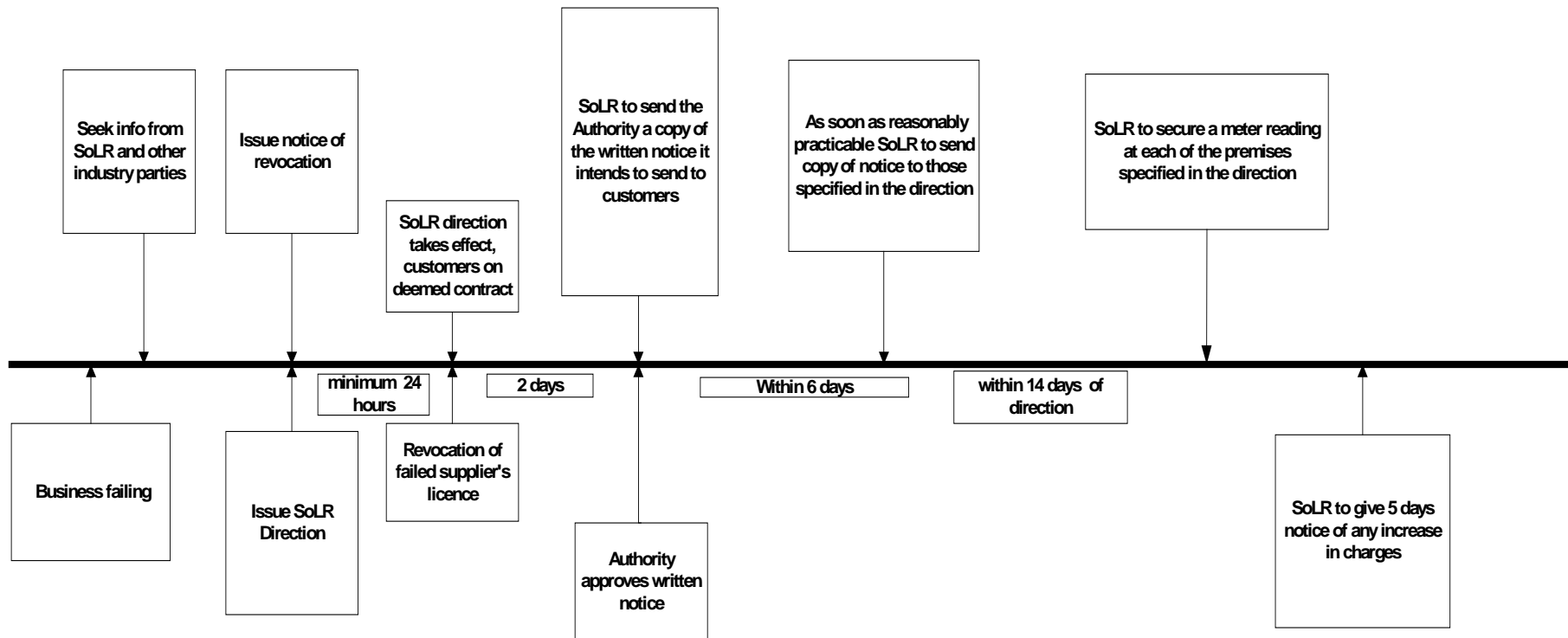
Annex 7 - Electricity SoLR before Utilities Act

Electricity - before the Utilities Act

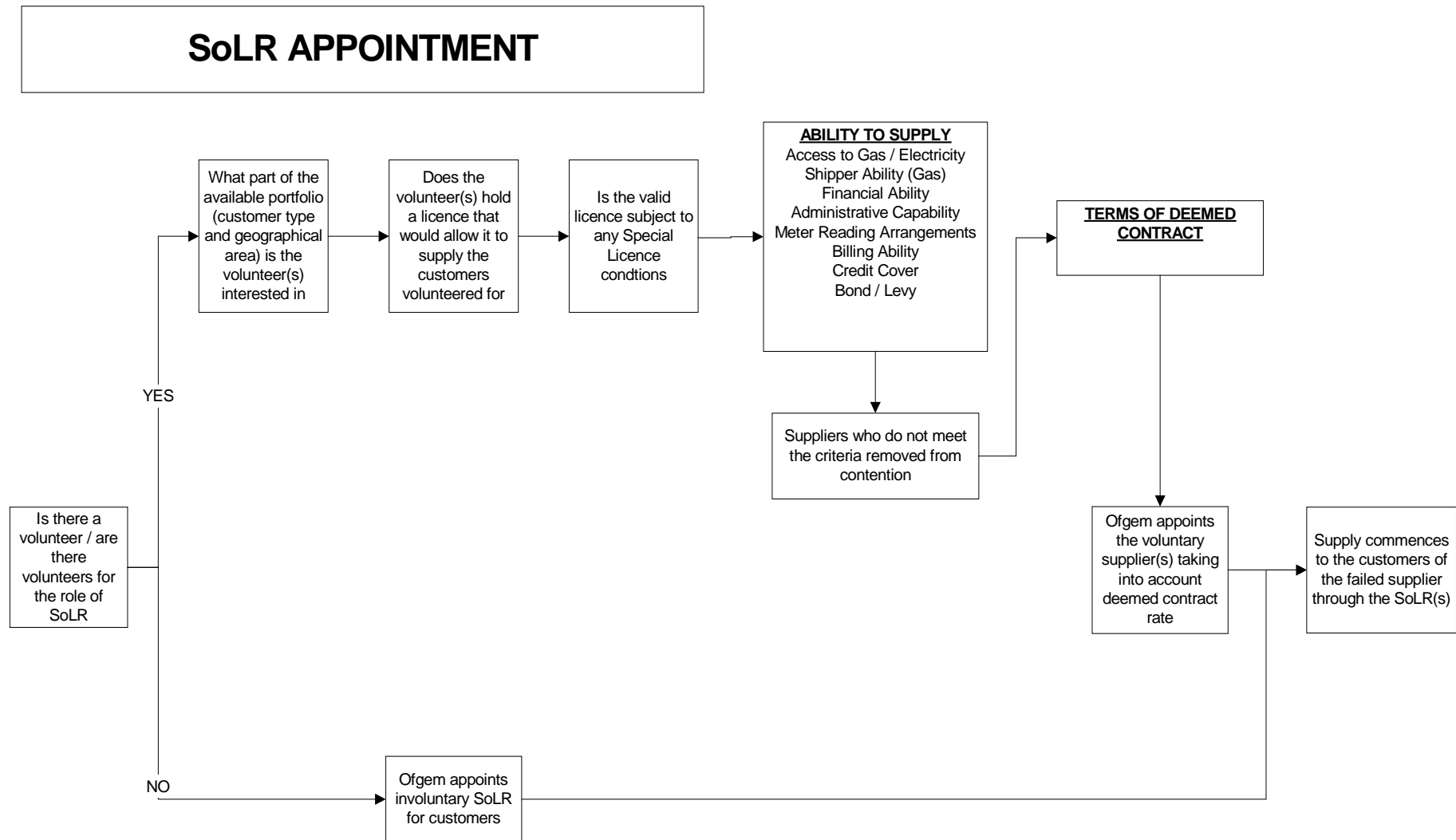


Annex 8 – Gas and Electricity SoLR after Utilities Act

Gas & Electricity after Utilities Act



Annex 9 – Selection and appointment of a SoLR



Annex 10 – Type of information to be requested

Gas Supplier Portfolio Information

Portfolio Details:

1. Total number of supply points in the portfolio
2. Spread of sites geographically by LDZ
3. Number of Daily Metered & Interruptible sites
4. Number of sites in the process of registration
5. Number of sites in the process of transferring away
6. Metering arrangements in place

Gas Costs:

1. Total Non Daily Metered kWh figure : split by domestic & I&C
2. Total kWh figure required per LDZ
6. Total Daily Metered kWh figure

Electricity Supplier Portfolio Information

Portfolio Details:

1. Total number of MPANs in the portfolio
2. Spread of sites geographically by GSP Group
3. Portfolio split by Profile Class
7. Metering arrangements in place (Half Hourly (HH) / Non HH)

In addition, depending on the time needed to compile the information:

- (a) Number of sites in the process of registration
- (b) Number of sites in the process of transferring away

Electricity Costs:

1. Total NHH Estimated Annual Consumption (EAC) per GSP Group
2. Total HH EAC per GSP Group
3. Registered Max demands at each MPAN
4. Current electricity costs incurred by the failing supplier

Annex 11 – Suppliers’ undertakings to gas transporters

Undertaking to be Given by Licensee to a Relevant Transporter in Respect of Shipping Charges etc

1. Where the licensee supplies gas to any premises in relation to which a particular gas transporter is the relevant transporter (“the transporter’s relevant premises”), it shall (unless it has previously done so) give the transporter a binding undertaking in the specified terms and, where it has given such an undertaking but there is a change in the specified terms which is such that the undertaking previously given is not in conformity with the changed terms, the licensee shall give the transporter a further binding undertaking in the changed specified terms which is expressed to supersede the undertaking previously given.
2. An undertaking for the purposes of paragraph 1 shall be given -
 - (a) as soon as is reasonably practicable within a month of the transporter concerned becoming the relevant transporter or, if later, of the specified terms in relation to the transporter concerned being designated by the Authority in pursuance of paragraph 3 or specified by the transporter in pursuance of paragraph 4, or
 - (b) in the case of a further undertaking, as soon as is reasonably practicable within a month of the change in the specified terms.
3. Subject to paragraph 4, in this condition “specified terms” and “changed specified terms” mean terms from time to time designated, in relation to the transporter concerned, by the Authority for the purposes of this condition generally, being terms which appear to it (after consultation with that transporter) to be calculated to secure the following objectives, namely that if and only if -
 - (a) the arrangements between the transporter concerned and a gas shipper for the conveyance of gas to the transporter’s relevant

premises, are terminated and no other arrangements between the transporter and that or another gas shipper for such conveyance have come into force, and

- (b) the licensee has been given notice thereof by the transporter concerned,

the licensee will, in respect of any period beginning when subparagraphs 2(a) and (b) are satisfied and ending immediately before there is a relevant shipper in relation to the premises, be required to make such payments to the transporter concerned in respect of gas taken out of its pipe-line system for supply to the transporter's relevant premises as, as nearly as may be, are the same as the payments which would have been attributable thereto and due under the arrangements mentioned in sub-paragraph (a), if they had not terminated and had the shipper concerned not, thereafter, introduced any gas into the transporter's pipe-line system nor made arrangements to do so.

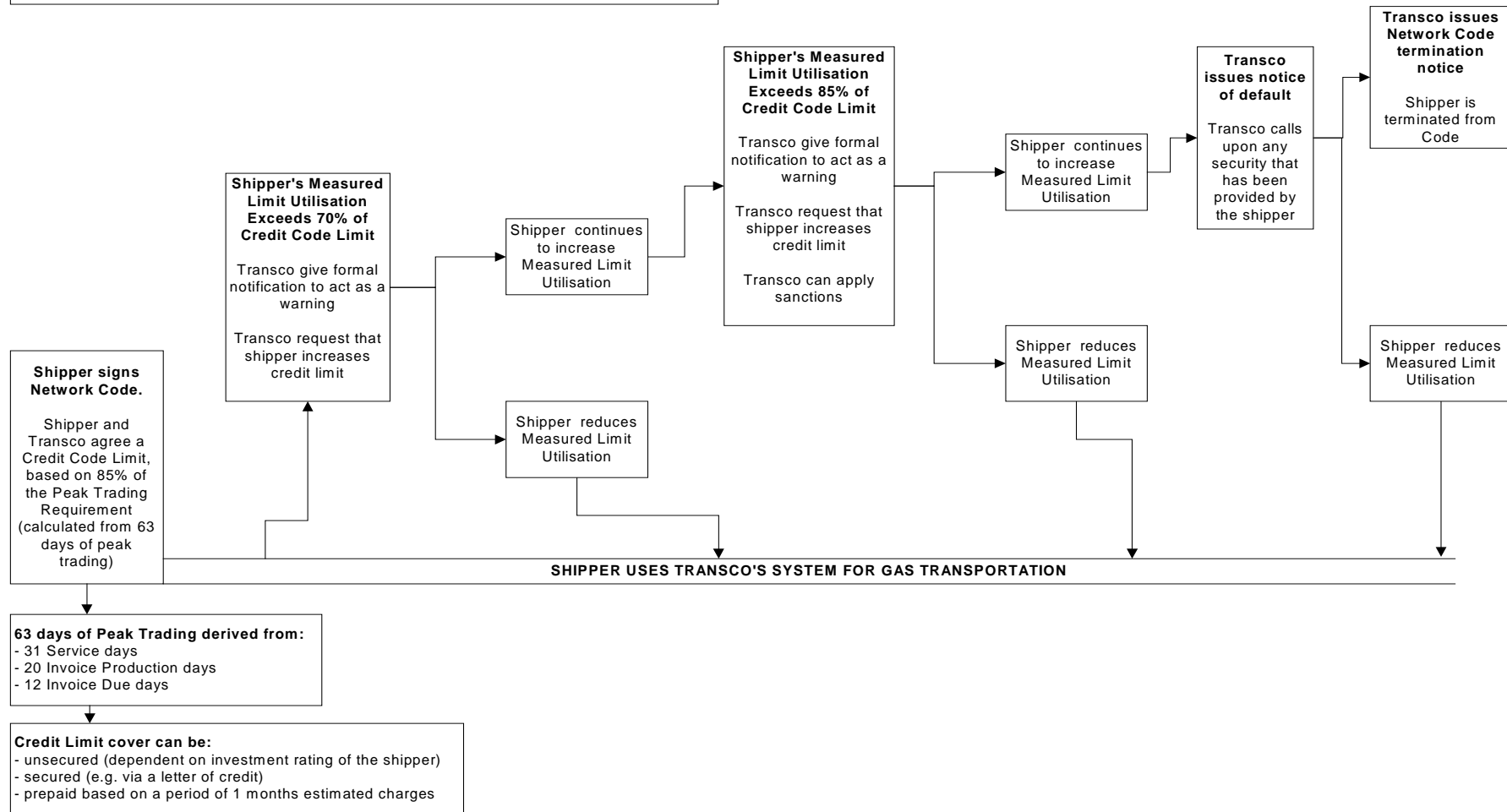
4. After the expiry of six months from the coming into force of the licence of the transporter concerned under section 7 of the Act and if and so long as the Authority has not designated terms in relation to that transporter, "specified terms" and "changed specified terms" mean terms from time to time specified by the transporter concerned which are calculated to secure the objectives mentioned in paragraph 3.
5. Changed specified terms shall only be designated by the Authority or, as the case may be, specified by the transporter concerned if, by reason of changes in the arrangements between the transporter and gas shippers, the terms previously specified have ceased to be calculated to secure the objectives mentioned in paragraph 3.
6. Different specified terms may be designated by the Authority or, as the case may be, specified by the transporter concerned for the purposes of this condition which differ according to the shipper concerned, so far as is

necessary or expedient to take account of differences in the terms of arrangements for the conveyance of gas made by different gas shippers.

7. The designation by the Authority of specified terms in relation to a gas transporter shall be by notice in writing given to that transporter.
8. Any reference in this condition to the termination of arrangements shall be construed as including a reference to the expiry of arrangements by effluxion of time and cognate expressions shall be construed accordingly.
9. Notwithstanding anything in the foregoing paragraphs, the licensee shall not be required to comply therewith save in so far as such compliance would not, from time to time, be unlawful by reason of section 5(1) of the Act.
10. In the circumstances mentioned in sub-paragraph (a) of paragraph 3, the licensee shall use its best endeavours to secure that a gas shipper makes arrangements with the transporter concerned for the conveyance of gas to the transporter's relevant premises which come into force, at the latest, within 35 days of both sub-paragraphs (a) and (b) of that paragraph being satisfied.
11. Where the transporter's relevant premises are secondary sub-deduct premises, the references to arrangements in paragraphs 3(a) and 10 shall be construed as references to sub-deduct arrangements; and references in this condition to "the shipper concerned" shall be construed accordingly.

Annex 12 – Gas transportation credit rules

GAS TRANSPORTATION CREDIT RULES



Annex 13 – Gas energy balancing charges

