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Dear Philippa

Last Resort Supply Payment Claim from Octopus Energy Limited

We welcome the opportunity to make representations.

The number of Supplier of Last Resort (SoLR) events in 2018 has been unprecedented and has caused considerable disruption for suppliers and customers. Stakeholders were warning that a number of suppliers were struggling to stay in business more than a year ago, and yet it has taken Ofgem until November this year to publish its initial thinking on tightening the supplier licensing regime. While we welcome the Supplier Licensing Review consultation¹ we believe that Ofgem should have acted more promptly and certainly as soon as the pressures facing the market became evident. This delay has allowed some suppliers to act in a financially irresponsible way by offering tariffs at unsustainable prices and sometimes with poor customer service. With no financial resilience built into their plans to deal with sudden unexpected shocks such as severe weather events, the number of suppliers failing is perhaps not surprising. However, it has resulted in suppliers with more robust business models having to pick up the costs of SoLRs and of any unpaid bills the failed suppliers have left behind, including a significant amount for the Renewable Obligation (RO) and Feed-in Tariff (FIT).

The frequency of SoLR events in recent months has left a considerable amount of uncertainty for suppliers, who have insufficient information about the potential value and timing of a Last Resort Supply Payment (LRSP) claim to aid financial planning. This unpredictability will increase when changes to the SoLR rules become effective on 1 January 2019, allowing SoLRs to submit LRSP claims up to five years after the SoLR commenced, unless Ofgem notifies a different timescale when appointing the SoLR. We urge Ofgem to notify suppliers of the precise deadline granted in respect of any particular LRSP at the earliest opportunity, together with full details of what the SoLR is expecting to claim for as stated in their SoLR RFI response, including the percentage of credit balances that the SoLR has indicated they will seek to recover in any LRSP claim.

We note that Ofgem has recently consulted² on changes to the distribution licence to allow network operators to request a derogation allowing them to make changes to their charges within a charging year; no account

¹ Supplier Licensing Review, Ofgem consultation, 21 November 2018

² Informal consultation on modification to the Electricity Distribution Licence to recover the costs associated with

appears to have been taken of the impact of this on suppliers. If there is less than 12 months' notice of increases to network charges, suppliers will have insufficient time to ensure that their fixed term contracts reflect the additional costs. Also, such a derogation could mean that the costs are not reflected in the default tariff price cap for a particular period and therefore suppliers would have to utilise the headroom provided for under Ofgem's default tariff cap methodology. The headroom allowance is already hard-pressed to cover all of the additional costs not accounted for in that methodology; additional costs caused by supplier failure could result in suppliers making further losses on default tariffs and put pressure on other suppliers such that they, also, fail. In deciding whether to grant a derogation, Ofgem must consider the impacts on suppliers to prevent one SoLR event forcing other struggling suppliers into another.

There are two concerns that we will be discussing further in our response to the Supplier Licensing Review consultation, but that we feel are worth raising here as well. In order to address these concerns quickly, we urge Ofgem to speed up its review of energy industry entry and exit rules in order to provide better protection to customers from the impacts of supplier failures.

Firstly, the amount suppliers can claim back through the LRSP now seems to be making trade deals unattractive. For example, prior to Spark Energy Ltd going through the SoLR process, Ovo contracted to acquire the Spark brand and operating company on the condition that it was appointed the SoLR. It was therefore able to conduct a trade sale for all but the customers of Spark Energy, absolving itself of responsibility for outstanding RO costs and indicating that it would submit an LRSP claim for many of the costs it would otherwise have had to bear itself. Ofgem must take this into consideration as part of its review of the supplier licensing regime.

Secondly, the impact of some suppliers' operating strategies can result in vulnerable customers subsidising those who are wealthy enough to afford to benefit from a cheaper price by paying up to a year in advance. If such suppliers fail, the credit balances those customers have with that supplier will be safe, but will be funded by all customers, including those that are vulnerable and less well-off. We welcome Ofgem's proposals in its Supplier Licensing Review consultation to restrict suppliers from offering terms which incentivise customers to maintain credit balances, of which we see this as an example.

Yours sincerely



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