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Consumers and Competition  
Ofgem  
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London  
SW1P 3GE

14 December 2017

Dear Rob,

### **LAST RESORT SUPPLIER PAYMENT CLAIM FROM CO-OPERATIVE ENERGY**

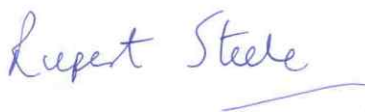
Thank you for the opportunity to make representations on Ofgem's minded to position in relation to Co-operative Energy Limited's (CEL) claim for a Last Resort Supply Payment in relation to its role as Supplier of Last Resort (SoLR) to customers of GB Energy Supply Limited (GBES).

Ofgem's letter of 16 November 2017 sets out the four claims that CEL has made in relation to use of the industry levy and explains that Ofgem is minded to consent to three of them. For the reasons set out in Annex 1, we agree with Ofgem's position to consent to Items 1 and 3 in relation to credit balances, and to refuse Item 4 in relation to IT migration costs, but we do not agree that Ofgem should consent to CEL's claim in relation to wholesale energy procurement under Item 2. The procurement cost was foreseeable for CEL and it should have either factored it into its price offer for GBES consumers or absorbed it. We set out further detail of this in Annex 1.

In assessing these claims, it has become clear to us that the detail and transparency within the SoLR process could be significantly improved. We have made some suggestions in Annex 2 for areas where we think the process could be improved both in transparency and operationally, in particular in relation to visibility of future claims from the industry levy. We have also set out some areas where we would welcome further feedback from Ofgem to support us in ensuring we can support customers as effectively as we can if we were to be chosen as SoLR in the future. We would be happy to discuss any of these points further if it would be helpful.

Should you wish to discuss our response further or have any questions please contact me or Rhona Peat ([rhona.peat@scottishpower.com](mailto:rhona.peat@scottishpower.com)).

Yours sincerely,



**Rupert Steele**  
Director of Regulation

**LAST RESORT SUPPLIER PAYMENT CLAIM FROM CO-OPERATIVE ENERGY –  
SCOTTISHPOWER COMMENTS**

**Items 1 and 3: Recovery of 70% of GBES consumers’ net credit balances (£10.98m), and related costs of capital (£1.79m)**

We have no representations to make in relation to CEL’s claim on the industry levy for 70% of the net credit balances of GBES customers. As Ofgem notes, paragraph 2.27 of the SoLR Guidance mentions credit balances as one area where Ofgem would consider a claim under the industry levy to be reasonable, and Ofgem’s information request in relation to the GBES SoLR event appears to directly link credit balances and Last Resort Supply Payments.

We note that CEL’s claim is consistent with its submission to act as SoLR for GBES customers. We agree with Ofgem’s objective of minimising the impact on consumers overall, and that the £10.98m should therefore be a maximum, with CEL tasked to minimise these costs through the administration process where possible.

We note Ofgem’s position that, in this case, it is reasonable to consent to CEL’s claim for its costs of capital in relation to the 70% of net credit balances. We agree with Ofgem’s assessment that the guidance, while noting that credit balances is an area where a claim under the levy would be reasonable, does not explicitly consider related costs.

We agree that the guidance could be clearer around this point (as well as other similar points which we set out in Annex 2). However, given that these costs directly relate to the protection of credit balances of GBES customers and given that the cost of capital is a significant factor in the costs of a supply business, we are supportive of Ofgem consenting to CEL’s claim for these costs.

**Item 2: Emergency wholesale procurement cost (£1.27m)**

We are not convinced by Ofgem’s assessment that it is reasonable to consent to CEL’s claim for emergency wholesale procurement costs. Ofgem justifies this on the basis that its information request did not explicitly ask suppliers about their assumptions on any future levy claims other than in relation to credit balances, and suppliers did not make any commitments in respect of these costs. We do not think this is sufficient reason to consent to CEL’s request; rather it clears the way to considering the request on its merits.

While the guidance could be clearer in setting out the areas where a claim under the levy would be viewed as reasonable, Ofgem has been clear that its preference is for suppliers to make claims for levy payments only in special cases, for example for protecting consumers’ credit balances. We do not believe it is appropriate to allow CEL’s claim for emergency wholesale procurement costs for the following reasons:

- a) There is a liquid and transparent market in the wholesale energy products which CEL will have needed to procure, and CEL should have been fully aware of the market prices at the time it submitted its SoLR application; the energy procurement costs were foreseeable by CEL and cannot reasonably be regarded as a “special case”.

- b) Ofgem says the claim for excess procurement costs is calculated relative to the costs that CEL would have incurred if it had had the opportunity to procure relevant customers' supply through normal acquisition routes and in accordance with CEL's standing hedging policy. Other than a slightly longer lead time (say two weeks) under normal acquisition routes, we cannot see why the energy procurement costs per customer should be substantially different for GBES customers. (Clearly, the margins may be different, given that CEL was promising to honour GBES prices, but that is a different matter).
- c) If the excess procurement costs were a result of CEL's relatively small scale and inability to secure favourable terms in the market, and these costs could have been avoided by larger suppliers, we do not believe it is appropriate for such costs to be recovered from other suppliers' customers via the levy.

In summary, these costs were foreseeable to CEL and it could have allowed for them in its bid or chosen to absorb them. Passing these costs on appropriately to GBES customers would have been unlikely to lead to hardship, given the generally low level of GBES charges. It is damaging to the integrity of the SoLR bidding process if a participant can bid low and then recover its procurement costs through this route without other bidders having the opportunity to bid on a comparable basis. (In ScottishPower's case, had we known that we would have been able to claim £1.3m for energy procurement costs, we could have improved our offer in other areas.) As noted in our cover letter, this highlights the need for greater transparency and rigour in the SoLR process.

#### **Item 4: IT System migration costs (£0.86m)**

We agree with Ofgem's reasons and minded-to decision not to consent to a claim in relation to the costs CEL has incurred (or will incur) in relation to transferring customers from the GBES systems to CEL systems. These are costs which CEL should have factored into their bid.

## **LAST RESORT SUPPLIER PAYMENT CLAIM FROM CO-OPERATIVE ENERGY - SCOTTISHPOWER COMMENTS ON SOLR GUIDANCE AND PROCESS**

### **1. Introduction**

As noted in our letter, we agree with Ofgem's view that the SoLR process could be more transparent and that the guidance could be clearer in some areas, particularly in relation to potential claims for a Last Resort Supply Payment. We have set these out below, alongside some further comments in relation to the SoLR process where we think additional information would allow ScottishPower to provide a better customer experience if it were to be selected as SoLR for any future events.

### **2. Claims for a Last Resort Supply Payment**

#### Credit balances

It would be helpful if Ofgem could provide further clarity in relation to credit balances of customers with the failed supplier, either by amending its guidance or the licence conditions.

SLC 9.4 (a) sets out that a Last Resort Supply Payment can only be claimed by the licensee in relation to the total costs incurred in the supply of gas or electricity to premises under a Last Resort Supply Direction. While we understand that this means that suppliers cannot make a claim in relation to closed account balances of former customers of the failed supplier (so that if they do commit to honour these balances it would be at the SoLR's own cost), it is less clear to us, how this would relate to customers who transfer to the SoLR with a credit balance but then switch away prior to using up that original credit balance and therefore where a balance would likely be refunded to a customer as cash rather than via a customer's energy account.

In the absence of any clarification or guidance from Ofgem that such payments would be considered under SLC 9.4 (a), in circumstances where a SoLR had not committed to cover all such balances itself, to minimise costs and reduce customer impact we could see customers being encouraged (for example via a letter) not to switch supplier until they had used up any credit balances. However we think this is an area where Ofgem may consider it appropriate to consider requests for payment under the levy in a similar manner to those customers with credit balances who continue to be supplied by the SoLR and would welcome Ofgem's views.

#### Other areas

As noted in our cover letter, we agree with Ofgem that there should be greater clarity on areas where it would consider a claim for a Last Resort Supply Payment. We also think that structure of the request for information could support this, as we note that within the GBES information request, the question relating to whether a supplier would waive its right to make a claim was included between two questions relating to credit balances (both live and closed), and this, along with the guidance, has perhaps led to an interpretation by some suppliers that only claims in relation to credit balances would be considered by Ofgem, which is not the case here based on Ofgem's minded to position for CEL's claims.

### **3. Process for “on-boarding” customers to the SoLR**

We noted in our response to the GBES information request that there appeared to be two alternative approaches for SoLRs moving customers from the failed supplier to the SoLR. Either to use the existing Change of Supply (CoS) process which would require the usual 15 to 20 day process to move customers using current industry processes, or replacing the failing supplier’s ID with that of the SoLR in the industry systems.

Our understanding from the limited SoLR events that have taken place in recent times is that the on-boarding process used will be that preferred by the appointed SoLR, and therefore SoLRs should set this out within their responses to the Ofgem information requests. To ensure that if chosen as a SoLR in the future, ScottishPower can provide customers with the best customer experience possible, we have assessed both options to understand what would deliver the best outcome for customers and what we need to do to support such processes in the future.

Of the two options, our assessment shows that there are advantages and disadvantages of each. For example, using existing industry processes may provide greater robustness to the process, however until the faster and more reliable switching changes are in place, there is likely to be a delay where customers cannot access their accounts while the switch completes. The alternative process may expose customers and suppliers to greater risk by bypassing the existing embedded processes; however, it is likely to provide a faster and clearer process for customer as their account is with their new supplier from the date of the Last Resort Supply Direction. We would be interested in understanding whether Ofgem has any additional insight on this that it could share ahead of any other SoLR events. Indeed if there is a preferred process, this may be something that Ofgem may wish to set out in its guidance.

In either case, it would also be helpful to have greater understanding of how customer information would be passed to appointed SoLRs. We appreciate that this may vary from case to case, however any insight on the expected data items and the process that Ofgem would (at least aim to) use would be particularly helpful in our plans to ensure a smooth customer experience for any future processes.

ScottishPower  
December 2017