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Submitted via email to: Licensing@ofgem.gov.uk

11 July 2018

Proposed modifications to Supplier of Last Resort (SoLR) supply licence conditions

Dear Lesley,

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests £12bn annually, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

The comments below represent a high-level industry view, and Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Energy UK agrees with the intent of Ofgem's proposed changes in its letter of 13 June. We recognise the rationale for a SoLR to be able to recover costs associated with honouring credit balances for customers who have switched away from the failing supplier.

With regard to the accompanying licence conditions, our primary concern is the lack of regulatory oversight of the administrator. Energy UK notes that the motivation of the administrator will be focused on recovering money for shareholders and creditors rather than on protecting consumers. There is a risk that the administrator will chase affected customers for debits up to the date of the handover. This could put customers at risk of a debt recovery process without regard for typical industry protections that exist for vulnerable customers or in relation to backbilling.

In the absence of regulatory oversight of the administrator, a SoLR will be exposed to risk. A scenario whereby the SoLR receives net credit balances from the administrator with no transparency of how this position had been reached is one that could cause detriment for customers and significant concern for suppliers. Ultimately this could disincentivise suppliers from applying to be the SoLR.

Energy UK understands that the alternative option of Energy Supply Company (ESC) administration could mitigate some of the risks linked to customer protections. We note that the Government outlined in its response to the consultation on the draft ESC administration rules in 2013 that it would only intend to apply for an ESC administration order for a large energy supply company if it is not possible to appoint a SoLR. Given the fundamental changes that have taken place in the energy supply market since 2013,

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we would encourage Ofgem to work with BEIS to review whether the current scope for ESC administration remains appropriate. We are interested to understand Ofgem's opinion on whether ESC administration would provide a better option to explore in future cases.

With regard to the recovery of costs, we agree in principle with the provision of greater flexibility around the timeframe in which a SoLR would be able to seek to recover any costs. It is, however, a significant change from the current deadline of within 6 months of the Last Resort Supply direction ceasing to take effect, to the proposed deadline of within 5 years. Energy UK considers that it is important for Ofgem to share further detail on the rationale for such a large increase to the current time period.

More broadly, Energy UK notes that it is during the build-up to a supplier failure that some of these risks can be better managed. This highlights the importance of improved market monitoring processes. We welcome the actions outlined by Ofgem in its letter of 11 June regarding the review of its approach to licensing suppliers. While the review of the arrangements for managing supplier failure and market exit is a positive first step, we note that it is in the areas of conditions for entering the market and ongoing monitoring and engagement that Ofgem's actions will impact the largest number of consumers. Energy UK urges Ofgem to engage with suppliers on how to approach reforms for market monitoring, in order for suppliers to be able to share relevant insight.

We also highlight to Ofgem that some suppliers are keen to participate in the SoLR process but are currently unable to (for example they may be an electricity only supplier and the supplier that fails is dual-fuel). The SoLR process will be more open to a wider variety of suppliers if interested parties were able to bid into the process as a consortium. With this approach, single fuel suppliers and/or sector specific suppliers would not be excluded from the process which could result in a more competitive SoLR process and better value for consumers. We acknowledge that there would need to be further discussion around how this could operate in practice but urge Ofgem to consider this in their overall review of the process which they will conduct later this year.

A supplier failure has a range of negative consequences, including a reputational risk to consumer confidence, and a financial cost affecting a multitude of parties. Ofgem has a vital role to play in protecting customers by mitigating the risk of supplier failures, both at the point at which a licence is awarded and through its regular market monitoring. We look forward to Ofgem's consultation on a review of licensing arrangements this summer and encourage Ofgem to expedite this work as quickly as possible.

Yours sincerely,

Colin Brooks