

All interested stakeholders

Email: licensing@ofgem.gov.uk

Date: 05 November 2018

Dear Colleague,

Decision to modify SoLR supply licence conditions

On 7 September, we¹ published a statutory consultation² setting out our intention to modify the supply licence conditions that underpin the Supplier of Last Resort (**SoLR**) arrangements.

Our proposed changes seek to enable a potential SoLR to recover costs associated with honouring credit balances for customers who have switched away from the failing supplier at the date the supplier fails. We also proposed a range of other changes to ensure any claim for credit balances represents the actual amounts owed to customers by the failed supplier and provide appropriate flexibility in the timings for the process for making a claim.

We received six non-confidential responses³ to our statutory consultation which we have published on our website. We also received one confidential response, which we have taken into account but not published. We are grateful to respondents for their further views on the proposed changes and have carefully considered all responses.

With one exception, there is broad support for the intention behind our proposed changes to the SoLR licence conditions. No new points were raised which we consider to be within the scope of this consultation. We recognise that a number of respondents continue to have concerns on certain aspects of the proposed changes, including the potential impact on suppliers of changes to the timescale for the SoLR process. Our response to these concerns is set out in annex 1.

We are also grateful to respondents for their views on supplier licensing and monitoring. We plan to publish initial proposals on our approach to supplier licensing before the end of the year.

¹ The terms "Authority", "we" and "us" are used interchangeably in this document.

² <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-modifications-solr-supply-licence-conditions>

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Decision

We have decided to modify the gas and electricity supply licences as set out in the formal licence modification notices that accompany this letter. The licence changes will take effect from 56 days from the date of this letter.

LESLEY NUGENT

Lesley Nugent
Head of Industry Codes and Licensing

Signed on behalf of the authority and authorised for that purpose

Annex 1 - Stakeholder feedback

Changes to the timescale for the SoLR process

A number of respondents noted on-going concerns on the potential impact of changes to the SoLR timescale on suppliers' ability to plan their finances, both in respect of the five-year backstop for a Last Resort Supply Payment (**LRSP**) claim and the removal of the three-month deadline for the Authority to determine the relevant amount for a LRSP claim.

Our view

We do not expect the five-year backstop to become the default period in which a LRSP claim is made. The backstop will apply only if the Authority does not notify the SoLR of an earlier deadline for a claim. With respect to the removal of the three-month deadline, we remain committed to making decisions on any LRSP claim in a reasonable timescale, given all the circumstances in any case. As noted in our statutory consultation, it remains our preference that a SoLR should not make a LRSP claim.

Distribution Use of System charges

Two respondents raised concerns on the risk associated with reopening Distribution Use of System (DUoS) charges in order to recover amounts claimed through a LRSP, and the associated impact on the 15-month notification period for suppliers on DUoS charges. One respondent urged Ofgem to consider the impact on suppliers and engage with stakeholders on this matter.

One respondent considered the statutory consultation to be a missed opportunity to include Independent Distribution Network Operators (**IDNOs**) in the arrangements for recovery of SoLR costs, but noted Ofgem has provided some expectation of this issue being picked up under other work.

Our view

We note the rules in place for DUoS charges can be changed by existing industry processes. We believe that industry should lead on this and bring forward any potential modification proposals for our consideration. We have discussed the arrangements for recovery of SoLR bad debt with DNOs and IDNOs, and expect to publish proposals on this shortly.

Regulatory oversight of the administration process

One respondent stressed the need for regulatory oversight of the administration process and urged Ofgem to reconsider working with the Department of Business, Enterprise and Industrial Strategy to review the scope for the use of the Energy Supply Company Administration process.

Our view

As we noted in the statutory consultation, the Energy Supply Company Administration process is intended to be used only in the unlikely event that a large supplier becomes financially distressed. We do not consider it necessary, at this time, to review the conditions when we may consider using this process. Broader regulatory oversight of the

administration process for companies is not within Ofgem's regulatory remit, or the scope of this consultation.

Credit balances

One respondent considered that priority should be given to compensating customers who wish to move away from a defaulting supplier. The respondent said customers are currently locked into a failing supplier because they lose protection of the credit balance if they switch, and this is not in the interests of consumers. The respondent proposed that customers who switch from a failing supplier should be given greater protection of the credit balance (say 100%) and a lesser amount of protection (say 50%) to others.

Our views

Our proposed changes will ensure that both open and closed credit balances are safeguarded through the industry levy arrangements and therefore address a potential gap in the existing consumer protections. We therefore consider that our proposal addresses what we understand to be the respondent's main concern: that consumers are otherwise potentially 'locked into' a supplier because of the risk of losing their credit balance if they switch and the supplier subsequently fails. We also anticipate that there could be risks and potentially unintended consequences of the proposed approach the respondent has suggested, and do not at this time consider a strong case has been made to consider this type of approach.

Definition of "Credit"

One respondent considered that the definition of "credit" is too narrow and should include explicit provision for goodwill payments.

Our views

Goodwill payments are discretionary. The SoLR may choose to honour goodwill payments for the purpose of managing customer relationships, but this is a commercial decision. We note that goodwill payments which already form part of the customer's credit balance will be protected by the SoLR. As we noted in our statutory consultation, where goodwill payments and credit balances are in dispute, these can be considered by an incoming SoLR, in conjunction with consumer bodies and Ofgem, as required, on a case by case basis.