

# Supplier of Last Resort in Electricity

---

Consultation Paper

15 May 2009

# 1 Introduction

The purpose of this paper is to consult on the process by which a Supplier of Last Resort (SoLR) would be chosen in Northern Ireland's retail electricity market.

In a competitive market, it is possible that suppliers may fail. Should a supplier fail, customers would be left without a party responsible for their electricity supply. This could lead to demand to be met and use made of the Transmission and Distribution Network without a responsible party. This represents a risk to other market participants.

Normally, a supplier will exit the market and will make arrangements for the continuation of supply for its customers with another supplier. However, on occasions a supplier may exit the market without making such arrangements, for example if they have gone into administration. European Directive 2003/54/EC stipulates that all households, and small enterprises where appropriate should enjoy universal service. To ensure the provision of universal service, Member States may appoint a supplier of last resort.

Consequently all supply licences in Northern Ireland provide for the Northern Ireland Authority for Utility Regulation (the Utility Regulator) to direct that supplier to be a SoLR, provided that such a direction would not adversely affect the supplier's business.

**Respondents are asked to comment on whether any Last Resort Supply Direction should apply to all customers or just Domestic and Small Enterprises.**

**Respondents are also asked to comment on whether the SoLR direction be used in all instances, or if only a small number of customers are involved should these customers be given an opportunity to find another supplier and transferred manually?**

## **2 Scope**

The scope of this paper covers:

- How and when should a SoLR be determined?
- What are the duties of a SoLR?
- How does the SoLR recover its costs and what tariffs can be charged?
- If different tariffs are charged to SoLR customers than to other customers of that supplier, how long should SoLR customers remain on this tariff?
- Should customers be 'locked-in' for a period of time following transfer to the SoLR?

It is beyond the scope of this paper to discuss how customer transfers should be handled under a SoLR direction.

### **3 Legislative Background**

#### **EU Directive**

Article 3.3 of EU Directive 2003/54/EC<sup>1</sup> states “Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises... enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort.”

#### **Supply Licence**

All suppliers have a condition in their licence (Condition 22) stating that the Utility Regulator may direct that licensee to be a SoLR, if it considers that circumstances have arisen that would entitle the Utility Regulator to revoke the Supply Licence of an Electricity Supplier other than the Licensee, and that Licensee could comply with the Last Resort Supply Direction without significantly prejudicing its ability to:

- Continue to supply electricity to its Customers’ premises; and
- Fulfil its contractual obligations for supply of electricity.

The effect of such a direction would be to put in place a deemed supply contract between each of the customers of the failing supplier and the SoLR, which the SoLR can rely on for billing purposes.

Condition 23 of the Supplier licence states that where a Supplier is appointed as a SoLR, with the Utility Regulator’s written consent, it may make a claim for a Last Resort Supply Payment to cover the costs which have been reasonably incurred by the Licensee in supplying electricity to premises pursuant to the Last Resort Supply Direction, plus a reasonable profit. These costs shall be approved by the Utility Regulator and passed through the PSO<sup>2</sup> in accordance with Condition 33 of the NIE

---

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0054:EN:HTML>

<sup>2</sup> In Northern Ireland a PSO levy is charged on all suppliers covering the excess costs of the legacy generation contracts which were signed between NIE PPB and independently owned generators. This was to ensure that the burden of historic cost was not being forced solely upon an ever decreasing customer base as customers moved away from NIE Energy Supply. The PSO is also applied to other costs which should be paid for by all customers, such as Land Bank, Energy Efficiency Levy and Market Opening.

Transmission Licence.

## **Electricity Regulations (Northern Ireland) 2007**

In Northern Ireland the Electricity Regulations (Northern Ireland) 2007 have amended the provisions of the Electricity (Northern Ireland) Order 1992 to replace its Schedule 6 with a new Electricity Supply Code.

The new Electricity Supply Code contains Paragraph 3, “Deemed Contracts”, which provides for the existence of Deemed Contracts where contracts for supply to premises do not exist.

Paragraph 3 of the Electricity Supply Code states that the Utility Regulator shall publish a document containing provisions for determining the appropriate supplier when a customer is being supplied under a deemed contract.

Therefore, the Utility Regulator is obliged to publish a document stating how a SoLR would be chosen in Northern Ireland’s electricity market. This consultation paper will be used to construct those provisions.

It is important to note that the SoLR Condition is distinct from Condition 26 of the supplier licence (Duty to Offer Terms) which states that where a Licensee supplies, or offers to supply, electricity to Domestic Premises, it must, within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, offer to enter into a Contract with that Customer. This is distinct because a SoLR can be directed by the Utility Regulator to enter into a deemed contracts by the Utility Regulator without customers needing to seek an alternative supplier.

The SoLR role does not apply to serving customers which another supplier no longer wishes to serve and seeks to transfer.

## **4 Effect of Supplier Failure**

Since November 2007, the Northern Ireland electricity market has been open to competition. While competition for industrial and commercial customers is well developed, NIE Energy remains the only supplier within the domestic market.

Since the start of the Single Electricity Market (SEM), also in November 2007, all suppliers and generators on the island of Ireland respectively buy and sell their energy from a central pool. These arrangements are described in the Trading and Settlement Code (“the Code”).

If a supplier was to fail, then unless they have made arrangements for the continuation of supply to its customers by for example, selling its customer base, these customers will continue to consume electricity and make use of the Transmission & Distribution network. There is therefore a need to appoint a SoLR.

Disconnecting customers would conflict with the EU Directive which states that domestic customers should enjoy universal service. If these customers do not have a registered supplier then no party will be responsible for this consumption and it represents a liability which must be covered by all other market participants.

It is therefore in the interests of all market participants if the customers of a defaulting supplier are transferred to the SoLR as soon as possible, and the SoLR takes responsibility for these customers from the date on which the Supplier’s licence is revoked and the Last Resort Supply Direction is issued.

## 5 Defining the SoLR function

The SoLR function essentially puts in place arrangements for the transfer of customers to a new supplier of electricity should the Supply Licence of an existing supplier be revoked. A supplier's licence may be revoked for a number of reasons, including:

- **Serious licence breach:** a supplier continuously breaches the conditions of its licence;
- **Non-payment of licence fees;**
- **Financial Hardship:** e.g. a supplier is unable to pay its debts, is placed into receivership/administration or becomes subject to an order for winding up;
- **Planned exit:** e.g. a supplier exits the market of his own free will (however, in such an event, the exiting supplier should use all available means to transfer customers to another supplier once timing of the exit is known);

The Utility Regulator considers that trade sales are in general more desirable than regulatory intervention, especially where discussion takes place with the Utility Regulator on how customer interests are protected through the sale. However there may be some cases in which this is not possible and the Utility Regulator will have to revoke the defaulting supplier's licence and give a Last Resort Supply Direction.

The SoLR function does not extend to serving customers that another supplier no longer wishes to serve and seeks to transfer to another supplier with a duty to supply. The SoLR function will only apply where the supply licence of another supplier has been revoked.

## 6 SoLR Duties

The Utility Regulator's view is that the role of the SoLR should include the following:

- Notify in writing all affected customers within five days of the direction that the SoLR mechanism has been initiated;
- Co-operate with NIE in managing the process for transferring and communicating with affected customers;
- Maintain normal conditions of supply to those customers until they transfer to another supplier;
- After a maximum of six months, transfer remaining SoLR customers who have not already transferred (to another supplier or tariff) onto a regular tariff of the SoLR that is appropriate to their customer category (should the SoLR tariff be different from regular tariffs);
- The SoLR must use all reasonable endeavours to secure a meter reading from the failed supplier's former customers within 14 days of the direction taking effect, except where the Utility Regulator accepts that it would not be feasible or economic to do so; or if it meant entering the customer's premises without their consent or trying to get entry on more than one occasion. The Utility Regulator and other interested parties may advise customers through the media to take a meter reading. In deciding whether it would be feasible for the supplier to obtain meter readings in the time specified the Utility Regulator will consider, amongst other things, the size of the failed supplier's portfolio and the availability of customer addresses.

The SoLR function does not apply when a Supplier no longer wishes to supply a group of customers and seeks to transfer them to another supplier with a duty to supply.

**Respondents are asked to comment on the Duties of the SoLR and state whether the duties listed above are all relevant or are there any other duties the SoLR should perform. Comments should also include the appropriateness of the 5 day window for notifying customers and the 14 days for securing a meter reading.**

### Lock-in Period

A three-month lock-in period may be necessary so that customers transferred to the SoLR under the SoLR direction would be with the SoLR for at least one billing system.



**Respondents to the Consultation are asked to consider the appropriateness and length of any lock-in period.**

### **Customer Opt-Out Period**

If there were to be a lock-in period, a customer opt-out period may be desirable. It is proposed that this would have the following features:

- From the date of the Supplier of Last Resort direction, the Supplier of Last Resort shall contact customers within five working days;
- Customers would then have 14 working days to choose an alternative supplier from the end of the five day contact period;
- All change of supply during this customer opt-period will be made retroactively to the effective date of the SoLR direction;
- At the end of the 14 working day period, all remaining customers will be transferred to the SoLR, retroactively to the effective date of the SoLR direction.

If there was no lock-in period, it may not be necessary to have an opt-out period.

**Respondents to the Consultation are asked to consider this Customer Opt-Out Period in their response. Comments should include the length of the Opt-Out Period, and whether there is a need for an opt-out period if no lock-in period existed.**

### **Different SoLRs for different Customer Classes**

It may be appropriate to have a different SoLR for each class of customer, as different suppliers are better suited at serving different customers.

**Respondents to the Consultation are asked to consider whether it would be appropriate to have different SoLRs for different Customer Classes.**

## **7 Customer Notification**

When notifying affected customers of the new arrangements, the SoLR will be required to communicate:

- That the exiting supplier will no longer be the respective customer's supplier;
- That the SoLR is the deemed supplier as directed by Condition 22 of its supply licence;
- The SoLR has been the deemed supplier since the date of the direction;
- That the customer is permitted to change supplier by a certain date (will depend on the opt-out period) and if they choose to do so, then this supplier will be deemed to have been their supplier from the date of the direction;
- The duration of the lock-in period (if a lock-in period exists);
- A company phone number outlining how the customer may receive further information; and
- A simple and comprehensive list of tariffs that will apply.

**Respondents to the Consultation are asked to consider whether there are any further pieces of information that should be supplied to customers.**

## 8 Appointment of the SoLR

The Utility Regulator has recognised three approaches as to how a SoLR could be appointed in the Northern Ireland electricity market:

- **Obligation:** a firm obligation is placed on one party, for a defined period of time, to carry out the role;
- **Auction:** parties compete, through an auction process, to provide the service at the lowest cost (having met certain minimum criteria);
- **Case-by-case:** A SoLR is selected depending on the specific circumstances at the time of the SoLR event.

### Obligation

This approach would be consistent with Condition 22 of Suppliers' licences, which essentially states that the Utility Regulator may direct any licensee to be SoLR. An obligation would be placed on a supplier for a defined period of time. If there was a SoLR event during this time, customers would automatically default to them.

The benefit of placing an obligation on a licensed supplier is that systems can be established to allow the SoLR to take on a large number of customers well in advance of a SoLR event happening and there can be clarity in terms of defining where accountabilities lie. Because the obligation is only being placed on the supplier for a defined period of time, it does not prevent the possibility that there will be a different SoLR appointed in the future.

However, this approach also has disadvantages. Expenditure may be needed in order to establish the systems necessary to appoint a SoLR. The Utility Regulator would be unwilling to approve significant costs relating to an interim IT solution for dealing with a SoLR event, given that work in order to implement an Enduring Solution is underway and all the existing systems may be replaced.

### Auction

Under this arrangement, the Utility Regulator (or a party appointed by the Utility Regulator) would hold an auction in which suppliers compete for the right to be the SoLR. The auction would either be held in advance of a SoLR event e.g. on an annual basis, or it would be held whenever a SoLR event happened.

It would be expected that suppliers would bid in the amount that it would cost to provide the SoLR service, with the supplier offering to provide the service at the least cost being awarded the contract. With the Utility Regulator's permission, this cost would then be recovered under the provisions of Condition 23 of the supplier licence.

There are a number of advantages to this approach. An auction is a good mechanism for establishing a market price for providing the SoLR service. While there may be some costs associated with a supplier stepping in at short notice and managing the administrative burden of transferring customers, managing their enquiries and ensuring that they are billed correctly, a successful auction will also draw out the benefits to a supplier of acquiring a number of customers that, under normal circumstances, it would have needed to acquire on a commercial basis. Therefore, a supplier's bid may be negative, i.e. there would be a net benefit to suppliers of being appointed SoLR, and they would therefore be prepared to pay to be awarded the service.

### **Case-by-Case Allocation**

Under this arrangement, the choice of SoLR is not determined in advance. Instead, depending on the nature of the supplier default, the Utility Regulator would appoint a SoLR on a case-by-case basis. The criteria for selection of a SoLR will include financial, technical and operational competence, as well the Terms and Conditions under which it would be supplying the SoLR customers.

The Utility Regulator would invite licensed suppliers to join a regularly reviewed list of SoLR candidates, where the supplier specifies the type of customer its business can support should there be a SoLR event. When a SoLR event occurs, the Utility Regulator would consider the nature of the default (e.g. the customer base of the defaulting supplier) and then appoint the most appropriate SoLR. This approach would allow the Utility Regulator to appoint a SoLR that best matches the nature of the default.

**Respondents to the Consultation are asked to consider how it feels the SoLR should be appointed. Should they be appointed under an Obligation, under an Auction or under a Case-by-Case basis? Are there any characteristics of each method which respondents feel should be improved? What operational competences should be considered for evaluation?**

## 9 Capabilities of the SoLR

The Utility Regulator will only direct a supplier as SoLR if it considers that the supplier could comply with the direction without significantly prejudicing its ability to continue to supply electricity to its Customers' premises and the ability to fulfil its contractual obligations for the supply of electricity.

Therefore before the SoLR role is directed the Utility Regulator will need to be certain that the proposed SoLR is in a position to fulfil the role. This includes having:

- The operational and technical competence and the financial ability to be able to supply the additional customers without significantly prejudicing its ability to supply its own customers;
- Energy available, or readily attainable, to supply additional customers;
- The ability to meet its obligations to existing and additional customers in accordance with consumer protection requirements;
- The ability to provide the increased credit cover required without reaching its credit limits;
- The ability to deal with customer enquiries, taking into account draft letters, notices, Q&As prepared, call centre capability and billing arrangements;
- The ability to deal with pre-payment customers acquired as part of a last resort supply direction.

This information may be needed to be provided to the Utility Regulator by potential SoLRs in a timely manner if it becomes clear to the Utility Regulator that a supplier is failing. An example of the type of information that would be requested from potential SoLRs is listed in Appendix 1.

## **10 Costs Recovery and SoLR Tariffs**

While being appointed as SoLR gives the opportunity to a supplier to acquire a potentially large number of customers it would have not acquired otherwise and without any costs being spent on marketing etc., there may be a significant amount of costs associated with undertaking the SoLR role.

Suppliers may make a claim for a Last Resort Supply Payment to cover the costs which have been reasonably incurred by it in supplying electricity to premises pursuant to the Last Resort Supply Direction, plus a reasonable profit. However, the Utility Regulator may look favourably on suppliers who were prepared to waive this right, given that the supplier may be obtaining a large number of customers without significant expenditure on advertising and marketing.

### **Non-Energy Related Costs**

Examples of these categories of cost include customer transfer through the change of supply process, communications with these customers, billing and ensuring that the affected customers can change to another tariff or supplier.

### **Energy Related Costs**

The cost of buying energy for customers is likely to be the largest component of cost and its level will be influenced by the timing of the SoLR event (the cost of purchasing additional energy is expected to be higher if a SoLR event occurs in winter than in summer) and the total demand of the customers involved. By taking on a large number of customers over a short period of time (overnight), the SoLR is likely to suffer a deterioration of any hedged position it is in and may have to purchase electricity for its additional customers at System Marginal Price.

### **Cost Recovery**

The Utility Regulator will approve a tariff that may include an estimate of the additional costs incurred by the SoLR. The tariff could be set:

- Above or below the standard tariffs currently offered by the SoLR in order to reflect the specific costs (net of benefits) involved, based on an ex-ante determination. Any difference between the SoLR tariff and the normal tariff will be determined by a number of factors, including the timing of the direction;

- At the same level as standard tariffs, with an ex-post regime to allow the SoLR to recover any costs incurred in carrying out the SoLR role. Setting allowed costs ex-post requires the SoLR to maintain clear records of the additional energy purchase costs involved and requires a judgement on how much of these costs should be allowed. Any outstanding amount would be recovered through the PSO;
- At the same level as standard tariffs. Given that costs of carrying out SoLR activities may not be excessive, the SoLR may actually benefit in the Long Run, as it has acquired a large number of customers without significant marketing costs; or
- As a pool-price-pass-through, with the supplier purchasing from the pool and passing the SMP straight onto customers.

**Respondents to the Consultation are asked to consider how the costs of carrying out the SoLR duties should be recovered. Should tariffs be set above the standard tariff, at the same level as the standard tariff, or as a pool-price-pass-through?**

## **11 Duration of the SoLR role**

According to Condition 22 of the Supply Licence, the Last Resort Supply Direction will have a maximum duration of six months from the date on which the direction was issued. At the end of this period, customers will go onto the standard terms and conditions of that supplier.

**Respondents to the Consultation are asked to consider whether the SoLR Direction should last for a period of shorter than six months.**



## 12 Determining when the SoLR should be directed

A Suspension Order is an order from the Market Operator instructing a participant to cease trading in the Pool in respect of the Unit or Units identified in the order. The Market Operator may issue a Suspension Order in respect of any or all of a Participant's Units under certain defined circumstances<sup>3</sup>, subject to the prior written consent of the Regulatory Authorities.

A Suspension Order cannot come into effect in relation to any Supplier Units before the expiry of the Supplier Suspension Delay Period (SSDP). The purpose of this delay periods is to provide time during which the Utility Regulator may investigate the underlying issues which led to the Participant defaulting and to consider and determine what action should be taken (if any) and, if possible, to enable the Participant to correct the default.

Also, a Suspension Order may not come into effect unless the Utility Regulator has directed that all demand represented by that Supplier Unit should be met by the SoLR<sup>4</sup>. This is to ensure that no consumer represented by the defaulting supplier will be left without a supplier, and to ensure that all demand in the wholesale market is allocated to a participant.

In their decision paper on Suspension Delay Periods, published 5<sup>th</sup> September 2007<sup>5</sup>, the Regulatory Authorities decided that the SSDP should be 14 calendar days.

Therefore, once the SSDP has been initiated, there is a maximum of 14 days in which to issue the SoLR direction. The Utility Regulator will leave as long as time possible between the issue of the SSDP and issuing the SoLR direction to allow time to investigate the underlying issues which led to the Participant defaulting enable the Participant to correct the default. However, the wholesale market elements relating to a SoLR direction must be put in place before the expiry of the Suspension Delay Period.

*SEM Agreed Procedure 1: Participant and Unit Registration and Deregistration* lays out the following timeline for the issue of a SoLR direction:

---

<sup>3</sup> These circumstances can be found in paragraphs 2.243 and 2.246 of the Trading and Settlement Code

<sup>4</sup> Paragraph 2.244 of the Trading and Settlement Code

<sup>5</sup> AIP/SEM/07/460

A single SoLR Supplier Unit will be registered by the SoLR using the same process as a Participant registering a Unit with the exception that the SoLR Unit will not be actively trading.

Assuming the Suspension Order is not lifted for any reason, the SoLR direction should be issued at least five days before the expiry of the SSDP. The SoLR Supplier Unit must be effective for trading on the day on which the retail SoLR process begins. It should therefore be effective prior to the running of Settlement for the day following the expiry of the SSDP.

The Meter Data Providers (NIE) can begin the transfer of customers of the Suspended Supplier Units to the SoLR Supplier Unit (or other Suppliers which the customers of the Suspended Supplier Units may have chosen according to the rules of the retail SoLR process). This should be carried out prior to the running of the Meter Data aggregation for Settlement for the day following the expiry of the Suspension Delay period.

NIE should then send Meter Data for defaulting Supplier Units (with decreasing volumes) and data for the effective SoLR Supplier Unit (with increasing volumes) to the Market Operator for Indicative Settlement. This should be done under normal data submission timelines, during the five day period between the effective date of the commence retail SoLR process and the expiry of the SSDP.

NIE should continue and complete the transfer of customers until the Suspended Supplier Units contain no customers. If all customers are removed from the Suspended Supplier Units, NIE should send over “zero-populated” meter data for those Supplier Units.

The Market Operator must then reconfigure all Trading Site configurations with the Suspended Supplier Units so that the SoLR Supplier Unit is an Associated Supplier Unit for those Trading Sites. This should be done before Meter Data Provider (MDP) aggregation commences for the day after the last day of the Suspension Delay Period.

**Therefore, all customers must be transferred to the SoLR before the end of the SSDP**

If a trade sale is plausible and where the transfer of a supply licence is acceptable to the Utility Regulator, then there may be no need to issue a SoLR direction. However, for a transfer to be completed and approved the new supplier will be required to meet existing supply licence conditions as well as all of the old supplier’s responsibilities.

Without such assurances, the Utility Regulator would not be able to allow for a transfer of the licence and would consequently consider issuing a SoLR direction.

Customers of the defaulting supplier must at some time be notified that their supplier is failing.

If the customers of the defaulting supplier were notified immediately upon the issue of the SSDP, it could cause them to transfer to another supplier, when there is every possibility that the company could recover from this and begin to operate as normal again.

Because of this, customers will not be notified until the Last Resort Supply Direction has been issued.

## 13 Information about the Failing Supplier's Portfolio

In order to appropriately manage a SoLR event, advance knowledge of the size of the Defaulting Supplier will be required. Good quality information about a failing supplier's portfolio enables potential SoLRs to assess the impact on their existing business of supplying additional customers. It also enables a SoLR to provide a better service to those customers, particularly if customer names and billing addresses are available. The Utility Regulator will therefore use its powers<sup>6</sup> to obtain information about the failing supplier's portfolio and customers. This information will be requested before the supply licence of the defaulting supplier is revoked, otherwise the Utility Regulator would have no power to ensure the information was handed over.

Some information about customers can be obtained from the network operator; however NIE do not have customer billing details. If poor quality systems have been one of the factors in the supplier's failure, customer billing information may be limited.

However, such information is confidential to the supplier, and as such information on a customer level will not be provided prior to a Last Resort Supply Direction. It is therefore the intention of the Utility Regulator that potential SoLRs will be provided with high-level portfolio information of the percentage market share of the Defaulting Supplier during the Supplier Suspension Delay Period. Detail regarding the number of customers and their Meter Point Registration Numbers (MPRN) will be provided only after a SoLR direction has taken place and a SoLR has been appointed.

It is deemed to be legitimate to release this information under Article 63 of the Energy (Northern Ireland) Order 2003, which states that information relating to the affairs of any individual or to any particular business, may be disclosed for the purpose of facilitating the performance of any functions of the Utility Regulator, one of which is to protect the interests of consumers of electricity supplied by authorised suppliers.

Article 63 also states that information cannot be disclosed during the lifetime of the individual or so long as the business continues to be carried on. Given that the supplier is in default, there should be no legal barrier to releasing this information.

Although NIE should have information about a supplier's meters, volumes used and site addresses, they do not hold customer billing details. The Utility Regulator will therefore ask the failing supplier for information about its portfolio and for details of its customers.

---

<sup>6</sup> *Electricity Supply Licence: Standard Condition 10 (Provision of Information to the Authority)*

An example of the type of information that would be requested from the failing supplier is set out in Appendix 2.

## 14 Responses

Responses should be sent, preferably in e-mail format, by 5.00pm on 12 June 2009 to

Kenny Dane  
Utility Regulator  
Queen's House  
14 Queen Street  
Belfast, BT1 6ED  
Tel: 028 9031 6646 Fax: 028 9031 1740  
[kenny.dane@niaur.gov.uk](mailto:kenny.dane@niaur.gov.uk)

In particular stakeholders are asked to respond on the following issues from the consultation:

1. Will any Last Resort Supply Direction apply to all customer classes, or just Domestic and small enterprises as stated in the Directive?
2. Should the SoLR direction be used in all instances, or if only a small number of customers are involved should these customers be given an opportunity to find another supplier and transferred manually?
3. Are the duties of the SoLR relevant and are there any other duties the SoLR should perform?
4. Is the five day window for notifying customers sufficient and is it reasonable to try and secure a meter reading within 14 days?
5. Should there be a customer opt-out period? How long should it last?
6. Should there be a lock-in period? How long should it last?
7. Should the same SoLR be used for all customer classes, or would it be more appropriate to have different customers transfer to different SoLRs?
8. Is there any further information that the Customer Notice should contain?

9. How should the SoLR be appointed (Obligation, Auction or case-by-case basis)? Is there any way these options can be improved? Are there any other available options?
10. How should SoLR costs be recovered? How should SoLR tariffs be set?
11. What information will be required from the defaulting supplier/NIE in respect of the customer base? What information will be required from potential SoLRs? Is the list of information in the Appendices relevant?

Individual respondents may ask for their responses, in whole or in part, not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, we ask respondents to also supply us with the redacted version of the response that can be published.

As a public body and non-ministerial government department, the Utility Regulator is bound by the Freedom of Information Act which came into full force and effect on 1 January 2005. According to the remit of the Freedom of information Act (FOIA), it is possible that certain recorded information contained in consultation responses can be put into the public domain. Hence, it is possible that all responses made to consultations will be discoverable under FOIA – even if respondents asked the Utility Regulator to treat responses as ‘confidential’. It is therefore important that respondents note these developments and in particular, when marking responses as ‘confidential’ or asking the Utility Regulator to treat responses as confidential, should specify why they consider the information in question to be confidential.

Confidentiality disclaimers created automatically by your company’s e-mail system will not normally be treated as sufficient in terms of a confidentiality request.

## Appendix 1 – Information from potential SoLRs

This Appendix sets out the information that the Utility Regulator is likely to request from potential SoLRs at the time of a SoLR event (if no SoLR has been appointed in advance). The information requested may vary depending on the circumstances of the failure – this is therefore provided for guidance only.

### *Data protection*

1. Please provide confirmation that, unless appointed as SoLR to some or all of the customers of **[name of failed supplier]**, the high-level portfolio information provided with this request will only be used for the purposes of making a decision about whether to volunteer for the role of SoLR and for providing the information requested in this request.
2. If appointed as SoLR to some or all of the customers of **[name of failed supplier]**, the Utility Regulator will provide to the Licensee any information it has obtained on those individual customers to which the Licensee is appointed as SoLR. Please confirm that, if appointed as SoLR, the Licensee will comply with the data protection principles set out in Schedule 1 of the Data Protection Act 1988, and that the data disclosed by the Utility Regulator will only be used for the purpose of providing information to the Utility Regulator or for the purpose of supplying electricity pursuant to a last resort supply direction under standard condition 22 of the electricity supply licence.

### *General information*

3. State whether the Licensee wishes to volunteer to be a SoLR for the following customer groups:
  - Domestic customers;
  - Non-domestic customers.
4. State if the Licensee agrees to waive its right to make a claim for a Last Resort Supply Payment before being appointed a SoLR.

## **Customers**

### *Change of supplier process*



5. Give details of the arrangements the Licensee will make to manage the change of supplier process and the length of time it is likely to take to transfer all the customers of the failed supplier.

#### *Customer service*

6. Explain the arrangements that the Licensee will make to deal with the customers of **[name of failed supplier]**, including:

- i) How customers will be informed about what has happened;
- ii) How customers' written and telephone enquiries will be dealt with;
- iii) How it will be ensured that customers will receive a timely and accurate bill; and
- iv) How customers will be made aware of their options to sign up to a contract with the Licensee or another supplier

#### *Prepayment meter customers*

7. Explain the arrangements that the Licensee will make to deal with the PPM customers of **[name of failed supplier]**, including:

- i) How arrangements will be made to deal with the provision of new PPM devices;
- ii) How arrangements will be made to enable the provision of emergency credit;
- iii) How arrangements will be made to deal with the switching of customer meters to the Licensee's deemed contract tariff rate for customers whose meter has been programmed to collect a proportion of debt; and
- iv) Provide details of the number and type of PPM customers already supplied by the Licensee.

### **Industry arrangements**

#### *Sourcing electricity*

8. Give details of the arrangements the Licensee has to source electricity to:
  - i) continue to supply its existing customers; and
  - ii) supply the customers of **[name of failed supplier]**.

*Credit cover*

9. Give details of the Licensee’s current arrangements for complying with:
- The Trading & Settlement Code credit cover;
  - distribution credit cover; and
  - transmission credit cover.

For each of these arrangements, please provide the following information:

- i) type of security instrument;
- ii) secured credit limit;
- iii) current level of indebtedness;
- iv) details of any failures to pay invoices in the past 12 months; and
- v) explain how the Licensee would comply with the credit cover requirements if it had to supply electricity to customers of **[name of failed supplier]**. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.

**Deemed contracts**

*Domestic customers*

12. Complete the table below, giving the average deemed contract price for each group if directed to supply electricity pursuant to Standard Condition 22 for a domestic electricity customer with medium consumption (3,300 kWh per annum). (NB – All prices must include VAT).

<b>DOMESTIC CUSTOMERS – AVERAGE PRICE</b>			
Standard Credit		PPM	
p/kWh	Standing Charge (p/day)	p/kWh	Standing Charge (p/day)

11. If the Licensee’s deemed contract prices as a SoLR for domestic customers differ from its normal deemed contract prices explain how and give the reasons for the different pricing structures.

*Non-domestic customers*

12. Complete the table below, giving the average GB deemed contract price if directed to supply electricity pursuant to Standard Condition 8 for a non-domestic electricity customer. **(NB – All prices must include VAT)**

<b>NON-DOMESTIC CUSTOMERS – AVERAGE PRICE</b>	
p/kWh	Standing Charge (p/day)

13. If the Licensee's deemed contract prices as a SoLR for non-domestic customers differ from its normal deemed contract prices explain how and give the reasons for the different pricing structures.

## **Appendix 2 – Information from a Failing Supplier**

This Appendix sets out the information that will be requested from a failing supplier. **The information requested may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

### **Part A (non-domestic supply points)**

The licensee should provide a list of the total number of non-domestic MPRNs registered to the Licensee. These should be reported:

- i) At the close of business on the day before the start of the report;
- ii) In relation to the Meter Point Reference Numbers (MPRNs) registered to the Licensee; and
- iii) Include all MPRNs in the course of registration to the Licensee, but exclude MPRNs in the course of registration away from the Licensee.

### **Part B (domestic supply points)**

The licensee should provide a list of the total number of domestic MPRNs registered to the Licensee. These should be reported:

- i) At the close of business on the day before the start of the report;
- ii) In relation to the Meter Point Reference Numbers (MPRNs) registered to the Licensee; and
- iii) Include all MPRNs in the course of registration to the Licensee, but exclude MPRNs in the course of registration away from the Licensee.

### **Part C (customer information)**

For each MPRN referred to in Part A (non-domestic supply points), the following information should be provided:

- a) Customer name;
- b) Billing Address;
- c) Site address;
- d) The Estimated Annual Consumption (EAC) figure;
- e) Meter Type (half-hourly/non half-hourly);
- e) Name of any company acting as agent to the Licensee for the supply of electricity.

For each MPRN referred to in Part B (domestic supply points), the following information should be provided:

- a) Customer name;
- b) Billing address;
- c) Site address;
- d) The Estimated Annual Consumption (EAC) figure;
- e) Meter Type (Prepayment or credit);
- f) Name of any company acting as agent to the Licensee for the supply of electricity.

A copy of the Licensee's Priority Service Register should also be provided [check the licence to see if this is something which is kept]

**Part D (embedded generation)**

Give detail, including MPRNs, contact names and telephone numbers and site addresses (where relevant) of any unlicensed generation held in the system.

## Appendix 4 – Relevant Supply Licence Conditions

### Condition 22 (Supply Licence): Supplier of Last Resort

- 1 The Authority may give a Last Resort Supply Direction to the Licensee if it considers that:
  - (a) circumstances have arisen that would entitle it to revoke the electricity supply licence of an Electricity Supplier other than the Licensee (for this Condition only, 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 electricity to its Customers' premises; and
    - (ii) to fulfil its contractual obligations for the supply of electricity.
- 2 The Last Resort Supply Direction will:
  - (a) have effect on and from the date on which and the time at which the other supplier's electricity supply licence is revoked; and
  - (b) stop having effect on and from a date, specified in the Last Resort Supply Direction, that is up to six months after the date on which the direction has effect.
- 3 The Licensee shall, subject to paragraph 4, comply with a Last Resort Supply Direction.
- 4 The Licensee is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply electricity because of either of the exceptions set out in sub-paragraphs 4(a) and (b) of Condition 26.
- 5 Within a reasonable period of time after receiving a Last Resort Supply Direction, the Licensee must send a copy of a notice to each of the premises specified or described in the Last Resort Supply Direction to inform the Customer:
  - (a) that the other supplier stopped supplying electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;
  - (b) that the Licensee began to supply electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;

- (c) that the Licensee is supplying electricity to the Customer's premises under a Deemed Contract;
  - (d) that the Customer may enter into a Contract with the Licensee or any other Electricity Supplier under which electricity will be supplied to his premises; and
  - (e) of the Charges for the Supply of Electricity that the Licensee may charge the Customer while supplying him under the Last Resort Supply Direction.
- 6 The Licensee's Charges for the Supply of Electricity to the premises specified or described in the Last Resort Supply Direction must not exceed an amount that may be expected, in total, approximately to equal the Licensee's reasonable costs of supply (including, where appropriate, the costs of purchasing electricity at short notice) and a reasonable profit.
- 7 If the Licensee purchases electricity to comply with a Last Resort Supply Direction, it must take all reasonable steps to do so as economically as possible in all the circumstances of the case.
- 8 The Licensee shall, so far as is reasonably practicable, give the Authority at least five days' notice of any increase in the Charges for the Supply of Electricity to premises to be supplied with electricity by it in accordance with a Last Resort Supply Direction.
- 9 Where, within five days of the receipt by the Authority of the notice referred to in paragraph 8, the Authority determines that the charges proposed by the Licensee would be likely to cause hardship to Domestic Customers, it may issue a direction to the Licensee requiring it to ensure that its Charges for the Supply of Electricity do not exceed those specified in the direction as being appropriate in order to avoid or mitigate such hardship.
- 10 The Licensee shall comply with any direction issued by the Authority under paragraph 9, but shall not be required by that direction to set its Charges for the Supply of Electricity at a level less than that applicable to the supply by it under Deemed Contracts of comparable Domestic Premises otherwise than in accordance with a Last Resort Supply Direction.

### **Condition 23 (Supply Licence): Claims for Last Resort Supply Payments**

1. If the Licensee has received the Authority's consent under paragraph 5, it may make a claim for a Last Resort Supply Payment under condition 33 of the Transmission Owner Licence.
2. The Licensee must not make a claim for a Last Resort Supply Payment if it has waived its ability to do so by notice given to the Authority before the Authority gave it a Last Resort Supply Direction.
3. If the Licensee intends to make a claim for a Last Resort Supply Payment, it must:
  - (a) give notice to the Authority of its claim; and
  - (b) give the Authority a calculation of the amount claimed with information to support that calculation,  
  
within six months after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.
4. The total amount of the Last Resort Supply Payment (for this Condition only, **the relevant amount**) to be claimed by the Licensee must not exceed the amount by which:
  - (a) the total costs (including interest on working capital) reasonably incurred by the Licensee in supplying electricity to premises pursuant to the Last Resort Supply Direction and a reasonable profit,  
  
are greater than:
  - (b) the total amounts recovered by the Licensee through Charges for the Supply of Electricity to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such charges).
5. If the Authority considers it appropriate in all the circumstances of the case for the Licensee to make the claim notified to it in accordance with paragraph 3, the Authority will give its consent in writing to the Licensee.
6. Within three months after it has been notified of the claim in accordance with paragraph 3, the Authority may determine that an amount other than the one calculated by the Licensee is a more accurate calculation of the relevant amount.
7. If the Authority makes a determination under paragraph 6, the amount specified by it



must be treated as the relevant amount for the purpose of paragraph 8.

8. A claim by the Licensee for a Last Resort Supply Payment from the Transmission Owner must specify:
  - (a) the relevant amount to be paid by the Transmission Owner; and
  - (b) whether payment is to be made by quarterly or monthly instalments.
9. A claim will lapse if the Licensee does not make it within six months after the Authority has given its consent under paragraph 5.
10. In this Condition:

**Last Resort Supply Payment**

means a sum of money payable to the Licensee to compensate for any additional costs it incurs in complying with a Last Resort Supply Direction.

## **Condition 26 (Supply Licence): Duty to Offer Terms**

- 1 Where the Licensee supplies, or offers to supply, electricity to Domestic Premises, it must, within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, offer to enter into a Contract with that Customer.
- 2 If the Domestic Customer accepts the terms of the Contract offered to him under paragraph 1, the Licensee must supply electricity in accordance with that Contract.
- 3 A Contract must:
  - (a) be in writing; and
  - (b) include all the terms and conditions for the supply of electricity as provided for in Condition 27.
- 4 The Licensee is not required to comply with the obligations set out in paragraphs 1 or 2 in any of the following circumstances:
  - (a) supplying electricity to the Domestic Premises would put the Licensee in breach of regulations made under Article 32 of the Order, provided that it has taken all reasonable steps to prevent such breach from occurring;
  - (b) it is not reasonable in all the circumstances of the case for the Licensee to supply electricity to the Domestic Premises, provided that, if it is already supplying electricity to the premises, it has given at least seven working days' notice of its intention to stop doing so; or
  - (c) the Licensee requires the Domestic Customer to pay a reasonable Security Deposit and he does not do so.
- 5 In this Condition:

### **Security Deposit**

means a deposit of money paid by a Customer as security for the payment of charges for the supply of electricity by the Licensee to the premises at which he is (or is to be) supplied, and may include a sum as security the provision of metering equipment.



### **Condition 33 (NIE Transmission Licence): Supplier of Last Resort Payment Claims**

- 1 This Condition sets out the circumstances in which the Licensee shall increase its Charges in order to compensate any electricity supplier (a “Claimant”) which claims for losses that it has incurred in complying with a supplier of last resort direction under its licence.

#### **Increase in Charges**

- 2 Where the Licensee receives a Last Resort Claim, the Licensee shall:
  - (a) increase the Charges in respect of the Relevant Year by such an amount as the Licensee reasonably estimates will secure an increase in revenue from the Charges equal to the Claimed Amount; and
  - (b) pay to the Claimant, as soon as practicable and in quarterly instalments, an amount equal to the additional revenue from the Charges received by the Licensee in respect of the Relevant Year as a result of the increase referred to in subparagraph (a) (to the extent such amount does not exceed the Claimed Amount).
- 3 If the amount paid to the Claimant under paragraph 2(b) is less than the Claimed Amount (a “**shortfall**”), the Licensee shall:
  - (a) increase the Charges in respect of the Year following the Relevant Year by such an amount as the Licensee reasonably estimates will secure an increase in revenue from the Charges equal to the amount of the shortfall together with 12 months’ interest thereon (the “**Shortfall Amount**”); and
  - (b) pay to the Claimant, as soon as practicable and in quarterly instalments, an amount equal to the additional revenue from the Charges revenue received by the Licensee in respect of such Year as a result of the increase referred to in subparagraph (a) (to the extent such amount does not exceed the Shortfall Amount).

#### **Decrease in Charges**

- 4 If the additional revenue from the Charges received by the Licensee, in respect of any Year, as a result of the increase referred to in paragraph 2(a) or 3(a) exceeds the Claimed Amount or the Shortfall Amount (respectively), the Licensee shall, in respect of the Year following that Year, decrease the PSO Charges by such an amount as the Licensee reasonably estimates will secure a decrease in revenue from the Charges equal to the amount of such excess together with 12 months’ interest thereon.

#### **Statements**

- 5 The Licensee shall prepare, in respect of each Year in which it increases or decreases charges in pursuance of paragraph 2, 3 or 4, a statement showing:
- (a) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 2;
  - (b) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 3;
  - (c) the aggregate amount of the decrease in its revenue resulting from decreases in charges in pursuance of paragraph 4; and
  - (d) in the case of each Last Resort Claim, the aggregate payments to the Claimant made in respect of the Year in question (whenever those payments were made).
- 6 The Licensee shall give the statements referred to in paragraph 5 to the Authority within the first 4 months of the Year following that to which they relate. On giving the statement referred to in paragraph 7(d) to the Authority, the Licensee shall also publish it in such manner as, in the reasonable opinion of the Licensee, will secure adequate publicity for it.

#### Miscellaneous

- 7 Any question whether any estimate for the purposes of paragraph 2, 3 or 4 is a reasonable one shall be determined by the Authority.
- 8 In calculating the revenue received by the Licensee from the Charges during any period for the purposes of Annex 1, any increase or decrease in revenue attributable to the Licensee's compliance with this Condition shall be treated as if it had not occurred.
- 9 All references in this Condition to interest shall be references to simple interest charged at the base lending rate of Northern Bank Limited from time to time.

#### Definitions

- 10 In this Condition, unless the context otherwise requires:

**“Charges”** means the PSO Charges (as defined in Condition 24A).

**“Claimed Amount”** means, in respect of any Last Resort Claim, the amount set out in the Last Resort Claim, together with interest for the period commencing on the date the Last Resort Claim was received by the Licensee

and ending on the date which is 61 days before the start of the Relevant Year (except where such period is of 30 days or less, in which case no interest shall be added).

**“Last Resort Claim”**

means a claim for which a Claimant has been given consent by the Authority pursuant to a condition of the Claimant’s licence that provides for supplier of last resort payments.

**“Relevant Year”**

means, in respect of any Last Resort 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.

**“Year”**

means a period of 12 months beginning with 1 April.