

Supplier of Last Resort in Electricity

Decision Paper

5 August 2009

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1 Introduction

In a competitive market, it is possible that suppliers will fail. Should a supplier fail, its customers will 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 arrange 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 Supplier of Last Resort (SoLR), provided that such a direction would not adversely affect the supplier's business.

The Utility Regulator sets out in this paper its decision in relation to how a SoLR will be chosen in Northern Ireland's electricity market, and what procedures will apply in the case of a SoLR event.

It should be noted that the Utility Regulator hopes that these procedures never have to be implemented. We will endeavour to assist in any way we could to allow a trade sale of the failing supplier's customers to another supplier.

2 Legislative Background

EU Directive

Article 3.3 of EU Directive 2003/54/EC¹ 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.”

Electricity Regulations (Northern Ireland) 2007

Normally, a person can only be bound by contractual obligations where they have taken positive steps to affirm their intention to be bound; this is usually by executing an agreement.

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.

Therefore, where a supplier fails, and a customer’s supply is transferred to a SoLR, a contractual arrangement can exist without the customer needing to do anything more than simply continue to consume electricity.

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

Paragraph 3 of the Regulations 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. This decision paper fulfils that obligation.

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 PSO² in accordance with Condition 33 of the NIE

² 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.

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.

3 Effect of Supplier Failure

Since November 2007, the Northern Ireland electricity market has been open to competition in all customer classes. While competition for industrial and commercial customers is well developed, NIE Energy Supply 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”)³.

If a supplier was to fail, then unless they have arranged 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 that 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 takes effect.

³ <http://www.allislandmarket.org/MarketRules/>

4 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.

5 Consultation

On 15 May 2009, the Utility Regulator published a consultation paper⁴ asking for views on how the operation of the SoLR process in the Northern Ireland electricity market.

This consultation posed 11 questions relating to, inter alia:

- How and when should a SoLR be appointed;
- The duties of a SoLR;
- How a SoLR recovers its costs and what tariffs can be charged;
- Should customers be “locked-in” for a period of time following transfer to the SoLR?

It was beyond the scope of the consultation paper to discuss how customer transfers should be handled if there was a SoLR Direction.

Interested parties were asked to provide comments on these questions, as well as comments on any other parts of the paper as appropriate.

Six responses were received (The Consumer Council, NIE plc, NIE Energy Supply, ESB Customer Supply, ESB Independent Energy and firmus energy). Respondents are thanked for their comments. A summary of responses is provided below.

i. Will any Last Resort Supply Direction apply to all customer classes, or just Domestic and small enterprises as stated in the Directive?

As stated in the European Directive, member states may appoint a supplier of last resort to ensure universal service to households and (where appropriate) small enterprises. The Utility Regulator sought comments on whether it was sufficient to appoint a SoLR for domestic customers and small enterprises only, or whether we should go further and

⁴ http://www.niaur.gov.uk/uploads/publications/SoLR_Consultation_Paper_-_May_2009.pdf

ensure that a SoLR was available for all consumers of electricity, regardless of their size.

Comments Received

NIE consider that all customers supplied by the defaulting supplier should be included in the transfer. This would ensure that all the consumption of the customers of the defaulting supplier is allocated to a supplier for Use of System billing and settlement. Additionally, it removes the risk of customers not registering with an alternative supplier. NIEES and ESBCS agreed that the SoLR Direction should apply to all customer classes.

However, ESBIE felt there should be a distinction between treatment of domestic and non-domestic customers. They felt that large customers should be given a clear and viable option to register with another supplier. firmus also believe that the SoLR should apply to domestic and small enterprise customers only.

All customers: NIE, NIEES, ESBCS

Only small customers: ESBIE, firmus,

Utility Regulator Response

The Utility Regulator has deemed it prudent that, in the event of supplier failure, all customers be transferred to a SoLR. It would not be appropriate for there to be a possibility that some customers could be left without a supplier for billing and settlement purposes. It also removes the risk that some customers will not actively seek an alternative supplier.

The Utility Regulator has decided in the event that a supplier's licence is revoked, all of its customers will be allocated to a Supplier of Last Resort. The Utility Regulator may appoint more than one Supplier of Last Resort.

- ii. 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?**

This question related to what should happen if a supply licence is revoked but the failing supplier only has a small number of customers. Should the pre-determined SoLR functionality be utilised, or should the customers be transferred manually?

Comments Received

ESBIE stated that if only a small number of customers are involved then discretion should intervene, while the Consumer Council felt customers should be given the opportunity to secure another supplier and if successful they should be transferred as quickly and as smoothly as possible, and manually if necessary.

NIEES commented that it is not reasonable to assume that all customers of a failed supplier will be able to, or proactively seek, a new supplier. The incentive to seek a new supplier will be low, as the site will remain energised irrespective of the customer's decision. ESBCS stated that the SoLR direction should apply in all cases, regardless of the size of the defaulting supplier or the size of the customer being served.

All instances: NIEES, ESBCS

Otherwise: ESBIE, Consumer Council,

Utility Regulator Response

Although it was not included in their response, NIE have confirmed since the consultation that customers cannot be transferred manually on their IT system without the customer's permission. The only time at which this can happen is under a SoLR event. They advised that the SoLR functionality be used in all instances.

The Utility Regulator has decided that in all cases when a Supply Licence is revoked, a SoLR Direction will be issued. The Utility Regulator may appoint more than one SoLR.

iii. Are the duties of the SoLR relevant and are there any other duties the SoLR should perform?

The Consultation Paper contained a number of duties that the Utility Regulator thought a supplier should be carrying out if it was issued with a SoLR Direction.

Comments Received

NIEES and ESBIE believed that the duties described were appropriate. However, it was felt that the role of Common Services Provider should also be clarified.

It was iterated by NIE that the SoLR should not be required to obtain meter readings. They propose that where readings are available within NIE's system they will be used, but in general, that estimated readings are used, whether these are credit or keypad meters.

NIE propose that they issue the customer notification. Any use of the media must be discussed fully by the Utility Regulator to avoid excessive impact on call-centres etc. the Consumer Council would be keen to play a part in customer communications.

Utility Regulator's Response

Based on NIE's response and subsequent meetings with them, the SoLR will **not** be required to obtain meter readings within 14 days of the SoLR Direction taking effect. Where meter readings are available from NIE's normal meter reading cycle, these will be used (meter reading taken four days before or after the SoLR Direction taking effect will be used). The possibility of asking consumers to submit their own meter reads was discussed, but NIE would be unable to handle this volume of meter reads over such a short period of time.

NIE have proposed that they issue the customer communication to customers. Because it states in the SoLR licence condition that within a reasonable period of time of receiving such a direction, the supplier must send notification to all the customers it is taking on under the SoLR direction, the SoLR would have to consent to NIE being responsible for the supplier fulfilling on of its licence conditions.

Therefore, the list of duties that the SoLR is expected to carry out are:

- Notify in writing all affected customers within five days of the direction taking effect that the SoLR mechanism has been initiated (unless the SoLR has given its consent for NIE to carry out this duty);
- 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.

NIE will be asked to develop a paper outlining the steps they intend to take as Common Service Provider. This will be reviewed and signed off by the Utility Regulator.

iv. Is the five day window for notifying customers sufficient and is it reasonable to try and secure a meter reading within 14 days?

It was asked whether the five day window for notifying customers sufficient and if it was reasonable to try and secure a meter reading within 14 days.

Comments Received

Firmus believe that five working days is sufficient time to inform any customers of the supplier's intentions. NIEES believe that a notification period of five days should take effect from the date of receipt of appropriately formatted data from NIE and the information should be sufficiently detailed to and fit for purpose for advising customers in writing of a SoLR Direction. Notification of customers should be based on all reasonable endeavours – the SoLR should not be held responsible for failings in the postal delivery system.

Timelines should be specified for the transfer of required data to the SoLR to facilitate adherence to the five day limit i.e. required data should be transferred on day 1 of the SoLR effective date.

A separate working paper should be developed to provide guidance on how to handle disputed, inaccurate or poorly estimated readings. Similarly guidelines regarding how to handle outstanding meter works relating to the defaulting supplier's customers should also be developed.

In general, it was felt that the five and 14 day windows were sufficient. This practice must be based on all reasonable endeavours.

Utility Regulator Response

The Utility Regulator proposes to retain the five day window for notifying all affected customers. For the purpose of clarity, this five day window commences on the day the Direction takes **effect**, not on the day the Direction is **issued**, and it will relate to business days.

Since additional meter readings will not be taken, the proposed 14 day window for obtaining meter readings has been omitted from the decision paper.

v. Is there any further information that the Customer Notice should contain?

The consultation paper included a list of information which the customer notice should contain.

Comments Received

The comments received on this section advised a number of further pieces of information:

- Details of the tariff they will be placed on/advice to customers of the best possible tariff available to them (this would require access to meter configuration details – therefore timely information should be supplied to the SoLR(s)).
- Terms and Conditions of Supply;
- The choices the customer has to switch to a contract with the SoLR, or an alternative supplier if they so wish - Details of other relevant suppliers should be listed;
- If SoLR tariff is different from regular tariffs, a statement that after six months, if they have not transferred onto a regular of the SoLR or transferred to a different supplier, they will automatically be transferred to a regular tariff offered by the SoLR;
- Customers should have access to the fullest possible information on the SoLR and how they are affected why the change has taken place;

- An e-mail address (in addition to a telephone number) to communicate with the SoLR;
- Provide information on how the SoLR will obtain a meter reading, or advise customers on how they can obtain their own meter readings.

The Consumer Council stated they would be keen to play a part in any communications through the media.

Utility Regulator Response

Taking the comments received on board, the Utility Regulator has decided that any notice sent to customers must include the following information:

- The defaulting supplier stopped supplying electricity to the customer on the date that the SoLR Direction had effect, and that from this date, the Licensee started supplying the customer with electricity;
- Electricity is being supplied to the premises under a deemed contract, and the terms and conditions of this contract;
- The first bill they receive from the SoLR is likely to be based on an estimate;
- The length of time for which the customer must remain with the licensee, before they can switch to an alternative supplier;
- The customer may enter into a signed contract with the licensee, or any other electricity supplier, after the lock-in period, who is prepared to supply them;
- Contact details for themselves and other suppliers available to the customer. This should include a phone number and an e-mail address;
- The charges for the supply of electricity that the SoLR will charge.

vi. Should there be a lock-in period? How long should it last?

It was asked within the consultation if there should be a lock-in period where the customer cannot transfer to another supplier for a defined period of time.

Comments Received

NIE felt that a three month lock-in period may be necessary in order to allow the completion of one full meter-reading/billing cycle i.e. 90 days and allow an actual read for all the customers affected by the SoLR direction. A shorter lock-in period could be considered for on-line sites.

ESBCS are in favour of a three-month lock in period in the interest of harmonisation. Firmus are in favour of a lock-in period, but feel that it should be for six months to take account of any unknown costs to the SoLR. While ESBIE are in favour of a lock-in period, they feel it should be as short as possible.

However, NIEES and the Consumer Council did not see any benefit from lock-in periods, as it would add unnecessary complexity at a difficult time for customers. It could inadvertently delay or prolong the SoLR process.

For: NIE, ESBCS, firmus, ESBIE

Against: NIEES, Consumer Council

Utility Regulator Response

Within the current NIE IT system, there is a limit that customers can only switch supplier once every 20 business days (28 calendar days). This will act as a natural lock-in and the lock-in period will not last any longer than this.

The lock-in period shall last 20 business days from the date the SoLR Direction takes effect.

vii. Should there be a customer opt-out period? How long should it last?

It was asked in the consultation that if there was to be a lock-in period, should there be a customer opt-out period so that customers would not be forced to transfer to the SoLR (i.e. could transfer to an alternative supplier) and be locked-in for a period of time.

Comments Received

NIE Energy Supply and the Consumer Council felt the need for an opt-out period unnecessary. It could unnecessarily delay the SoLR process and create customer confusion. It could adversely impact the proposal for a five day notification period and a 14 day window for meter reading.

However, ESBCS said that after communication by the SoLR to affected customers they should have the choice to move to another supplier within a certain time-period. The opt-out period in RoI is 14 days and for harmonisation, this should also be the opt-out period in Northern Ireland. They also said that the Change of Supplier date of effect should also be the SoLR effective date, irrespective of the customer's choice of supplier.

Because they favour a six month lock-in period, firmus would wish for there to be an opt-out period of 14 days after customers have been informed of the arrangements.

While they believed that a customer opt-out period was appropriate, ESBIE were concerned that 14 days may be somewhat tight in terms of a customer securing a contract with an alternative supplier.

For	ESBCS, firmus, ESBIE
Against:	NIEES, CC,

Utility Regulator Response

We have learned in discussion with NIE since the consultation that retroactive transfers (and therefore opt-outs) are not possible under the current functionality of their IT system. **There will therefore be no opt-out period and customers will be locked in to the SoLR for 20 business days.**

However, the Utility Regulator is recommending that the capability for retroactive transfers be built into the enduring solution⁵. This would allow the possibility of an opt-out period where if customers did not want to be transferred to the SoLR, they could transfer to the supplier of their choice.

viii. Should the same SoLR be used for all customer classes, or would it be more appropriate to have different customers transfer to different SoLRs?

The Consultation asked whether the same SoLR should be used for all customer classes or whether there should be different SoLRs for different customer classes.

Responses Received

NIE argue that more than one SoLR may be required to cover all the relevant customer/meter types. The Consumer Council felt that where it is clear that a particular supplier would suit a certain class of customer, it would be appropriate that they transfer to different SoLRs.

However, the suggestion that some suppliers may be better suited at serving different classes of customer was disputed by NIEES, who argued that only one SoLR was necessary. In terms of efficiency, it was felt that one supplier may be more appropriate,

⁵ The Enduring Solution is aimed at replacing NIE's legacy IT systems, which were built to support an integrated utility and were not suitable for a contestable retail market and have therefore been identified as a barrier to domestic competition. At present the number of domestic customers that can switch per month is limited; under the Enduring Solution there will be unlimited customer switching.

provided that larger customers were given the choice to seek alternative suppliers. For ease of administration, ESC CS wishes for one SoLR to be appointed.

More than one SoLR: NIE, Consumer Council

One SoLR: NIEES, ESBCS, ESBIE

Utility Regulator Response

Taking the comments on board, and given its duty to promote competition where possible, the Utility Regulator is not be averse to there being different SoLRs for different classes of customer.

Under the interim solution, all customers should be transferred to the same SoLR. The SoLR that customers are transferred to will depend on the customer base of the defaulting supplier.

Under the enduring solution, there will be the possibility for different classes of customer being allocated to different SoLRs.

ix. 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?

It was asked in the consultation how the SoLR should be appointed, and three options were proposed:

- Obligation/In Advance – a party is appointed to the role of SoLR in advance of any SoLR event for a defined period of time;
- Auction – parties compete, through an auction process to provide the SoLR service at lowest cost;

- Case-by-case: SoLR is selected depending on the specific circumstances at the time of the SoLR event.

Responses Received

NIE consider that any SoLR should be appointed in advance. This would allow the systems and processes for the customer transfers to be developed and tested in advance, and that only the appointed SoLR(s) would need to undertake testing. It would also mean that arrangements for communicating with customers could be tested to provide assurance that customer service levels will be acceptable.

The Consumer Council felt that while an auction would draw out lowest cost, that it should not be based on price alone. The bidding process should be determined in advance of a SoLR event to ensure that the SoLR is well prepared.

ESBIE and firmus felt that a case by case basis was the most appropriate, as it provided flexibility depending on the specific circumstances at the time.

Whichever option is chosen, ESBCS want harmonisation between the two regulators.

NIEES and the Consumer Council recommended that there should be a pre-qualification process against set criteria to identify a short list of preferred SoLR suppliers. This shortlist should be reviewed at regular intervals.

An integral part of the Utility Regulator's appointment process should include comprehensive tests and audits of end-to-end processes spanning the responsibilities of NIE and the SoLR.

Obligation/in-advance: NIE

Auction:

Case by Case: NIEES (with pre-qualification process), ESBIE, firmus

Utility Regulator Response

The Utility Regulator intends to create a shortlist of suppliers who have shown the willingness and the ability to be Supplier of Last Resort. All suppliers on the short-list will be expected to undergo the necessary market testing to enable them to carry out this role if required.

From this short-list, a supplier will be selected that serves both the domestic and non-domestic market. If there is a SoLR event where the defaulting supplier supplies both domestic and non-domestic premises, this supplier will be appointed SoLR.

In addition to this a supplier will also be selected that serves non-domestic premises only. If the Utility Regulator deem that this supplier is better suited at serving non-domestic premises (using the criteria below), they will be appointed as SoLR for non-domestic premises. If there is a SoLR event where the defaulting supplier only serves non-domestic customers, this supplier will be used.

The criteria that the Utility Regulator will choose when appointing SoLRs are:

- Price;
- The Utility Regulator's duty to promote competition.

As a condition to being on the short-list, suppliers would have to provide a list of tariffs they apply to all customer classes so that the Utility Regulator can compare prices when making its decision.

Under the Enduring Solution, different classes of customer may be transferred to different SoLRs.

x. How should SoLR costs be recovered? How should SoLR tariffs be set?

The consultation asked how the costs of carrying out SoLR should be recovered and how SoLR tariffs should be set.

Being appointed SoLR give the opportunity to a supplier to acquire a potentially large number of customers it would not have acquired otherwise, and without any costs being spent on marketing, sales-people etc. However, there may still be costs associated with undertaking the SoLR role.

Suppliers may make a claim through the PSO 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.

Non-Energy Related Costs

Examples of these categories of cost include customer transfer through the change of supply process, communications with these customers, billing, administration and ensuring that the affected customers can change to another tariff or supplier. There will also be cost related to maintaining a higher level of credit cover.

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.

The consultation laid out a number of options as to how these costs can be recovered.

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.

Comments Received

The general consensus is for SoLR tariffs to be set no higher than regular tariffs currently offered by the SoLR to its customers. The PSO should be used to recover any excess costs beyond this.

The potential impact of a SoLR event on the banking sector was mentioned. The banking sector may become anxious as a result of a supplier failing. This could have consequences in the SoLR obtaining the necessary letters of credit to comply with the additional credit cover for additional volumes in the SEM. Perhaps the PSO could be

used as a possible mechanism to provide 'start-up' credit cover for the SoLR until the capital markets settle down, should such an event occur.

Utility Regulator Response

Taking account of the comments received, the Utility Regulator feels that the tariffs charged to customers under a SoLR Directions should be the same level as those charged to that supplier's customers under normal conditions.

Any excess costs faced due to undertaking the SoLR role will be recovered through the PSO. The Utility Regulator does not feel it is in the best interests of customers, or indeed competition, if the SoLR's tariffs increase in the long run because of undertaking the SoLR role. Recovery through the PSO means that all customers share the burden of additional levels of costs associated with a SoLR event.

All costs being claimed by a supplier due to their appointment in the role of SoLR must be submitted with full supporting evidence within six months of the SoLR Direction taking effect.

xi. 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 takes effect. At the end of this period, customers will go onto the standard terms and conditions of that supplier.

The consultation asked for comments on whether the SoLR Direction should last for a period of shorter than six months.

No comments were received on this question.

Utility Regulator Response

Because it has been decided that the SoLR tariffs shall not be any higher than the standard tariffs offered by the SoLR, and customers will be free to switch supplier after 28 days of the SoLR Direction taking effect, the Utility Regulator feels this question is no longer relevant.

As stated above, the SoLR should within six months submit the excess costs of carrying out the SoLR role to the Utility Regulator within six months of the SoLR Direction taking effect.

xii. 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?

The consultation contained two appendices: one appendix relating to information required from potential SoLRs required by the Utility Regulator to inform its decision regarding the identity of the SoLR, and one appendix relating to information that will be required on the failing supplier.

Comments Received

NIE's proposed SoLR process does not require the defaulting supplier to provide information. The customer and site data held by NIE in respect of all transferring MPRNs will be used.

Respondents commented on the type of information they would require to give them the ability to carry out the SoLR role effectively if appointed. This information is listed in the Utility Regulator's decision below.

Utility Regulator Response

The Utility Regulator feels it may be difficult to obtain relevant information from a defaulting supplier. If the company had been placed into administration, it would not be a priority of the administrators to pass information over to the regulator.

Because NIE have stated they can provide the necessary information required to carry out a SoLR event, they will be responsible for providing all the necessary information.

This will include, as a minimum:

- customer name;
- premise address;
- correspondence address;
- meter type/meter point configurations;
- EACs and AACs;
- volumes and meter readings;
- load-factor;
- consumption profile;
- SoLR change of supply meter readings, date and readings of last actual meter reading;
- Name of company acting as an agent to the licensee;
- Details, including MPRNs, contact names, telephone numbers and site addresses of any embedded generation that may be served by the defaulting supplier.

It is deemed that the passing of this information will not be in breach of the Data Protection Act, as it is necessary in order to allow the Utility Regulator to carry out its functions.

xiii. General Comments

Although the scope for handling customer transfers under a SoLR direction is not within scope of the consultation paper, it is worth pointing out that this is a key element of a SoLR event. An efficient Retail Market Process for the handling of a change of supplier for many customers within a short timeframe and agreed working practices for dealing with meter reading issues and outstanding meter works processes will assist greatly in providing a successful outcome.

Utility Regulator Response

The Utility Regulator will work with NIE and SEMO to agree a Retail Market Process for the Supplier of Last Resort. A key aspect of this will be the timeframe under which certain actions will be taken.

6 Utility Regulator's Decision

Appointment of SoLR

The Utility Regulator intends to create a shortlist of suppliers who have shown the willingness and the ability to be Supplier of Last Resort.

From this short-list, a supplier that serves both non-domestic and domestic premises will be appointed. If there is a SoLR event where the defaulting supplier supplies both non-domestic and domestic premises, this is the supplier that will be used.

However, should there be a different supplier who serves non-domestic premises only, and the Utility Regulator deem that this supplier is better suited at serving non-domestic premises than the original supplier (using the criteria below), they will be appointed as SoLR for non-domestic premises only. If there is a SoLR event where the defaulting supplier only serves non-domestic customers, this supplier will be used.

The criteria that the Utility Regulator will choose when appointing SoLRs are:

- Price;
- The Utility Regulator's duty to promote competition.

Appointed suppliers will be expected to undergo the necessary testing to ensure that customers could be transferred to them efficiently under a SoLR direction.

As a condition to being on the short-list, suppliers would have to provide a list of tariffs they apply to its customers so that the Utility Regulator can compare prices when making its decision.

Under the Enduring Solution, different classes of customer may be transferred to different SoLRs.

Will any Last Resort Supply Direction apply to all customer classes, or just Domestic and small enterprises as stated in the Directive?

Should a supplier fail and their licence revoked, all their customers will be subject to a Last Resort Supply Direction. There may be different SoLRs for different classes of customer, but all customers will have a SoLR.

Duties of the SoLR

If a supplier is issued with a SoLR Direction, it must:

- Notify in writing all affected customers within five business days of the direction taking effect that the SoLR mechanism has been initiated (unless the SoLR has given its consent for NIE to carry out this duty);
- 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;

Any notification must include the following information:

- The defaulting supplier stopped supplying electricity to the customer on the date that the SoLR Direction had effect, and that from this date, the Licensee started supplying the customer with electricity;
- Electricity is being supplied to the premises under a deemed contract, and the terms and conditions of this contract;
- The first bill they receive from the SoLR is likely to be based on an estimate;
- The length of time for which the customer must remain with the licensee, before they can switch to an alternative supplier;
- The customer may enter into a signed contract with the licensee, or any other electricity supplier who is prepared to supply them;

- Contact details for themselves and other suppliers available to the customer.
This should include a phone number and an e-mail address;
- The charges for the supply of electricity that the SoLR will charge.

Lock-in Period

There will be a 20 business day lock-in period from the date the SoLR Direction takes effect. After 20 business days have elapsed, customers will be free to contract with other suppliers.

There will be no opt-out period.

SoLR Cost Recovery

The tariffs charged by the Supplier of Last Resort to the customers under the SoLR Direction should not be any higher than the tariffs charged to its standard customers. All costs being claimed by a supplier due to their appointment in the role of SoLR must be submitted with full supporting evidence within six months of the SoLR Direction taking effect.

Information Regarding the Failing Supplier's Customers

NIE will be responsible for providing any information reasonably required by the SoLR in respect of customers under the SoLR direction. Such information is to include:

- customer name,
- premise address,
- correspondence address,
- meter type/meter point configurations,
- EACs and AACs,
- Volumes and meter readings;

- load-factor,
- consumption profile
- SoLR change of supply meter readings, date and readings of last actual meter reading;
- Name of company acting as an agent to the licensee.
- Details, including MPRNs, contact names, telephone numbers and site addresses of any embedded generation that may be served by the defaulting supplier.

7 Supplier of Last Resort Timelines

The Utility Regulator is currently in discussions with NIE and SEMO to finalise a timeline for the activities that will occur should a SoLR event occur.

Appendix 1 – 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 sub-paragraph (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 sub-paragraph (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).
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"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).
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"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
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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.