Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Supplier of Last Resort in Electricity

Decision Paper & Response to Comments

CER/06/006

February, 2006

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1. Supplier of Last Resort – Decision

1.1 Background & Appointment of SoLR

In April 2005 the Commission published a consultation document (CER/05/072) on the role and appointment of a Supplier of Last Resort (SoLR) in the Irish market. Later, in December 2005, the Commission issued a *proposed Decision* (CER/05/238) on this role.

In addition to comments received relating to the original consultation, a number of parties commented on the provisions of this *proposed Decision*. Responses to the *proposed Decision*[1] were received from:

- ESB Customer Supply ('ESB PES');
- ESB National Grid ('ESBNG');
- Viridian.

In the *proposed Decision*, the Commission proposed to appoint ESB PES as the SoLR in the absence of interest from other suppliers. To this end, suppliers were invited to submit expressions of interest in this role. As of the end of 2005, no expressions of interest were received. Therefore, the Commission now appoints ESB PES as SoLR for the retail electricity market.

1.2 Legislative Framework

This document contains a decision made by the Commission for Energy Regulation under Condition 21 of Statutory Instrument 60 (European Communities Internal Market in Electricity Regulations) of 2005.

1.3 Structure of this Paper

The final SoLR decision for the electricity market is presented in this section (below). Section 2 includes summarised comments received in relation to *proposed Decision* CER/05/238. The Commission's responses to these comments are also presented in section 2.

1.4 Final Decision

1. <u>Initiating the SoLR Process</u>

   The SoLR process will be initiated on the issuing of a Direction by the Commission. The SoLR shall be responsible for affected customers from the date stated in the SoLR Direction. There will be only one SoLR appointed at a point-in-time.

[1] Responses to the SoLR consultation paper CER/05/072 were published with the *proposed Decision* on 8th December 2005. These can be found on the CER's website.

2. Supplier of Last Resort Duties

In the event of a SoLR Direction, the designated SoLR is obliged to perform the following duties:

a. send a notice to all affected customers that the SoLR mechanism has been initiated from the date of the Commission's Direction. This notice shall inform affected customers of the SoLR event, the SoLR process, their rights in respect to changing supplier the tariff that will apply to them as well as other information customers may require as outlined in point 8 (below).

b. provide the SoLR facility for all customers of an exiting supplier from the date of the Direction set out in the notice referred to above.

c. co-operate with the Distribution System Operator (DSO), (or Transmission System Operator (TSO), and the Meter Registration Service Operator (MRSO) in managing the process for transferring and communicating with affected customers i.e. the SoLR shall share responsibility with the DSO, TSO and MRSO for ensuring that customers are transferred transparently and seamlessly.

d. maintain normal conditions of supply to customers for 6 months after the date of SoLR event on the SoLR tariff or until customers are registered to a different supplier or tariff[2]. The SoLR shall be responsible for all transferred customers' usage from the date included in the SoLR Direction unless the customer moves within 14 business days of the issuance of the SoLR notice. The SoLR will be required to comply with the de-energisation code of practice for this 6 month period.

e. supply the customer from the date on which the Direction took effect (unless, as stated above, the customer informs the SoLR within fourteen days of the date included in the notice referred to in (a) above that the customer does not wish to accept supply of electricity from the SoLR). After this, the SoLR shall provide the opportunity for customers to switch to another supplier or tariff on request from 3 months after the SoLR event.

f. after 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.

g. use all reasonable endeavours to secure a meter reading at each of the premises specified or described in the SoLR Direction within 14 days of the Direction taking effect.

[2] The term 'normal conditions of supply' means that the SoLR applies the same conditions of supply and codes of practice to its SoLR and its regular customers.

h. provide a clear accounting separation between SoLR costs and other parts of its business i.e. between the SoLR activities and other regular supply activities.

3. Application of the SoLR to Customers

The SoLR rules will apply in all cases – regardless of the size of the supplier exiting the market or the size of the customer being served.

4. Appointment of ESB PES as the SoLR

The initial SoLR is ESB PES. This will remain the case for either (1) a period of two years, (2) the development of an All-Island electricity market or (3) until such time as a credible number of interested parties approach the Commission.

After this time and in the event that more than one candidate expresses interest in the position of SoLR, the Commission will:

- appoint an SoLR on a case-by-case basis from a prescribed list of suppliers.
- develop a set of criteria against which candidates will be assessed.

The Commission considers that ESB PES satisfies these criteria at this time.

5. Customer 'Lock In'

When the Commission issues a SoLR Direction, affected customers have 14 business days to choose a supplier from the date the SoLR issues the SoLR notice (for clarity, the 14 business day allowed 'change of supplier period' commences once the SoLR issues a notice to customers, NOT from the date of the SoLR Direction) Once this period expires and the customer has not nominated an alternative supplier a 'lock-in' period of three months will apply from the date of the SoLR event.

6. Customer information available to Suppliers

Subject to data protection legislation, the MRSO will send all suppliers a full list of all affected customers served by the exiting supplier once the Commission has issued a SoLR Direction.

7. SoLR Cost Recovery & SoLR Tariffs

- Non-energy costs will be agreed based on costs submitted *ex ante*. Energy costs will be provisionally agreed based on costs submitted *ex ante* and adjusted *ex post*.

- Costs above-and-beyond those recoverable in the SoLR tariff (see below) will be recovered *ex post*, subject to Commission approval, via the TUoS charge.

- SoLR customers' usage and demand data will be identified via a separate SSAC code.

- The structure and level of SoLR tariffs correspond with the regulated supply tariffs for the same category of customer.

8. Mechanics of the SoLR Process

- the SoLR needs to (1) have the requisite energy available and (2) the ability to serve customers in line with existing consumer protection provisions.

- the Commission requires the SoLR to provide details of how it intends to procure energy and at what cost. This is particularly relevant given that allowed energy costs will be adjusted *ex post*.

- the SoLR should strive to serve customers in the same way as its serves its own customer base.

- the SoLR is not directly concerned with issues relating to wholesale market credit. This means that the role of SoLR does not directly concern the payment of monies owed by the exiting supplier in the wholesale market. However, this does not mean that the SoLR will not face increased credit requirements when faced with an increased wholesale market exposure. These potential costs will be considered as part of the SoLR's revenue requirements, as discussed in section 4 of this Decision.

- the SoLR will be required to be capable of providing the service, in particular, having the capability to transfer and communicate the SoLR event to the exiting supplier's customers.

- while detailed procedures will be discussed at a later date, the SoLR and the DSO/MRSO (and TSO as appropriate) should be in a position to ensure that the following processes are put in place:

  - Transfer of Customers:

    - The DSO/MRSO/TSO will be required to maintain a list of customers, by supplier, and details of their MPRN numbers, contracted, deemed and/or actual MIC, and DUoS Group.

- The SoLR will be required to register all transferred customers within the timelines referred to in the SoLR market process design[3].
- The DSO will also be required to endeavour to collect maximum demand readings for LVMD customers not using on-line MFM metering. However, where a large number of MD readings are required the DSO will have the option to estimate these MDs.

- Communication with Customers:

  - The DSO/MRSO will be required to maintain customer details including customer addresses, phone numbers (where available) and other customer-specific details, such as vulnerable customer status.
  - The customer's credit rating may only be communicated insofar as is legally permitted.
  - This information must be sent to the appointed SoLR from the date of the SoLR Event/ Cessation of Participation (COP) date for the purpose of communicating the impending SoLR event to customers.
  - Once this information has been sent to the SoLR, the nominated SoLR will have full responsibility for communicating this event to customers.
  - 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 the Commission in accordance with S.I. 60 of 2005;
    - that the customer is permitted to change supplier by a certain date;
    - a company phone number outlining how the customer may receive further information;
    - a simple and comprehensive list of tariffs that will apply.

- The Commission expects the SoLR to be able to fulfil the above duties. Proof of such capabilities will be required before any SoLR event. Therefore the SoLR will have to satisfy existing market assurance processes. If the designated supplier does not have the necessary arrangements in place, the Commission will place an obligation on an alternative supplier to act as the SoLR. The Commission will review all communication documents in advance of them being sent to customers.

[3] The SoLR retail market process design, MPD4, will have to be amended as a result of this Decision.

9. Suppliers' Duties

Suppliers are required to include approved conditions with respect to the SoLR in contracts or terms and conditions issued to customers. This is to ensure that customers are aware of the SoLR process and that they are required to participate in the event that their supplier fails.

2. Comments Received & Commission's Response

A number of comments were received in relation to the proposed decisions contained in CER/05/238. These comments, together with the Commission's responses, are presented below.

2.1 Background & SoLR Role

Respondents' Comments

One respondent agreed with the *proposed Decision* not to retrospect the SoLR event. This respondent went onto state its understanding that 'the date of the SoLR event cannot be earlier than the date the Commission announces its declaration of such an event and further, that the date of the SoLR event is the start date from which other milestone dates e.g. 14 (calendar) days to choose an alternative supplier to the SoLR, are measured'.

This respondent has concerns over the 2 week time period during which the MRSO must transfer sufficient data to enable the SoLR to communicate to customers the required information and commence registration for billing purposes – 'Media advertising will be required to complement direct communication with customers; training and briefing will also be required for front-line staff to enable them deal with customers' queries'.

Implicit in the Commission's proposal is the assumption that there is adequate time to agree *ex ante* energy and non-energy costs and to set SoLR tariffs – if these are to be different from the standard tariffs. There should be a contingency arrangement to cater for situations where this is not possible. For example for non-domestic customers above a certain size a pass-through tariff may be necessary.

In addition for ESB PES to forecast in a reliable way, the likely level of demand from the SoLR customers, consumption data going back several billing periods will be needed; this should be part of the data transferred from MRSO to the SoLR'.

Commission's Position

Most of comments made above on the issue of 'triggering the SoLR process' concern SoLR costs and 'mechanics' issues dealt with in sections 4 and 5 respectively of the *proposed Decision* paper.

As outlined in section 5 of the *proposed Decision*, the SoLR must communicate to customers, amongst other items, the relevant details of the SoLR event, the identity of their new supplier as well as their right to change supplier within 14 business days. For clarity, the 14 business day allowed 'change of supplier period' commences once the SoLR issues a notice to customers, NOT from the date of the SoLR Direction.

As ESB PES is the SoLR, *ex ante* energy and non-energy costs will be considered by the Commission at the time of each annual supply price review. As stated before, a pass-through tariff will not be put in place in the electricity market.

Finally, the MRSO and DSO should provide all information required by the SoLR in undertaking this role.

2.2 SoLR Duties

2.2.1 Appointment of SoLR

Respondents' Comment

One respondent welcomed the fact that the proposed SoLR process will be subject to review where there is interest expressed from other suppliers and in advance of the introduction of the All-island electricity market. This respondent also agreed that, in the interim, ESB PES should act as the SoLR.

2.2.2 Duration of SoLR Role

Respondents' Comments

One respondent welcomed the Commission's 'proposal to provide a full list of affected customers to all suppliers at the time of the SoLR' – 'this will serve to reduce the impact of the SoLR event by potentially reducing the number of customers requiring the SoLR service as other suppliers have an opportunity to offer customers an alternative. We agree with the Commission's proposed timetable of 14 business days to allow customer moves to alternative suppliers to the SoLR. The count of the 14 business days should not be initiated until both the list of involved customers has been provided and the SoLR process has been triggered. Additionally time should be allowed for the customer transfer process and customers should not be disadvantaged in this respect if there is a delay'.

On the other hand, another party stated its belief that this measure is unnecessary – 'it simply facilitates other suppliers to recruit the more attractive customers and increases the potential risk for the SoLR. As a means of recruiting SoLR customers other suppliers can e.g. advertise in order to promote their offers'.

One of the other respondents stated the following – 'we do not consider that large customers should be able to circumvent the SoLR process by negotiating a new tariff with the SoLR. This would unfairly discriminate against smaller customers and disadvantage other suppliers. The "lock in" period should apply equally to all customers regardless of size. We agree with the proposed three month lock in period for the reasons outlined in the proposal and additionally

we consider this a reasonable period to allow the full recovery of costs by the SoLR from the customer through the applied tariff. We also agree with the termination of the SoLR after a six month period'.

Commission's Position

For clarity, the proposal to issue customer information concerns customers' non-confidential details only.

The 'lock in' period will apply equally to all customers regardless of size. Once-'locked-in' large customers will not be able to circumvent the SoLR process by negotiating a new tariff with the SoLR until 3 months have elapsed.

2.2.3 Duties of the SoLR

Respondents' Comments

One respondent noted that the *proposed Decision* states that the SoLR is required to use all reasonable endeavours to secure a meter reading at each of the premises specified or described in the SoLR direction. This respondent commented, however, that it is 'the DSO that is responsible for meter reading so this duty rests with the DSO. Accordingly Section 1.3.2 g should be corrected'.

This respondent adds – 'regarding the costs of meter reading the *proposed Decision* intends to include these in an *ex ante* estimate to be included in the SoLR tariff. This appears to conflict with the intention not to charge a premium to the SoLR customer and the intention to use the standard PES tariff as the SoLR tariff. An alternative approach to the recovery of these costs, not discussed but perhaps worthy of consideration given the likelihood of a high level of estimates for a SoLR event, is to have the DSO bill the SoLR customer directly for the meter read. The alternative for the customer would be to accept the estimate which should also be the basis for settlement (in the wholesale market)'.

Commission's Position

ESB Networks, as DSO, is the meter operator and therefore is responsible for reading meters. However, under the generic supply licence, all suppliers are required to co-operate with the DSO in this task.

Metering costs will be calculated *ex ante* and will be included in any SoLR which may or may not be approved. The DSO will not bill customers directly for metering costs.

2.3 SoLR Cost Recovery and Tariffs

The majority of comments received regarding the content of the *proposed Decision* relate to the recovery of SoLR costs. These comments are summarised below.

2.3.1 SoLR Revenue Requirements

Respondents' Comments

One respondent is of the view that the SoLR variable costs are not negligible, as is suggested in the *proposed Decision*. This respondent stated that 'for example, customer communication costs both direct and mass media will be required. Depending on customer numbers and types of customer affected front line staff will need briefing and or training. In addition the likely widespread use of estimated readings will lead to downstream customer queries and possible difficulties in wholesale settlement. All of these will lead to increased costs for the SoLR'.

In its submission, this respondent also noted that 'the Commission suggests that the lock in period and the anticipated efficacy of the credit assessment processes of other supplier will reduce the bad debt risk to the SoLR. The lock in period is just 3 months and allows for one 2 monthly billing period; confidential data will not be available to other suppliers so the way is clear for a SoLR customer to switch and leave the SoLR with a bad debt and the costs including legal fees associated with attempts to collect. This is a significant risk for the SoLR. Clearly the SoLR cannot perform any credit assessment in advance; it must accept all SoLR customers. A more equitable approach would be to provide for the inclusion of bad debts from customers who have subsequently left the SoLR in the *ex post* set of costs to be included in the TUoS tariff and returned to the SoLR'.

Another respondent strongly disagrees with the proposal to allow the SoLR to recover costs through the TUoS charge. This respondent states that 'it is not appropriate to add SoLR related costs to TUoS charges, which are primarily for the use of the transmission system. Neither is it equitable to apply a charge to customers of all suppliers for costs incurred by the SoLR in providing a service to their customers. Customers exercise judgement on the likelihood of default in selecting a supplier. As pointed out in the proposal the costs should not be large, and are within the control of the SoLR. We suggest that the costs are recovered either:

1. Through the ESB PES tariff in the following year; or
2. By applying a SoLR tariff equal to the ESB PES tariff plus costs.

Either of the above mechanisms would ensure accountability and control of costs in the SoLR process'.

Another respondent asked if the Commission would include the costs of additional credit cover for increased energy purchases as an additional SoLR cost.

Finally, another respondent commented that while it 'has no *a priori* objections to this additional levy being channelled through TUoS, and therefore through the TSO business, the TSO naturally assumes that the CER will ensure that any administrative costs of this function reasonably incurred can be recouped by the TSO, and that the CER will provide for sufficient working capital costs to cover the TSO for the costs of funding any payments associated with the Supplier of Last Resort until they can subsequently be recovered by the TSO through TUoS'.

Commission's Response

Given that the ESB PES already has in excess of 1.8 million customers, the Commission considers that the administrative costs of dealing with the customers of an exiting supplier will be small. Nevertheless, all reasonable costs will be considered by the Commission in its review of ESB PES' annual supply revenues.

While customer arrears will occur when a supplier exits the market, the SoLR is required to use all available means to reduce bad debt.

The Commission is not in favour of charging SoLR customers a SoLR 'premium' as this would penalise customers who have changed supplier. Likewise the proposal to recover the SoLR costs from all ESB PES customers in the year after the SoLR event would discriminate against ESB PES customers.

Regarding credit cover costs relating to increased energy purchases, the Commission will approve any reasonable unavoidable costs that arise as a result of having to fulfil role of SoLR.

Finally, the Commission will provide for sufficient working capital costs to cover the TSO for the costs of funding any payments associated with the SoLR until they can subsequently be recovered by the TSO through TUoS.

2.4 Mechanics of the SoLR

2.4.1 SoLR Business Processes & Information Requirements

Respondents' Comment

One respondent noted that the document alludes to a role for 'the TSO in providing co-operation with the SoLR in managing the process for transferring and communicating with affected customers. The relationship between transmission connected customers and their suppliers is a function of the MRSO. The TSO is of course, happy to co-operate in whatever way it can, however, it would be grateful if the CER could clarify that the handling of these matters is primarily one for the MRSO and that the MRSO will continue to provide any data requirements for the purposes of energy market settlement or TUoS billing'.

Commission's Response

Responsibility for SoLR customer communications, for the most part, will fall on the MRSO/DSO or SoLR, as is referred to in the *proposed Decision*. The role of the TSO in this process will be minor and will be limited to instances where ESB Networks and/or the SoLR require information on a customer from the TSO.