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Dear David,

**RE: SoLR Levy Offset**

Thank you for the opportunity to respond to the SoLR levy offset consultation. We understand the aims that Ofgem is attempting to achieve through its proposal however, we believe there are further considerations that need to be taken into account for the proposal to work in practice. These are addressed in our responses to Ofgem's questions which are provided in Appendix 1.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely,

Lucy McMahon

## Appendix 1

### **Section 2**

#### **Q1. Do you agree with our problem statement?**

We agree.

### **Section 3**

#### **Q2. What are your overall views on whether the proposal would deliver on the aims of the SoLR levy Offset?**

In principle we believe that the proposal could deliver on the aims of the SoLR levy offset however, we have identified some points that Ofgem should take into consideration as it develops the practicalities of it. Our main concern is the likelihood that a number of unintended consequences would arise as a result of its implementation. These are addressed in responses to later questions, in particular the response to question 8.

#### **Q3. What are your views on the proposed option of network companies being creditor, as opposed to other alternatives.**

We believe this is the most sensible option.

#### **Q4. What are your views on the creditors ranking in the insolvency waterfall as unsecured creditors and do you think another classification would be more appropriate?**

We believe that creditors ranking as unsecured creditors is the most appropriate position.

#### **Q5. What are your views on the creditor claim being contingent on a valid claim being made by a SoLR for a LRSP? Do you think that the creditor claim could be formulated or calculated in another way?**

Where a SoLR decides not to make an LRSP claim, it is possible that, in future, a SoLR could recover the costs of taking on the customers of a failed supplier through customer charges. For instances where this is the case, customers would not be protected in the same way as they would if a SoLR made an LRSP claim and the SoLR levy offset was then enacted. In a situation like this, rather than the costs being mutualised across suppliers, only new and existing customers of the SoLR would be covering the costs. It would be unlikely that the SoLR would then be able to claim any costs back from the failed supplier/administrator. This gives rise to clear fairness issues which Ofgem should consider further.

### **Section 4**

#### **Q6. What are your views on the deed as it is currently drafted**

As currently drafted, the deed requires a failed supplier to pay any Last Resort Supply Payment Liability whatever the cost and without an understanding of how those costs have been calculated. We understand that the costs would be subjected to the usual Ofgem claims process where the costs are reviewed and consulted on. But, given the expectation on the failed supplier, we would expect a degree of engagement between the failed supplier/administrator and the SoLR in advance of the claim being submitted to Ofgem. This would provide transparency of costs as they are calculated and the

opportunity for the failed supplier to raise appropriate challenge of those costs. Other costs in an administration process are either known upfront or significantly more straightforward to determine.

The deed also makes reference to failure or delay by a network company in exercising any right, power or remedy will not operate as a waiver of it. We believe the network companies should be required to implement their obligations in a reasonable manner and within a reasonable timeframe.

***Q7. What are your views on the proposed license changes for suppliers and networks? Please identify any factors relating to the drafting of license changes that we should consider at this stage.***

The responses provided to other questions should be factored into any changes to the licences.

## **Section 5**

***Q8. Have we identified the key impacts, risks and benefits of the SoLR Levy Offset, and are there any impacts we should give further consideration to? Do you think that overall this would be of benefit to consumers?***

Ofgem should consider the potential impact of adding network companies to the list of unsecured creditors. At present, although banks are often a secured creditor of a failed business, they can and do have unsecured agreements in place. Adding the network companies to the list of unsecured creditors with the ability to request payment of an unspecified amount could lead to banks rethinking their approach to existing and future finance agreements with suppliers. This could be by way of ceasing to provide unsecured agreements, and only having arrangements in place backed by collateral, and/or increasing any associated interest rates as a result.

We do not believe that it is Ofgem's intention through these proposals to potentially impact existing financial arrangements that suppliers have in place, particularly when Ofgem has already introduced other financial resilience measures. We encourage Ofgem to explore this potential unintended consequence further and the impact it may have on the supplier community as well as their customers.

Further to the above, although we have relatively limited experience of the insolvency process, our understanding is that clarity of actual costs would need to be provided to an administrator soon after supplier failure. Consequently, we are unsure how an administrator would gain an accurate view of costs when they will be incurred after supplier failure and not by the supplier that has failed.

A further possible impact of this proposal could be that potential SoLRs change their bidding strategy when a SoLR RFI is issued. In the past some suppliers have offered to make a contribution towards the costs of taking on the customers of a failed supplier absorbing some of the costs and with no intention of passing the costs onto their customers. The SoLR levy offset proposal may lead to an approach where potential SoLRs decide not to make a contribution knowing that there will be an attempt to recover costs by the networks from the failed supplier.

Although there may be occasions where the networks are successful in their claim, we believe there will be many instances where the networks either do not recover any of the costs of the SoLR claim or recover a significantly lower amount than anticipated. Ofgem should be mindful that the result of this could be that customers do not see any material difference in the prices they are charged.

Finally, while Ofgem has taken the opportunity to review recovery of SoLR costs other than credit balances, to keep the SoLR process as simple as possible, Ofgem should look to incorporate customer credit balances within this process rather than having two separate processes.