

To: All holders of a gas supply licence

**Gas Act 1986
Section 23(2)**

Notice of statutory consultation on a proposal to modify the standard conditions of all gas supply licences

1. The Gas and Electricity Markets Authority ('the Authority')¹ proposes to modify the standard conditions of all gas supply licences granted or treated as granted under 23(2) of the Gas Act 1986 by amending Condition 9 (Claims for Last Resort Supply Payment) 9.1, 9.4(d) and 9.5, and adding 9.7ZA, and Condition 9, 9A.1.
2. The first modification we are proposing is an additional condition required to implement the Supplier of Last Resort (SoLR) Levy Offset. The SoLR Levy Offset has been developed in response to the significant impacts on consumers of supplier failures after a number of failures in winter 2021.
3. The primary intended effect of this proposed addition is to reduce the mutualised costs associated with supplier failure.
4. The newly inserted Condition 9A, 9A.1 would require suppliers to enter into a "deed of undertaking" with the distribution networks. This would create an obligation from the supplier to pay the distribution networks the value of any Last Resort Supply Payment (LRSP) claim, in the event the supplier failed and a SoLR was appointed. The amount owed would be the value of the LRSP Claim, excluding Customer Credit Balances. The distribution networks would be able to claim the amount in the insolvency process of the failed supplier. Any sums recovered would be returned to consumers through lower network charges.
5. We are also proposing several modifications to formalise existing LRSP processes as well as to i) take into account any sums recovered by a SoLR from the insolvency process, ii) in order to make a procedure for making multiple claims (the multi-claims process) permanent, and iii) to ensure that reconciliation of claims takes place.
6. The intended effect of the next modification proposed is to make the 'multi-claims' process permanent. Under the multi-claims process, SoLRs can submit more than one LRSP claim for the costs incurred relating to a failed supplier. The current drafting of the relevant Conditions refers to a single LRSP claim. Modifications to Condition 9, 9.1 and Condition 9, 9.5 confirm that one *or more* LRSP claims can be made.
7. The intended effect of the next modification proposed is to ensure that any sums recovered by a SoLR from the insolvency process of a failed supplier are accounted for in the total amount consented to in the LRSP process. Modifications to Condition 9, 9.4D confirm that any sums recovered are deducted with interest, from the total LRSP claim.

¹ The terms "the Authority", "we" and "us" are used interchangeably in this document and may refer to either GEMA or Ofgem.

8. The intended effect of the last modification proposed is to ensure that reconciliation of LRSP claims takes place. Newly inserted Condition 9, 9.7ZA would require that a SoLR that received any overpayment return that overpayment to the distribution networks. It also requires that if a SoLR becomes aware that it has received an overpayment, it notifies the Authority.
9. A copy of the proposed modifications and other documents referred to in this Notice have been published on our website (www.ofgem.gov.uk). Alternatively, they are available from information.rights@ofgem.gov.uk.
10. Any representations with respect to the proposed licence modification/modifications must be made on or before 17 October 2024 to: SoLR Levy Team, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to SoLRLevyTeam@Ofgem.gov.uk.
11. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
12. If we decide to make the proposed modifications they will take effect not less than 56 days after the decision is published.

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David Hall, Deputy Director of Financial Resilience and Controls
Duly authorised on behalf of the Gas and Electricity Markets Authority
19th September 2024

Condition 9. Claims for Last Resort Supply Payment

Ability to make claim

9.1 If the licensee has received the Authority's consent under paragraph 9.5, it may make one or more claim(s) for a Last Resort Supply Payment, under standard condition 48 (Last Resort Supply: Payment Claims) or standard special condition A48 (Last Resort Supply: Payment Claims) of the Gas Transporter Licence, from each Relevant Gas Transporter.

Process for making claim.

9.4 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 gas to premises under the Last Resort Supply Direction and a reasonable profit,
plus

(b) any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances,
plus

(ba) any additional (actual or anticipated) interest and finance costs (including fees, costs and expenses incurred in arranging such financing) associated with an arrangement approved in accordance with Clause 9.7C, are greater than:

(c) the total amounts recovered by the licensee through Charges for the Supply of Gas to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such Charges)

(d) less (i) any sums recovered by the licensee from the other supplier (either in respect of any sum or debt referred to at 9.4(b) or any other sums owed by the other supplier to

the licensee) together with interest on such sums; and (ii) any Valid Claim already made by the licensee.

9.5 If the Authority considers it appropriate in all the circumstances of the case for the licensee to make ~~the~~ a claim notified to it in accordance with paragraph 9.3, the Authority will give its consent to the licensee.

Reconciliation of Claims

9.7ZA After the licensee has made at least one Valid Claim,

- (a) If the accumulated amount of Valid Claims made by the licensee exceeds the total amount that the licensee is entitled to claim under 9.4, the Authority may amend the consent given under paragraph 9.5; the Valid Claim to which the consent relates will be deemed to be adjusted accordingly; and paragraph 9.6(a) will apply;
- (b) If, at any time, Last Resort Supply Payments made to the licensee exceed the amount that the licensee was entitled to claim under 9.4 the licensee shall be liable to pay any such excess to the Gas Transporters in such manner as the Authority shall direct;
- (c) If the licensee becomes aware that the accumulated amount of Valid Claims made by the licensee exceed the total amount that the licensee is entitled to claim under 9.4, the licensee shall as soon as reasonably practicable, give notice to the Authority of the excess;
- (d) If any of (a) to (c) apply, the licensee will (i) give the Authority a calculation of each of the amounts in 9.4(a) to (d) showing any variation in such amounts from those included in the Valid Claim (ii) provide to the Authority details of Last Resort Supply Payments received; (iii) provide to the Authority such information and documentation as the Authority reasonably requires to give an amended consent under (a) and/or a direction under (b).
- (e) Notwithstanding 9.7ZA(a), the licensee shall give the Authority a calculation of each of the amounts in 9.4(a) to (d) with information to support that calculation no later than a date (which may be more than one date) notified to it by the Authority and, in any event, no later than five years after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.

Condition 9A. Undertakings to Gas Transporters in relation to Last Resort Supply Payments.

9.1A(a) The Licensee must give to the Licensed Distributors an undertaking to pay to the Licensed Distributors the amount of any Last Resort Supply Payment claim made to that Licensed Distributor from a licensee.

9.1A(b) The amount of any Last Resort Supply Payment claim referred to in (a) must not include amounts in the claim relating to Customer Credit Balances.

9.1A(c) The undertaking in (a) must be conditional upon a Last Resort Supply Direction being given in respect of the licensee's Customers' premises.

9.1A(d) The undertaking in (a) must be in Writing and in a form acceptable to the Authority (including any form, or replacement form, published by the Authority from time to time).