

**DETI RESPONSE TO COMMENTS MADE DURING THE STATUTORY CONSULTATION ON  
THE DRAFT GAS (SUPPLIER OF LAST RESORT) REGULATIONS**

Regulation	Consultee	Consultee Comments	DETI Response
2	Phoenix Supply Limited	<p>Request that nothing in the proposed legislation requires the designated supplier to supply natural gas to customers who may have had their natural gas supply disconnected by the defaulting supplier as a result of:</p> <ul style="list-style-type: none"> <li>(a) The customer’s failure to settle debts when due; or</li> <li>(b) The identification of suspected fraud and the subsequent theft of natural gas; or</li> <li>(c) Compliance with relevant health and safety legislation.</li> </ul> <p>Meter tampering and the theft of natural gas is illegal and highly dangerous and nothing within the legislation should be able to be utilised by a customer, or any other party, to claim the right to be supplied with natural gas in these circumstances.</p>	<p>Nothing in the proposed legislation will require the designated supplier to supply gas to customers who have had their natural gas supply disconnected by the defaulting supplier. Any decision to reconnect a customer will lie with the designated supplier.</p>
2	Phoenix Supply Limited	<p>The draft legislation does not contain legislative condition on the Authority to allow the legitimate costs of the designated supplier in sending a notice to the customers of the defaulting supplier. Also, a designated supplier is likely to incur significant additional costs in respect of supplying customers arising from a direction made by the Authority. The draft legislation should contain a statutory duty on the Authority to permit these costs to be recovered from customers, and if this is not the case, then the designated supplier should have the legislative right to refuse to supply the customers of the defaulting supplier</p>	<p>The allowance of legitimate costs arising from the designation of a company as the Supplier of Last Resort will be considered by the Utility Regulator as part of the detailed proposals for the introduction of a Direction.</p>

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2	Phoenix Supply Limited	<p>The deemed contract concept is not extended to cover all instances where a signed contract does not exist between a supplier and the customer. The need for deemed contracts arises mainly from change of tenancies in the licence area and this legislative oversight requires amendment as a matter of urgency. It was our understanding this issue was to be addressed as part of this consultation. This legislation is contained within the Electricity Regulation (Northern Ireland) 2007 (Appendix I) and also the Gas Act 1986 (Appendix II). We request the Department include the relevant conditions within gas legislation.</p>	<p>Legislation to cover deemed contracts in events such as change of tenancy cannot be introduced under these Regulations as they deal specifically with the issues surrounding the designation of a Supplier of Last Resort. The wider Deemed Contracts issue is however being considered as part of a proposed Bill to introduce new primary legislation for gas in Northern Ireland</p>
2	Consumer Council NI	<p>Consideration for vulnerable consumers, and those consumers who are struggling to pay. As the SoLR may charge a higher price than the failed supplier, vulnerable consumers should be offered “price protection”, to offset the higher price of the SoLR for a specified period of time</p>	<p>Priority in the event of needing to designate a Supplier of Last Resort must be given to ensuring that all customers and particularly vulnerable consumers such as the elderly and the sick have continuity of supply to heat their homes and prepare food. The cost of gas to all customers, including vulnerable consumers, arising from the designation of a Supplier of Last Resort will be considered by the Utility Regulator as part of the detailed proposals for the introduction of a Direction.</p>
2	Consumer Council NI	<p>Tariffs should be capped at the level which the SoLR currently charges its comparable existing customers. Customers must be advised of the changeover and provided with supporting information, including terms and conditions, within a specified timeframe</p>	<p>The tariffs to be used arising from the designation of a Supplier of Last Resort will be considered by the Utility Regulator as part of the detailed proposals for the introduction of a Direction. Customers will be provided with full details of the new costs and arrangements.</p>

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2	Consumer Council NI	An obligation must be placed on the SoLR to take actual meter reads or implement measures to obtain actual meter reads within 14 days of supplying the failed company's customers	The Department considers that the taking of actual meter readings from what could be a very large number of customers within 14 days of appointment of the designated company would be impractical. A system of how to obtain accurate meter information from customers will be considered by the Utility Regulator as part of the detailed proposals in the Direction.
2	Consumer Council NI	A mechanism must be in place to allow the SoLR to recover any shortfall between the amount received from the new customers and the SoLR's cost in supplying them, other than simply passing these costs onto consumers	A mechanism to recover costs arising from the designation of a Supplier of Last Resort will be considered by the Utility Regulator as part of the detailed proposals in a Direction.
2	Consumer Council NI	There must be an inclusion in the Regulations to direct NIAUR to consult on the methodology they intend to adopt when appointing a SoLR. This methodology should include the appointment of a SoLR in the event that it is the monopoly supplier who fails, and also the appointment of a SoLR operating within a competitive market. The Regulations should also include a direction to review the methodology at appropriate intervals to reflect changes within the market.	The Regulator would intend to issue guidance notes on the methodology to be used to implement the Gas Supplier of Last Resort Regulations and to review these arrangements periodically with the industry and the appropriate consumer authorities. The Department does not feel that it is necessary to include this in the legislation.
2	Consumer Council NI	A review should also be undertaken in the event that a company fails and a SoLR is appointed, to ascertain the appropriateness of the methodology deployed and to identify if improvements can be made.	The Regulator would intend to review the appropriateness of specific Supplier of Last Resort arrangements, if and when they are introduced, and make any necessary changes and improvements in the light of experience.
2	Phoenix Natural Gas Ltd	The consultation does not clarify what protection exists for companies e.g. will the Utility Regulator approve costs reasonably incurred by its regulated utilities in complying with the new legislation, will the SoLR process apply for all consumers or will there be exemptions e.g. if PNG has identified a property as having a tampered gas meter?	A mechanism to recover costs arising from the designation of a Supplier of Last Resort will be considered by the Utility Regulator as part of the detailed proposals for a Supplier of Last Resort Direction.

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2	Firmus Energy	<p>In drafting the proposed regulations two options have been considered, including “doing nothing” and maintaining the status quo or alternatively “introducing regulation” so that an alternative supplier can be appointed. However, there should be a third potential option whereby the Regulator could invite expressions of interest from suppliers interested in becoming SoLR, as is the case in Rol.</p>	<p>The Department considers it more appropriate to introduce Regulations to allow the Utility Regulator the power to designate a Supplier of Last Resort at the necessary time taking account of the circumstances in the market. If the Utility Regulator was to request suppliers to register an interest for being the provider of the SoLR arrangements there would currently only be a very limited number of companies able to show an interest. Given this small number of supply companies it was felt that all gas suppliers should be considered as potential Suppliers of Last Resort not just those who have specifically expressed interest in doing so. This will be kept under review as the Northern Ireland gas market develops.</p>
2	Firmus Energy	<p>Before any regulations are finalised, a number of issues need to be fully considered. These include;</p> <ul style="list-style-type: none"> <li>• How would customers, already in debt with the defaulting supplier, be treated?</li> <li>• Following a SoLR direction (being no longer than 6 months) what contractual arrangement would customers enter into – would a new contract be required?</li> <li>• What tariff would be charged to customers after the 6 month period?</li> <li>• How would the supply businesses under / over recoveries be treated?</li> <li>• How would additional costs (IT development, additional manpower etc.) be recovered by a SoLR?</li> </ul>	<p>All the issues raised will all be considered by the Utility Regulator as part of the detailed proposals for the Supplier of Last Resort Direction.</p>
2	Firmus Energy	<p>A guidance document outlining core responsibilities and accountabilities needs to be developed to coincide with any changes to SoLR legislation.</p>	<p>Guidance notes on the appointment of a Supplier of Last Resort (similar to those issued by Ofgem, the Regulator in Great Britain) will be produced by the Utility Regulator as part of the work programme for 2009/10.</p>

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2	Viridian Power & Energy	There may be occasions when it is necessary to 'direct' more than one SoLR to deal with a defaulting supplier's customers, and the Regulations should accordingly allow for this.	The Department has been advised that the Regulations as currently worded would allow the Utility Regulator to direct more than one company to act as the Supplier of Last Resort.
2	Viridian Power & Energy	Suppliers are increasingly becoming dual fuel by dint of participation in both the electricity and gas supply markets. It would therefore make perfect sense to ensure that SoLR arrangements are adequately coordinated across both fuels.	The introduction of these Regulations will ensure that Northern Ireland gas customers are protected in the event of a company failing to meet its obligations. Similar legislation arrangements relating to Supplier of Last Resort for Electricity companies can be found under the Electricity Regulations (Northern Ireland) 2007 No. 321. Both these sets of Regulations will provide protection for customers of dual fuel companies who have separate supply licences for their gas and electricity elements.
2	Viridian Power & Energy	This highlights a continuing incongruity between the gas and electricity statutory objectives for the Authority, i.e. it must have a mandate to 'promote competition' for gas transportation and supply thus aligning with its mandate for electricity, and not just to facilitate. This is therefore a good time to make a commensurate change to the Authority's statutory objectives to make them fit for an integrated competitive energy policy approach for 2010 and beyond.	The Department notes this response.
2	Viridian Power & Energy	There are a number of other key matters to address. These include the Authority's assessment criteria for nominating a SoLR, and how other market participants' exposure to wholesale gas settlement liabilities will be minimised.	Guidance Notes will be issued by the Utility Regulator outlining the proposals for the Supplier of Last Resort Direction.
2	Viridian Power & Energy	It is just as important to determine the industry business rules that will ensure the smooth customer supply transition from one supplier to another, noting that current industry gas customer transfer procedures cannot yet support a quick and efficient transfer.	The Utility Regulator will continue to look at the IT systems available in order to ensure that there is an optimal customer transfer process in place.

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2	Airtricity	<p>Welcome the proposal by the Department to introduce legislation in Northern Ireland regarding Supplier of Last Resort (SoLR) provisions in the Gas Industry. If implemented, SoLR may help address the concerns of some customers relating to perceived risks associated with switching to a different supplier. As a result we view the proposal for implementation in legislation of SoLR as positive for competition in the Northern Ireland gas industry.</p>	<p>The Department notes this response.</p>