



An Coimisiún
um Rialáil Fóntas
**Commission for
Regulation of Utilities**

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Commission for Regulation of Utilities

Supplier of Last Resort in Prepayment Electricity Decision Paper

Decision Paper

Reference: CRU/18112	Date Published: 08/06/2018	
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Executive Summary

On 7 December 2017, the Commission for the Regulation of Utilities (CRU) published a consultation paper on Supplier of Last Resort (SoLR) function in prepayment electricity (CRU). This paper sought to address a regulatory gap in ensuring effective operation of the SoLR function with respect to prepayment suppliers.

The consultation paper CRU/17/333 initially focused on the electricity prepayment sector and, in particular, the interaction between the SoLR and third party supported prepayment offerings that have emerged over recent years. This reason for this is that the existing regulatory framework covering the SoLR function predates the growth of prepayment offerings in the electricity market. Therefore the CRU has reviewed the existing SoLR regulatory framework in this context.

The purpose of this decision paper is to consider submissions received from industry considering improvements to the SoLR regulatory framework as it operates in the electricity prepayment sector. The CRUs principle objective is to protect the interests of existing and future customers and that, in the event a supplier exiting the market, customers continue to receive a supply of electricity. While the focus of the consultation was prepayment electricity, the conclusions establish principles which would equally apply to all customers.

There were four questions put forward in the consultation paper:

1. What obligations should the SoLR have with regard to type of services transferred to it under a SoLR process?
2. What obligations should the SoLR have with regard to any credit or debit that has been amassed by customers under the exiting suppliers?
3. Are additional supply licence obligations required to support effective transfer of customers to the SoLR?
4. Are there additional requirements that should be placed on suppliers where the SoLR was offered to the market?

All energy customers are entitled to *Universal Service*, which is a right to be supplied with electricity or gas at a specified quality, at reasonable, clearly comparable and transparent prices. The SoLR designation is specifically intended to ensure the continuity of Universal Service where a customer's chosen supplier ceases, or fails, to supply a customer with energy in line with their contractual obligations. It is an extraordinary event where the CRU steps in to protect the customer.

The focus of the SoLR is forward looking, ensuring continuity of supply, with clear pricing parameters, so that the customer is provided with a service platform from which they can choose the services of a new supplier if their own supplier exits the market. Alternatively, they may elect to take one of the SoLR's own tariff offerings. As such, the CRU recognises that the SoLR function provides for a non-standard switching service and, as such, is not intended to replicate all features of the service that the customer had with their exiting supplier. Within this framework, the CRU does not think that it would be appropriate to require the current SoLR to ensure seamless continuity of PAYG services to the consumer at the point of transfer. However, the CRU may specify the support of PAYG services in a SoLR transfer as a criteria in the future designation of the SoLR.

Similarly, while the role of the SoLR is not intended to replicate the service features that the customer had with the exiting supplier, nor does it provide for retrospective account management on behalf of the exiting supplier. Within the current procedural framework, the SoLR would have no knowledge of, or be entitled to pursue the customer for, any outstanding debt with the exiting supplier. The converse is also true, in that the SoLR would have no knowledge of, or be obligated to honour, any existing PAYG credit that the customer had with the exiting supplier. The CRU recognises that the latter scenario means that customers may lose PAYG credit which they have accumulated, where credit has not been decremented by customer consumption in the period between the exiting supplier ceasing operations and the SoLR transfer.

The CRU is mindful that where a customer has elected to have a PAYG meter installed it is to assist in managing their energy budget, either as a lifestyle choice, or for reasons of financial hardship. In either case, the potential loss of accumulated credit is an unwelcome consequence of their supplier exiting the market. The CRU will endeavour to minimise the impact that a SoLR event may have on consumers through better upfront information and improved SoLR process management.

Firstly, the CRU will review the supplier Terms & Conditions to ensure that PAYG customers are aware that credit may be lost in event of a market exit. Second, the CRU has commenced a review of the SoLR processes, and while it would not be proportionate at this stage to mandate explicit procedures which facilitate the transfer of credit, the CRU will seek to ensure that the process review incorporates due consideration of appropriate customer protection notifications.

Appropriate process management and notifications will aim to minimise any negative impact of the SoLR event on customers. Furthermore, the CRU notes that the future deployment of Smart Meters, where PAYG functionality is a feature of all meter installations, should enable the introduction of more seamless SoLR solutions for PAYG customers.

Therefore the CRU has decided that at this time the SoLR is not required to;

- (i) maintain the customer's original service type in a SoLR event

or

- (ii) to honour any existing credit or debit balances that exist on a PAYG customer's account with the exiting Supplier at the point of a SoLR event.

It is proposed that these rules should apply to all PAYG scenarios, whether the meter is Networks or Supplier installed.

In relation to the questions 3 and 4 regarding the requirements for further licence conditions or obligations on Suppliers, the CRU has noted the comments of all respondents but has concluded that it cannot specify whether any additional obligations are required at this time. As noted above, the CRU has commenced a review of the SoLR processes, this will include *inter alia*;

- an end to end review of the practical processes to support a SoLR event and the transfer of customers away from the exiting supplier including the CRU managed aspects of the process.
- the development of additional processes which take account of customers with PAYG meters (installed by either the Networks companies or directly by Suppliers for reasons of financial hardship or lifestyle choice).
- a test of the SOLR processes for gas and electricity markets and how they apply to all customers (credit & PAYG).

The CRU considers that the output of this work will better inform the drafting of any additional licence obligations, as and such will defer any further decisions until such time as the review is complete. It should be noted that the scope of this review does not extend to SoLR designation or remuneration.

Following the current work underway with industry on SoLR process development, the CRU will return to the question of whether any further licence obligations are required to facilitate the SoLR process.

Public/ Customer Impact Statement

- All energy customers have a right to be supplied with electricity at a specified quality, at reasonable, clearly comparable and transparent prices.
- The SoLR gives customers continuity of service where a customer's chosen supplier ceases, or fails, to supply a customer with electricity or gas in line with their contractual obligations.
- A SoLR market exit would be an extraordinary event where the CRU would step in to protect the customer.
- This paper looks at how SoLR arrangements would work for prepayment customers.
- The decisions relate to whether the customer's prepayment facility should be maintained in a SoLR event and how debt and credit are treated.
- The decisions reflect the fact that the priority obligation of the SoLR is to ensure continuity of service.
- The key aim of the decisions is to ensure that all customers are duly protected and they continue to have energy supply if their supplier exits the market.
- The CRU notes that PAYG customers could lose built up prepayment credit in a SoLR event.
- The CRU will do the following to minimise the impact that a SoLR event may have on consumers;
 - (i) ensure that all PAYG customers are made aware that credit may be lost in event of a market exit.
 - (ii) ensure that the SoLR processes let customers know what is happening with their supplier and when.
 - (iii) ensure that Smart Meter processes improve the SoLR solution for PAYG customers.

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Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
CER	Commission for Energy Regulation
CRU	Commission for Regulation of Utilities
ESBN	ESB Networks
PAYG	Pay As You Go
S.I.	Statutory Instrument
SoLR	Supplier of Last Resort

1 Introduction

1.1 Commission for Regulation of Utilities

The Commission for the Regulation of Utilities (CRU), is Ireland's energy and water regulator. Our mission is to regulate water, energy and energy safety in the public interest.

CRU is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector. In particular the CRU is aware of its function under section 14 of the Electricity Regulation Act 1999, which provides that "it shall be a function of the Commission to ensure that there is a high standard of protection for all final customers, including in their dealing with energy undertakings."

1.2 Background of Regulatory Framework of SoLR

The Supplier of Last Resort function was established in S.I. 60 of 2005, which implemented Directive 2009/72/EC and Directive 2009/73/EC. The SoLR's role is to ensure that in the event that a supplier exits the retail market (for whatever reason) that customers continue to receive gas and electricity supply.

1.3 The Customer Experience of the Supplier of Last Resort

When the SoLR is appointed, its first responsibility will be to notify the customers of the exiting supplier that the SoLR is now supplying their electricity. The SoLR must provide information to affected customers about the terms and conditions of supply and their rights to transfer to other suppliers (together with the timescales involved). The SoLR must manage the Change of Supplier (CoS) process for its new customers and issue bills to them on a timely basis. This will include meter-reading activities to complete the transfer process. The volume of customer transfers may impact on the time taken to transfer affected customers. Because the role of the SoLR is customer-facing, it is crucial that the SoLR operating in the market is supported by an effective regulatory regime which enables the SoLR to carry out its function in an effective manner.

1.4 Purpose of this Decision Paper

This paper considers submissions from market participants to its consultation paper published on 7 December 2017 (CRU/17/333) which put forth proposals on changes in the SoLR policies to take account of identified challenges relating to these prepayment offerings in the electricity market.

2 Background

2.1 SoLR Regulatory Framework

The SoLR function is governed by a complex legal and regulatory framework, the main elements of which are contained within S.I. 60 of 2005 in implementing Directive 2003/54/EC and Directive 2009/72/EC. The Directives ensure that all energy customers are entitled to *Universal Service*, which is a right to be supplied with electricity at a specified quality, at reasonable, clearly comparable and transparent prices. The SoLR designation is specifically intended to ensure the continuity of Universal Service where a customer's chosen supplier ceases, or fails, to supply a customer with electricity in line with their contractual obligations. It is an extraordinary event where the CRU steps in to protect the customer.

2.1.1 Legislation

Regulation 21 of S.I. 60 of 2005 sets out the legislative framework for the operation of a SoLR in Ireland. Under S.I. 60 of 2005, the SoLR must supply electricity to certain customers in three situations.

- i. Firstly, where a supplier ceases or fails to supply electricity to final customers in accordance with its contractual obligations¹.
- ii. Secondly, in certain cases, the CRU has the discretion² to direct the SoLR to supply electricity to a final customer where it is of the opinion that circumstances warrant such a direction.
- iii. In circumstances where a supplier's licence is being revoked, the CRU may also issue a Supplier of Last Resort Direction.³

Regulation 21(3) requires the CRU to include in the SoLR designation⁴ any terms, conditions or requirements considered necessary by the Commission in respect of the functions of the supplier of last resort. The CRU has used this power over the years to make provision for the SoLR in the Single Electricity Market (SEM) (CER/07/171) and deregulation of the electricity supply market (Decision CER/11/060). The CRU may also use this power to specify particular functions of the SoLR with regard to prepayment services for customers. The SoLR legislation does not place specific obligations of the SoLR and confers the power on the CRU to make regulations regarding the SoLR obligations and terms and conditions of the designation.

¹ Regulation 21(2)(a) of S.I. 60 of 2005

² Regulation 21(2)(b) of S.I. 60 of 2005

³ Regulation 21(2) and Supply Licence Condition 22

⁴ under Regulation 21(1)

The CRU decision on the SoLR in electricity predates the presence of PAYG offerings in the market. The CRU is therefore examining the existing SoLR obligations to identify whether these SoLR duties will suffice to ensure delivery of the SoLR function to customers with supplier installed 'budget controllers' installed. In addition it is important to consider whether the licence obligations imposed on all suppliers need to be amended to reflect requirements to facilitate a smooth transfer of customers who are availing of prepayment lifestyle choice offerings to the SoLR.

2.1.2 Licences

The Electricity Supply Licence contains a number of provisions relating to the SoLR. Specifically Condition 22 states:

1. The SoLR shall undertake its duties, where designated, in accordance with the terms and conditions of that designation and the relevant Regulations.
2. The Licensee shall comply with a Supplier of Last Resort Direction in so far as it applies.
3. The Licensee shall assist, in the transfer of its Customers to the designated Supplier of Last Resort.
4. The Commission may issue a Supplier of Last Resort Direction in respect of the Licensee where:
 - a) the Licensee fails to supply electricity in accordance with its contractual obligations;
 - b) the Commission is of the opinion that circumstances exist which warrant such a Supplier of Last Resort Direction;
 - c) the Licensee's Licence is in the process of being revoked.

In particular, licence Condition 22 of the electricity supply licence, obliges the licensee "to assist [...] in the transfer of its Customers to the designated Supplier of Last Resort." There are no further specific obligations on suppliers exiting the market.

The CRU has examined whether or not these general obligations are sufficient to facilitate the smooth transfer of all impacted customers to the SoLR.

In particular, the CRU has examined whether the existing licence conditions are sufficient to address specific concerns about the continuity of supply to customers who use supplier installed "budget controllers", in the event that their supplier exits the market. Further detail on these issues is contained in Sections 3 and 4 of this consultation paper.

3 Prepayment Services and SoLR Event

With the continuing development of lifestyle choice prepayment offerings in the retail market, the CRU considers it timely to review the SoLR function and process. A number of practical and legal issues arise in the operation of the SoLR function when a supplier exits the market and where a prepayment service with a supplier installed budget controller is in place. Once a supplier exits the market, and the SoLR function is activated, the SoLR is required to facilitate the transfer of customers from the exiting supplier. The current SoLR designation does not differentiate between types of services and hence requires the SoLR to provide continuity of supply even where a customer has a budget controller. This transfer of customers is complicated by the fact that there are third parties, namely the front-office and back-end service providers, that are affected by the SoLR event. The CRU must, therefore, consider an appropriate approach to SoLR regulation where a budget controller is in use and where the customer can, potentially, no longer use their existing mechanism to make top-up payments to ensure access to electricity supply.

3.1 The Role of Codes in the Top-Up Process

For electricity to continue to flow, the customer must keep its budget controller topped up with credit. To facilitate top-ups, codes specific to individual budget controllers are generated as part of the service provided by prepayment third party providers.

These third parties are not licenced by CRU, and are merely contractually bound to the supply licensees. A number of practical and legal issues, therefore, arise regarding the treatment of the lifestyle choice prepayment sector, in the event that a SoLR has to step in.

First, in order for the customer to continue to receive supply, it is necessary for the budget controller to be topped up and to continue to function. Where customers are transferred, normal conditions of supply are contingent on the generation of codes by back-end systems operators. These codes can do one of two things: (i) allow the customer to either continue to top up as normal (via a third party vendor) or alternatively (ii) turn the prepayment function of the budget controller off so that it does not cut off power supply, if credit cannot be purchased. The SoLR does not have access to the system that generates these codes. When a SoLR event occurs, one of two approaches could be adopted:

- i. All aspects of the budget controller could be transferred to the SoLR including the ability of the customer to continue to top up via the existing vendors; or
- ii. The transfer of customers to the SoLR takes place while the budget controller is in credit mode.

4 Proposed Options for Consultation

The consultation considered four central questions that must be addressed in considering whether the SoLR is sufficiently robust in the prepayment space. The responses and CRUs decision are set out in the following sections.

4.1 What obligations should the SoLR have with regard to type of services transferred to it under a SoLR process?

Proposal

In the event that a SoLR event occurs, the CRU needs to define the scope of obligations that the SoLR must provide to the customers that it acquires. Two options were proposed by the CRU.

1. Ensure the SoLR facilitates a PAYG service together with a traditional credit service;
2. Require the SoLR transfers customers on a credit basis only;

The CRU maintained as a minded to position in its consultation paper that as the function of the SoLR is specified as the obligation to ensure that the customer continues to receive electricity supply, the CRU therefore held that the customer's election of using a pre-payment approach be facilitated is not strictly necessary to comply with the designation of the SoLR. As such, the SoLR would be able to provide electricity supply to customers that it acquired under a SoLR process on the basis of credit terms and conditions rather than prepayment.

Responses

Bord Gáis Energy

BGE agreed with the CRU's proposal that the prepayment functionality should not be continued in a SoLR event and that affected customers should be placed on a non-prepayment product. It argued that this would ensure that supply stays connected in the immediate term. The SoLR could then offer the customer its own prepayment solution (if desired). BGE argues that the meter should be returned to credit mode and that the SoLR should charge the customer a cost-reflective tariff. BGE also acknowledged that new Electricity Supply Licence Conditions may also be required to facilitate obligations on the exiting Supplier to facilitate the change back to credit mode.

Electric Ireland

Electric Ireland agreed with the CRU's proposed approach. Its principle reason for supporting this approach is that this approach is the simplest (critically subject to suitable internal arrangements being designed, negotiated and agreed with third parties in advance of such an event), and timeliest to achieve while maintaining optimum continuity of supply for customers.

In relation to suitable arrangements needing to be in place with third parties, Electric Ireland stated that these arrangements would very broadly cover an agreed process to be added to existing contracts that would oblige in particular, third party providers to communicate a switch from prepay to credit mode, *en masse* (on the instruction of CRU, the exiting supplier or SoLR), a message/ code to all impacted customers. Electric Ireland also noted that a clear statement or definition would be needed to cover boundaries and responsibilities for delivering and handling customer communications.

Electric Ireland further stated that if complete commercial and legal arrangements for all budget controller functions to be transferred to the SoLR were required to be in place, the statutory and regulatory challenges might be very difficult to overcome. They also noted that operationally it would also be very cumbersome to activate in the event of a SoLR direction. Electric Ireland also drew attention to the positive changes that might come about in terms of ease of SoLR communications with customers with the advent of Smart Meters.

SSE Airtricity

SSE Airtricity generally agreed with the proposal that customers should be transferred to the SoLR on a non-prepayment product if that means that the customers supply would not be interrupted. SSE Airtricity was not clear as to how the meter will be put into non-prepayment mode. SSE Airtricity proposed that the CRU must take the position that if a supplier is exiting the market they may have little incentive or willingness to engage with the SoLR process. Therefore, if the process to move customers to non-prepayment mode is dependent in any way on the exiting supplier then it must be accepted that customers may not be able to transfer in non-prepayment mode and other options must be considered. If the process is not dependent on the exiting supplier, then SSE Airtricity suggested that the Terms and Conditions of Supply for suppliers of budget controllers should be clear that, in the event of the Supplier exiting the market, the customer will transfer to the SoLR in credit mode.

PrePayPower

PrePayPower did not support the CRU's proposal. It stated that the SoLR should be required to offer the customer the same services that they were on while contracted to the defaulting supplier. PrePayPower did not agree that the prepayment functionality could be discontinued following the SoLR event and proposed that all impacted customers should retain the service type that they signed up to with defaulting supplier.

PrePayPower stated that the customer is central to the SoLR process and that any process should be designed to minimise impact on the customer. They stated that based on the existing process, at minimum the first 19 days will involve a CoS process for many customers who move to alternative suppliers. For those customers who choose not to actively change supplier, they will be transferred to the SoLR. PrePayPower emphasises that it is no fault of the customer that the SoLR event is involved and that the exiting Supplier has ceased trading. Furthermore, customers should not be removed from a supply model which they expressly opted for. All Lifestyle PAYG customers explicitly opt to avail of a prepayment service over a credit service. If the customer is put into credit mode on day 19, the SoLR will be obliged to provide bill pay services. This is not currently a requirement and would preclude some PAYG lifestyle choice suppliers from tendering for the SoLR process in the future.

PrePayPower also suggest that transferring to "credit mode" may not be a simple process as it requires a customer to apply a code/ vend in order for credit mode to take effect. PrePayPower argued that further understanding of the implications and practicalities of this option would need to be addressed.

CRU Response

As stated above, the SoLR designation is specifically intended to ensure the continuity of Universal Service where a customer's chosen supplier ceases, or fails, to supply a customer with electricity in line with their contractual obligations. It is an extraordinary event where the CRU steps in to protect the customer.

The focus of the SoLR is forward looking, ensuring continuity of supply, with clear pricing parameters, so that the customer is provided with a service platform from which they can chose the services of a new supplier, or they may elect to take one of the SoLR's own tariff offerings. As such, the CRU recognises that the SoLR function provides for a non-standard switching service and is not intended to replicate all features of the service that the customer had with the exiting supplier. Within this framework, the CRU does not think that it would be appropriate to require the current SoLR to ensure continuity of PAYG services to the consumer.

The CRU notes that Bord Gais, Electric Ireland and SSE Airtricity support the CRU's minded to position in its consultation paper which was premised on the fact that the function of the SoLR is to ensure that the customer continues to receive electricity supply.

While it has been argued that the legislation pre-dates the advent of prepayment function in the market, this does not change the general role of the SoLR. Nonetheless, the legislation does provide that the SoLR designation by the CRU could specify certain terms and conditions or any other matters which the Commission considers necessary for the purpose of the supply of electricity to a final customer by the SoLR. Therefore, as the CRU has already decided that the role of the SoLR should be offered to market in a competitive process, it could, in that context, specify that the support of PAYG services in a SoLR transfer is a criteria in the future designation of the SoLR.

Referencing the current electricity SoLR process, PrePayPower suggests at minimum that the first 19 days of a SoLR event will involve a CoS process for many customers who move to alternative suppliers. For those customers who choose not to actively change supplier, they will be transferred to the SoLR. The CRU is of the view that changing market processes to ensure that customers are made aware that if they would like to avail of a prepayment service, they may change supplier to another prepayment service provider at this stage would be beneficial. The CRU notes that it has commenced a review of the SoLR processes and it will seek to ensure that the review incorporates due consideration of appropriate customer protection notifications to alert customers of their PAYG options. The CRU is of the view that the balance to be struck in ensuring that customers' preferred mode of payment would be accommodated by ensuring customers are informed of their options earlier in the SoLR process.

PrePayPower also suggested that placing the customer's budget controller into credit mode on day 19, would ensure the SoLR is obliged to provide bill pay services. This is not currently a requirement and would preclude some PAYG lifestyle choice suppliers from tendering for the SoLR process in the future. The CRU does not accept that this requirement would necessarily preclude any prepayment supplier from tendering for a SoLR role. This would still depend on how any procurement or auction process is run and the demands of this process.

Decision

The CRU has decided that the SoLR should not be obligated to maintain the service type that the customer had with an exiting supplier. This means that in the case of a PAYG customer, the SoLR is not required to maintain a seamless PAYG service as part of the SoLR service.

Decision 1: The CRU has decided that the SoLR is not required to maintain the customer's original service type in a SoLR event.

4.2 What obligations should the SoLR have with regard to any credit or debit that has been amassed by customers under the exiting suppliers?

Proposal

The CRU does not consider it appropriate to put an obligation on the SoLR to honour any outstanding credit balances for customers that transfer to it from an exiting supplier. Similarly with regard to debit balances that may be associated with a budget controller, any debt owed to the exiting supplier means that the customer is a debtor of the exiting supplier. Any such debts would be recoverable under the insolvency process, and the customer would be treated as an unsecured debtor of the exiting supplier. For this reason the CRU proposes not to impose an obligation on the SoLR to honour outstanding credit balances, nor to act as the conduit for any outstanding debt recovery for a customer that transfers to the SoLR. Respondents are asked to comment on this proposal approach to outstanding credit and debit balances.

Responses

Bord Gáis Energy

BGE agrees that it is not appropriate to put an obligation on the SoLR to honour any outstanding credit balances for customers that transfer to it from the exiting Supplier. Similarly, the SoLR should not be obliged to collect outstanding customer debts that may have been on the meter. BGE argues that the SoLR will already have incurred significant costs in undertaking the role and it is not appropriate to add to their financial burden (which by definition is transferred to all customers via the cost recovery mechanism provided to the SoLR) by making them responsible for any credits or debts already on the meter.

Electric Ireland

Electric Ireland agrees with the proposal as set out by CRU and with the supporting rationale provided in relation to insolvency, particularly as any credits or debts outstanding are likely to be considered as under the ownership of an appointee (examiner or receiver).

Moreover Electric Ireland believes that, technically transferring debts or credits from an exiting supplier to a SoLR (devices, books of account etc) in all the circumstances prevailing would be a considerable extra burden to resolve at the time of a SoLR direction.

Apart from any general communications requirement it should be noted in this particular respect that customer reaction (and from representatives and representative bodies) to such an occurrence could be expected to be difficult. Electric Ireland suggested that a clear understanding of obligations in handling customer communications is required.

SSE Airtricity

SSE Airtricity agrees that debt accrued by the customer under the exiting supplier should not be transferred to the SoLR as the consultation points out the debts would be recoverable under the insolvency process.

PrePayPower

PrePayPower considers that credit at the point of time of a SoLR event, should be passed to the customer or to the supplier in order for a refund to take place. This includes passing any credit owed during any COS that takes place during the 19 day period. PrePayPower acknowledges that this would not be an immediate and would need to be calculated as part of the liquidation process.

PrePayPower supported this position with the rationale that the nature of PAYG supply is that customers pay up front for their energy. For this reason, unlike credit pay customers, most customers would have credit balance at the point of a SoLR event or during the 19 day window prior to SoLR take over. Therefore, in order to honour the customer and keep them central to the SoLR process, it is important that their credit is refunded to them at some point in the future.

PrePayPower acknowledges that there are practical difficulties in getting an accurate view of the credit owed to each customer as a result of the reconciliation between the secure system, vending of customer and third party systems. PrePayPower suggested that running a report on the defaulting supplier's database to identify the last credit vend and last vend date.

PrePayPower considered that debt accrued between the customers and defaulting Supplier to be a matter between the customer and defaulting supplier/ Liquidation Company and that this debt should not be transferred to the SoLR.

CRU Response

As stated above, the SOLR designation is specifically intended to ensure the continuity of Universal Service where a customer's chosen supplier ceases, or fails, to supply energy in line with their contractual obligations. It is an extraordinary event where the CRU steps in to protect the customer.

The CRU notes that all of the respondents acknowledged the complexity which would be involved in transferring credit owing to one potentially insolvent legal entity which presumably would have creditors and debtors, to another solvent entity namely the SoLR. Complex legal rules exist which frame rights and obligations in an insolvency. Moreover, in such circumstances, customers have rights protected by law to ensure that they can claim monies owing to them including credit accrued on a PAYG budget controller. It is beyond the remit of the CRU, however, to decide that credit accrued by one supplier should be recognised by a separate legal entity and thereby circumventing insolvency rules and procedures. The CRU also notes that there are no established mechanisms for the inter-operator transfer of customer credit/debt balances in the event of a customer switch for credit or PAYG (financial hardship) customers.

As previously stated, the focus of the SoLR is forward looking, ensuring continuity of supply, with clear pricing parameters, so that the customer is provided with a service platform from which they can choose the services of a new supplier, or they may elect to take one of the SoLR's own tariff offerings. As such, the CRU recognises that the role of the SoLR does not provide for retrospective account management on behalf of the exiting supplier. Within the current procedural framework, the SoLR would have no knowledge of, or be entitled to pursue the customer for, any outstanding debt with the exiting Supplier. The converse is also true, in that the SoLR would have no knowledge of, or be obligated to honour, any existing PAYG credit that the customer had with the exiting supplier. The CRU recognises that the latter scenario means that customers may lose PAYG credit which they have accumulated, where credit has not been decremented by the customer's electricity consumption in the period between the exiting supplier ceasing operations and the SoLR transfer.

The CRU is mindful that where a customer has elected to have a PAYG meter installed it is to assist in managing their energy budget, either as a lifestyle choice, or for reasons of financial hardship. In either case, the potential loss of accumulated credit is an unwelcome consequence of their supplier exiting the market. The CRU will endeavour to minimise the impact that a SoLR event may have on consumers through better upfront information and improved SoLR process management. Firstly, the CRU will review the supplier Terms & Conditions to ensure that PAYG customers are aware that credit may be lost in event of a market exit.

Second, the CRU has commenced a review of the SoLR processes, and while it would not be proportionate at this stage to mandate explicit procedures which facilitate the transfer of credit, the CRU will seek to ensure that the process review incorporates due consideration of appropriate customer protection notifications. Appropriate process management and notifications will aim to minimise any negative impact of the SoLR event on customers. Furthermore, the CRU notes that the future deployment of Smart Meters, where PAYG functionality is a feature of all meter installations, should enable the introduction of more seamless SoLR solutions for PAYG customers.

Decision

The CRU does not consider it appropriate to put an obligation on the SoLR to honour any outstanding credit balances for customers that transfer to it from an exiting supplier. Similarly with regard to debt balances that may be associated with a budget controller, any debt owed to the exiting Supplier means that the customer is a debtor of the exiting Supplier. Any such debts would be recoverable under the insolvency process, and the customer would be treated as an unsecured debtor of the exiting supplier. For this reason, the CRU proposes not to impose an obligation on the SoLR to honour outstanding credit balances, nor to act as the conduit for any outstanding debt recovery for a customer that transfers to the SoLR. However, the CRU will implement a number of measures to improve customer notifications during a SoLR event.

It is also proposed that these rules should apply to all PAYG scenarios, whether the meter is Networks or Supplier installed.

Decision 2: The CRU has decided that the SoLR is not required to honour any existing credit or debit balances that exist on a PAYG customer's account with the exiting Supplier at the point of the a SoLR event.

4.3 Are additional supply licence obligations required to support effective transfer of customers to SoLR?

Proposal

The existing mechanism for regulating the transfer of customers in a SoLR event is by way of a licence condition on all suppliers. A general licence condition exists obliging all suppliers to cooperate with the SoLR in transferring customers. SI 60 of 2005 also provides for specific terms and conditions in any SoLR designation.

This means that, if required, the CRU could specify in separate designation decision additional terms and conditions under which the SoLR would function under licence. Nonetheless, this specification in itself may not be sufficient to ensure that customers are effectively transferred, given that the flow of electricity via a budget controller requires the services of unlicensed parties. It is for this reason that the CRU proposes to revisit licence conditions under section 14 of the Electricity Regulation Act 1999.

The CRU proposed to impose additional licence conditions on all suppliers to ensure that where they have contracted with third parties for prepayment service (not licensed by the CRU, that the contracting supplier transfers an obligation on these third parties to facilitate a transfer of customers to the SoLR. It is essential that the unlicensed third party is contractually bound to facilitate the transfer of customers to a SoLR where such an event arises. In this way, the market can be assured that the existence of third party commercial relationships does not impact on the transfer of customers to the SoLR, and that the customer is protected.

Responses

Bord Gáis Energy

BGE stated that there should be an Electricity Supply Licence requirement on all Suppliers to ensure that if they are active in the prepayment electricity market and use prepayment technology, that they contractually require any third parties (such as Secure Meters/ Liberty) to facilitate the transfer of customers to the SoLR in a SoLR event. A licence condition would seem to be the best way to ensure that this contractual obligation is inserted into third party contracts by all suppliers.

Electric Ireland

Electric Ireland agreed in principle that this change may be necessary, though it is uneasy regarding possible uncertain outcomes where this obligation is proposed to be enforced by suppliers through an obligation transferred to (unlicensed) third parties, whether retroactively or not.

In the absence of further legislation, there has to be some doubt as to whether third parties would accept such an obligation. Electric Ireland stated that impacted third parties would carefully consider their commercial position where they have an existing contract, loss of market share, potential loss of transaction revenues etc. Third parties may also be creditors themselves in an exit situation.

In this context, Electric Ireland would ask CRU to consider further whether, in fact, this extra proposal is needed in the context of the existing provision under condition 22 of the Supply licence, which obligates the licensee 'to assist [...] in the transfer of its customers to the designated Supplier of Last Resort.'

SSE Airtricity

SSE Airtricity stated that third parties involved in the Budget Controller process are doing so because they are receiving a financial payment for carrying out their activities. Regardless of whether electricity supply licences are updated to ensure that suppliers contractually obligate third parties to facilitate the transfer of customers, the third party is likely to only do so if they are paid and contracted for whatever activity they are required to carry out. In this SoLR scenario, SSE suggested, it is likely that the third party will be owed money by the exiting supplier and therefore may have no incentive to facilitate the transfer of customers unless they are paid to do so.

SSE Airtricity asked if any payment to third parties for activities in relation to the SoLR process would be borne by the SoLR. SSE Airtricity also queried as to how CRU would propose to enforce licence obligations on the exiting supplier in a SoLR event.

PrePayPower

PrePayPower agreed that licence holders should be obliged to facilitate the transfer of their database to the agreed SoLR if an event were triggered. The reason is that due to the nature of PAYG systems, the defaulting supplier has an obligation to complete or provide control or complete certain practical steps or transitions for example production of a deactivation code. PrePayPower suggested that the SoLR should be given access to the database and customer data necessary to provide the 19 day support as well as customer transfer process following day 19.

PrePayPower suggests that the approach should be either the handing over of control by the defaulting supplier or alternatively requiring the defaulting supplier to operate their business for the 19 days leading up to the SoLR take over.

CRU Response

The CRU has noted the comments of all respondents but has concluded that it cannot articulate the appropriate licence conditions at this time. The CRU notes that it has commenced a review of the SoLR processes which will include *inter alia*;

- an end to end review of the practical processes to support a SoLR event and the transfer of customers away from the exiting supplier including the CRU managed aspects of the process.
- the development of additional processes which take account of customers with PAYG meters (installed by either the Networks companies or directly by Suppliers for reasons of financial hardship or lifestyle choice).
- a test of the SoLR processes for gas and electricity markets and how they apply to all customers (credit & PAYG).

The CRU considers that the output of this work will better inform the drafting of any additional licence obligations, as and such will defer any further decisions until such time as the review is complete.

Decision

The CRU has not made any decision on a requirement for further licence obligations at this time.

4.4 Are there additional requirements that should be placed on suppliers where the SoLR was offered to the market?

Proposal

In accordance with Regulation 21 of S.I. 60 of 2005, the Commission may invite expressions of interest from licenced suppliers to act as SoLR. It should be noted that although the CRU stated in Decision CER/06/006 that it would pursue offering a competitive process to determine the SoLR, the CRU is not proposing to progress with this approach at this point in time. While the CRU remains committed to this approach, it is focussing at this point in time on policies that ensure that a robust regime is in place to ensure that the SoLR functions effectively in the prepayment sector, in the first instance.

Regulation 21(3) requires the CRU to include in the SoLR designation⁵ any terms, conditions or requirements considered necessary by the Commission in respect of the functions of the SoLR. It is open to CRU to use this power to specify particular functions of the SoLR in the prepayment space going forward by way of a re-designation under specific terms. This may be necessary where additional obligations are required to ensure the SoLR functions as it should.

The decision to offer the SoLR role was made in 2006. Market participants were asked whether with the emergence of lifestyle choice prepayment offerings since then, they consider that specific additional terms, conditions or requirements should be placed on the current SoLR or any supplier undertaking the role of SoLR in the future.

Responses

Bord Gáis Energy

BGE is of the view that any SoLR should be adequately remunerated for carrying out this role. This should be built into any offering of the SoLR role to the market. BGE is of the view that suppliers cannot be expected to carry the expense and risk of acting as the SoLR.

BGE also noted that if the SoLR role were to be offered to the market in the future, the CRU should take account of the supplier's stability and security and accordingly to set *de minimis* security or financial levels for those who seek to act as SoLR.

⁵ under Regulation 21(1)

Electric Ireland

Electric Ireland acknowledged the complexity and range of issues reviewed by CRU in proposing to revisit licence conditions, specifically in relation to contractual obligations that might be placed on unlicensed third parties.

Electric Ireland support the CRU's approach but are uneasy in relation to possible unintended consequences and recommend that additional consideration is given to maintaining the existing position vis-à-vis condition 22.

Electric Ireland also recommended being cognisant of market changes in relation to the broader Smart Metering programme to commence in 2019 which may further facilitate the SoLR process.

SSE Airtricity

SSE Airtricity stated that notwithstanding the fact that the electricity market has been fully deregulated since 2010, Electric Ireland remains the designated SoLR despite the CRU determining in its 2011 decision paper 'Role of the Public Electricity Supplier and Supplier of Last Resort in the Deregulated Electricity Market CER/11/060, that the role of the SoLR be offered to the market in a competitive process. SSE Airtricity commented that there are several suppliers currently active in the market that have the systems and process capabilities to fulfil the role of the SoLR. SSE Airtricity also noted that although in the CRU 2011 decision paper, the CRU made several decisions that required further consultation however this consultation, SoLR in PPM electricity, is the first paper since 2011 relating to the SoLR process. SSE Airtricity is disappointed that the CRU did not take the opportunity to consult on the outstanding items relating to the SoLR. SSE Airtricity reiterated that it is essential that all suppliers operate on a level playing field in a deregulated market but noted that this has not been the case since market deregulation as Electric Ireland remains the designated SoLR with no attempts by the CRU to correct that position.

PrePayPower

PrePayPower was of the view that the SoLR should be able to provide PAYG services to customers. Furthermore, the SoLR should do all things necessary to facilitate transfer of PAYG to a similar PAYG model offered by defaulting supplier. PrePayPower also suggests that the SoLR must be guaranteed to receive credit payment from liquidated company. In addition, PrePayPower argues that it may be prudent for the SoLR to establish a dormant account with front office providers which is invoked as soon as a SoLR event is called. In the event that a SoLR event is called, the front office vendor account is substituted by the dormant account which is linked to the SoLR.

CRU Response

The CRU has noted the comments of all respondents but has concluded that it cannot specify whether any additional obligations are required at this time. The CRU notes that it has commenced a review of the SoLR processes which will include *inter alia*;

- an end to end review of the practical processes to support a SoLR event and the transfer of customers away from the exiting supplier including the CRU managed aspects of the process.
- the development of additional processes which take account of customers with PAYG meters (installed by either the Networks companies or directly by Suppliers for reasons of financial hardship or lifestyle choice).
- a test of the SoLR processes for gas and electricity markets and how they apply to all customers (credit & PAYG).

The CRU considers that the output of this work will better inform the drafting of any additional licence obligations, as and such will defer any further decisions until such time as the review is complete.

The scope of this review does not extend to SoLR designation or remuneration.

Decision

The CRU has not made any decision on requirements for further obligations at this time.

5 Conclusions and Next Steps.

The consultation considered four central questions that must be addressed in considering whether the SoLR is sufficiently robust in the prepayment space. The responses and CRUs decision are set out in the following sections.

5.1 Conclusions

Further to consultation, the CRU has decided that at this time the SoLR is not required to

- (i) maintain the customer's original service type in a SoLR event

or

- (ii) to honour any existing credit or debit balances that exist on the customer's account with the exiting Supplier at the point of a SoLR event.

5.2 Next Steps

Following the current work underway with industry on SoLR process development, the CRU will return to the question of whether any further licence obligations are required to facilitate the SoLR process.

Annex 1 – Regulation 21 of S.I. No 60 of 2005

Regulation 21 of S.I. 60 of 2005:

- (1) The Commission may invite expressions of interest from licenced suppliers to act as supplier of last resort that is to supply electricity in accordance with this Regulation.
 - (a) Following public consultation and subject to subparagraph (c), the Commission shall designate a licensed supplier to act as supplier of last resort that is to supply electricity in accordance with this Regulation.
 - (b) Where the Commission is of the opinion that the public electricity supplier is the most appropriate licensee to supply electricity in accordance with this Regulation, it may designate the public electricity supplier to act as supplier of last resort under subparagraph (b) as it sees fit.
- (2) The supplier of last resort shall supply electricity to final customers of another licensed supplier where –
 - (a) a licensed supplier with whom final customers have a supply contract ceases or fails to supply electricity to those final customers in accordance with its contractual obligations; or
 - (b) following representations to the Commission from a licensed supplier, the Commission is of the opinion that circumstances exist which warrant a direction to the supplier of last resort to supply electricity to a final customer.
- (3) The Commission shall include in the designation under paragraph (1) any terms, conditions or requirements considered necessary by the Commission in respect of the functions of the supplier of last resort.
- (4) The Commission shall specify
 - (a) the terms and conditions under which the supplier of last resort shall supply electricity to a final customer including those in relation to –
 - (i) duration of supply
 - (ii) termination of supply; and
 - (iii) price
 - (b) the method for calculating the charges for the supply of electricity to a final customer.
 - (c) Any other matters which the Commission considers necessary for the purpose of the supply of electricity to a final customer by the supplier of last resort,

And the supplier of last resort shall comply with the matters so specified.
- (5) Where a final customer is supplied with electricity by the supplier of last resort, a contract for the supply of electricity shall be deemed to exist between the final customer and the supplier of last resort from the date upon which the supply of electricity to the final customer by the supplier of last resort begins.