RETAIL ENERGY CODE

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|---|---|
| 01 | Initial Assessment Report |
| 02 | Preliminary Change |
| 03 | Final Change Report |

# CHANGE REPORT

## R0057 – CLARIFICATION OF SUPPLIER OF LAST RESORT OBLIGATIONS UNDER THE REC

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| CHANGE REPORT | PRELIMINARY |
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| PRIORITY STATUS | MEDIUM | URGENCY | STANDARD |

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| DEADLINE FOR ALTERNATIVE CHANGE PROPOSALS | 27/01/2023 |


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## CHANGE OVERVIEW

Within Schedule 19 – Market Exit and Supplier of Last Resort there is currently no consideration of circumstances where the Replacement Supplier is unable to fulfil its REC obligations in respect of Consumers transferred to them, due to them having little or no control over the processes of the failed Supplier or its administrator. This change seeks to define when the Replacement Supplier is responsible for obligations relating to the Consumers gained through a Supplier of Last Resort (SoLR) Process.

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| | High Impact:<br>N/A |
| | Medium Impact:<br>Energy Suppliers |
| | Low Impact:<br>Metering Equipment Managers, Data Collectors, REC Performance Assurance Board |

## CODE MANAGER'S RECOMMENDATION

The Code Manager recommends Change Proposal R0057 is **APPROVED** for implementation on 03 November 2023.

RETAIL ENERGY CODE

## CONTENTS


| | | |
|---|---|---|
| **BACKGROUND** | | |
| 1. | Summary | 3 |
| 2. | Problem Statement | 3 |
| 3. | User Stories | 3 |
| **PROPOSAL** | | |
| 4. | Summary of Analysis Undertaken | 4 |
| 5. | Proposed Solution | 4 |
| 6. | Draft Legal Text | 5 |
| 7. | Summary of Impact Assessment Activity | 5 |
| 8. | Delivery Against Change Proposal Plan | 5 |
| 9. | Proposed Implementation Date and Approach | 5 |
| 10. | Business Case Assessment | 6 |
| 11. | Case for Change | 6 |
| 12. | Code Manager's Recommendation | 6 |
| 13. | Consultation Plan and Next Steps | 7 |
| 14. | Appendix | 7 |
| 15. | Glossary | 7 |

# BACKGROUND

## 1 BACKGROUND

When a Replacement Supplier is appointed during the SoLR Process, it is usually the case that the systems and processes of the failed Energy Supplier will be operated by an administrator. The administrator, whose primary responsibility and focus is the wrap up of operations and closure of a failed Energy Supplier, and as such is not always able to help resolve queries from the Replacement Supplier.

Section 5.1 (b) of Schedule 19 – Market Exit and Supplier of Last Resort, currently states that the Replacement Supplier is responsible for all obligations assigned to the Registered Supplier or its Supplier Agents as stated within the Code, from the date and time set out in the Last Resort Supply Direction.

This does not consider any limitations the Replacement Supplier may have in meeting REC obligations, for processes such as in-flight Erroneous Switches, Disputed Switch Meter Readings, or Performance Assurance reporting. In the period prior to Consumer accounts being migrated from the failed Energy Suppliers' systems to those of the Replacement Supplier, the limitations experienced by the Replacement Supplier can be significant. The Replacement Supplier will often not have contracts in place with the Supplier Agents appointed by the failed Supplier, causing further disruption to these processes and ultimately Consumers.

## 2 PROBLEM STATEMENT

Currently, Replacement Suppliers are responsible for all obligations of the failed Supplier from the date and time set out in the Last Resort Supply Direction, this includes a period prior to Consumer accounts transferring to the Replacement Supplier's systems, limiting their ability to fulfil these obligations.

This means that a Replacement Supplier may experience issues with the Performance Assurance obligations for which they are responsible, but do not have direct control over.

Any breaches of obligations by a Replacement Supplier need to be considered fairly and any limitations the Replacement Supplier may face are taken into consideration.

## 3 USER STORIES

| REF. | USER STORIES |
|---|---|
| **CONSUMER USER STORIES** | |
| C1 | As a Consumer, when my Energy Supplier goes out of business and I am transferred to a Replacement Supplier, I want my supply transfer to be handled quickly and have confidence that my new Supplier has all the necessary data to set up my account and bill me correctly from the transfer date, and if the Replacement Supplier fails to provide the expected level of service they will be appropriately held accountable. |
| **MARKET PARTICIPANT USER STORIES** | |
| M1 | As a Replacement Supplier, I want the limitations affecting my ability to meet my REC obligations to be understood by the REC Code Manager and the REC Performance Assurance Board (REC PAB), so that any breaches of obligations are considered fairly, and any limitations are taken into consideration. |

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| M2 | As the Code Manager I want to apply appropriate and proportionate Performance Assurance Techniques, taking into account the ability of a Replacement Supplier to meet its obligations under the REC. |

# PROPOSAL

## 4 SUMMARY OF ANALYSIS UNDERTAKEN

A period of analysis and solution development was undertaken by the Code Manager ahead of Party impact assessment. Four separate solutions (see below) were considered including the solution that was discussed within the Switching Programme, and as identified by the Proposer (**solution option one**).

Each solution includes a new definition of "Supplier of Last Resort Transitional Period" (SoLR Transitional Period). This refers to the period from the date and time in the Last Resort Supply Direction and the time that a Replacement Supplier has fully onboarded the accounts associated with the SoLR.

**Solution option one** proposes that new legal text is introduced into Schedule 6 – Performance Assurance, which would enable the REC PAB and Code Manager to consider the context of SoLR and use its discretion when applying Performance Assurance Techniques or Performance Charges against the Replacement Supplier. This solution would enable proportionate assurance with all effort placed on the PAB to determine the most reasonable outcomes on a case-by-case basis.

**Solution option two** will require the Replacement Supplier to submit a plan for the fulfilment of its REC obligations, detailing the steps to be achieved until full compliance is reached. This plan needs to be submitted alongside the Supplier's plan for onboarding all Registrable Measurement Points (RMPs). This solution may require drafted guidance to support Suppliers through the process.

**Solution option three** proposes to continue and develop the use of the currently available derogations process, which may also require the development of additional guidance.

**Solution option four** plans to introduce risk-based principles for how a Replacement Supplier should approach its obligations under the REC. However, this was discounted as it did not provide the simplicity or clarity required for the change.

Full details of each of the above solutions can be found here.

Following Party impact assessment, **solution option one** was widely accepted as the preferred option.

It was noted that **solution option two** could place an administrative burden on the Replacement Supplier to provide documentation for an assumed failure or issue. **Solution option three** also required advanced notice or an expectation of non-compliance which may not be possible to predict.

## 5 PROPOSED SOLUTION

Based on the analysis that was undertaken, the Code Manager has determined that **solution option one** should be progressed.

This solution best resolves the problem statement as the SoLR process is dynamic and dependent on many factors, including the data quality of the failed Supplier and the access available to its systems. This solution provides proportionate assurance and enables the best resolution (for impacted Consumers) to be determined on a case-by-case basis.

This solution introduces a new defined term into Schedule 1 Interpretations and Definitions - "Supplier of Last Resort Transition Period" and additional requirements in Schedule 6 Performance Assurance to

enable the PAB's consideration of a Replacement Supplier's ability to fulfil its REC obligations and for PAB to use appropriate discretion for relevant non-compliance.

## 6 DRAFT LEGAL TEXT

The legal text changes to deliver the proposed solution to R0057 can be found here.

## 7 SUMMARY OF IMPACT ASSESSMENT ACTIVITY

### 7.1 REC PARTY IMPACT ASSESSMENTS

A Party impact assessment was published by the Code Manager on 25 November 2022, inviting Energy Suppliers and Metering Equipment Managers (MEMs) to provide their comments on the proposed solutions by 16 December 2022.

Four non-confidential responses were received from Suppliers, the responses received are detailed in the consolidated impact assessment responses document.

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| **ENERGY SUPPLIERS** | • Three of the four Suppliers highlighted that there is a risk to fulfilling REC obligations where the data quality and processes of a Failed Supplier in a SoLR situation is unknown. The fourth Supplier noted that there should not be a risk to the Replacement Supplier's obligations where it relates to activities carried out by the failed Supplier.<br>• Suppliers noted that it is not possible to foresee any compliance issues at the point of acquisition which led to the belief that solution options two and three did not effectively resolve the problem statement.<br>• All four Energy Suppliers agreed that solution option one most appropriately resolved the problem statement with minor effort and no identified costs to implement. |

## 8 DELIVERY AGAINST CHANGE PROPOSAL PLAN

To date all activity has been completed within the planned timescales. The Change Proposal Plan can be found here.

## 9 PROPOSED IMPLEMENTATION DATE AND APPROACH

As the solution only introduces changes to legal text, and no respondents stated that implementation lead time was required, it is proposed for this change to be incorporated into the November 2023 release.

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| **PROPOSED IMPLEMENTATION DATE** | 03/11/2023 | **PROPOSED IMPLEMENTATION APPROACH** | BIG BANG |

## 10 BUSINESS CASE ASSESSMENT

### 10.1 COSTS

There are no identified implementation costs associated with this Change Proposal.

### 10.2 BENEFITS

There have been no tangible benefits identified as part of this Change Proposal.

| INTANGIBLE BENEFITS | BENEFITS DESCRIPTION |
|---|---|
| CLARITY WITHIN THE REC | This Change provides clarity to Replacement Suppliers, and the Code Manager as to who is responsible for obligations relating to the Consumers gained through the SoLR process under the REC. |
| PROPORTIONATE ASSURANCE | This Change ensures that Replacement Suppliers' ability to fulfil obligations, for Consumers gained through the SoLR process, is considered by the REC PAB, and any Performance Assurance Techniques applied are fair and proportionate. |

### 10.3 COST BENEFIT ANALYIS SUMMARY

There are no costs associated with implementing this solution. It will improve the clarity in the REC and ensure that the appropriate Performance Assurance outcomes are determined, therefore, the Code Manager considers there is a positive case for change.

## 11 CASE FOR CHANGE

### 11.1 SELF GOVERNANCE

The Code Manager believes there is a positive case for change for this Change Proposal on the basis that the proposed solution:

- Appropriately resolves the problem statement by providing clarity of responsibility during the SoLR transition period, proportionate assurance in meeting REC obligations and provides the best Consumer outcomes on a case-by-case basis;
- Negates the need for Replacement Suppliers to be at risk of penalisation for processes outside of their control or be required to inefficiently anticipate and mitigate non-compliances rather than dynamically address Consumer-facing issues;
- There are no identified costs, and only minor effort noted by affected Parties in implementing this solution.

## 12 CODE MANAGER'S RECOMMENDATION

The Code Manager recommends that the Change Panel:

- **APPROVE** the proposed change solution;

- **APPROVE** the proposed implementation approach; and
- **APPROVE** the proposed implementation date of 03 November 2023.

## 13 CONSULTATION PLAN AND NEXT STEPS

The consultation on this Preliminary Change Report for R0057 will be published on the REC Portal on **10 February 2023** and closes on **03 March 2023.**

Following consultation, the Code Manager will produce an updated version of this Preliminary Change Report (referred to as the Final Change Report). This will include the outcome of the consultation, setting out a summary of the consultation submissions and the Code Manager's response.

The Final Change Report will be issued to the Change Panel to make its determination.

## 14 APPENDIX

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| **CHANGE PROPOSAL** | Link |
| **LEGAL DRAFTING** | Link to EMAR |
| **CONSOLIDATED IMPACT ASSESSMENT RESPONSES** | Link |

## 15 GLOSSARY

| TERM | DEFINITION |
|---|---|
| Code Manager | means the person described in Clause 7 of the main body of this Code. |
| Consumer | means any person supplied (or seeking a supply) of Energy at an RMP (whether or not that person also exports or is seeking to export electricity at an RMP). |
| Disputed Switch Meter Reading | means that the Switch Meter Reading is disputed by the Consumer, Losing Supplier or Gaining Supplier. |
| Energy Supplier | means a person which is either or both an Electricity Supplier and/or a Gas Supplier. |
| Erroneous Switch | means where a Consumer has been switched to an Energy Supplier which does not have an Energy Contract in place, as further described in the Resolution of Consumer-Facing Switching and Billing Problems Schedule. |
| Last Resort Supply Direction | has the meaning given in the Energy Supply Licence. |
| Metering Equipment Manager (MEM) | means, as applicable, either: (a) for electricity, the 'Meter Operator Agent' (as defined in the BSC) Appointed by an Electricity Supplier; or (b) for gas, the 'Meter Asset Manager' (as defined in the UNC) Appointed by the Gas Supplier. |

| TERM | DEFINITION |
|---|---|
| Performance Assurance Technique (PAT) | means any provision or process that may be employed by the REC PAB and/or the Code Manager in order to mitigate Retail Risks in accordance with the Performance Assurance Schedule. |
| Performance Charges | means the charges which the REC PAB may levy on REC Service Users and REC Service Providers as part of the Performance Assurance Framework. |
| REC Performance Assurance Board (REC PAB) | means the performance assurance board for this Code, as from time to time established under Clause 15 of the main body of this Code (which is a Sub-Committee). |
| Replacement Supplier | means a Supplier appointed by means of a Last Resort Supply Direction. |
| Supplier Agent | means a Data Aggregator, a Data Collector or a Metering Equipment Manager. |
| Supplier of Last Resort Process | means the process of appointing a Replacement Supplier, as defined in the Energy Supply Licence. |
| Switching Programme | means the programme established by the Authority to implement new switching arrangements in retail energy markets. |