

Gas and Electricity Suppliers,  
Electricity Distribution Network  
Operators, Gas Transporters and  
all other interested parties

Email: [supplier@ofgem.gov.uk](mailto:supplier@ofgem.gov.uk)

Date: 23 June 2022

Dear colleague,

### **Last Resort Supply Payment Claim for Utilita Energy Limited**

On 6 December 2021, Utilita Energy Limited ("Utilita") submitted for our approval an initial claim for a Last Resort Supply Payment ("LRSP" or "levy payment"). This claim was resubmitted a number of times,<sup>1</sup> with the final version being submitted on 16<sup>th</sup> December, and Ofgem consent being granted on 17 December 2021.

This letter sets out our notice of reasons to consent to Utilita claiming for a LRSP of up to £2,607,751.00. Our decision will allow Utilita to recover some of the additional unrecoverable wholesale costs they face in serving customers of Omni Energy Ltd ("Omni").

We are approving this initial claim under the temporary procedures we have implemented in response to the current extreme market conditions<sup>2</sup> and with due regard to Ofgem's principal objective of protecting the interests of current and future energy consumers,<sup>3</sup> the relevant provisions of Utilita's gas and electricity supply licences,<sup>4</sup> Ofgem's "Guidance on supplier of last resort and energy supply company administration orders" (our "Guidance"),<sup>5</sup> the terms of the Last Resort Supply Directions (LRSD)<sup>6</sup> and the particular circumstances of the case.

Having scrutinised the evidence Utilita has provided (see below), we are satisfied that the amount we have approved is reasonable in all the circumstances of the case. Our approval of Utilita's claim is conditional on:

- a) Utilita entering into the 'True Up' Agreement with us; and
- b) complying with any directions we make about the instalments by which the approved amount will be repaid.

Under that True Up Agreement, Utilita will submit full details, including any reconciliation of all of its costs once they are fully incurred and known. We expect Utilita to obtain an

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<sup>1</sup> Utilita resubmitted its claim on the 9<sup>th</sup> December at our request (see wholesale commodity section, below).

<sup>2</sup> On 29 October 2021 we set out our proposals for temporary changes to the SoLR levy process to cater for the current unique market circumstances and we confirmed these changes in a letter on 1 December (see: [Letter to suppliers on faster claims](#) and [Decision letter on supplier of last resort levy claims](#)). These changes allow SoLRs to submit more than a single claim per SoLR Direction and set out further details of how we will assess claims under these temporary arrangements.

<sup>3</sup> s4AA Gas Act 1986 and s3A Electricity Act 1989

<sup>4</sup> in particular, SLCs 8 and 9

<sup>5</sup> [Supplier of Last Resort: Revised Guidance 2016](#)

<sup>6</sup> [Supplier of Last Resort Directions | Ofgem](#)

independent audit of those full details and board sign off before making any further claim. If there is any reduction in these costs, we will set them off against Utilita's subsequent claim. In the highly unlikely event that the subsequent claim is not sufficient for that set off to be made, Utilita will agree to repay any net overpayment back to consumers.

An overview of Utilita's initial claim together with the reasons for our decisions with respect to this claim are set out in subsequent sections of this letter. This should not be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances of the particular case.

## **The SoLR process and the Licensing Framework**

Under SLC 9.1 of the Supply Licence, licensed suppliers are entitled, provided the Authority consents, to make a claim for a Last Resort Supply Payment ("LRSP") from each Relevant Gas Transporter and Electricity Distribution Operator.

SLC 9.4 sets out the approach that we adopt when assessing the claim in order to ensure the total amount of the LRSP does not exceed the difference between the total costs incurred by the licensee in supplying customers under the SOLR Direction (taking account of any sums paid or debts assumed by the licensee in relation to Customer Credit Balances) and the total amounts recovered by the licensee through Charges for that supply.<sup>7</sup>

SLC 9.6 makes clear that the Authority may determine that an amount other than the one calculated by the licensee is a more accurate calculation of the relevant amount and in such cases, the amount specified by the Authority must be treated as the relevant amount when the licensee submits its claim to each relevant electricity or gas network licensee under SLC 9.8.

Levy claims are paid for by the relevant gas distribution networks (GDN) and electricity distribution network operators (DNOs), who then recover the cost through charges. SLC 38B of the Electricity Distribution Licence and Standard Special Condition A48 of the Gas Transportation Licence set out the details of this.

Our decision letter<sup>8</sup> sets out how we are working with networks to support the faster levy process and ensure they are not impacted financially. This includes our minded-to position to grant derogations to DNOs to enable them to recover the cost of the levy concurrently with paying it to the SoLRs.

## **Temporary SoLR process**

Under our temporary procedures, we have decided that more than one claim can be made for costs incurred. Our expectation is that this will comprise of an initial claim followed by a true up claim.<sup>9</sup> To mitigate against the risk of overpayment, we expect the initial claim only to include costs that have actually been incurred and can be fully evidenced in the period immediately after appointment, and so comprise, in particular, commodity costs.

The procedures then provide for a prompt assessment of the initial claim resulting in Ofgem either approving or rejecting it or determining an alternative amount.

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<sup>7</sup> SLC 9.4 provides that: 'The total amount of the LRSP to be claimed by the Licensee must not exceed the amount by which the total costs (including interest on working capital) reasonably incurred by the licensee in supplying gas to premises under the SOLR Direction and a reasonable profit, plus any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances, are greater than 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'.

<sup>8</sup> [Decision letter on supplier of last resort levy claims | Ofgem](#)

<sup>9</sup> We recognise there may be some limited instances where a SoLR considers it needs to claim more than twice, and where this occurs, we will consider on a case by case basis, whether this is warranted and appropriate in all the circumstances.

We have engaged with SoLRs in respect of these initial claim assessments, analysed them carefully taking account of all the relevant criteria (see further below) and published a notice of our decisions.

As Utilita's initial claim is comprised primarily of wholesale costs, the relevant details are highly commercially sensitive including details as to the hedging and procurement strategies adopted by Utilita. As such, they are not amenable to consultation. However, through our open letter and our decision letter published on 1 December 2021, we have consulted on our approach to assessing those costs including that all costs are fully evidenced and carefully scrutinised and all the relevant criteria are applied to ensure they are subject to a robust assessment.

We set out in more detail below the process we have followed and the criteria we have applied in assessing this claim.

### Overview of Utilita's claim

In this initial claim Utilita is seeking to claim primarily for their initial additional and unrecoverable wholesale costs incurred in procuring energy to comply with the Last Resort Supply Directions we issued in respect of acting as SoLR for former customers of Omni.<sup>10</sup>

Utilita is also seeking to claim for the associated costs of absorbing credit balances of former Omni customers. Table 1 below summarises the total amount claimed and approved.

*Table 1: summary of Utilita's claim and amounts we have approved*

	<b>Amount claimed</b>	<b>Amount approved</b>
Wholesale	£2,722,682.62	£ 2,607,751.00
Credit Balance	£162,597.80	£0
<b>Total</b>	<b>£2,885,280.42</b>	<b>£2,607,751.00</b>

To assess Utilita's costs, we followed the following process:

- a quantitative check of Utilita's methodology for the costs claimed. This included determining how those costs were calculated based on the data Utilita sent us and ensuring these costs were in line with commitments Utilita made at the time of its SoLR appointment;
- undertaking validation of assumptions made, with other data sources, where appropriate;
- a qualitative assessment of the claim against our methodology criteria.

We set out below further details on the approach we took to assessing these costs and the rationale for disallowing certain costs.

### Our assessment of the amount to approve: decision process and methodology

#### *Credit balances*

Utilita requested our consent to recover £0.16m for the costs associated with credit balances to some former customers of Omni.

In its claim Utilita noted that it has not been possible to get a true balance read for the credit balances held by each of the former customers of Omni. This is due to the fact that

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<sup>10</sup> This is allowed under standard licence condition 8.8.

former Omni customers are supplied energy through legacy pre-payment meters (PPM) and that the legacy infrastructure makes it difficult to obtain accurate live credit balance data. To estimate the level of credit balances it absorbed, Utilita used the average credit balance of its existing portfolio of smart meter PPM customers and used this as a proxy for the credit balances it absorbed. Using this methodology to estimate credit balances on legacy PPM meters is not something that we have considered to date in assessing and deciding on levy claims. We consider it appropriate to consult on the approach taken before making our decision on this aspect of Utilita's claim. We have therefore disallowed the full amount at this stage. Utilita may seek to claim for this in its subsequent claim, by which time we will have finished consulting with industry on the appropriateness of the proposed approach and we will be able to decide whether to consent to the claim.

#### *Wholesale commodity costs*

Utilita requested our consent to claim £2.72m for the cost of purchasing energy on the wholesale market to serve former Omni customers. Utilita provided evidence that supported the amount claimed. The evidence provided was in line with the expectations we have set out in our 1 December decision letter<sup>11</sup> and included:

- an outline and justification of the wholesale hedging strategy it pursued, including how this was and would continue to be efficient;
- evidence of all trades executed in implementing its strategy;
- assumptions made underpinning its strategy; and
- methodology to support its calculation of the portion of the costs faced in procuring energy which would be unrecoverable.

Given the highly sensitive and confidential nature of these costs and our statutory duties, we cannot disclose company-specific information relating to those costs. However, we can state that in assessing their wholesale costs we calculated the difference between the total costs and what could be recovered through charges. We were satisfied that Utilita's claim related solely to these unrecoverable costs.

To satisfy ourselves that the costs claimed were economic, we carefully reviewed Utilita's assumptions behind the volumes it procured and compared the costs that Utilita evidenced it faced, with prices that were available in the market at the time, before deciding that we were satisfied that the costs claimed were reasonable in this respect.

To satisfy ourselves that the costs claimed had been incurred, we reviewed the evidence provided in order to confirm that the claim aligned with the expectations we set out in our December letter. This included confirming that Utilita had only claimed for the wholesale costs of energy which would be delivered within 6 months of being appointed SoLR or by 31 March 2022, whichever date was earlier.<sup>12</sup> This also involved checking whether the claim included any forecasted wholesale 'shaping' costs because at the time of the claim such costs would be forecasted and so would not yet constitute "costs incurred".

During further checks, we identified that Utilita had included forecast shaping costs and summer contract product that extended beyond the 31 March 2022 in its claim submitted on the 6<sup>th</sup> of December, and we asked it to remove these. It resubmitted its claim with these costs removed on the 9<sup>th</sup> of December.

When carrying out further checks on the claim, we disagreed with elements of the methodology specifically regarding costs that could be recovered via price cap allowances. We therefore disallowed £115k which reduced the amount approved to £2.61m

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<sup>11</sup> [Decision letter on supplier of last resort levy claims | Ofgem](#)

<sup>12</sup> The level of the price cap beyond 31 March 2022 was not known at the time

Utilita will be paid the amounts specified in the gas and electricity consents given on 17 December and published alongside this letter, by the relevant Gas Transporter and Distributor. This will be recovered by the relevant GDNs and DNOs, allocated in proportion to the total number of nationwide gas and electricity supply points. We consider this apportionment to best enable broad socialisation of the claimed costs in line with the intent of the SoLR regime to protect all consumers in the market, for example, through limiting the extent of unpaid industry bills of a failing supplier.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Neil L', with a stylized flourish at the end.

**Neil Lawrence**  
**Director of Retail**