

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

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

4 November 2022

Dear Colleague

### **Last Resort Supply Payment Claim from Utilita**

On 7<sup>th</sup> October 2022, Utilita gave notice to Ofgem of its intention to submit a claim for a Last Resort Supply Payment ("LRSP") "True-up" claim. Utilita is seeking to recover additional, otherwise unrecoverable costs incurred in acting as Supplier of Last Resort (SoLR) to customers of the former Omni.

Under Standard Licence Condition (SLC) 9.1 of the Supply Licence, SoLRs are entitled, provided Ofgem consents, to make a claim for a LRSP from each Relevant Gas Transporter and Electricity Distribution Network Operator. The true-up claim from Utilita included its calculation of the claim amount and information to support the calculation (outlined in Table 1).

This letter sets out the reasons why we are minded to consent to Utilita claiming a LRSP of up to £80,571.13.

We are minded to allow Utilita to claim for costs incurred in complying with a Last Resort Supply Direction<sup>1</sup> relating to:

- Additional wholesale costs incurred as a result of commitments to supply energy to SoLR customers;
- protecting the credit balances owed to former customers of Omni;

In our policy decision on this true-up process we noted that during winter 2021/22 we introduced a number of temporary changes to the LRSP claim process, which were designed to ensure that the SoLR process continues to protect consumers in the current market conditions. This included the temporary introduction of a faster, multiple-claim levy process which was intended to reduce the time taken for suppliers to submit claims and for us to make decisions on those claims. During consultation several suppliers supported continuation of this, based on the benefits to suppliers of the multiple-claim process and the likelihood of continuing market uncertainty into 2023.

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<sup>1</sup> [Direction to appoint Utilita Energy Limited as Electricity Supplier of Last Resort to Omni Energy Ltd](#); [Direction to appoint Utilita Energy Limited as Gas Supplier of Last Resort to Omni Energy Ltd](#).

As part of that faster multiple-claim levy process, each of the SoLRs entered into a true-up deed with us. Under the True-up Agreement between Utilita and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim. We are minded to consider this claim to be a Subsequent Levy Claim for the purposes of the True-up Agreement. This would mean that the final True-up claim would happen next year, or in the years after. This will enable suppliers to submit additional LRSP claims with supporting evidence for costs that have not yet been approved by Ofgem, and allow Ofgem to ensure the benefit of any monies recovered from the administrators of the failed suppliers can be utilised for consumers' benefit. A result of this is that we may, under the terms of the True-up Agreement, require a final True-up claim to be submitted in future years. In the meantime, we note that obligations under the True-up Agreement continue to apply and will continue to apply after a final True-up claim has been finalised.

We welcome views, but are minded to make our consent to this claim conditional on their confirmation that the terms of those true-up deeds continue to apply to this and further claims requested or made in accordance with it. This includes an obligation to submit true-up information as requested and to refund any amounts by which Utilita has been overcompensated by a LRSP.

The purpose of this consultation letter is to provide interested parties with an opportunity to make any representations to us, ahead of us making our final decision. We will take such representations into account in our final decision making and may make changes to our minded to position in response to such representations, if we consider it appropriate to do so.

In addition, before we make our final decision we will conduct an additional assurance process in respect of the calculations contained in our minded to position.

We expect to make our final decision in mid-December 2022.

## **Background**

### *The SoLR process*

Electricity and gas supply is a competitive activity in Great Britain. While competition has the potential to bring many benefits to consumers, in a competitive market, companies that are not operating efficiently may fail. This applies as much in relation to the gas and electricity supply markets as it does to other markets.

It is Ofgem's statutory duty to protect customers' interests when suppliers fail. When a supplier fails, our focus is to ensure continuity of supply for its customers and to minimise wider negative impacts on the market. These wider effects stem from the fact that if an energy supplier fails, its customers will continue to be physically supplied with gas and/or electricity, but the supplier will not be able to meet the costs of providing this energy. In these circumstances, the costs of procuring the necessary energy will be spread across all domestic suppliers and the costs of procuring gas will fall to the relevant shipper. There is also the real risk that if a supplier fails without urgent intervention, consumer trust and confidence in the energy market would be materially damaged.

Ofgem can ensure continuity of supply to the failed supplier's customers and minimise

these wider negative effects by appointing a SoLR, which is issued with a Last Resort Supply Direction requiring it to supply the failed supplier's customers at very short notice<sup>2</sup>.

### Failed Supplier event

On 7<sup>th</sup> of November 2021, we appointed Utilita as the SoLR for Omni gas<sup>3</sup> and electricity<sup>4</sup> customers, following its announcement that it had ceased trading. This followed an appointment process aimed at getting the best deal for consumers. We outlined the material factors behind our decision to appoint Utilita as the SoLR to those customers in our decision letter published on 23<sup>rd</sup> June 2022<sup>5</sup>.

### **Claim for Last Resort Supply Payment**

Under SLC 9.1 of the Supply Licence, SoLRs are entitled, with Ofgem's consent, to make a claim for a Last Resort Supply Payment ("LRSP") from each Relevant Gas Transporter and Electricity Distribution Network Operator.

SLC 9.4 provides that the total amount of the LRSP must not exceed the amount by which the total costs (including interest on working capital) reasonably incurred by the SoLR in supplying customers under the Last Resort Supply Direction and a reasonable profit plus any sums paid or debts assumed by the SoLR to compensate customers in respect of any customer credit balances plus any additional (actual or anticipated) interest and finance costs associated with a financing arrangement approved under SLC 9.7C are greater than the total amounts recovered by the SoLR through charges for that supply.

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

LRSPs are paid for by the relevant gas and electricity network operators, who then recover the cost through charges to suppliers. SLC 38B of the Electricity Distribution Licence and Standard Special Condition A48 of the Gas Transportation Licence set out the details of this.

### **Our true-up decision process and methodology**

During winter 2021/22 we introduced a number of changes to the process for making LRSP claims, which were designed to ensure that the SoLR process continues to protect consumers in the current market conditions. The changes included the temporary introduction of a faster, multiple-claims process whereby SoLRs are able to submit more than one claim in relation to each Last Resort Supply Direction.

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<sup>2</sup> The obligation for a supplier to comply with a LRSD derives from standard licence condition 8 of each supplier's gas and electricity supply licences and is intended to ensure a universal service for Great British energy consumers (for further information on this universal service, see Articles 3(3) of the EU Directives 2009/72/EC and 2009/73/EC).

<sup>3</sup> [Direction to appoint Utilita Energy Limited as Gas Supplier of Last Resort to Omni Energy Ltd](#)

<sup>4</sup> [Direction to appoint Utilita Energy Limited as Electricity Supplier of Last Resort to Omni Energy Ltd](#)

<sup>5</sup> [Appointment of Utilita Energy as Supplier of Last Resort](#)

This involves SoLRs submitting an 'initial claim' for costs faced in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. These initial claims were therefore limited to the recovery of costs for energy delivered within 6 months of their SoLR appointment or up to the end of March 2022, whichever was earlier. SoLRs may then follow this claim with an additional claim (or claims) for any additional and otherwise unrecoverable costs reasonably incurred under their SoLR Direction. We refer to these additional claims as 'true-up' claims for additional costs reasonably incurred that relate to period from November 2021. SoLRs entered into a 'True-up Agreement' with Ofgem to support the faster process. Initial claim consents and subsequent true-up claims are conditional on SoLRs meeting the requirements of the True-up Agreement. The true-up process is intended to reconcile suppliers' initial claims with actual costs incurred and determine any additional payments or repayments that should be made.

In line with our faster, multiple claims process, by December 2021 we had consented to SoLRs making initial levy claims totalling £1.83 billion. At the time, we set out that we would give further due consideration to a number of issues and consult with stakeholders before assessing any subsequent claims by SoLRs who submitted initial claims.

On 23 June 2022, we issued a consultation seeking views on our 'minded-to' positions on the fair approach to reflecting the costs suppliers faced in providing energy to customers after being appointed as a SoLR between September 2021 and December 2021. A decision document was published on the 21 September 2022<sup>6</sup> that set out our policy decisions on the approaches SoLRs should take with regards to these true-up claims. We have now applied these policies in order to reach our minded-to position on true-up claims.

Under SLC 9.5, Ofgem must decide whether it is appropriate in all the circumstances of the case for the SoLR to make the claim notified to it in accordance with Standard Licence Condition 9.3.

Our process to reach our minded-to position included:

- a. A quantitative check of Utilita's methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by Utilita and ensuring these costs were in line with commitments Utilita made at the time of its SoLR appointment;
  - b. A true-up and cross check of any evidence that may result in a change to the initial claim made by the SoLR;
  - c. Undertaking validation of some assumptions with other data sources, where appropriate; and
  - d. A qualitative and quantitative assessment of the claim for costs related to credit balances, in accordance with our criteria and methodology, set out below.
- **Additional:** whether the costs claimed are additional to the costs to the SoLR of existing customers. In addition, we consider whether these costs would have been expected at the time of the SoLR's bid and whether any commitments were given in relation to these costs in their competitive SoLR bid.

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<sup>6</sup> [Decision on the last resort levy claims true-up process](#)

- **Directly incurred as part of the SoLR role:** whether the costs were incurred as a result of taking on customers in an emergency situation as opposed to normal customer acquisition routes.
- **Otherwise unrecoverable:** whether the SoLR could have recovered the costs through other means. It would not be appropriate for us to allow the SoLR to claim for costs it could have recovered – or reasonably be expected to recover – through the administration process or customer charges, for example.
- **Economic:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.

### Utilita's claim

Utilita indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP, and that it would claim for the cost of procuring wholesale energy and gas, and honouring customer credit balances.

The initial claim was consented to on the 6th of December 2021. Consistent with the terms of that consent and the True-up Agreement between the SoLR and Ofgem, we have taken that claim into consideration in reaching our minded-to position on this claim.

### **Summary of our minded-to decision**

Based on the information available and consideration of the circumstances in which a claim for LRSP by Utilita was consented to, and in accordance with the True-up Agreement in relation to customers of the former Omni, Ofgem is minded to consent to Utilita claiming a LRSP of up to £80,571.13.

Under the supplier SLCs we are required to consider on a case-by-case basis whether in the circumstances it is appropriate for a SoLR to make a claim for a LRSP. We have set out below our reasons for our minded-to position for this case. 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.

Table 1: Summary table of initial claim, true-up and minded-to position on final claim amounts.

<b>Item</b>	<b>Cost</b>	<b>Initial Claim</b>	<b>True-up claim</b>	<b>True-up deductions</b>	<b>Minded-to position on claim</b>
1	Wholesale	£2,607,750.99	£77,563.80	£159,576.55	-£82,012.75
2	Credit balances	£162,597.80	£162,597.80	£13.92	£162,583.88
	Total	£2,770,348.79	£240,161.60	£159,590.47	£80,571.13

## Reasons for our minded-to decision

### Cost category: Wholesale

In our published decision on the claims true-up process<sup>7</sup> we explained that all SoLRs appointed in the period from September – December 2021 should be able to recover additional and otherwise unrecoverable wholesale costs reasonably incurred as part of the SoLR role relating to energy delivered up until 31 March 2022 or until the end of their 6-month SoLR direction, whichever is later. This has been necessary largely as a result of a period of extreme wholesale energy price volatility and record high prices seen, resulting in wholesale direct fuel costs often far exceeding those assumed in the default tariff price cap over the period. The bulk of these costs were considered in the December 2021 initial claim, by which time most initial wholesale energy purchases had taken place.

In this true-up claim we have analysed the information provided by suppliers, to:

- Assess whether costs being claimed for are consistent with the criteria set out earlier in this letter and our September 2022 Decision on the true up process
- Assess the reasonableness of assumptions made and decisions taken, including for example demand forecasting and hedging strategies, against the criteria we consider in assessing claims
- Assess the specifics of the reported wholesale market trades, including trade date, contract type, price, and volume. Specifically, we have considered whether trade prices are consistent with market benchmarks and price assessments
- Assess cost per MWh and cost per customer to facilitate comparisons between claims
- Assess the amounts deemed to have been recovered from customer charges, including the applicability of various price cap allowances, and hence offset against the wholesale costs incurred

In Utilita's initial true-up claim submission a claim was made for the period spanning 7th November 2021 to 31st May 2022, which exceeded the allowed 6-month period. The Total Levy Claim amounted to £2,693,957.29 (£1,482,656.20 for Gas and £1,211,301.09 for Electricity).

We checked with Utilita whether they intended to claim costs over this longer period but on 14th October 2022, Utilita sent an update true-up claim, with the updated claim period spanning 7th November 2021 to 6th May 2022 and confirmed that they had not. The Total Levy Claim amounted to £2,685,314.79 (£1,479,224.70 for Gas and £1,206,090.09 for Electricity), with a true-up of £77,563.80.

As a result, their claim for costs was £8,642.50 lower than had it been for the period to the end of May.

The Utilita true-up claim includes £77,563.80 in wholesale costs. Following the above assessments, we consider that the claimed amount is not fully consistent with our criteria and we are minded to consent to the claim with the following deductions:

- A deduction of £66,004.31 for the revenue received from SoLR customers in respect of the Backwardation allowances in the price cap. Backwardation allowances were

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<sup>7</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

set out in our decision on the potential impact of increased wholesale volatility on the default tariff cap in February 2022<sup>8</sup> ("February 2022 Decision") and our decision on possible wholesale cost adjustment in August 2022<sup>9</sup> ("August 2022 Decision"). The deduction has been calculated based on a value of £14 per typical dual fuel customer, SoLR customer numbers at the end of winter 2021/22, and the forecast annualised gas and electricity demand of these SoLR customers.

- A deduction of £82,869.60 for the revenue received from SoLR customers in respect of the Contracts for Difference (CfD) Interim Levy Rate (ILR) allowance in the price cap in cap period 7. The deduction has been calculated based on a Demand weighted ILR of £6.88/MWh in cap period 7, multiplied by the claimed electricity supply volume for SoLR customers in cap period 7.
- A deduction of £10,702.64 for the revenue received from SoLR customers in respect of Shaping, forecast error and imbalance, transaction cost and basis risk allowances within the price cap, specifically for volumes in the period covering 08 November to 31 November. This has been calculated for each fuel as the difference between the claimed comparator prices (without allowances) and the prices with allowances, multiplied by claimed demand in the period.

The proposed total deduction is £159,576.55 leading to a net wholesale true-up claim of -£82,012.75. When taking into account the initial claims made in December 2021, the total wholesale costs approved would be £2,525,738.24.

Table 2: Summary of claims and minded-to position for wholesale costs

Item	Cost	Initial Claim	True-up claim	True-up deduction categories	True-up deduction amounts	Minded-to position on claim
1	Wholesale	£2,607,750.99	£77,563.80	Backwardation	£66,004.31	
				Contracts for Difference	£82,869.60	
				Correct comparator for short-term trading	£10,702.64	
						-£82,012.75

Note: We are unable to calculate the proportion of the wholesale claim made up of backwardation, CfD and short-term trading. As such, we have shown the deductions above in relation to the overall wholesale claim.

<sup>8</sup> [Price Cap - Decision on the potential impact of increased wholesale volatility on the default tariff cap | Ofgem](#)

<sup>9</sup> [Price Cap - Decision on possible wholesale cost adjustment | Ofgem](#)



## Rationale for decision:

### Backwardation allowances:

In February 2022 Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover the systematic and unrecoverable backwardation cost for suppliers, beyond the normal basis risk inherent in the cap. An amount of £8 per customer (at typical consumption) was included within the cap for the year starting 1 April 2022, applied via an increase to the additional wholesale risk allowance component of the cap. In August 2022 a further allowance of £6 per customer was introduced, to be recovered in the year from 1 October 2022.

The allowances were based on estimates from suppliers which did not exclude costs incurred specifically for SoLR customers. These allowances will be recovered from all customers, SoLR and non-SoLR<sup>10</sup>. Given this, we consider that the revenues collected by suppliers under this allowance should be deducted from claims made by SoLRs in relation to the costs of hedging SoLR customers' demand subsequent to their taking on the customers of the failed supplier. In other words, the costs of purchasing wholesale energy for these customers should be reduced because suppliers are allowed to recover approximately £14 per customer through higher bills in later periods.

We propose to calculate the relevant deduction for each supplier based on our best view (given the information submitted by the supplier as part of its claim) of (a) the number of SoLR customers that remained with that supplier as of the end of winter 2021/22 and (b) the annualised demand of those customers. We prefer this to an approach based on suppliers' own forecasts of their SoLR customers' demand in the period from 1 April 2022, because the latter approach would result in deductions that are dependent on suppliers' forecasts of future customer numbers which have proved to be highly uncertain and prone to error in this unprecedented time for the market (as seen by previous 'unexpected SVT demand' allowances). We prefer our proposed approach to an approach based on the number of SoLR customers at the time of appointment, because that approach would not account for the fact that some SoLR customers may have since switched to fixed tariffs or other suppliers which did not take on any SoLR customers in winter 2021/22.

Allowances for supplier charges in relation to the Contracts for Difference (CfD) scheme: The default tariff cap relating to electricity customers includes an allowance for costs incurred in relation to the CfD scheme, which is a government scheme aimed at supporting low carbon electricity generation. The charges that suppliers face under the CfD scheme depend on wholesale electricity prices, with higher prices resulting in lower costs (all else equal). The allowance included in the cap is based on Low Carbon Contract Company (LCCC) forecasts of the relevant charges as they exist prior to the cap being set, which are in turn based on forward prices observed at that time of the forecast<sup>11</sup>.

The increases in wholesale prices which followed the cap for winter 2021/22 being set in August 2021 led to SoLRs paying prices for wholesale electricity which were well in excess of the direct fuel allowances included in the cap - this cost has comprised the majority of SoLRs' claims. However, increases in wholesale electricity prices also resulted in CfD costs that were significantly lower than the relevant allowance in the cap.

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<sup>10</sup> This is in contrast to the allowance for Unexpected SVT Demand, which did exclude costs related to SoLR customers

<sup>11</sup> [Decision on the Contract for Difference \(CfD\) allowance methodology in the default tariff cap](#)



As we set out in our February 2022 price cap decision<sup>12</sup> on the potential impact of increased wholesale volatility on the default tariff cap, for non-SoLR customers, this benefit was not realised in most cases, as suppliers had hedged their CfD exposure earlier in 2021, when wholesale prices were lower. However, we consider that this is unlikely to apply to SoLR customers. This is because, where a supplier hedged their CfD exposure for SoLR customers, this would have been at much higher wholesale prices given the timing of the SoLRs, locking in a lower CfD cost than included in the cap. And where a supplier did not hedge, they would have realised the outturn CfD cost – which given high Day Ahead wholesale prices would have been a net payment back to the SoLR in question through the CfD scheme.

Given this, to avoid SoLRs over-recovering in relation to wholesale costs of their SoLR customers, we are minded to deduct an amount from claims equivalent to the demand-weighted interim levy rate component of the default tariff cap for period 7, on the basis that the revenue generated under the CfD allowance would have offset the wholesale costs incurred by suppliers. Where suppliers consider that they incurred a CfD cost in relation to SoLR customers, they should provide evidence - setting out the cost incurred versus the allowance included in the cap - and we will take this into account in our final decision.

#### Short-term trades to cover immediate energy need:

The wholesale claim by Utilita includes trades to fulfil SoLR customers' immediate energy requirements, in the period between appointment and the beginning of the next traded month.

Utilita has claimed for the costs incurred in relation to the immediate requirements of SoLR customers (i.e. wholesale gas and electricity delivered in the period from the date of the SoLR until the end of the month). We consider that it is appropriate for suppliers to claim for these short-term trade costs, however we consider that the offsetting revenue that SoLRs should assume to have been recovered from customers in relation to these costs should include the various wholesale allowances that are included in the cap, not just the direct fuel cost component. This is because we expect only limited further costs to be incurred in relation to these trades. For example, the shaping and imbalance allowance covers costs from season or quarter ahead through to delivery, whereas short term trades will require only limited further shaping. Similarly, limited additional transaction costs would be incurred. We are therefore minded to deduct £10,702.64 from the claim to account for the shaping and imbalance, transactions costs and basis risk allowance amounts not taken into account by Utilita when considering revenue recovered from customers for these volumes.

However, we also note relating to short-term trading, that the prices of five electricity trades covering days, week and weekend periods were at higher prices than we could verify according to market data. Though we are currently minded to accept these costs, this is subject to Utilita providing further evidence to justify the prices stated in their claim and evidence that the trades in question took place at the stated prices.

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<sup>12</sup> [Decision on the potential impact of increased wholesale volatility on the default tariff cap](#)

We welcome any submissions on these proposed deductions, and the approach we have taken to calculating it, in response to our minded to position by the end of the consultation period.

**Cost category: Credit balances**

Our published guidance sets out that we may in certain circumstances consider it appropriate to approve a claim associated with costs incurred in repaying credit balances to customers who had a positive credit balance with a failed supplier.

In our published decision on the claims true-up process<sup>13</sup> we explained that we will expect any claim for traditional pre-payment meter (PPM) credit balances to be based on the percentage of the SoLR’s portfolio of smart PPMs with a credit balance on the day of customer transfer, and the average credit balance of those customers at midnight on the day of customer transfer. Where a supplier is claiming for both gas and electricity customers, a separate figure should be calculated for each.

However, in line with Ofgem’s approach to all LRSP claims, SoLRs have been expected to provide sufficient supporting evidence for the figures upon which the estimate was based. If a SoLR has provided evidence that characteristics of its customer base impacts upon the claim it submits for traditional PPM credit balances, Ofgem has taken this into consideration when assessing the claim’s underlying calculations.

Decision:

Utilita’s claim includes £162,597.80 in credit balances repaid to date to ex-customers of Omni. We consider that the claimed amount is consistent with our criteria and we are minded to consent to the claim, with the following deductions: £13.92.

Table 3: Summary of claims and minded to position for credit balances

<b>Item</b>	<b>Cost</b>	<b>Initial Claim</b>	<b>True-up claim</b>	<b>True-up deductions</b>	<b>Minded-to position on claim</b>
2	Credit balances	162,597.80	162,597.80	13.92	162,583.88

Rationale for decision:

All the costs Utilita claimed for in credit balances relate to pre-payment (PPM) meters. As set out in our Policy Decision, we recognise that where a SoLR takes on customers on traditional prepayment meters, there will not be any ‘real’ data available for the SoLR to determine credit balances to be honoured. In order to estimate the balances on the prepayment meters of customers they took on as part of the SoLR process, Utilita adopted the approach they proposed in their initial claim. We subsequently consulted on this approach and we, and respondents to the consultation, considered to be a reasonable approach to estimating credit balances of customers on prepayment meters<sup>14</sup>.

<sup>13</sup> [Decision on the last resort levy claims true-up process](#)

<sup>14</sup> [Decision on the last resort levy claims true-up process](#)

To estimate the credit balances of prepayment meters, Utilita took the percentage of the SoLR's portfolio of smart PPMs with a credit balance on the day of transfer of supplies, and the average credit balance of those customers at midnight on the day of transfer. This was carried out separately for gas and electricity accounts. The number of gas and electricity accounts taken on was then multiplied by the percentage of Utilita's own accounts in credit and the average credit balance of those customers. We verified these figures using the list of accounts taken on by Utilita. We have disallowed a small amount due to incorrect calculations on Utilita's part which appear to have occurred as a result of rounding. In their calculations, Utilita rounded the average percentage of accounts with a credit balance to the nearest whole number, and the average credit balance to the nearest penny, which resulted in a slightly higher figure.

We have considered whether the costs Utilita is seeking to claim for credit balances are otherwise unrecoverable; it may still be the case that Utilita is able to recover some of this claimed amount through the ongoing administration process for Omni, to which Utilita has, in accordance with the requirements of the LRSP process, submitted a subrogated creditor claim for the costs incurred in repaying credit balances. We propose to make our final decision on Utilita's claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. Given this, we are minded to approve this element of the claim, subject to the outcome of the Utilita liquidation process.

At this point, the final amount Utilita can claim would be adjusted to include costs recovered through the liquidation process.

### **SOLR Internal Audit outcome**

Utilita stated that they do not currently have an internal audit team, so did not undertake an internal audit that fully meets the requirements we set out in our published policy on the True-up process<sup>15</sup>. Utilita stated in their submission that, in order to provide assurance, they utilised existing staff with a separate reporting line and skills to test the calculations. They also set out their Agreed Procedures Audit tests, which appear to largely mirror the Agreed Upon Procedures set out in our published policy on the True-Up process. This was accompanied by a declaration, signed by a director and company secretary.

While the audit does not fully align with the requirements of our published policy on the True-Up process, we are minded to allow the claim. Due to the small value of the claim, the limited volume of auditable data, and the fact that Utilita provided an adequate level of detail in their submission to allow us to replicate their calculations, we do not consider it proportionate to require Utilita to commission an external audit. Under the circumstances, and in this case only, we are content that the declaration which was signed by the director and company secretary provides an adequate level of assurance on the accuracy of the information provided to us to support Utilita's claim. We would usually expect SoLRs who lack an internal audit function to commission an external audit to verify the submission, and our decision not to require Utilita to carry this out should not be seen as setting a precedent for future applications to the LRSP and should be considered on a case-by-case basis.

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<sup>15</sup> [Decision on the last resort levy claims true-up process](#)

## **Next steps**

The purpose of this letter is to provide the SOLR and interested parties with an opportunity to make any representations to us, ahead of us making our final decision on this LRSP claim. We invite any representations by 30<sup>th</sup> November 2022. Responses should be emailed<sup>16</sup> to [solrlevyteam@ofgem.gov.uk](mailto:solrlevyteam@ofgem.gov.uk).

We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so that they can be placed easily on our website.

We will take into account all relevant information, including any representations we receive, and the results of our internal audit of our assessment process in reaching our final decision on Utilita claim. We expect to make our final decision by mid-December.

Yours faithfully,

**Neil Lawrence**  
**Director, Retail Directorate**

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<sup>16</sup> Although we prefer responses in electronic format, responses can be posted to the address below.