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interested parties

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20 December 2022

Dear Colleague

Last Resort Supply Payment Claim from EDF Energy Limited

On 7 October 2022, EDF Energy Limited ("EDF") submitted a claim for a Last Resort Supply Payment (LRSP) for Ofgem's consent under Supply Licence Standard Licence Condition (SLC) 9. EDF is seeking to recover additional costs incurred in complying with a Last Resort Supply Direction¹ to act as Supplier of Last Resort (SoLR) to customers of the former Zog Energy Limited ("Zog").

On 4 November 2022 Ofgem published a minded-to position in relation to that claim for consultation.² Responses to this consultation and consultations on other SoLR claims can be found within this document.

In addition, we conducted internal assurance of our minded-to position.

Decision to consent

After taking into consideration the consultation responses and the results of our internal assurance process, on 20 December 2022 Ofgem consented to EDF making a LRSP claim of up to £3,873,799.30.

This letter is the notice of reasons for Ofgem's decision to consent to EDF making a LRSP claim from relevant network operators. Our decision will allow EDF to claim for costs 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 Zog;
- financing costs incurred on becoming a SoLR; and
- other costs reasonably incurred on becoming a SoLR.

We have assessed this LRSP claim in accordance with our policy decision on the True-up process, published 21 September 2022³, and consistent with our published *Guidance on*

¹ [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort to Zog Energy Ltd | Ofgem](#)

² [Last resort levy True-up claim minded-to position | Ofgem](#)

³ <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

*supplier of last resort and energy supply company administration orders.*⁴ In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the interests of current and future energy consumers⁵, the public sector equality duty⁶, relevant licence provisions, and the particular circumstances of the case.

Nothing in this decision should 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.

An overview of EDF's LRSP claim together with the reasons for decision with respect to this claim are set out below.

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. The failure of a supplier may affect a range of groups including its consumers, the wider market and other consumers. Ofgem has discretionary powers that enable it to address these consequences.

It is Ofgem's statutory duty to protect customers' interests when suppliers fail including their interests in the security of energy supply to them⁷. Under Supplier SLC 8 Ofgem can issue a Last Resort Supply Direction to direct any gas or electricity supplier to take over responsibility for a failed supplier's customers.

Generally, suppliers are open to taking on the role of SoLR because they acquire a large number of new customers who may remain with them over the longer-term and allow the supplier to increase its margins. As a result, suppliers may compete to be appointed.

In considering which supplier to appoint as SoLR, Ofgem must be satisfied that the SoLR can supply additional customers while continuing to supply its existing customers and to fulfil its contractual obligations for the supply of gas or electricity⁸.

Ofgem's criteria for the selection of a SoLR are set out in its "Guidance on supplier of last resort and energy supply company administration orders"⁹ and our stated policy preference is to appoint a SoLR that has volunteered for the role. To understand the terms on which suppliers are willing to volunteer as SoLR, Ofgem requires potential SoLRs to provide information about a number of issues, including customer service, how the supplier would meet SoLR obligations, whether it would make any LRSP claim and, if so, for what categories of costs and with what upper limit. This is done by way of a Request for Information (RFI).

Once a Last Resort Supply Direction has been issued, the responses to the RFI become supplier commitments, which under Supplier SLC 8.3 the SoLR must take all reasonable

⁴ https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf

⁵ s4AA Gas Act 1986 and s3A Electricity Act 1989

⁶ Equality Act 2010 Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/154/part_11)

⁷ See section 4AA (1A) (b) Gas Act 1986 and section 3A (1A) (b) of the Electricity Act 1989

⁸ See Supplier SLC 8(1)(b)

⁹ [Supplier of Last Resort: Revised Guidance 2016 | Ofgem](#)

steps to honour. Under Supplier SLC 8 a supplier must comply with a Last Resort Supply Direction, whether or not it volunteered for the SoLR role.

As part of its regulatory responsibilities Ofgem has discretion under Supplier SLC 9¹⁰ to determine the amount of compensation that a SoLR can recover for additional costs incurred as a result of complying with a Last Resort Supply Direction¹¹. Ofgem's subsequent exercise of that discretion cannot be limited by any response that a supplier makes to an RFI before a Last Resort Supply Direction is issued. SLC 9 makes clear that in deciding whether or not to approve a SoLR levy claim, Ofgem must consider what it considers to be '*appropriate in all the circumstances of the case*'. In making that decision, Ofgem's principal objective is to protect the interests of existing and future consumers and we are very mindful that all amounts consented under SoLR levy claims are paid for by customers.

It is well understood by suppliers that Ofgem must make complex regulatory choices about the allocation of risks and when a supplier has failed. It must do so having regard to the future operation of the market. In particular, Ofgem must balance the need to ensure that its approach to claims for a LRSP ensures that suppliers are not disincentivised from volunteering to become SoLRs while not creating a moral hazard by encouraging suppliers to make commitments on the basis that any losses subsequently incurred could be recovered by way of a LRSP. This is a complex balancing assessment carried out by Ofgem as regulator, having regard to its principal objective to protect consumers.

Zog SoLR event

On 3 December 2021, we appointed EDF as the SoLR for Zog gas¹² 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 EDF as the SoLR to those customers in our decision letter published on 18 March 2022¹³.

Last Resort Supply Payment

Under SLC 9.1, 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 Operator ("network operators").

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.

¹⁰ See in particular Supplier SLC 9.5 and 9.6

¹¹ A consent given by Ofgem under SLC 9 may be varied, amended or remade and may be made subject to conditions – see Supplier SLC 2.7.

¹² [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort to Zog Energy Ltd | Ofgem](#)

¹³ [Appointment of EDF Energy Limited as Supplier of Last Resort for Zog Energy Limited | Ofgem](#)

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 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.

Multi-stage claims

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.

This involves SoLRs submitting an 'initial claim' for costs faced in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. SoLRs may then follow this claim with a subsequent 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 during the relevant period. SoLRs entered into a 'True-up Agreement' with Ofgem to support the faster process. Initial claim consents, subsequent claims and True-up claims are conditional on SoLRs complying with 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 2022¹⁴ that set out our policy decisions on the approaches SoLRs should take with regards to these True-up claims. We applied these policies in order to reach our minded-to position on this claim, which we published for consultation on 4 November 2022.

Decision-making process

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. In making this decision Ofgem has considered evidence provided

¹⁴ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

by EDF, its own knowledge of the energy markets, and responses to consultation on the minded-to position on this claim.

In exercising this decision-making function Ofgem has had regard to the interests of current and future consumers of gas and electricity and has considered the public sector equality duty.

Ofgem published a minded-to position on this claim and invited consultation responses. EDF was offered the opportunity to meet with us to clarify aspects of the minded-to position during the consultation period. In reaching its decision Ofgem has taken into consideration any additional evidence provided by EDF during the consultation period and any consultation responses received in relation to the published minded-to position.

In reaching its decision Ofgem carried out:

- a. A quantitative check of EDF methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by EDF and ensuring these costs were in line with commitments EDF 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;
 - d. Review and assurance of the calculations made in the published minded-to position; and
 - e. A qualitative and quantitative assessment of the claim for costs related to wholesale costs, credit balances, financing and other costs 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.
 - **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.

Overview of EDF's claim

EDF indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for a LRSP for any costs but that it would claim for the cost of wholesale, credit balance, working capital and certain other costs.

The initial claim(s) were consented to on 17 December 2021¹⁵. 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 decision on this claim.

Summary of decision

Ofgem has consented to EDF claiming a LRSP of up to £3,873,799.30 conditional on EDF confirming that this claim is a Subsequent Levy Claim for the purposes of the True-up Agreement and that the terms of the True-up Agreement continue to apply to this and subsequent claims in respect of the Last Resort Supply Direction.

The reasons for the decision are set out below. This decision 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.

Table 1: Summary table

Item	Cost	Initial Claim Approved	True-up Claim (this claim)	Minded-to deductions on this claim	Decision on deductions for this claim	Amount approved for this claim
1	Wholesale	£4,348,260.00	£2,295,361.11	£91,125.98	£91,073.43	£2,204,287.68
2	Credit balances	£0.00	£1,120,696.55	£0.00	£0.00	£1,120,696.55
3	Working capital	£211,623.00	£339,726.69	£0.00	- £1.26 (amount added)	£339,727.95
4	Other costs	£0.00	£209,087.12	£0.00	£0.00	£209,087.12
Total:						£3,873,799.30

General points raised in consultation

Summary

We received eight responses to our minded-to positions, with seven responses from SoLRs and one from a consumer group. We received wide-ranging support and recognition for working efficiently throughout the assessment period to ensure each LRSP claim was given due consideration whilst maintaining engagement stakeholders. We note several general points made by suppliers on the wider SoLR levy process,

¹⁵ [Faster SoLR levy process: consents to Last Resort Supply Payments | Ofgem](#)

including the potential for further claims, and concerns regarding the policy decision to limit the additional, otherwise unrecoverable, wholesale costs that SoLRs can claim to the cost of energy delivered by the end of March 2022, or within six months of being appointed, whichever is later, the latter of which we have responded to in the wholesale section of this document. We have expanded below upon each general issue raised in consultation responses to the minded to position.

Changes in approach during consultation

Several suppliers claimed in their consultation responses that we had changed our approach during the process, including one supplier who believed that Ofgem had disallowed sums previously agreed in principle. Ofgem made it clear throughout the entirety of the claims process that we would assess each claim on a case-by-case basis, considering the evidence and circumstances of each case before making a decision. Ofgem could not have made a decision on claims before considering all the information provided by SoLRs and any responses to our consultation on our minded-to positions. This was clear from our minded-to positions, which explained that the purpose of the consultation letter was to provide interested parties with an opportunity to make any representations to us, ahead of us making our final decision and that we would take such representations into account when reaching our final decision, making changes to our minded to position if considered appropriate. We also made it clear that our decision might reflect changes resulting from an additional assurance process.

This applies to all LRSP claims made by SoLRs. Ofgem has exercised its statutory discretion to ensure all decisions are fair and reasonable, taking into account the statutory framework, the relevant licence conditions, all the relevant circumstances and no irrelevant factors. 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 the relevant circumstances of the particular case.

Volunteering to be SoLR in the future

Several suppliers noted that, due to our positions on certain elements of their claims, they may be less willing to volunteer as SoLR in the future. We note suppliers' concerns. However, Ofgem must make complex regulatory choices about the allocation of risks and costs in the event that a supplier has failed and must do so having regard to the future operation of the market¹⁶.

'In particular, Ofgem must balance the need to ensure that its approach to claims for a LRSP ensures that suppliers are not disincentivised from responding to the SoLR RFI to become SoLRs, whilst not creating a moral hazard, namely, circumstances where suppliers do not respond appropriately or take excessive risks when responding, knowing that any losses subsequently incurred could be recovered by way of a LRSP. This is a complex balancing assessment carried out by Ofgem as regulator, having regard to its principal objective to protect consumers¹⁷.'

¹⁶ see *R (on the application of Scottish Power Energy Management Ltd v Gas and Electricity Markets Authority)* [2005] EWHC 2324 (Admin) paragraph 97.

¹⁷ see *R (on the application of Scottish Power Energy Management Ltd v Gas and Electricity Markets Authority)* [2005] EWHC 2324 (Admin) paragraph 97.

We are confident that the process we have undertaken for assessment of these claims has been appropriate, in particular to protect consumers during the current cost of living crisis. In exercising its statutory discretion Ofgem has ensured all decisions are fair and reasonable, taking into account the statutory framework, the relevant licence conditions, and to be reasonable in all the circumstances.

Lack of sufficient evidence

One supplier noted that they were surprised by Ofgem's statements regarding a lack of sufficient evidence being provided to support claims. Where we have identified insufficient evidence, teams have worked to engage with SoLRs throughout the process to raise issues and request further information where appropriate to ensure that sufficient evidence is provided for us to consider. We are grateful for all SoLRs continuing engagement in this regard. As noted in the policy decision we published in September 2022, the consultation provided interested parties with an opportunity to make representations to us, ahead of us making our final decision. During the consultation period we engaged with SoLRs that had not submitted enough evidence initially, giving them an opportunity to provide more and better evidence for Ofgem to consider. Ofgem has carefully scrutinised the evidence provided by SoLRs in relation to each claim and where it considers the evidence provided to be insufficient, has only allowed claims if additional evidence has been provided which justifies that the costs claimed (or an element of those costs) should be approved. We believe that this was a reasonable approach to balancing the need for rigorous and robust evidence, whilst recognising the need for suppliers to be compensated for costs meeting our criteria described above as a result of acting as a SoLR.

External Assurance

The consumer group restated the view, previously put in their response to our September policy consultation, that external assurance of all LRSP claim is required. Due to the scale of the LRSP claims, they do not believe that an internal audit is sufficient. We have decided to apply the policy decision published in September and not to require external auditing of these LRSP claims. This is because we consider that adding a requirement for external audit at this stage would be unreasonable. We will, however, consider this point ahead of any future LRSP claims.

Further claims

Several suppliers voiced their view that further LRSP claims should be permitted, generally to allow further reconciliation of wholesale costs incurred. The possibility of further claims was echoed by the consumer group, which considered that further claims may be required to ensure that SoLRs are not overcompensated. However, the consumer group also pointed to the clear commercial incentive SoLRs have to use any further claims to argue that they have been undercompensated.

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 EDF and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim. As set out in the consultation for this claim, we were minded to consider this claim to be a Subsequent Levy Claim for the purposes of the True-up Agreement.

Following the consultation on this claim, we consider that this remains a reasonable approach. Accordingly, Ofgem has made its consent to this LRSP claim conditional on confirmation by EDF that this claim is a Subsequent Levy Claim for the purposes of the

True-up Agreement and that the terms of the True-up Agreement continue to apply. This includes an obligation to submit true-up information as requested and to refund any amounts by which EDF has been overcompensated by a LRSP.

This would mean that the final True-up claim under the True-up Agreement will be made next year or later. This will allow additional time for suppliers to provide additional supporting evidence for the limited instances where we have specified that our decision on certain costs is not final. In addition, this will allow additional time to make the final True-Up decision to ensure that the benefit of any monies recovered from the administrators of the failed suppliers can be utilised for consumers' benefit.

For the avoidance of doubt, unless we have specified otherwise in respect of certain costs suppliers are seeking to claim, our decision on each Subsequent Levy Claim is a final decision, and we do not expect suppliers to seek to revisit those final decisions.

We have made clear in this decision where we consider that we have not yet made a final decision on a particular element of this subsequent claim; and/or where we expect to make a revision to the amounts approved here under the True-Up Deed (or amended or otherwise varied consent), especially should additional evidence be forthcoming or once additional validations have taken place.

Status of SoLR RFI responses

We note that when suppliers respond to an RFI to become a SoLR, they may include certain requests in their response to the RFI and ask us to consider them, for example the recovery of costs over a longer period. However, while we use the information provided in responses to the information request issued at the time of the SoLR appointment to inform our decision on which supplier to appoint, this should not be seen as an endorsement of any particular requests that a supplier included in their RFI response. The supply licences provide that the SoLR would be able to make a claim to recover its reasonable incremental costs incurred in taking on the new customers where those costs are additional to the total amounts recovered from the customers for the supply where it has not waived its right to do so. We cannot give assurance, prior to the appointment of the SoLR, as to what costs can be claimed for, or over what period. The onus is on the SoLR to submit a claim that is supported by evidence and demonstrates why the amounts claimed meet the criteria for SoLR levy claims and should be allowed. Ofgem will then take all relevant information into account in deciding on whether to consent to any claim, or not, given all the circumstances of the case.

Reasons for decision

General

Ofgem's general preference is for a SoLR not to make a claim for a LRSP for costs it has incurred carrying out its role. However, we do recognise that circumstances may exist which would justify a departure from this general rule and that the costs of this claim will ultimately be paid by consumers. In our assessment of the claim, consideration has been given to the interests of current and future consumers, particularly those in more vulnerable circumstances.

Historically, some SoLRs have waived their right to make that claim through the SoLR processes. Recent SoLRs have not waived those rights as the recent costs associated with becoming a Supplier of Last Resort have been significant. In the particular circumstances of this claim, and in line with the relevant licence conditions, we consider it appropriate to allow for the additional and otherwise unrecoverable costs summarised in Table 1 to be recovered via a LRSP.

In granting consent for this claim, the net costs incurred by the supplier acting as a SoLR in an emergency situation will be spread across all consumers, rather than borne solely by the SoLR and its customers. We consider it to be in the interest of current and future consumers to allow this claim to ensure that the consumer safety net provided by the SoLR process remains viable into the future, and the stability of the retail energy market is not further undermined to the detriment of all consumers.

Condition

Ofgem has made its consent to this LRSP claim conditional on confirmation by EDF that this claim is Subsequent Levy Claim for the purposes of the True-up Agreement between EDF and Ofgem and that the terms of the True-up Agreement continue to apply to this and subsequent claims in respect of the Last Resort Supply Direction. We have made this decision because it has the effect of allowing additional time to finalise claims for LRSPs following multiple Last Resort Supply Directions in difficult market conditions. We consider that it will enable suppliers to provide additional supporting evidence for costs that have not yet been approved by Ofgem, as well as allowing Ofgem to ensure the benefit of any monies recovered from the administrators of the failed suppliers can be utilised for consumers' benefit.

Cost category: Wholesale

In our published decision on the claims True-up process¹⁸ 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 assessment 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

¹⁸ [Decision on last resort levy claims True-up process | Ofgem](#)

- 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

Decision

The EDF True-up claim for Zog submitted on 7 October 2022 includes £2,295,361.11 in wholesale costs. Following the above assessments, and having considered the responses received to our minded-to position consultation, as well as carrying out further assurance of our own calculations, we consider that the claimed amount is not fully consistent with our criteria and we have decided to consent to the claim with the following deductions:

- A deduction of £91,073.43 has been made for EDF as part of our final decision for the revenue received from SoLR customers in respect of the Backwardation allowances in the price cap. Our final decision is unchanged from our minded to position, other than a small adjustment to reflect rounding.

The final total deduction for EDF is £91,073.43, which is £52.55 lower than the proposed deduction of £91,125.98 in the minded-to decision. This results in a net wholesale True-up claim of £2,204,287.68, as opposed to £2,204,235.13 set out in the minded-to decision. When accounting for the initial claims made in December 2021, the total wholesale costs approved would be £6,552,547.68, as opposed to £6,552,495.13 set out in the minded-to decision.

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

Item	Cost	Initial Claim	True-up claim	Deduction category	Deduction amount (minded-to)	Deduction amount (final decision)	Minded-to position on claim	Final position on claim
1	Wholesale	£4,348,260.00	£2,295,361.11	Backwardation	£91,125.98	£91,073.43		
							£2,204,235.13	£2,204,287.68

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

Backwardation

Summary of minded-to position

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 winter 2021/22, 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, and a further allowance of £6 per customer was introduced in August 2022, to be recovered in the year from 1 October 2022.

In our minded to decision, the relevant backwardation deduction for each supplier was 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 noted that we preferred 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 preferred it 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.

Summary of consultation responses

In relation to the standardised backwardation deduction, three suppliers that responded to our consultation confirmed that they understood and did not oppose the rationale for making this deduction in principle. Some respondents raised challenges regarding the specific demand-base used, suggesting that this would overstate the revenue that would be recovered under the backwardation allowance. One supplier questioned whether the deduction was consistent with Ofgem's decision not to allow claims for costs relating to supply after the six-month direction period.

Specifically in relation to this claim, EDF said that while it accepted the decision to deduct the backwardation allowance, it was inconsistent to use a forecast of revenue recovery based on customer numbers at the end of winter 2021/22. Instead, the deduction should be based on revenue recovered by SoLRs at the time of the claim, with a future True-up then calculated at the end of the period in which the backwardation allowance applies.

Reasons for decision

We have decided to deduct an amount from EDF's claim to reflect the backwardation allowances in the cap, for the reasons set out in our minded-to position.

We have decided that it will be open to SoLRs to submit a further claim in 2023 in relation to the backwardation deduction if they consider that new evidence exists to

support such a claim. We note that an important consideration in assessing any such claim will be the extent to which it is appropriate to base the amount to be deducted on outturn demand, rather than seasonally normal demand (given the potential inconsistency with how costs for winter 2021/22 have been treated).

In relation to EDF's proposal that the deduction should be based on revenue recovered as of the time of the claim, we are concerned that such an approach would create a risk that suppliers are overcompensated. This is because revenues have continued to be recovered since the time of the claim (and will continue to be recovered up until the end of September 2023). As such, we consider that under EDF's proposal, customers could end up paying more via SoLR levy charges in next year's network charges than is necessary. Practically, the information required to calculate the deduction in this way has not been provided by suppliers alongside their claims, and therefore it would not be possible to calculate the deduction on this basis in a standardised way. Therefore, we have decided not to change our approach to reflect EDF's proposal.

Finally, we note that, in calculating the backwardation deduction for the minded-to decision, Ofgem relied on inputs which were rounded to different numbers of decimal places. For consistency, we have for our final decision used unrounded inputs, as they appear in the relevant workbook submitted by suppliers alongside their claim, or annex to the default tariff cap. This results in small adjustments to backwardation deductions for all claims.

Claims for costs relating to supply beyond the six-month direction period

Summary of minded-to position

In our decision on the last resort levy claims True-up process published on 21 September 2022,¹⁹ we set out our position that - where appropriate - SoLRs appointed during the period September – December 2021 would be allowed to apply to recover additional and otherwise unrecoverable wholesale costs incurred relating to energy delivered up until 31 March 2022, or within six months of being appointed, whichever was later. We said²⁰ that it would not be proportionate to allow a blanket extension to allow SoLRs to recover costs via the levy throughout summer 2022 (i.e. beyond the six month direction period), recognising that while some SoLRs may consider there is still a portion of costs they should be able to claim that are unrecoverable, we did not consider these costs to be directly related to their role as SoLR, and other suppliers would face similar costs as a result of higher than anticipated volumes of customers remaining on the standard variable tariff. We explained that while this would be our broad approach when assessing claims - because we considered that it best balanced the interests of consumers and fairness between suppliers - we would also consider whether the circumstances of any specific claim warranted exceptional treatment.

In the September 2022 decision, we also noted that when we initiate a competition for the appointment of a SoLR, we issue a RFI to suppliers. In their responses, suppliers may include certain requests and ask us to consider them, for example the recovery of costs over a longer period. However, while we use the information provided in responses to the information request issued at the time of the SoLR appointment to inform our decision on which supplier to appoint, this should not be seen as an endorsement of any

¹⁹ [Decision on last resort levy claims true-up process | Ofgem](#)

²⁰ Ibid paragraph 3.8

particular requests that a supplier included in their RFI response. The supply licences provide that the SoLR would be able to make a claim to recover its reasonable incremental costs incurred in taking on the new customers where those costs are additional to the total amounts recovered from the customers for the supply where it has not waived its right to do so. We cannot give assurance, prior to the appointment of the SoLR, as to what costs can be claimed for, or over what period. The onus is on the SoLR to submit a claim that is supported by evidence and demonstrates why the amounts claimed meet the criteria for SoLR levy claims and should be allowed. Ofgem will then take all relevant information into account in deciding on whether to consent to any claim, or not, given all the circumstances of the case.

In light of this decision, EDF did not submit a claim for wholesale costs incurred in relation to energy delivered beyond the six-month direction period as part of the claim submitted prior to our minded-to letter.

Summary of consultation responses

Subsequent to the minded-to decision being published, EDF submitted a further claim for unexpected wholesale costs (and linked working capital costs) faced in summer 2022. It stated that the events that led to these costs were economic, directly incurred as a result of acting as a SoLR, additional to the costs it would have otherwise incurred, and otherwise unrecoverable. It argued that it is clear that the impact of Russia's invasion of Ukraine meets the requirements for Ofgem to agree to make EDF good for the additional costs it has faced. It said that it is in customers' interests that the claims process is credible and that exceptional costs of the type incurred by EDF are met, as if not, supplier confidence will be reduced (as would EDF's appetite to act as a SoLR in future).

Reasons for decision

We have decided not to allow EDF to claim for wholesale costs relating to the supply of energy to SoLR customers which took place subsequent to the six-month direction period. This decision is in line with the policy position published in September 2022. The evidence presented and arguments raised by EDF do not, in our view, demonstrate that EDF's claim was exceptional, or should be treated differently to the claims of other suppliers for the same period. In particular, we note that the circumstances in the wholesale market following the Russian invasion of Ukraine were not specific to EDF. In addition, the bulk of the costs making up EDF's claim for the summer period beyond the six-month SoLR direction were in any event incurred prior to the end of February 2022. Therefore, we consider it to be in consumers' interests to limit the claim to the six-month direction period set out in the licence condition, for the reasons set out in our September decision.

Cost category: Credit balances

Under SLC 9.4(b) a SoLR can claim 'any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances'.

Decision

EDF claimed £1,120,696.55 in compensation to former customers of Zog for their credit balances. We consider that the claimed amount is consistent with our criteria. We have consented to EDF claiming £1,120,696.55 for sums paid to compensate customers for credit balances.

Table 3: Summary of claims and decision for credit balances

Item	Cost	Initial Claim	This claim	Minded-to deductions	Decision on deductions	Decision on this claim
2	Credit Balances	£0.00	£1,120,696.55	£0.00	£0.00	£1,120,696.55

Summary of minded-to position

EDF requested our consent to claim £1,120,696.55 through the LRSP for the cost of refunding credit balances of customers and former customers held at the time the Zog direction was issued.

In our minded-to position, we noted that SoLR could claim sums paid or debts assumed to compensate customers of the failed supplier in respect of customer credit balances.

In our minded-to position we explained that this was because we did not consider that it would be appropriate to allow SoLRs to claim for closed account credit balance cheques until the point that they are actually cashed for the following reasons:

- To avoid consumers bearing the cost of compensation for credit balances never in fact received by customers of the failed supplier;
- To ensure that the SoLR does not profit from a situation where some credit balance cheques are never presented; and
- Noting that a future LRSP claim can be made so that EDF can recover the cost of any credit balance cheques presented after the cut off point for the current claim.

There were no uncashed cheques for Zog.

Summary of consultation responses

We received one stakeholder response from British Gas to our minded-to position on credit balances. British Gas stated that it supported our stance of allowing all credit balances refunded to customers to be reclaimed via the levy. It also stated that it supported the pragmatic approach for uncashed cheques that will allow it to claim any issued cheques that are cashed by customers in the future.

Decision

EDF requested our consent to recover £1,120,696.55 for the cost of refunding credit balances to some former customers of Zog. In our minded-to position, Ofgem stated that, in principle, we were minded-to allow the claim. We have considered the consultation responses, noting that one supplier noted their support for this approach. We are satisfied that the claim is consistent with our criteria and have decided to consent to a LRSP claim of £1,120,696.55 for sums paid to compensate customers for credit balances.

Cost category: Working capital

The policy decision on last resort levy claims True-up process²¹ explained what would be required for SoLRs to claim for financing or working capital costs incurred. The policy decision also set out the requirement for suppliers to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

Decision

EDF claimed £404,201.31 for the cost of working capital, of which £63,314.37, relating to refinancing, was deducted. This was followed by a revised claim totalling £339,726.69. The calculation includes costs incurred to reflect actual costs incurred and the timescale for the recovery of those costs as set out in our published policy decision.

We consider that the revised claim amount is consistent with our criteria. Following corrections made by us to reflect corrections in other cost categories, we have consented to EDF claiming £339,727.95 as part of an LRSP.

Table 4: Summary of claims and decision for working capital

Item	Cost	Initial Claim	True-up claim	Revised True-up	Minded-to deductions	Decision on deductions	Decision on this claim
3	Working capital	£211,623.00	£340,886.94	£339,726.69	£0.00	- £1.26	£339,727.65

Summary of minded-to position

EDF submitted a claim for the cost of working capital amounting to £404,201.31. It submitted evidence that detailed its expenditure relevant to its claim for working capital costs, as well as justification for why it had applied the interest rate that it had. Based upon our assessment of the submitted evidence against our overall criteria, which included reviewing commitments made when EDF was appointed as SoLR and comparing the rate against all other claims submitted to Ofgem on 7 October 2022, we stated in our minded-to letter that we were satisfied that EDF has provided adequate evidence to demonstrate the rate of interest they faced in respect of working capital costs is reasonable. We further stated that we believe that EDF's proposed rate is reasonable when compared against the range of rates secured for initial claims and the overall market movements since the submission of initial claims. Our decision on the reasonableness of the rate applied by EDF applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

EDF refinanced their initial SoLR levy claim for Zog with a third-party bank. Upon refinancing there was a benefit to EDF of £63,314.37. We took the decision that EDF

²¹ [Decision on the last resort levy claims True-up process](#)

should not benefit from refinancing, as it falls within the definition of Excess under the True-Up Agreement, and as per the Agreement it should be repaid under Clause 7 of the True-Up Agreement. Therefore, £63,314.37 was deducted from the True-up claim by EDF at submission. We note that EDF provided additional workings and assumptions that were considered in their refinancing process.

Resubmission of claim for working capital

In our minded-to letter we stated that working capital may only be claimed on costs that meet our criteria for assessing claims²². In light of our minded-to position to make deductions to other cost categories and/or to make deductions where further evidence is not forthcoming, the total amount of working capital claimed for of £340,886.94 was subject to EDF resubmitting a revised working capital claim taking into account the deductions in our minded-to position. In order to fully assess the working capital aspect of the claim, we therefore required EDF to recalculate the working capital element of their claim using, as costs incurred, the amounts we stated we were minded-to consent to in our minded-to letter.

In our minded-to letter we also stated our expectation that EDF should follow the same methodology, and apply the same rate, as their 7 October submission, and to clearly set out which costs have been reduced or removed. We also asked that EDF submitted their full calculations to allow us to undertake these calculations on working capital unilaterally for our decision, so that we can work out what their working capital allowance should be, without having to revert to EDF. While we noted that, based on the evidence submitted to us, the claim appeared consistent with our criteria, in order to arrive at a decision on working capital costs we required that suppliers submit to us their calculations that we could unilaterally validate and replicate and amend for final decision, without having to revert to the supplier. In the minded-to position process we had been unable to replicate what suppliers had done on working capital, and could not deduct the disallowances made through the minded-to position.

In our minded-to letters, we requested that the SoLRs provide further evidence which would allow us to effectively assess the costs claimed against our criteria. With the exception of one supplier, all SoLRs provided the evidence required from them in order to support their working capital claims. We thank suppliers for being so engaged with Ofgem during the consultation period.

Summary of consultation responses

Ofgem thanks suppliers and consumer groups for responding to our consultation, and for their active engagement with the consultation process, and Ofgem, during this period. We did not receive any specific comments on our minded-to position on working capital costs from EDF in relation to this claim.

Reasons for decision

As noted above, EDF submitted a revised working capital claim totalling £339,726.69, taking into account the deductions in our minded-to position. The re-submitted calculations were sufficiently clear to allow us to unilaterally undertake additional

²² [Last resort levy true-up claim minded-to position | Ofgem](#)

recalculations to account for adjustments to the deductions set out in our minded-to letter. No additional evidence was required from EDF.

Based upon our assessment of the evidence provided, the submitted re-calculation of the claim, and the relevant consultation responses received, we consider that the rate at which working capital has been calculated, and the methodology followed, is consistent with our criteria and reasonable in this case, and for these purposes only. Our decision on the reasonableness of the rate applied by EDF applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

In arriving at our decision on whether the rate submitted by EDF demonstrated that their financing cost claim delivered value for money for consumers, and considering the evidence submitted to us as part of the consultation process, we have undertaken the following approach. For companies that secured financing through intra-group company arrangements, we have looked at whether the rate secured through these arrangements could have been improved had the supplier gone to market. In order to undertake this assessment, we looked at the range of rates approved in the initial claims, and the market movements since the initial claims decision. For companies that have gone to market for their financing, we looked at the rate that they have claimed for, and whether that rate is consistent with the range of rates approved in the initial claims, and the market movements since the initial claims decision.

Further adjustments

In light of our decision to make further adjustments to other cost categories, we have adjusted the working capital calculation further by unilaterally adjusting the values deducted from the model provided by EDF.

This has resulted in the working capital claim being adjusted from £339,726.69 to £339,727.95.

Therefore, we are proceeding with the decision that we proposed in our minded-to position, to approve a LRSP claim of £339,727.95 for working capital costs. Our decision is therefore to consent to the recovery of these costs.

Cost category: "Other costs"

We understand that other costs may have been incurred when undertaking activities as part of becoming a SoLR (for example, legal fees). We have used the criteria set out in our published policy decision to assess whether these costs are appropriate and should be recovered through a LRSP. The other costs that EDF has claimed are detailed below.

EDF claimed £209,087.12 in other costs incurred as a result of complying with the Last Resort Supply Direction. We consider that the claimed amount is consistent with our criteria.

We have consented to EDF claiming that amount as part of a LRSP.

Table 5: Summary of claims and decision for other costs

Item	Cost	Initial Claim	This claim	Minded-to deductions	Decision on deductions	Decision on this claim
4	Operating costs	£0.00	£209,087.12	£0.00	£0.00	£209,087.12

Migration costs

Summary of minded-to position

EDF requested our consent to claim £209,087.12 for operational costs incurred when onboarding former customers of Zog. Included with this are costs relating to:

- IT Costs incurred to enable migration and management of SoLR customers from Zog to EDF
- Call costs of Zog related calls to EDF's dedicated telephone line
- Complaint costs
- Back-office activity

EDF submitted evidence, including breakdowns of call contacts, IT resourcing, calculations of how they arrived at claim figures, and explanatory narrative to demonstrate that these costs had been incurred as a direct result of acting as a SoLR in an emergency situation. In our minded-to position, we were minded to approve these costs as we are not, in principle, against SoLRs claiming for operational costs associated with migration of customers. This, however, was on the proviso that EDF submit further evidence to show that costs incurred were additional to those EDF would have incurred if these customers were acquired through normal customer acquisition routes. EDF have provided additional evidence about all the costs listed above.

Summary of consultation responses

EDF engaged in bilateral meetings with Ofgem throughout the consultation period, and EDF provided additional evidence, including statements from company directors attesting to the work carried out, invoices from suppliers and further explanatory narrative regarding the submission. EDF had commented that their partners do not separately identify the additional SoLR work from non-SoLR work. Instead, the SoLR activity was included in with wider invoices for their normal retail operations.

EDF did not specifically comment on this aspect in their formal consultation response. We did not receive any responses referencing EDF's request to claim for a LRSP for operational costs incurred as a result of migrating former customers of Zog to EDF.

Rationale for decision

EDF have submitted additional evidence to us to support their claim and satisfy us that these costs were additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient in relation to EDF's role as a SoLR for Zog. Having reviewed the additional evidence we are satisfied that EDF have demonstrated to us their methodology for disaggregating the SoLR activity from their usual retail

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operations. We have assessed all the additional evidence supplied by EDF and we are satisfied that, taken with the original evidence, these costs incurred by EDF are reasonable and additional as a result of acting as a SoLR in an emergency situation and meet our criteria. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow EDF to recover these costs and we have approved the full amount claimed.

We would like to explicitly note that the decision taken in respect of this case is seen by Ofgem as novel and not setting a precedent for the evidence we would look to accept in future SoLR levy claims. In future claims we would expect that suppliers attempt to invoice separately or itemise their invoices for the SoLR work incurred, where it is also being included with non-SoLR work. If a supplier is unable to do so for some reason, we would expect in the future that suppliers set out in advance the reason for this, and the steps that they have taken to ensure that there is a clear evidence trail of the costs incurred separated out from normal operational costs. SoLRs should fully consider what supporting evidence they will need to support any future claims and compile it accordingly.

Recovery of LRSP claim

EDF will be paid the amounts specified in the Ofgem's consent documents, published alongside this letter, by the relevant licensed gas and electricity network operators. This will be recovered by the network operators in proportion to the total number of nationwide gas and electricity supply points.

Yours faithfully,

Neil Lawrence
Director of Retail