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interested parties

Email: solrlevyteam@ofgem.gov.uk

20 December 2022

Dear Colleague

Last Resort Supply Payment Claim from Utilita

On 7 October 2022, Utilita submitted a claim for a Last Resort Supply Payment (LRSP) for Ofgem's consent under Supply Licence Standard Licence Condition (SLC) 9. Utilita 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 Omni.

On 4 November 2022 Ofgem published a minded to position in relation to that claim for consultation². 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 Utilita making a LRSP claim of up to £106,477.65.

This letter is the notice of reasons for Ofgem's decision to consent to Utilita making a LRSP claim from relevant network operators. Our decision will allow to claim for costs relating to:

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

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 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

¹ Link: <https://www.ofgem.gov.uk/publications/direction-appoint-utilita-energy-limited-electricity-supplier-last-resort-omni-energy-ltd>

² Link: <https://www.ofgem.gov.uk/publications/last-resort-levy-true-claim-minded-position>

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

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

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 Utilita'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 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.

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)

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](#)

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 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.

Failed Supplier event

On 7th November 2021, we appointed Utilita as the SoLR for Omni gas¹² and electricity¹³ 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 23rd June 2022¹⁴.

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.

SLC 9.6 makes clear that Ofgem may determine that an amount other than the one

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 <https://www.ofgem.gov.uk/publications/direction-appoint-utilita-energy-limited-gas-supplier-last-resort-omni-energy-ltd>

¹³ [Direction to appoint Utilita Energy Limited as Electricity Supplier of Last Resort to Omni Energy Ltd | Ofgem](#)

¹⁴ Link: <https://www.ofgem.gov.uk/sites/default/files/2022-06/Decision%20Letter%20-%20Omni%20Energy.pdf>

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 2022¹⁵ 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

¹⁵ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

by Utilita, 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. Utilita 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 Utilita 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 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;
 - 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 and 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.
 - **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 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 a LRSP for wholesale and credit balance costs, but that it would claim for the cost of wholesale and credit balances.

The initial claim(s) were consented to on 6th 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 decision on this claim.

Summary of decision

Ofgem has consented to Utilita claiming a LRSP of up to £106,477.65 conditional on Utilita 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	£2,607,750.99	£77,563.80	£159,576.55	£133,670.03	-£56,106.23
2	Credit balances	£0.00	£162,597.80	£13.92	£13.92	£162,583.88
Total:						£106,477.65

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 with stakeholders. We note several general points made by suppliers on the wider SoLR levy process, 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.'

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

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.

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 Utilita 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 Utilita 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 Utilita 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 Utilita that this claim is Subsequent Levy Claim for the purposes of the True-up Agreement between Utilita 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, 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
- 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

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

- 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 Utilita true-up claim for Omni submitted on 14 October 2022 includes £77,563.80 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 £65,865.47 has been made for Utilita 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.
- A deduction of £67,804.56 has been made for Utilita as part of our final decision 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. Our final decision is adjusted from our minded to position for the reasons set out in the following sections.
- In our minded-to decision, we described our intention to disallow an amount of £10,702.64 relating to the costs associated with short terms trades which had been included in Utilita's claim. Following a review of additional evidence submitted by Utilita in relation to the appropriate price cap comparator for these trades, we have now decided to allow this amount.

The final total deduction for Utilita is £133,670.03, which is £25,906.52 lower than the proposed deduction of £159,576.55 in the minded-to decision. This results in a net wholesale true-up claim of -£56,106.23, as opposed to -£82,012.75 set out in the minded-to decision. When accounting for the initial claims made in December 2021, the total wholesale costs approved are £2,551,644.76, as opposed to £2,525,738.24 set out in the minded-to decision.

Table 2: Summary of 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	£2,607,750.99	£77,563.80	Backwardation	£66,004.31	£65,865.47		
				Contracts for Difference	£82,869.60	£67,804.56		
				Correct comparator for short-term trading	£10,702.64	£0.00		
							-£82,012.75	-£56,106.23

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.

Backwardation Allowances

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, Utilita stated that it claimed only for those areas specified in their RFI response, which did not include an element for backwardation. Hence, Utilita does not consider backwardation to be an acceptable deduction, as it considers that Ofgem's approach disallows sums previously agreed in principle and creates a one-way regulatory risk. Utilita also believes that the backwardation deduction is overstated in the minded-to position, even if this were to be justified in principle, based on a value of £12 per dual fuel customer.

Reasons for Decision

We disagree with Utilita's view that the backwardation allowance should not be deducted from the claim. In particular, while correct that the allowance was not referred to in Utilita's response to the request for information sent to potential SoLRs at the time of the RFI response, this would not have been possible as suppliers did not know they would be able to recover this additional revenue until February 2022, i.e. subsequent to Utilita being appointed. The retrospective allowance was specifically designed to allow suppliers to recover additional wholesale costs above those included in the price cap allowances incurred in winter 2021/22. Failure to deduct an amount to reflect this revenue would not be consistent with the criteria that we have used to assess claims, as it would result in the same cost being recovered twice – once via the price cap allowances, once via the claim.

We also do not agree that we have overstated the relevant amount to be deducted. In particular, while the allowance was equivalent to £14 per dual fuel customer at typical consumption, it was incorporated in the price cap as a percentage uplift. Our approach to estimating this deduction reflects that the appropriate amount to deduct will therefore depend on the expected demand of the customers of the failed supplier (which may differ from that of a typical household).

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.

Finally, 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).

CfD Allowances

Summary of minded to position

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 for suppliers (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,¹⁹ which are in turn based on forward prices observed at that time of the forecast.

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 for the customers of the failed suppliers which were well in excess of the direct fuel allowances included in the cap. However, increases in wholesale electricity prices also resulted in CfD costs for those customers that were significantly lower than the relevant allowance in the cap. As we set out in our February 2022 price cap decision 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 risk 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.

To avoid SoLRs over-recovering in relation to wholesale costs of their SoLR customers, we were therefore minded-to deduct an amount from claims equivalent to the demand-weighted interim levy rate component of the default tariff cap for period 7 multiplied by the volume of electricity being claimed for, on the basis that the revenue generated under the CfD allowance would have offset the wholesale costs incurred by suppliers.

¹⁹ [August 2021, Default tariff cap, Annex 4](#)

Summary of Consultation Responses

In relation to the standardised CfD deduction, three suppliers that responded to our consultation confirmed that they understood and did not oppose the rationale for making this deduction, and one supplier did not comment on this deduction. Some respondents raised challenges at the demand-base used. One supplier questioned if the CfD deduction was consistent with the rest of the price cap, and that Ofgem were being selective about deductions made when some elements of the price cap may adversely affect suppliers.

Specifically in relation to this claim and similar to its submission on the backwardation deduction, Utilita said that it claimed only for those areas specified in their RFI response, which did not include an element for risk on CfD. Hence, Utilita does not consider CfD to be an acceptable deduction to the wholesale claim, as it considers that Ofgem's approach disallows sums previously agreed in principle and creates a one-way regulatory risk.

Utilita also submitted that the CfD position was an unknown risk at the time of SoLR appointment, and had CfD costs increased above the Interim Levy Rate (ILR) allowance, Utilita had no expectation of being able to make a claim for such costs, and it considers that Ofgem would not have proposed an uplift to claims. Additionally, Utilita set out its view that permitting other suppliers to retain the benefit of a CfD "gain" on their full portfolio but penalising Utilita as a SoLR created an imbalanced competitive landscape.

Utilita further argued that Ofgem should not "cherry pick" the one item that provided an offsetting benefit to suppliers when other allowances in the price cap (such as the wholesale allowances for shaping and imbalance, and Renewable Obligations mutualisation costs) were underrepresented within the methodology versus realised costs.

Finally, Utilita argued that the demand base used to calculate the CfD deduction was higher than the allocation on which CfDs are based, and that this was not accounted for by the treatment of losses.

Reasons for Decision

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

We disagree with Utilita's submission that the CfD allowance should not be deducted from the claim. It is correct that the treatment of CfD charges (and whether or not the claim would reflect any benefit relating to these charges) was not referred to in Utilita's response to the request for information (RFI) sent to potential SoLRs at the time of the RFI response, in which respondents were asked to specify the type of costs that they would expect to claim for under the levy process. However, while we used the information provided in response to the RFI 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.

We note that the basis on which we would assess levy claims (ie the four criteria set out above) was known at the time of the RFI – including that we would only allow claims for costs which were otherwise unrecoverable. In this case, we have decided that even though Utilita’s RFI response did not refer to making an adjustment to reflect any CfD benefit, it is nevertheless appropriate to disallow this amount to ensure that the claim does not result in the supplier over-recovering via the levy claims process. Failing to do so would not be consistent with the criteria by which we have assessed claims, set out above.

We do not consider that making a deduction for CfDs represents “cherry picking”, as Utilita has argued. This is because CfD payments directly relate to the wholesale element of Utilita’s claim - in the same way that we have allowed Utilita to claim for hedging costs above those reflected in the cap as a result of increases in wholesale prices from August 2021, it would be inconsistent to not similarly correct for the offsetting benefits via CfD charges that arose from the same increase in wholesale prices.

We also do not agree that our decision on the CfD deduction distorts competition between suppliers depending on the number of customers of failed suppliers they have taken on. This is because, as we set out in our February 2022 price cap decision on the potential impact of increased wholesale volatility on the default tariff cap, for non-SoLR customers, the CfD benefit was not realised in most cases, as suppliers had hedged their CfD exposure earlier in 2021, when wholesale prices were lower.

Finally, we have not sought to adjust the demand base used to calculate the CfD deduction for Utilita, as no rationale was provided by Utilita as to why an alternative estimate of electricity supplied to SoLR customers is a more appropriate demand base to use than the volume of electricity that Utilita has actually claimed for. Subsequent to publishing the minded-to letter, Ofgem has however made an adjustment to ensure that the CfD deduction matches the intent of our policy position. In particular, the CfD deduction calculated for the Omni claim included electricity supplied in April and May 2022. The correct end date – based on our stated intent to make this deduction for CfD costs in cap period 7 only – should have been March 2022. This was picked up through internal and external assurance checks and has been adjusted in our final decision to align with the CfD deduction calculated for other suppliers.

Finally, we note that in calculating the CfD deduction for the minded-to decision, Ofgem relied on inputs which were rounded to different numbers of decimal places. For consistency and greater accuracy, we have for our final decision used unrounded inputs, as they appear in the relevant annex to the default tariff cap. This results in small adjustments to the CfD deductions for all claims.

Short-term trades to cover immediate energy need

Summary of minded to position

The wholesale claim by Utilita included trades to fulfil SoLR customers' immediate energy requirements, in the period between appointment and the beginning of the next traded month. In our minded-to letter, we set out that while we considered that it was

appropriate for suppliers to claim for these short-term trade costs, 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 was because we expected only limited further costs to be incurred in relation to these trades. We were therefore minded-to deduct £10,702.64 from the claim to account for the shaping and imbalance, transactions costs and basis risk price cap allowance amounts that had not been taken into account by Utilita when considering revenue recovered from customers for these volumes.

We also noted 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. We set out that while we were minded-to accept those costs, this was 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.

Summary of Consultation Responses

In their response to our consultation, Utilita submitted that the comparator originally proposed (i.e. excluding the additional wholesale allowances) should be used, and the deduction of £10,702.64 set out in the minded-to letter should be added back to the claim. To support this, Utilita provided further evidence relating to the specific profile of the trades being claimed for.

In addition, Utilita provided further documentary evidence that the five electricity trades that we had highlighted in our minded-to letter which were priced considerably higher than external reference prices for the days in question, took place at the stated prices

Reasons for Decision

Based on the evidence submitted by Utilita regarding the specific profile of the trades (which is commercially confidential), we are now content that the appropriate amount to offset from the trades relating to the period immediately after the SoLR appointment is the wholesale allowance in the price cap, excluding the various allowances. Therefore, we have decided to allow this amount (ie the deduction of £10,702.64 pertaining to short term trades set out in our minded-to letter will be removed)

Having reviewed additional evidence provided by Utilita, we are satisfied that the five electricity trades highlighted in our minded-to letter took place at the stated prices and have decided to allow these costs.

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

In our decision on the last resort levy claims true-up process published on 21 September 2022,²⁰ 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 said²¹ that it would not be proportionate to allow a blanket extension to allow SoLRs to recover costs via the levy throughout summer 2022 (ie beyond the six month direction period),

²⁰ <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

²¹ Ibid paragraph 3.8

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 Request for Information (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 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.

Summary of Consultation Responses

In its response to our consultation, Utilita noted its objection to Ofgem's policy limiting claims to six months from the date of the SoLR acquisition. It said that prudent suppliers should be hedging their domestic SVT demand in line with the wholesale calculation methodology used in the default tariff cap. On this basis, Utilita does not understand why any portion of summer 2022 would be excluded from wholesale SoLR claims occurring within the Ofgem-prescribed wholesale observation window (Aug 2021 to January 2022, inclusive). Ofgem's policy has meant that Utilita has had to absorb a substantial loss for the majority delivery period of May 2022 onwards (in contrast to what it considers was agreed with Ofgem as part of its response to our SOLR RFI).

Reasons for Decision

We have decided not to allow Utilita 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 Utilita do not, in our view, demonstrate that Utilita's claim was exceptional, or should be treated differently to the claims of other suppliers for the same period. Rather they relate to the impact of high wholesale prices; the mechanics of the price cap methodology; and/or the fact that their appointment as SoLR took place after the observation window for summer 2022 opened – factors which were common to all SoLRs appointed in winter 2021/22. Given this, 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'.

In our published decision on the last resort levy claims true-up process²² we explained: 'We consider that, in principle, it is reasonable for Ofgem to allow SoLRs to make a case to claim the costs of traditional PPM credit balances through the levy, where these are otherwise unrecoverable. We recognise that the traditional PPM customers of a failed supplier would have continued to draw down the existing credit on their meter and that a SoLR would have been required to supply this energy without receiving payment. ...

Any claim to recover costs associated with traditional or smart PPM credit balances will be subject to all circumstances of the case and will be assessed against our existing criteria for SoLR levy claims. We will expect SoLRs to demonstrate the steps taken to minimise the costs (for example seeking to claim credit balances from the administrator of the failed supplier), and we will decide on a case-by-case basis whether it is in consumers' interests to grant our consent.'

Decision

Utilita claimed £162,597.80 in compensation to ex-customers of Omni for their credit balances. We consider that the claimed amount is consistent with our criteria. We have consented to Omni claiming £162,583.88 for sums paid to compensate customers for credit balances, with a deduction of £13.92 for a rounding error.

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	£162,597.80	£13.92	£13.92	£162,583.88

Summary of minded-to position

Utilita requested our consent to claim £162,597.80 in credit balances repaid to date to former customers of Omni.

In our minded-to-position we noted that all the credit balances Utilita claimed for relate to pre-payment (PPM) meters. In our published policy decision in September 2022²³, we recognised that where a SoLR takes on customers on traditional prepayment meters, there would not be any 'real' data available for the SoLR to determine credit balances to

²² [Decision on last resort levy claims true-up process | Ofgem](#)

²³ [Decision \(ofgem.gov.uk\)](#)

be honoured and that the balances on the prepayment meters of customers would need to be estimated.²⁴

That policy decision set out a methodology using the SoLR's existing smart PPM portfolio to estimate transitional PPM credit balances at the time of the customer transfer.²⁵

In order 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 were satisfied with the general approach. We verified these figures using the list of accounts taken on by Utilita. In our minded-to-position we made a small adjustment due to incorrect calculations on Utilita's part which appear to have occurred as a result of rounding. We considered in our minded-to-position that the calculation was consistent with the methodology that Ofgem set out in the consultation decision in September 2022.

Summary of consultation responses

We received two stakeholder responses to our minded-to-position on credit balances: one from Utilita and one from British Gas. Utilita challenged the calculations Ofgem had arrived at and stated that it would welcome clarity on Ofgem's methodology. 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.

Reasons for decision:

Utilita requested our consent to recover £162,597.80 for the cost of refunding credit balances to some former customers of Omni. In our minded-to position, Ofgem stated that in principle we are minded-to allow the claim, with a minor adjustment for a calculation error. In their consultation response Utilita challenged Ofgem's calculation. In recalculating the amount, we did not round the average percentage of accounts with a credit balance to the nearest whole number, hence the slightly lower figure. We have considered the consultation responses and are satisfied that the claim is consistent with our criteria and that the adjustment in our minded-to-position is consistent with the methodology set out in our policy published in our consultation decision in September on the calculation of PPM credit balances. Therefore, we have decided to consent to a LRSP claim of £162,583.88 for sums paid to compensate customers for credit balances with a deduction of £13.92 based on the adjustments to the calculations undertaken by Utilita as outlined above.

Recovery of LRSP claim

Utilita will be paid the amounts specified in the Ofgem's consent documents, published alongside this letter, by the relevant licensed gas and electricity network

²⁴ Page 25: [Decision \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/decision)

²⁵ [Consultation](https://www.ofgem.gov.uk/consultation)

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