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20 December 2022

Dear Colleague

### **Last Resort Supply Payment Claim from E.ON Next Energy Limited**

On 7 October 2022, E.ON Next Energy Limited ("E.ON") submitted a claim for a Last Resort Supply Payment (LRSP) for Ofgem's consent under Supply Licence Standard Licence Condition (SLC) 9. E.ON Next is seeking to recover additional costs incurred in complying with a Last Resort Supply Direction<sup>1</sup> to act as Supplier of Last Resort (SoLR) to customers of the former Gas and Power Limited (trading as "Hub Energy").

On 4 November 2022 Ofgem published a minded to position in relation to that claim for consultation.<sup>2</sup> 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 E.ON Next making a LRSP claim of up to **£1,315,698.60**.

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

- protecting the credit balances owed to former customers of Hub Energy;
- financing costs incurred on becoming a SoLR;
- other costs reasonably incurred on becoming a SoLR.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/direction-appoint-eon-next-energy-limited-electricity-supplier-last-resort> and <https://www.ofgem.gov.uk/publications/direction-appoint-eon-next-energy-limited-gas-supplier-last-resort>

<sup>2</sup> [E.ON Next - SoLR Levy claim minded-to position - Hub Energy.pdf \(ofgem.gov.uk\)](#)

We have assessed this LRSP claim in accordance with our policy decision on the true-up process<sup>3</sup>, published 21 September 2022<sup>4</sup>, and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.<sup>5</sup> In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the interests of current and future energy consumers<sup>6</sup>, the public sector equality duty<sup>7</sup>, 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 E.ON Next'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 them<sup>8</sup>. 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 electricity<sup>9</sup>.

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"<sup>10</sup> 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

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<sup>3</sup> While this claim is not part of the multi-claim process, we have considered our latest policy positions on cost areas where they have been relevant for this claim. For example, where we have specified the level of evidence that would be sufficient to assess a claim.

<sup>4</sup> <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

<sup>5</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/10/solr\\_revised\\_guidance\\_final\\_21-10-2016.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf)

<sup>6</sup> s4AA Gas Act 1986 and s3A Electricity Act 1989

<sup>7</sup> 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)

<sup>8</sup> See section 4AA (1A) (b) Gas Act 1986 and section 3A (1A) (b) of the Electricity Act 1989

<sup>9</sup> See Supplier SLC 8(1)(b)

<sup>10</sup> [Supplier of Last Resort: Revised Guidance 2016 | Ofgem](#)

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.

As part of its regulatory responsibilities Ofgem has discretion under Supplier SLC 9<sup>11</sup> 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 Direction<sup>12</sup>. 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.

### Failed Supplier event

On 12 August 2021, we appointed E.ON Next as the SoLR for Hub Energy's gas<sup>13</sup> and electricity<sup>14</sup> customers, following its announcement that it had ceased trading. This followed an appointment process aimed at getting the best deal for consumers. We outlined the material factors behind our decision to appoint E.ON Next as the SoLR to those customers in our decision letter published on 06 September 2021<sup>15</sup>.

### 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

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<sup>11</sup> See in particular Supplier SLC 9.5 and 9.6

<sup>12</sup> 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.

<sup>13</sup> <https://www.ofgem.gov.uk/publications/direction-appoint-eon-next-energy-limited-gas-supplier-last-resort>

<sup>14</sup> <https://www.ofgem.gov.uk/publications/direction-appoint-eon-next-energy-limited-electricity-supplier-last-resort>

<sup>15</sup> <https://www.ofgem.gov.uk/publications/appointment-eon-next-energy-limited-supplier-last-resort>

profit plus any sums paid or debts assumed by the SoLR to compensate customers in respect of any customer credit balances plus any additional (actual or anticipated) interest and finance costs associated with a financing arrangement approved under SLC 9.7C are greater than the total amounts recovered by the SoLR through charges for that supply.

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

LRSPs are paid for by the relevant 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.

### 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 by E.ON Next, 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. E.ON Next 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 E.ON Next 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 E.ON Next's methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by E.ON Next and ensuring these costs were in line with commitments E.ON Next made at the time of its SoLR appointment;
- b. Undertaking validation of some assumptions with other data sources, where appropriate;
- c. Review and assurance of the calculations made in the published minded-to position; and
- d. A qualitative and quantitative assessment of the claim for costs related to 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 E.ON Next's claim

E.ON Next indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP costs and that it would claim for the cost of honouring domestic customer credit balances, the cost of working capital, and certain other costs.

#### **Summary of decision**

Ofgem has consented to E.ON Next claiming a LRSP of up to **£1,315,698.60**.

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	This claim	Minded-to deductions	Decision on deductions	Amount approved
1	Credit balances	£813,270.82	£6,012.68	£20,839.27	£792,431.55
2	Other costs: Tech/IT costs; Traditional service agreement; operational costs; Internal resources.	£421,209.70	£43,215.71	£43,215.71	£377,993.99

3	Working capital	£145,273.06	£0	£0.00	£145,273.06
<b>Total:</b>					<b>£1,315,698.60</b>

## 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. As this claim is not part of the temporary multi-claim process, not all responses were relevant for this particular claim. 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 have expanded below upon each general issue raised in consultation responses to the minded to position that may be relevant for this claim.

### 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 market.<sup>16</sup>

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

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

complex balancing assessment carried out by Ofgem as regulator, having regard to its principal objective to protect consumers.<sup>17</sup>

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.

#### 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.

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



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 decisions

### 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.

### **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

E.ON claimed £813,270.82 in compensation to ex-customers of Hub Energy for their credit balances. We consider that the claimed amount is consistent with our criteria. We have consented to E.ON Next claiming **£792,431.55** for sums paid to compensate customers for credit balances, with a deduction of £20,839.27 for uncashed cheques.

*Table 2: Summary of claims and decision for credit balances*

Item	Cost	This claim	Minded-to deductions	Decision on deductions	Decision on this claim
1	Credit Balances	£813,270.82	£6,012.68	£20,839.27	£792,431.55

### Summary of minded-to position

E.ON next requested our consent to claim £813,270.82 through the LRSP for the cost of refunding credit balances of customers and former customers held at the time the 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.

We were minded-to not allow claims for the value of uncashed cheques where the SoLR had compensated customers for credit balances by sending cheques. 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 Hub Energy can recover the cost of any credit balance cheques presented after the cut off point for the current claim.

In our minded-to-position we considered whether the amount E.ON Next is seeking to claim for credit balances is otherwise unrecoverable; it may still be the case that E.ON Next is able to recover some of this claimed amount through the ongoing administration process for Hub Energy, to which E.ON Next has, in accordance with the requirements of the LRSP process, submitted a subrogated creditor claim for the sums paid to compensate customers for credit balances. In our minded-to-position we noted that, as we propose to make our decision on the claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain, we were minded-to approve this element of the claim, subject to the outcome of the Hub Energy liquidation process.

In our minded-to-position we considered that the claimed amount for honouring the credit balances of open accounts was consistent with our criteria and we were minded-to consent to this portion of the claim. However, E.ON Next had been unable to provide a breakdown of cashed and uncashed cheques specifically for its SoLR customers. E.ON Next provided an alternative methodology for the calculation of the likely amount of uncashed cheques that we believe is a reasonable alternative when detailed data is not available. E.ON Next had not provided evidence to explain their calculations in their methodology. However, we were minded, in principle, to allow this portion of the claim, taking into account the deduction using the methodology proposed by E.ON Next provided that E.ON Next gave us further evidence to allow us to validate the calculations in the alternative methodology.

#### Summary of consultation responses

We received two stakeholder responses on our minded-to-position: one from E.ON Next and one from British Gas on credit balances. E.ON Next stated that following further work, it had been able to identify all cheques issued to SoLR customers and those which remain uncashed and it expects the claim in the final decision to be revised to reflect this. 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

E.ON Next requested our consent to recover £813,270.82 for the cost of refunding credit balances to some former customers of Hub Energy. In our minded-to-position, Ofgem

stated that in principle we are minded-to allow the claim, subject to E.ON Next providing sufficient evidence that all refunded credit balances have been received by the customer, or the value of uncashed refund cheques have been deducted from the amount claimed. E.ON Next provided further evidence and data during the consultation period, which included actual data for uncashed cheques for the SoLR customers. In its consultation response, E.ON Next stated that it expected the claim to be revised in line with the evidence it had submitted.

We have considered the consultation responses, noting that no objections were raised to the approach proposed on uncashed cheques, and one supplier noted their support for this approach. We have also considered the additional evidence submitted by E.ON Next and are satisfied that the claim is consistent with our criteria. Therefore, we have decided to consent to a LRSP claim of £792,431.55 for sums paid to compensate customers for credit balances with a deduction of £20,839.27 for uncashed cheques.

### **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 E.ON Next has claimed are detailed below.

E.ON Next claimed £421,209.70 in other costs incurred as a result of complying with the Last Resort Supply Direction. We consider that the claimed amount is not consistent with our criteria.

We have consented to E.ON Next claiming up to £377,993.99, which we consider to be a more accurate calculation of the amount of other costs to be paid as part of a LRSP claim.

*Table 3: Summary of claims and decision for other costs*

<b>Item</b>	<b>Cost</b>	<b>This claim</b>	<b>Minded-to deductions</b>	<b>Decision on deductions</b>	<b>Decision on this claim</b>
1	Transitional service agreement	£275,728.00	£0	£0	£275,728.00
	Internal resourcing	£43,215.71	£43,215.71	£43,215.71	£0
	IT costs	£101,469.00	£0	£0	£101,469.00
	Operational costs	£796.99	£0	£0	£796.99
<b>Total:</b>		<b>£421,209.70</b>	<b>£43,215.71</b>	<b>£43,215.71</b>	<b>£377,993.99</b>

## **Transitional Services Agreement costs**

### Summary of minded-to position

E.ON Next requested our consent to claim £275,728.00 for transitional services agreement costs incurred when onboarding former customers of Hub. E.ON Next had provided sufficient evidence, including the agreement, invoices and explanatory narrative 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 E.ON Next's role as a SoLR for Hub. In our minded-to position we accepted that E.ON Next could recover these costs.

### Summary of consultation responses

E.ON Next did not comment on this aspect of the claim in their consultation response. We did not receive any further responses about E.ON Next's request to claim for transitional service agreement costs incurred as a result of migrating former customers of Hub to E.ON Next.

### Rationale for decision:

We recognise that working with the administrator of a failed supplier and having transitional service agreements in place was required to allow successful transfer of customers from Hub and these costs were incurred as a direct result of E.ON Next acting as a SoLR, were additional and otherwise unrecoverable. 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 E.ON Next to recover these costs and we have approved the full amount claimed.

## **Internal Resourcing Costs**

### Summary of minded-to position

E.ON Next requested our consent to claim £43,215.71 for internal resourcing costs to support the transitioning of customers from Hub to E.ON Next. E.ON Next originally provided evidence to support their claim including timesheets and narrative explanation verified by their audit. Our minded-to position was to not approve these costs as we considered them not to be additional to those which E.ON Next would have faced in the course of normal retail operations. This is because the costs related to existing staff who were temporarily transferred from their existing function and we considered that E.ON Next would have incurred these salary costs irrespective of acting as a SoLR. As a result, we consider that these costs do not meet the criteria of being additional to the costs of serving existing customers and being directly incurred as part of the SoLR role. This position aligned with the position we took when assessing initial claims during winter 2021/22.

### Summary of consultation responses

In their consultation response, E.ON Next disagreed with our minded-to position. They highlighted that the SoLR events in the second half of 2021 were unprecedented and, therefore, supporting the migration of customers from failed suppliers required significant support. E.ON Next further stated that colleagues within their business, who

were due to leave had tenure extended specifically to cover SoLR activity; noting that the alternative would have been to employ external consultants. E.ON Next stated that they would be mindful of how future SoLR events are resourced.

*Rationale for decision:*

We accept that staff within E.ON Next have been reassigned to support the migration of customers from Hub to E.ON Next and that there would be an opportunity cost to E.ON Next here. We also note that E.ON Next could have used external resourcing to support migration activity, but the fact they were able to carry out this activity using existing staff meant that this could reduce the overall LRSP claim. However, we consider that suppliers should make '*all reasonable efforts to avoid the cost in the first instance or absorb the cost*'. After considering all the available information we consider that these costs were not additional to E.ON Next's expected costs and were not unavoidable, as they could be absorbed into existing staffing costs. Since staff resources were reassigned to support the migration, we do not consider these costs were additional costs directly incurred as a result of acting as SoLR. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we do not consider it reasonable to allow E.ON Next to recover these costs and we have not approved the amount claimed.

## **IT Costs**

*Summary of minded-to position*

E.ON Next requested our consent to claim £101,469.00 for technological and IT costs incurred when migrating former customers of Hub to E.ON Next's customer platform. In our minded-to position, we noted that at the time of the customer migration from Hub, E.ON Next was migrating to a new customer platform across its business and that E.ON Next had not provided sufficient evidence to demonstrate that the costs claimed were additional to the costs of E.ON Next serving existing customers. We were minded to consent to the claim on the condition that E.ON Next provided further evidence within the consultation period that these costs were over and above costs E.ON Next would have incurred if these customers were acquired outside of the SoLR process, and through normal customer acquisition routes, and not related to the migration of existing E.ON Next customers to the new customer platform.

*Summary of consultation responses*

E.ON Next engaged in bilateral meetings with Ofgem throughout the consultation period, and submitted additional evidence for Ofgem to consider throughout the consultation period.

From their consultation response E.ON Next noted that we had requested further evidence to support the claim which E.ON Next have provided in the consultation period. They stated they expect our final decision to be in line with the minded-to.

*Rationale for decision:*

Having considered the additional evidence submitted by E.ON Next, we are satisfied with the evidence submitted, which shows that the costs incurred are additional to the cost of serving existing E.ON Next customers, are as a result of acting as a SoLR in an

emergency situation and are not recoverable in any other way. Furthermore, we are satisfied that the costs incurred are not directly related to the migration to existing E.ON Next customers to a new customer platform and are distinguishable from these wider organisational costs. E.ON Next provided information to support this. 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 E.ON Next to recover these costs and we have approved the full amount claimed.

## **Operational costs**

### Summary of minded-to position

E.ON Next requested our consent to claim £796.99 for operational costs incurred when onboarding former customers of Hub. E.ON Next used an outsourced contact centre to help them with customer service when migrating customers. E.ON Next submitted evidence, which included invoices of the costs involved and an explanatory narrative as to why the costs met our criteria. In our minded-to position, we were satisfied that these costs have been incurred as a direct result of E.ON Next acting in its role as a SoLR for former customers of Hub, are additional to those E.ON Next would have incurred in the course of its normal retail operations and are not recoverable in any other way. E.ON Next provided evidence to show that they had sought to minimise these costs by utilising existing contracts. We agreed with the principle that it would cost more to get new contractors in place and we also agreed that utilising existing contracts would not cause any disruption to existing customers.

### Summary of consultation responses

E.ON Next engaged in bilateral meetings with Ofgem throughout the consultation period, and provided additional evidence to support their claim and a reasoned explanatory narrative.

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

### Rationale for decision:

Having reviewed the evidence E.ON Next submitted to support their claim and a reasoned explanatory narrative, we are satisfied that these costs are additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable and efficient. 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 E.ON Next to recover these costs and we have approved the full amount claimed.

## Cost category: Working capital

The decision on last resort levy claims true-up process<sup>18</sup> set out the requirement for suppliers to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and was the best possible rate they could achieve given their individual circumstances.

### Decision

E.ON Next claimed £152,459.34 for the cost of working capital, followed by a revised claim totalling £145,273.06. We consider that the revised claim amount is consistent with our criteria.

We have consented to E.ON Next claiming up to **£145,273.06** as part of a LRSP claim.

*Table 4: Summary of claims and decision for working capital*

Item	Cost	Claim	Revised claim	Minded-to deductions	Decision on deductions	Decision on this claim
3	Working capital	£152,459.34	£145,273.06	£0.00	£0.00	£145,273.06

### Summary of minded-to position

E.ON Next's LRSP claim includes £152,459.34 for the cost of working capital. The calculation included actual costs incurred and the timescale for the recovery of those costs, as set out in our published decision on the last resort levy claims true-up process.

We noted in our minded-to position that while E.ON Next has submitted evidence for their proposed rate of interest, which we believe is reasonable when compared against the range of rates secured for other suppliers' initial claims, we did not initially receive sufficiently detailed evidence from E.ON Next that would allow us to undertake a quantitative assessment of their methodology and calculations. We were therefore minded-to, in principle, allow the claim, dependent on the submission of sufficient evidence and upon the recalculation and resubmission of the working capital claim following deductions in other cost categories in our minded-to position. As noted in our minded-to letter, our minded-to decision as to a reasonable rate of interest on working capital in this case has been taken considering our criteria for these SoLR levy claims and what we consider to be reasonable and appropriate in all these circumstances and for these purposes only. Our decision on the reasonableness of the rate applied by E.ON Next 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.

<sup>18</sup> <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

### Summary of consultation responses

Ofgem thank suppliers and consumer groups for responding to our consultation, and for the active engagement that they have had with the consultation process, and Ofgem during this period. We did not receive any specific comments on the methodology of our minded-to position consultation from E.ON Next in relation to working capital costs for this claim.

### Resubmission of evidence

In our minded-to letter we stated that working capital may only be claimed on costs that meet our criteria for assessing claims. 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 £152,459.34 was subject to E.ON Next 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 E.ON Next 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 stated our expectation that E.ON Next should follow the same methodology, and apply the same rate, as their 7th October submission, and to clearly set out which costs have been reduced or removed. We also asked that E.ON Next 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 E.ON Next.

Following E.ON Next's submission of a revised working capital claim, taking into account the deductions in our minded-to position and revised uncashed cheque amounts, we consider that the revised claim is consistent with our criteria, and our decision is to consent to the recovery of these costs.

### Decision

In our minded-to documents, Ofgem stated that in principle we were minded-to allow the claim for working capital costs provided that further satisfactory evidence is submitted to us.

Upon receiving further evidence from E.ON Next on their methodology and calculations, Ofgem assessed this against our overall criteria, including reviewing commitments made by E.ON Next when they were appointed as SoLR, and we believe that the claim is reasonable and justified, as well as the proposed rate of interest being reasonable. This decision on acceptableness of the rate applied to E.ON Next is relevant only in this case, and for these purposes 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. Therefore, we are proceeding with the decision that we proposed in our minded-to position, to approve a LRSP claim of **£145,273.06** for working capital

## **Recovery of LRSP claim**

**The Office of Gas and Electricity Markets**

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

[www.ofgem.gov.uk](http://www.ofgem.gov.uk)



E.ON Next 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**