

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

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

20 October 2023

Dear Colleague

### **Last Resort Supply Payment Claim from EDF Energy Limited**

On 7 September 2023, EDF Energy Limited (“EDF”) gave notice to Ofgem of its claim for a Last Resort Supply Payment (LRSP) in relation to acting as Supplier of Last Resort (SoLR) to customers of the former Utility Point Limited (“Utility Point”).

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

This letter sets out the reasons why we are minded-to consent to EDF claiming a LRSP of up to **£3,451,160.67**.

We are minded-to consent to EDF making a claim for costs incurred in complying with a Last Resort Supply Direction<sup>1</sup> relating to:

- Additional wholesale costs incurred as a result of commitments to supply energy to SoLR customers;
- protecting the credit balances owed to former customers of Utility Point;
- financing costs incurred on becoming a SoLR;
- other costs reasonably incurred on becoming a SoLR.

During winter 2021/22 we introduced a number of temporary changes to the LRSP claim process, which were designed to ensure that the SoLR process continues to protect consumers in volatile market conditions. This included the temporary introduction of a faster, multiple-claim levy process, which was intended to reduce the time taken for suppliers to submit claims and for us to make decisions on those claims. Our policy on assessing further claims under this temporary multiple-claim process was published on 21 September 2022<sup>2</sup>. On 25 May 2023 we published a further consultation on whether to end or continue the temporary multiple-claim process. In the consultation decision, published on 24 August 2023, we set out our decision to maintain the temporary process until at least

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<sup>1</sup> [Direction to Appoint EDF Energy Customers Limited as Electricity Supplier of Last Resort](#) and [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort](#)

<sup>2</sup> [Decision \(ofgem.gov.uk\)](#)

after winter 2023/24, at which point we would again review market conditions and consult on whether the temporary process should be ended.<sup>3</sup>

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

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

In addition, before we make our final decision, we will conduct an additional assurance process in respect of the calculations contained in our minded-to position, the results of which may also be reflected in our final decision.

We expect to make our final decision in mid-December 2023.

## **Background**

### *The SoLR process*

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

It is Ofgem's statutory duty to protect customers' interests when suppliers fail. When a supplier fails, our focus is to ensure continuity of supply for its customers and to minimise wider negative impacts on the market.

Ofgem can ensure continuity of supply to the failed supplier's customers and minimise these wider negative effects by appointing a SoLR, which is issued with a Last Resort Supply Direction requiring it to supply the failed supplier's customers at very short notice<sup>4</sup>.

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<sup>3</sup> [Decision on ending the temporary Last Resort Supply Payment claim process | Ofgem](#)

<sup>4</sup> The obligation for a supplier to comply with a LRSD derives from standard licence condition 8 of each supplier's gas and electricity supply licences and is intended to ensure a universal service for Great British energy consumers (for further information on this universal service, see Articles 3(3) of the EU Directives 2009/72/EC and 2009/73/EC).

## Failed Supplier event

On 17 September 2021, we appointed EDF as the SoLR<sup>5</sup> for Utility Point gas<sup>6</sup> and electricity<sup>7</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 EDF as the SoLR to those customers in our decision letter published on 23 June 2022<sup>8</sup>.

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

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

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

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

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

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

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

The multiple-claims process involves SoLRs submitting an 'initial claim' for costs faced in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. Each SoLR entered a True-up Agreement with Ofgem to support this process. The True-up Agreements provide for the initial claims to be followed by an additional claim (or claims) in accordance with SLC 9. We refer to these additional claims as either a Subsequent claim or a final True-up claim. The true-up process is intended to reconcile suppliers' initial and subsequent claims with actual costs incurred and determine

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<sup>5</sup> [Ofgem appoints EDF to take on customers of Utility Point](#)

<sup>6</sup> [Direction to appoint EDF as Gas Supplier of Last Resort](#)

<sup>7</sup> [Direction to appoint EDF as Electricity Supplier of Last Resort](#)

<sup>8</sup> [Appointment of EDF as Supplier of Last Resort](#)

any additional payments or repayments that should be made at the end of the multiple-claim process.

Following consultation, on 21 September 2022<sup>9</sup> we published our policy on assessing these true-up claims and it has been applied to subsequent and true-up claims under the True-up Agreements.

In December 2022, Ofgem consented to SoLRs making Subsequent levy claims totalling £405m on the condition that these claims be treated as Subsequent levy claims under the True-up Agreements, and that the Agreements remain in place until a valid final True-up claim is made. As a result, SoLRs that submitted claims in 2022 under their True-up Agreements were still required to submit to Ofgem a final True-up claim for each Last Resort Supply Direction in respect of which they have a True-up Agreement.

In May 2023, we set out in an open letter our expectations for SoLRs' final True-up claims following the LRSP claims that were approved in December 2022 under the temporary multiple claim process.<sup>10</sup>

Under Supplier 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 SLC 9.3.

Our process to reach our minded-to position included:

- a. A quantitative check of EDF methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by EDF and ensuring these costs were in line with commitments EDF made at the time of its SoLR appointment;
  - b. A true-up and cross check of any evidence that may result in a change to the initial claim or subsequent claim made by the SoLR;
  - c. Undertaking validation of some assumptions with other data sources, where appropriate; and
  - d. A qualitative and quantitative assessment of the claim for costs related to credit balances, wholesale, financing and other costs in accordance with the relevant licence conditions and/or 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.

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<sup>9</sup> [Decision \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/decision)

<sup>10</sup> [Update on the last resort claim process for 2023 | Ofgem](#)

- **Economic:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.

### EDF claim

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

The initial claim(s) were consented to on 17 December 2021<sup>11</sup> and a subsequent claim was consented to on 20 December 2022.<sup>12</sup> Consistent with the terms of that consent and the True-up Agreement between the SoLR and Ofgem, we have taken those claims into consideration in reaching our minded-to position on this claim.

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

Based on the information available and consideration of the circumstances in which the claims for LSRPs by EDF were consented to, and in accordance with the True-up Agreement in relation to customers of the former Utility Point, Ofgem is minded-to consent to EDF claiming a LRSP of up to £3,451,160.67.

Under the Supplier SLCs we are required to consider on a case-by-case basis whether in the circumstances it is appropriate for a SoLR to make a claim for a LRSP. We have set out below our reasons for our minded-to position for this case. This should not be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances of the particular case.

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

<b>Item</b>	<b>Cost</b>	<b>Initial Claim Approved</b>	<b>Subsequent Claim Approved in 2022</b>	<b>This Claim as Submitted</b>	<b>Minded-to position on This Claim</b>
1	Wholesale	£152,080,979.69	£44,326,844.00	£699,414.17	£699,414.17
2	Credit Balances	£0	£32,844,848.10	£53,564.97	£53,564.97
3	Other Costs	£2,478,111.09	£3,400,752.84	£2,309,627.77	£2,309,627.77
4	Working Capital	£9,151,752.13	£8,225,432.14	£388,553.76	£388,553.76
	Total			£3,451,160.67	£3,451,160.67

<sup>11</sup> Our Notice of Reasons for granting consent to the initial claim was published on 23 June 2022: [Faster SoLR levy process: Notice of Reasons for Last Resort Supply Payment \(LRSP\) claims | Ofgem](#)

<sup>12</sup> [Decision on last resort levy true-up claims | Ofgem](#)

## Reasons for our minded-to decision

### Cost category: Wholesale

#### Retrospective backwardation

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

These allowances would be recovered from all customers, SoLR and non-SoLR. Given this, we considered that the revenues collected by suppliers under this allowance should be deducted from claims made by SoLRs in relation to the costs of hedging SoLR customers' demand subsequent to it taking on the customers of the failed supplier. In other words, the costs of purchasing wholesale energy for these customers should be reduced because suppliers were allowed to recover approximately £14 per customer through higher bills in later periods.

We calculated the relevant deduction for each supplier in our decision in the subsequent claim (our December 2022 decision), 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.

Given that the retrospective backwardation deductions included in the decision on the subsequent claim were based on our best view of information submitted by the supplier at the time, we provided SoLRs an opportunity to submit evidence in September 2023 to substantiate actual allowances received.

#### This claim

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

- Assess the actual retrospective backwardation allowances received by SoLRs from April 2022 to September 2023 based on actual demand (MWh) and updated allowance numbers (£/MWh), adjusted for actual UIG and line losses.
- Assess the claim value for retrospective backwardation by calculating the difference between the deduction amount published in the decision on the subsequent claim and the actual retrospective backwardation allowances received by SoLRs.
- Assess the actual retrospective shaping allowances received by SoLRs from April 2022 to March 2023 based on actual demand (MWh) and updated allowance numbers (£/MWh), adjusted for actual UIG and line losses.
- Assess the claim value for retrospective shaping by calculating the difference between the deduction amount published in the decision on the subsequent claim (including the amount already included by SoLRs in their claims) and the actual retrospective shaping allowances received by SoLRs.

### Decision

This claim from EDF includes £699,414.17 for retrospective backwardation. Following the above assessment process, we are minded to consent to the following claim, subject to EDF providing further evidence during the minded-to consultation period regarding the underlying calculations and methodology used for the backwardation claim amount:

- We expect EDF to submit further evidence with actual demand values for any forecasts that were submitted in September 2023. We also expect EDF to submit further evidence regarding how it arrived at its claim amount of £699,414.17 for retrospective backwardation.

The proposed total claim is £699,414.17. When taking into account the amount approved for the wholesale claim in the decision on the subsequent claim, the total wholesale costs approved to date would be £197,107,237.86.

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

<b>Item</b>	<b>Cost</b>	<b>Initial Claim Approved</b>	<b>Subsequent Claim Approved in 2022</b>	<b>This Claim as Submitted</b>	<b>Minded-to position on This Claim</b>
1	Wholesale	£152,080,979.69	£44,326,844.00	£699,414.17	£699,414.17

### **Cost category: Credit balances**

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

### Decision

EDF' claim includes £53,564.97 for credit balances repaid to date to former customers of Utility Point.

We consider that the claimed amount is consistent with the definition of Customer Credit Balances in SLC 9.4(b) and we minded-to consent to the claim. We have set out our rationale for this below.

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

<b>Item</b>	<b>Cost</b>	<b>Initial Claim Approved</b>	<b>Subsequent Claim Approved in 2022</b>	<b>This Claim as Submitted</b>	<b>Minded-to position on This Claim</b>
2	Credit Balances	£0	£32,844,848.10	£53,564.97	£53,564.97

### Rationale for decision

As part of our assessment of the closed account credit balances, our position is that costs incurred by SoLRs as a result of credit balance refunds being made by cheque should only be recovered by the supplier through the levy once that cheque is cashed. This is to avoid consumers bearing the cost of compensation for credit balances that yet to be received by

customers of the failed supplier and to ensure the SoLR does not benefit from a situation where some cheques are never cashed. EDF has submitted evidence as part of its claim demonstrating instances where previously disallowed uncashed cheques have since been cashed by former customers of Utility Point.

We are minded-to allow this part of the claim.

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

**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 decision on the last resort levy claims true-up process<sup>13</sup> to assess whether it is appropriate for these costs to be recovered through a LRSP. The other costs EDF has claimed are detailed below alongside our minded-to position.

Decision

EDF’s claim includes £2,309,627.77 for other costs incurred when acting as SoLR for former customers of Utility Point. We consider that the claimed amount is consistent with our assessment criteria and we are minded-to consent to the claim. We have set out our rationale for this below.

Table 4: Summary of claim for other costs

Item	Cost	Initial Claim Approved	Subsequent Claim Approved in 2022	This Claim as Submitted	Minded-to position on This Claim
3	Other Costs	£2,478,111.09	£3,400,752.84	£2,309,627.77	£2,309,627.77

Rationale for decision

Administrator withheld funds and legal fees

EDF is requesting our permission to claim £2,116,310.13 for administrator withheld funds and £193,317.64 in legal fees associated with legal action taken to attempt to recover those funds through the courts. The administrator withheld funds represent direct debits collected from Utility Point’s customers by a third-party debit provider after Utility Point failed (that is, after EDF was appointed). In previous SoLR events, such payments have been held by the debit provider and, once final billing was completed, funds collected pre-SoLR would go to the administrator and funds collected post-SoLR to the appointed SoLR. In this case, at the request of the administrator of Utility Point, certain funds collected post-

<sup>13</sup> [Decision \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

SoLR appointment were released to the administrator. These funds are separate to those EDF has claimed for in its credit balance claim. EDF has ensured that customers where direct debits collected post-SoLR appointment have had the correct credit balance applied.

EDF has taken action to recover the funds collected in respect of energy supplied after it was appointed as SoLR. Firstly, through engagement with the administrator of Utility Point. The claim for legal fees comes as EDF were subsequently party to legal action to recover the funds. EDF is claiming its share of the legal fees.

EDF made an LRSP claim for the administrator withheld funds and legal costs in October 2022. We did not consent to EDF claiming them at that time because of the possibility that they may have been recovered, through legal action, from the administrator for Utility Point.

EDF supplied evidence to support their claim including invoices for legal fees, letters and emails of communication with the administrator for the administrator withheld funds and strong supporting narrative as to why these costs meet our criteria. EDF has also confirmed that these funds are separate from claims for honouring customer credit balances that existed at the time it was appointed to act as SoLR for Utility Point.

We have considered whether the costs EDF is seeking to claim are otherwise unrecoverable, including whether EDF is able to recover some of the customer payments collected after it was appointed through the ongoing administration process for Utility Point. EDF has confirmed it has submitted a creditor claim to the administrators of Utility Point but at present has been given no indication of what it might expect to receive from the administration process or the expected timescales.

The administrator withheld funds and associated legal costs have been incurred as a result of acting as the SoLR for former customers of Utility Point, are additional to those that it would have faced in the course of its normal retail operations and have not been recoverable in any other way. We propose to make our final decision on EDF's claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. As a result, we consider that the claimed amount for administrator withheld funds and associated legal fees is consistent with our criteria and, in the circumstances of this particular case, we are minded-to consent to the claim for administrator withheld funds and associated legal fees. However, consent would be conditional on repayment of any amount recovered from the administration of Utility Point.

### **Cost category: Working capital**

Our published policy decision on last resort levy claims True-up process<sup>14</sup> sets out the requirements for SoLRs seeking to claim financing or working capital costs. It also sets out the requirement for SoLRs to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

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

## Decision

EDF's claim includes £388,553.76 for the cost of working capital. We consider that the claimed amount is consistent with our assessment criteria and we are minded-to consent to the claim. We have set out our rationale for this below.

*Table 5: Summary of claims for working capital*

<b>Item</b>	<b>Cost</b>	<b>Initial Claim Approved</b>	<b>Subsequent Claim Approved</b>	<b>True-up Claim Submitted</b>	<b>Minded-to position on True-up Claim</b>
4	Working Capital	£9,151,752.13	£8,225,432.14	£388,553.76	£388,553.76

## Rationale for decision

When a SoLR is appointed, it incurs costs associated with taking on the new customers which need to be financed. There are a range of ways in which a SoLR can finance this activity. Regardless of the finance option used, there is a cost in doing so. Under Supplier SLC 9.4(a) a SoLR may claim total costs reasonably incurred in supplying premises under the Last Resort Supply Direction, which includes the interest on working capital.

EDF submitted a claim for the cost of working capital amounting to £388,553.76, supported by evidence that detailed its expenditure relevant to the claim as well as justification for claiming interest at the specified rate. We consider it appropriate for a SoLR to claim for the cost of working capital used for the purposes of carrying out the SoLR role. EDF's claim for the cost of working capital is based on applying a specified interest rate to the amount that it has claimed for wholesale cost and withheld administrator funds reasonably incurred as a result of acting as SoLR. Through assessing its supporting evidence and rationale, we are satisfied that the rate EDF has applied meets our criteria for assessing whether costs are reasonably incurred, in accordance with SLC 9.4(a). Our 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.

In the preceding sections we have outlined that we consider the costs claimed for wholesale (backwardation) and other costs meet our overarching criteria for allowable levy claims and are and otherwise unrecoverable costs reasonably incurred as a direct result of acting as a SoLR for Utility Point. As a result of those assessments, and our assessment of the evidence submitted to support its claim for associated working capital costs, we are minded-to consent to EDF's request to claim £388,553.76 for working capital costs.

However, working capital costs may only be claimed on costs that meet our overall criteria for LRSP claims. In light of our minded-to position requesting further evidence to support EDF's wholesale costs claim, we note that our final decision on working capital may be recalculated accordingly.

## **Next steps**

The purpose of this letter is to provide the SoLR and interested parties with an opportunity to make any representations to us, ahead of us making our final decision on this LRSP

claim. We invite any representations by 17 November 2023. Responses should be emailed<sup>15</sup> to [solrlevyteam@ofgem.gov.uk](mailto:solrlevyteam@ofgem.gov.uk).

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

We will take into account all relevant information, including any representations we receive, and the results of our internal assurance of our assessment process in reaching our final decision on EDF's claim. We expect to make our final decision in mid-December 2023.

Yours faithfully,

**Rohan Churm**  
**Director, Financial Resilience and Controls**

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<sup>15</sup> Although we prefer responses in electronic format, responses can be posted to the address below.