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14 December 2023

Dear Colleague

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

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).

On 20 October 2023 Ofgem published a minded-to position in relation to that claim.<sup>1</sup> Summaries of the responses to the minded-to position consultation, including any relevant general representations made in response to the consultations on other SoLR claims, can be found within this document.

In addition, we undertook further 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 14 December 2023 Ofgem consented to EDF making a LRSP claim of up to **£3,630,953.26**.

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

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

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<sup>1</sup> [Last Resort Supply Payment claims minded-to positions 2023 | Ofgem](#)

We have assessed this LRSP claim in accordance with our policy published 21 September 2022,<sup>2</sup> and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.<sup>3</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>4</sup>, the public sector equality duty<sup>5</sup> relevant licence provisions, and the particular circumstances of the case.

As part of the temporary multiple-claim levy process introduced in December 2021, EDF entered into a True-up Agreement with Ofgem. Under the True-up Agreement between EDF and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim.

We set out in the consultation in relation to this claim that we were minded to consider this claim to be a Subsequent Levy Claim under the True-up Agreement. Following this consultation, we consider that this remains a reasonable approach. Accordingly, Ofgem has made its consent to this LRSP claim conditional on confirmation by EDF that this claim is a Subsequent Levy Claim for the purposes of the True-up Agreement, and that the terms of the True-up Agreement continue to apply. This 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 decision, the final True-up Claim required under the True-up Agreement will be made next year or later.

Nothing in this decision should be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances.

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

## **Background**

### *The SoLR process*

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

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>6</sup>

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<sup>2</sup> <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

<sup>3</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>4</sup> s4AA Gas Act 1986 and s3A Electricity Act 1989

<sup>5</sup> *Equality Act 2010* Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/15/part_11)

<sup>6</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>7</sup> for Utility Point gas<sup>8</sup> and electricity<sup>9</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>10</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 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.

### 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 incurred in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. SoLRs may then follow this claim with 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. SoLRs entered into a 'True-up Agreement' with Ofgem to support the faster process. The Initial, Subsequent and True-up claim consents are conditional on SoLRs meeting the requirements of the True-up Agreement. The true-up

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<sup>7</sup> [Ofgem appoints EDF to take on customers of Utility Point](#)

<sup>8</sup> [Direction to appoint EDF as Gas Supplier of Last Resort](#)

<sup>9</sup> [Direction to appoint EDF as Electricity Supplier of Last Resort](#)

<sup>10</sup> [Appointment of EDF as Supplier of Last Resort](#)

process is intended to reconcile suppliers' initial and subsequent claims with actual costs incurred and determine any additional payments or repayments that should be made.

Following consultation, on 21 September 2022<sup>11</sup> we published our policy on our approach to these claims. In December 2022, Ofgem consented to SoLRs making LRSP 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.

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>12</sup>

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

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

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

In reaching its decision Ofgem carried out:

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

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<sup>11</sup> [Decision \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/decision)

<sup>12</sup> [Update on the last resort claim process for 2023 | Ofgem](#)

- **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.

### 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 was consented to on 17 December 2021.<sup>13</sup> A Subsequent claim was consented to on 20 December 2022.<sup>14</sup> Consistent with the terms of the LRSP consents and the True-up Agreement between the SoLR and Ofgem, we have taken those claims into consideration in reaching our decision on this claim.

### Summary of decision

Ofgem has consented to EDF claiming a LRSP of up to £3,630,953.26.

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 of initial claim, subsequent claim, true-up claim minded-to position and final decision on deductions and amounts.*

Item	Cost	Initial Claim Approved	Subsequent Claim Approved	This claim	Minded-to position	Decision on this claim
1	Wholesale	£152,080,979.69	£44,326,844.00	£699,414.17	£699,414.17	£868,367.95
2	Credit balances	£0	£32,844,848.10	£53,564.97	£53,564.97	£53,564.97
3	Working capital	£9,151,752.13	£8,225,432.14	£388,553.76	£388,553.76	£399,392.57
4	Other costs – Administrator withheld funds	£N/a	£0	£2,309,627.77	£2,309,627.77	£2,309,627.77
<b>Total:</b>				<b>£3,451,160.67</b>	<b>£3,451,160.67</b>	<b>£3,630,953.26</b>

<sup>13</sup> [Faster SoLR levy process: consents to Last Resort Supply Payments | Ofgem](#)

<sup>14</sup> <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-true-claims>

## Responses to consultation

We received two responses to our minded-to consultation, one from a supplier and one confidential response that was not specifically related to our minded-to positions.

The supplier supported the minded-to positions on its claims and flagged that updated data had been submitted as requested in our minded-to positions. The supplier also queried how we will treat claims for customer credit balances refunded to customers by cheques that remain unpresented - for example, cheques that have not been cashed after five years from issue.

In response to this query, we note that further LRSP claims (subsequent claims and true-up claims) can continue to be made by a SoLR as long as the True-up Agreement remains open, which may be beyond the default five-year limitation period in SLC 9.3. Where customer credit balance cheques remain uncashed, we encourage SoLRs to be proactive in following up with customers where appropriate.

## 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. We recognise 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.

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. We consider it to be in the interest of current and future consumers to allow this claim to ensure that the 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: Wholesale**

In our decision in December 2022 on EDF'S claim for Utility Point, we made deductions for amounts recovered through retrospective backwardation. As these deductions were based on our best view of information submitted by EDF at the time, we provided SoLRs an opportunity to submit evidence in September 2023 to substantiate the actual value of allowances received.

As these allowances were recovered from customers until the end of September 2023, during the minded-to consultation period we invited SoLRs to provide actual data in instances where forecasts had been submitted in September 2023.

This data was used to calculate actual retrospective allowances received by EDF, calculated by multiplying outturn demand on a quarterly basis from Q2 2022 to Q3 2023 with the relevant £/MWh retrospective backwardation allowances for each quarter, adjusted for UIG and line losses.

In the claim we analysed the information provided by EDF to:

- Assess whether costs being claimed are consistent with our criteria (set out earlier in this letter);
- Assess the accuracy of the submitted data by reviewing evidence provided by EDF;
- Assess the overall changes to the wholesale claim amount caused by changes to the retrospective backwardation claims.

### Decision

EDF's first submission in September 2023 contained a claim for £699,414.17 for wholesale costs in relation to Utility Point. Due to updated data and methodology, EDF's claim was subsequently revised to £904,544.97.

Following the above assessments, we consider that the claimed amount is not fully consistent with our criteria, and we have decided to consent to EDF making a claim for the following:

- A claim of £868,367.95 for retrospective backwardation.

The total consented to for this claim is £868,367.95. When taking into account the amount approved for the wholesale claim in the December 2022 Decision, the total wholesale costs approved to date will be £197,276,191.64.

*Table 2: Summary of claims and decision on wholesale costs*

Item	Cost	Initial Claim Approved	Subsequent Claim Approved	This Claim as Submitted	Minded-to Position on This Claim	Decision on This Claim
1	Wholesale	£152,080,979.69	£44,326,844.00			
	Retrospective backwardation			£699,414.17	£699,414.17	£868,367.95
	Total					£868,367.95

### Retrospective Backwardation

#### Summary of minded-to position

In February 2022 Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover the systematic and unrecoverable backwardation costs 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 Utility Point in our decision in the subsequent claim from EDF (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 EDF's claim for Utility Point, were based on our best view of information submitted by the supplier at the time, we provided EDF an opportunity to submit evidence in September 2023 to substantiate actual allowances received.

EDF submitted a claim of £699,414.17 for retrospective backwardation in September 2023, as part of its working capital submission. We asked EDF to provide some more narrative and explanation for its calculation. EDF provided this, along with a revised claim, during the minded-to consultation period.

As we told SoLRs they could submit August and September 2023 numbers as forecasts, during the minded-to consultation period we asked EDF to confirm if the figures it submitted in its claim were final.

#### Summary of consultation responses

EDF responded to our minded-to position, stating that it was supportive in principle on adjustments made for retrospective allowances subject to clarification on the methodology used.

#### Reasons for decision

During the minded-to consultation period, EDF resubmitted its calculation for its retrospective allowances claim, along with detailed workings and supporting narrative. The claim increased from £699,414.17 to £904,544.97 as a result of this updated data.

In its resubmission, EDF updated customer demand to meter-point level and used a £/megawatt hour (MWh) allowance that was unadjusted for unidentified gas and line losses. As part of our analysis, we noticed that EDF had split the February 2022 allowance evenly across electricity and gas accounts. This assumed a total allowance of £4 per gas account and £4 per electricity account.

For our decision, we have recalculated the claimed amount to be consistent with our approach with other suppliers. This approach takes customer demand at National Balancing Point (NBP) level and uses a £/MWh allowance that accounts for unidentified gas and line losses. To do this, we requested EDF resubmit its customer demand at NBP level, which it provided. Consistent with the other claims, we have used a split of £3.75 per gas account and £4.39 per electricity account to calculate the allowance, as opposed to an even £4 split. This methodology results in an updated claim value of £868,367.95.

We have therefore decided to consent to EDF claiming £868,367.95<sup>15</sup> for retrospective backwardation, which is the difference between the amount of £3,532,777.09 we deducted in our December 2022 decision for retrospective backwardation allowances and the amount of £2,664,409.13 actually received by EDF for retrospective backwardation allowances between April 2022 and September 2023.

### **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'. Our published guidance sets out circumstances in which we may consider it appropriate to approve a claim for the amount a SoLR spends compensating customers who had a positive credit balance with a failed supplier.

### Decision

EDF claimed £53,564.97 in compensation to ex-customers of Utility Point for their credit balances. We consider that, consistent with SLC 9.4(b), EDF has made payments to customers for credit balances that they held with Utility Point. We have consented to EDF claiming £53,564.97 amount as part of a LRSP.

*Table 3: Summary of claims and decision for credit balances*

<b>Item</b>	<b>Cost</b>	<b>Initial Claim</b>	<b>Subsequent Claim</b>	<b>This claim</b>	<b>Minded-to position</b>	<b>Decision on this claim</b>
2	Credit balances	£0	£32,844,848.10	£53,564.97	£53,564.97	£53,564.97

### Summary of minded-to position

EDF requested our consent to claim £53,564.97 through the LRSP for the cost of refunding credit balances of customers and former customers held at the time the Utility Point direction was issued.

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

Where EDF had compensated customers for credit balances by sending cheques, we were minded-to allow EDF to claim the value of the cheques that had been cashed.

In our minded-to-position we considered whether the amount EDF is seeking to claim for credit balances is 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, 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

<sup>15</sup> The total amount consented to has been rounded to two decimal places. The inputs used were unrounded, although have been represented here as rounded to two decimal places. When using the rounded inputs shown here, there is therefore a slight discrepancy with the total consented to.

decision on the claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. Therefore, we were minded-to approve this element of the claim, subject to the outcome of the Utility Point liquidation process.

### Summary of consultation responses

We received one consultation response from EDF, though it related to a more general policy point rather than our-minded position.

EDF assumed that any outstanding amounts relating to uncashed cheques would no longer be claimable via the SoLR levy after five years and asked what should happen after this period.

### Reasons for decision

EDF requested our consent to recover £53,564.97 for the cost of refunding credit balances to some former customers of Utility Point. We are satisfied that the claim is for cheques, sent to customers to compensate them for credit balances, that have been cashed. As explained in our minded-to position, we do 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. 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.

We have decided to consent to a LRSP claim of £53,564.97 for sums paid to compensate customers for credit balances.

In relation to EDF's general policy point, we note that further LRSP claims (subsequent claims and true-up claims) can continue to be made by a SoLR as long as the True-up Agreement remains open, which may be beyond the default five-year limitation period in SLC 9.3. Where customer credit balance cheques remain uncashed, we encourage SoLRs to be proactive in following up with customers where appropriate.

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

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.

Our published policy decision on last resort levy claims True-up process<sup>16</sup> sets out the requirements for SoLRs seeking to claim financing or working capital costs.

### Decision

EDF sought to claim £388,553.76 for the cost of working capital. The calculation included costs incurred as a result of acting as the SoLR and the timescale for the recovery of those costs as set out in our published policy decision.

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<sup>16</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

Following the recalculation of the wholesale cost element, as set out in the wholesale section above, our decision is to allow EDF to claim up to £399,392.57 for working capital costs. We set out our rationale for this decision below.

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.

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

<b>Item</b>	<b>Cost</b>	<b>Initial Claim Approved</b>	<b>Subsequent Claim Approved</b>	<b>This claim</b>	<b>Minded-to position</b>	<b>Decision on this claim</b>
3	Working capital	£9,151,752.13	£8,225,432.14	£388,553.76	£388,553.76	£399,392.57

#### Summary of minded-to position

EDF requested our permission to claim an amount of £388,553.76 for the cost of working capital. The claim was supported by evidence that detailed expenditure relevant to the claim, as well as justification for claiming interest at the specified rate.

EDF's claim for the cost of working capital was based on applying a specified interest rate to the amount that it has claimed for wholesale costs and other costs reasonably incurred as a result of acting as SoLR.

After assessing its supporting evidence and rationale, we were minded-to consider that the claimed costs incorporated into the working capital calculation met our criteria for assessing whether costs are reasonably incurred in accordance with SLC 9.4(a), and that the rate EDF has applied was reasonable in this circumstance and for this purpose only. As a result of those assessments, we were minded-to consent to EDF's requested claim amount. However, we noted in our minded-to position that we expected EDF to provide updated evidence to support its wholesale costs claimed, and that this would impact on our final decision regarding working capital costs.

#### Summary of consultation responses

We received one consultation response from EDF in relation to this claim, which was supportive of our minded-to position. No other responses were received in respect to the working capital element of this claim, or any working capital elements of minded-to positions we consulted in the same time period.

#### Rationale for decision

Based upon our assessment of the evidence provided we have decided that the rate at which working capital has been calculated, and the methodology followed, is consistent with our criteria and reasonable in these cases and for these purposes only.

We have also determined in the preceding sections that the costs claimed for wholesale (backwardation) and other (administrator withheld funds) costs meet our overarching assessment criteria, and are reasonable costs incurred as a direct result of acting as a SoLR. As a result, we have determined that the inclusion of these costs in the

calculations for the working capital claim is reasonable. Our decision on the reasonableness of the rate applied by EDF applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

Following the submission of updated evidence for the wholesale (backwardation) claim element, we have recalculated the working capital cost element appropriately, using the working capital model submitted by EDF as part of its claim. The costs that we are approving as part of the wholesale element of EDF's claim for Utility Point has increased, as set out in the wholesale section of this decision letter above. As a result of this change in the wholesale costs being claimed, we have decided to allow EDF to claim for up to £399,392.57 in working capital costs for this 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 to assess whether it is appropriate for these costs to be recovered through a LRSP. The other costs EDF has claimed are detailed below.

#### Decision

EDF's claim includes £2,309,627.77 for other costs incurred when acting as SoLR for former customers of Utility Point. The cost claimed is for administrator withheld funds, which are direct debits for which payment by customers has been withheld by the administrator for Utility Point, and legal costs incurred in seeking to recover those payments. We consider that the claimed amount is consistent with our assessment criteria, and we consent to this portion of the claim. We have set out our rationale for this below.

*Table 5: Summary of claim for other costs*

Item	Cost	Initial Claim	Subsequent Claim	This claim	Minded-to position	Decision on this claim
4	Other costs – Administrator withheld funds	£N/a	£0	£2,309,627.77	£2,309,627.77	£2,309,627.77

### **Administrator withheld funds**

#### Summary of minded-to position

EDF requested our consent 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.

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 have been paid

to the administrator and funds collected post-SoLR have been paid to the appointed SoLR. In this case, at the request of the administrator of Utility Point, some funds collected through customer direct debit payments post-SoLR appointment were released to the administrator.

EDF has acted, including by taking legal action, to attempt to recover money paid by customers in respect of energy supplied after it was appointed as SoLR. EDF supplied evidence to support its claim including invoices for legal fees, letters and emails specifically about the administrator withheld funds and strong supporting narrative as to why these costs meet our criteria. Our minded-to position was to accept that EDF could recover these funds.

### Summary of consultation responses

In its formal consultation response, EDF did not comment on our minded-to position for other costs and the claim for administrator withheld funds. We did not receive any responses referencing EDF's request to claim for a LRSP for administrator withheld funds.

### Rationale for decision

EDF has provided sufficient evidence to satisfy us that 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. On the evidence provided we are satisfied that those costs are additional to those that it would have incurred in the course of its normal retail operations and have not been recoverable in any other way. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow EDF to recover these costs and we have approved the full amount claimed. However, consent is conditional on repayment of any amount recovered from the administration of Utility Point.

### **Recovery of LRSP claim**

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

Yours faithfully,

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