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14 December 2023

Dear Colleague

**Termination of the True-up Agreement between ScottishPower Energy Retail Limited and Ofgem in relation to Entice Energy Supply Limited and Orbit Energy Limited**

As part of the faster multiple-claim levy process introduced by Ofgem in Winter 2021/22, ScottishPower Energy Retail Limited ("ScottishPower") entered into a True-up Agreement with Ofgem in respect of acting as Supplier of Last Resort (SoLR) to customers of the former Orbit Energy Limited ("Orbit") and the former Entice Energy Supply Limited ("Entice"). Under the True-up Agreement Subsequent Levy Claims and a final True-up Claim may be made following the Initial Levy Claim.

On 7 October 2022, ScottishPower submitted a claim for a Last Resort Supply Payment (LRSP) for Ofgem's consent under Supply Licence Standard Licence Condition (SLC) 9. ScottishPower sought to recover additional costs incurred in complying with a Last Resort Supply Directions to act as SoLR to customers of Orbit<sup>1</sup> and Entice.<sup>2</sup> On 4 November 2022 Ofgem published our minded-to positions in relation to these claims for consultation.<sup>3</sup> The claim for Orbit was subsequently withdrawn by ScottishPower.

On 7 September 2023, ScottishPower gave notice to Ofgem of its intention not to make a further claim for a LRSP in relation to acting as SoLR to customers of Entice and make a final True-up claim in accordance with the True-up Agreement between ScottishPower and Ofgem.

On 20 October 2023 Ofgem published two minded-to positions, one in relation to the claim for Entice and one in relation to the claim for Orbit.<sup>4</sup> These consultations set out

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

<sup>2</sup> [Decision to Appoint ScottishPower Energy Retail Limited as Gas Supplier of Last Resort to Entice Energy Supply Limited | Ofgem](#) and [Direction to Appoint ScottishPower Energy Retail Limited as Electricity Supplier of Last Resort to Simply Your Energy Limited | Ofgem](#)

<sup>3</sup> [https://www.ofgem.gov.uk/sites/default/files/2022-11/ScottishPower%20-%20SoLR%20levy%20true-up%20minded-to%20position%20-%20Orbit%20Energy\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/2022-11/ScottishPower%20-%20SoLR%20levy%20true-up%20minded-to%20position%20-%20Orbit%20Energy_0.pdf)

<sup>4</sup> [Last Resort Supply Payment claims minded-to positions 2023 | Ofgem](#)

that we were minded-to consider the 7 October 2022 claim for Orbit, and the 7 September 2023 claim for Entice as Valid Final Levy Claims for the purposes of the True-up Agreement. We received no responses to either consultation.

As there is only one True-up Agreement between ScottishPower and Ofgem, which relates to both Orbit and Entice, and as the purpose of this decision is to terminate that Agreement, we have decided to publish our reasons for both decisions together in this document.

In this letter we issue our notice of termination in accordance with clause 2 of the True-up Agreement between ScottishPower and Ofgem made on 27 January 2022. We also set out our reasons for considering the claims in relation to acting as SoLR for customers of Entice and Orbit, to be Final Valid Levy Claims for the purposes of the True-up Agreement, and for issuing this notice of termination.

## Decision

As part of the faster multiple-claim levy process introduced by Ofgem in Winter 2021/22, each of the SoLRs that received consent for an initial LRSP claim entered into a True-up Agreement with Ofgem. Under the True-up Agreement between ScottishPower and Ofgem in relation to Orbit and Entice, Subsequent Levy Claims and a final True-up Claim may be made following the Initial Levy Claim.

Although ScottishPower is not seeking further LRSPs for costs incurred from acting as a SoLR for Orbit or Entice, we were minded-to consider that the submissions made by ScottishPower on 7 October 2022 and 7 September 2023 meet the requirements for a final True-up claim set out in Clause 5 of the True-up Agreements. These requirements were reiterated to SoLRs in Ofgem's update letter on 25 May 2023.<sup>5</sup>

ScottishPower notified Ofgem of its intention to withdraw its claim for an additional LRSP in relation to Orbit and to voluntarily absorb the costs included in the claim submitted on 7 October 2022, and for which Ofgem had published its minded-to position for consultation on 4 November 2022.<sup>6</sup> However, in accordance with the temporary multi-claim process introduced in 2021, we have assessed the claim in its entirety (including the initial claim), using the audited evidence provided, to ensure that no overpayments have been made to ScottishPower.

In coming to our decision to terminate the Agreement, we have assessed the entirety of ScottishPower's claim for Orbit in accordance with our policy decision on the true-up process, published 21 September 2022<sup>7</sup>, and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.<sup>8</sup> In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the

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<sup>5</sup> [Update on the last resort claim process for 2023 | Ofgem](#)

<sup>6</sup> [https://www.ofgem.gov.uk/sites/default/files/2022-11/ScottishPower%20-%20SoLR%20levy%20true-up%20minded-to%20position%20-%20Orbit%20Energy\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/2022-11/ScottishPower%20-%20SoLR%20levy%20true-up%20minded-to%20position%20-%20Orbit%20Energy_0.pdf)

<sup>7</sup> <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

<sup>8</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)

interests of current and future energy consumers<sup>9</sup>, the public sector equality duty<sup>10</sup>, relevant licence provisions, and the particular circumstances of the case

Clause 2.2 of the True-up Agreements sets out that the Agreement will terminate on the earlier of the following:

- (a) Where any Valid True-up Amount is an Excess, the date upon which the SoLR has repaid in full the total of any Excess resulting from the True-ups of all Last Resort Supply Directions covered by this Deed;*
- (b) Where any Valid True-up Amount is a Deficit, the date of the last of the Valid Final Levy Claim(s) covered by this Deed; and*
- (c) The date of termination specified in any notice of termination of this Deed issued by the Authority.”*

Following our consideration of the information submitted by ScottishPower in relation to these claims, we have determined that they meet the requirements of a True-up claim under clause 5 of the True-up Agreement. However, as there is no relevant Excess to be repaid or Deficit to be recovered by ScottishPower for either claim, we have decided to terminate the True-up Agreement under the provision set out in Clause 2.2(c).

This decision letter is to be considered Ofgem’s Notice of Termination under the True-up Agreement. This means that the True-up Agreement in relation to the claims for Orbit and Entice will cease to have effect on the date of publication of this decision letter.

## **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>11</sup>

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<sup>9</sup> s4AA Gas Act 1986 and s3A Electricity Act 1989

<sup>10</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>11</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 28 November 2021 we appointed ScottishPower as the SoLR for Entice Energy Supply Limited gas<sup>12</sup> and electricity<sup>13</sup> customers. On 30 November 2021 we appointed ScottishPower as the SoLR for Orbit Energy Limited gas<sup>14</sup> and electricity<sup>15</sup> customers. This followed an appointment process aimed at getting the best deal for consumers after the companies announced they had ceased trading<sup>16</sup>. We outlined the material factors behind our decision to appoint ScottishPower as the SoLR to those customers in our decision letter published on 18 March 2022<sup>17</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.

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<sup>12</sup> [Decision to Appoint ScottishPower Energy Retail Limited as Gas Supplier of Last Resort to Entice Energy Supply Limited | Ofgem](#)

<sup>13</sup> [Direction to Appoint ScottishPower Energy Retail Limited as Electricity Supplier of Last Resort to Simply Your Energy Limited | Ofgem](#)

<sup>14</sup> [Decision to Appoint ScottishPower Energy Retail Limited as Gas Supplier of Last Resort to Orbit Energy Limited | Ofgem](#)

<sup>15</sup> [Decision to Appoint ScottishPower Energy Retail Limited as Electricity Supplier of Last Resort to Orbit Energy Limited | Ofgem](#)

<sup>16</sup> [Ofgem appoints Scottish Power to take on customers of Entice Energy and Orbit Energy | Ofgem](#)

<sup>17</sup> [Appointment of ScottishPower Energy Retail Ltd as Supplier of Last Resort for Entice Energy Supply Ltd and Simply Your Energy Ltd | Ofgem](#) and [Appointment of Scottish Power Energy Retail Ltd as Supplier of Last Resort for Orbit Energy Ltd | Ofgem](#)

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 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>18</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>19</sup>

#### Overview of ScottishPower's claims

ScottishPower indicated at the time of our SoLR appointment process that it would waive its right to make a claim for a LRSP for certain other costs but that it would claim for the cost of wholesale, credit balances and working capital costs.

In relation to the claim for Orbit, ScottishPower had made Ofgem aware that there was an escrow agreement in place with the administrator under which ScottishPower has a right to claim the value of credit balances. At the time of the claim submission on 7 October 2022, ScottishPower had no access to these funds but notified Ofgem that, if it did gain access to the escrow funds, it would withdraw its claim for an additional LRSP and voluntarily absorb the additional wholesale and working capital costs.

In November 2022, ScottishPower notified Ofgem that these conditions had been met and it was now seeking to withdraw its additional LRSP claim, agreeing to voluntarily absorb these costs.

Had ScottishPower not withdrawn the claim for an additional LRSP, access to the escrow funds for the cost of honouring credit balances would not have impacted Ofgem's decision as ScottishPower had not sought to recover the cost of credit balances through the SoLR levy.

The initial claim(s) were consented to on 17 December 2021,<sup>20</sup> and the subsequent claim for Entice was consented to on 20 December 2022.<sup>21</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 these claims.

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

<sup>19</sup> [Update on the last resort claim process for 2023 | Ofgem](#)

<sup>20</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>21</sup> [Decision on last resort levy true-up claims | Ofgem](#)

## Entice Energy - Reasons for decision

Based on the information available and consideration of the circumstances in which the claims for LSRPs by ScottishPower were consented to, and in accordance with the True-up Agreement in relation to customers of the former Orbit and Entice, Ofgem was minded-to terminate the True-up Agreement.

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. 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, subsequent claim, true-up claim minded-to position and final decision on deductions and amounts in relation to Entice.*

Item	Cost	Initial Claim Approved	Subsequent Claim Approved	True-up Claim Submitted
1	Wholesale	£2,377,284.47	£85,082.70	£0
2	Credit Balances	£0.00	£331,378.73	£0
3	Working Capital	£0.00	£51,956.44	£0
	<b>Total</b>	<b>£2,377,284.47</b>	<b>£468,417.87</b>	<b>£0</b>

The True-up Agreements set out the requirements for final True-up claims, which provide that True-up claims must at a minimum contain certain things, including:

- a calculation with supporting evidence showing the total actual or committed additional costs incurred by the SoLR in complying with that Last Resort Supply Direction, including those costs already claimed for under the Valid Initial Levy Claim(s) and any Valid Subsequent Levy Claim(s) and showing whether those costs exceed or are less than the LRSP claims already made; and
- evidence for additional LRSPs not already claimed; and
- indication of any changes to circumstances relevant to previously approved claims, including changes to assumptions about wholesale costs; and
- evidence that all costs have been audited with due rigour and signed off by the company secretary or a director of the SoLR; and
- a declaration from the SoLR's board of directors or the financial director, where authorised by the SoLR's board of directors, that the information provided in the True-up is true, accurate and not misleading in any material respect.

We are content that the claim for Entice meets all the requirements under the True-up Agreement for a final True-up claim, and that the declaration and previously submitted internal audit provide sufficient assurance of the accuracy of the information submitted to us to support ScottishPower's claims.

## Orbit Energy - Reasons for decision

In line with the True-up Agreement between Ofgem and ScottishPower, as well as Ofgem's principal objective to protect current and future consumers, we have assessed the evidence provided by ScottishPower prior to the withdrawal of its October 2022 claim for Orbit to satisfy the condition that ScottishPower had not been overcompensated in its initial claim.

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 2: Summary table of initial claim, subsequent claim, true-up claim minded-to position and final decision on deductions and amounts for Orbit*

Item	Cost	Initial Claim	Withdrawn claim	Minded-to deductions	Decision on this claim
1	Wholesale	£41,322,896.59	£2,641,017.48	£1,842,211.34	N/A
2	Working capital	-	£698,949.34	-	N/A
<b>Total:</b>		<b>£41,322,896.59</b>	<b>£3,339,966.82</b>	<b>£1,842,211.34</b>	<b>N/A</b>

In our published policy decision on the true-up process<sup>22</sup> we explained that all SoLRs appointed in the period from September – December 2021 would be able to make claims to recover additional and otherwise unrecoverable wholesale costs reasonably incurred relating to energy delivered up until 31 March 2022 or until the end of their 6-month Last Resort Supply Direction, whichever is later. This was primarily necessary as a result of a period of extreme wholesale energy price volatility and record high prices, resulting in wholesale direct fuel costs often far exceeding those assumed in the default tariff price cap over the period. The bulk of these costs were considered in the December 2021 initial claim, by which time most initial wholesale energy purchases had taken place.

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

- Assess whether costs being claimed for are consistent with the criteria set out earlier in this letter and our September 2022 Decision on the True-up process;
- Assess the reasonableness of assumptions made and decisions taken, including for example demand forecasting and hedging strategies, against the criteria we consider in assessing claims;
- Assess the specifics of the reported wholesale market trades, including trade date, contract type, price, and volume. Specifically, we have considered whether trade prices are consistent with market benchmarks and price assessments;
- Assess cost per MWh and cost per customer to facilitate comparisons between claims; and,

<sup>22</sup> <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

- Assess the amounts deemed to have been recovered from customer charges, including the applicability of various price cap allowances, and hence offset against the wholesale costs incurred.

### Decision

On 17 December 2021, we consented to ScottishPower claiming £41,322,896.59 in relation to Orbit, the full amount of which related to wholesale costs<sup>23</sup>. On 7 October 2022 ScottishPower submitted a True-up claim of £2,641,017.48 for wholesale costs, which was subsequently withdrawn with ScottishPower voluntarily absorbing these costs.

As part of our assessment of this claim, and in line with our True-up process, we reviewed the full amount claimed for wholesale costs; this included the amount claimed and consented to in December 2021.

We consider that the amount already consented to in December 2021 is consistent with our criteria. Following the True-up assessment, we are assured that there was no overpayment in December 2021; as set out in our minded-to position<sup>24</sup>, we would have consented to ScottishPower recovering an additional £798,806.14 if it had not withdrawn its claim. This amount was revised to £799,688.07 following the minded to consultation, before ScottishPower withdrew its claim.

*Table 3: Summary of claims and decision for wholesale costs in relation to Orbit*

Item	Cost	Initial Claim	True-up claim	Minded-to deductions	Final deduction following assessment	Decision on True-up claim
1	Wholesale costs	£41,322,896.59	£2,641,017.48	£1,842,211.34	£1,841,329.31	N/A

### Reasons for decision on wholesale costs

Our assessment resulted in a proposed total wholesale deduction for ScottishPower of £1,841,329.31, which is £881.93 lower than the proposed deduction of £1,842,211.34 in the minded-to decision. This would have resulted in a net wholesale True-up claim of £799,688.07, as opposed to £798,806.14 as set out in the minded-to decision. As ScottishPower subsequently withdrew its claim for Orbit, we are satisfied that even with the proposed deductions made to the True-up claim submitted on 7 October 2022 of £2,641,017.48, there would have been a net positive amount consented to be paid to ScottishPower had it not withdrawn the True-up claim.

Therefore, we are satisfied that there has been no overpayment in the initial amount consented to in December 2021. Given the withdrawal of the True-up claim, the total wholesale costs approved are £41,322,896.59, as consented to in the December 2021 decision, with no further claim for additional costs.

<sup>23</sup> [Faster SoLR levy process: consents to Last Resort Supply Payments | Ofgem](#)

<sup>24</sup> [Last resort levy true-up claim minded-to position | Ofgem](#)

## **Notice of termination of the True-up Agreement**

As a result of ScottishPower withdrawing its claim for Orbit, and Ofgem's assessment of the evidence provided for both the initial and withdrawn true-up claim, we are satisfied that there is no Excess due to be repaid or Deficit due to be recovered by ScottishPower.

We have determined that the claims for Orbit and Entice are Valid Final Levy Claims for the purposes of the True-up Agreement. As set out above, there is no Excess to be repaid or Deficit to be recovered by ScottishPower for either claim.

This decision letter is to be considered the Notice of Termination as set out under clause 2.2(c) of the True-up Agreement. The True-up Agreement entered into by Ofgem and ScottishPower with respect to Orbit Energy and Entice Energy will cease to have effect on the date of publication of this notice.

Yours faithfully,

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