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14 December 2023

Dear Colleague

Last Resort Supply Payment Claim from British Gas Trading Limited

On 7 September 2023, British Gas Trading Limited ("British Gas") 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 Neon Reef Limited ("Neon Reef") and Social Energy Supply Limited ("Social Energy").

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 British Gas 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.¹ 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 British Gas making a LRSP claim of up to **£145,268.17**.

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

- Additional wholesale costs incurred as a result of commitments to supply energy to customers of Neon Reef and Social Energy;

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

- protecting the credit balances owed to former customers of Neon Reef and Social Energy.

We have assessed this LRSP claim in accordance with our policy published 21 September 2022,² and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.³ In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the interests of current and future energy consumers⁴, the public sector equality duty⁵ relevant licence provisions, and the particular circumstances of the case.

As part of the temporary multiple-claim levy process introduced in December 2021, British Gas entered into a True-up Agreement with Ofgem. Under the True-up Agreement between British Gas 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 British Gas 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 British Gas 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 British Gas'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.

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

³ https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf

⁴ s4AA Gas Act 1986 and s3A Electricity Act 1989

⁵ *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)

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.⁶

Failed Supplier event

On 21st November 2021, we appointed British Gas as the SoLR⁷ for Neon Reef and Social Energy gas⁸ and electricity⁹ customers, following their announcements that they 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 British Gas as the SoLR to those customers in our decision letter published on 22nd November 2022¹⁰.

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.

⁶ 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).

⁷ [Ofgem appoints British Gas to take on customers of Neon Reef Limited and Social Energy Supply Ltd | Ofgem](#)

⁸ [Direction to Appoint British Gas Trading Limited as Gas Supplier of Last Resort to Social Energy Supply Ltd | Ofgem](#)

⁹ [Direction to Appoint British Gas Trading Limited as Electricity Supplier of Last Resort to Neon Reef Limited | Ofgem; Decision to appoint British Gas Trading Limited as Electricity Supplier of Last Resort to Social Energy Supply Ltd | Ofgem](#)

¹⁰ [Ofgem appoints British Gas to take on customers of Neon Reef Limited and Social Energy Supply Ltd | Ofgem](#)

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 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 2022¹¹ 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.¹²

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 British Gas, 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. British Gas 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

¹¹ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

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

consideration any additional evidence provided by British Gas 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 British Gas methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by British Gas and ensuring these costs were in line with commitments British Gas 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 and credit balances in accordance with our criteria and methodology, set out below.
- **Additional:** whether the costs claimed are additional to the costs to the SoLR of existing customers. In addition, we consider whether these costs would have been expected at the time of the SoLR's bid and whether any commitments were given in relation to these costs in their competitive SoLR bid.
 - **Directly incurred as part of the SoLR role:** whether the costs were incurred as a result of taking on customers in an emergency situation as opposed to normal customer acquisition routes.
 - **Otherwise unrecoverable:** whether the SoLR could have recovered the costs through other means. It would not be appropriate for us to allow the SoLR to claim for costs it could have recovered – or reasonably be expected to recover – through the administration process or customer charges, for example.
 - **Economic:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.

Overview of British Gas's claim

British Gas indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP for wholesale and credit balance costs.

The initial claim was consented to on 17 December 2021.¹³ A Subsequent claim was consented to on 20 December 2022.¹⁴ Consistent with the terms of the LRSP consents

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

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

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 British Gas claiming a LRSP of up to **£145,268.17**.

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	£7,963,351.81	£7,378,794.20	£130,259.21	£128,832.73	£130,214.51
2	Credit balances	£0	£4,561,369.68	£15,053.66	£15,053.66	£15,053.66
Total:				£145,312.87	£143,886.39	£145,268.17

General points raised in 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 British Gas' claim for Neon Reef and Social Energy we made deductions for amounts recovered through retrospective backwardation and shaping allowances. As these deductions were based on our best view of information submitted by British Gas 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 British Gas, calculated by multiplying Seasonal Normal Demand values 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 British Gas 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 British Gas;
- Assess the overall changes to the wholesale claim amount caused by changes to the retrospective backwardation and retrospective shaping claims.

Decision

British Gas have claimed £130,259.20 for wholesale costs (£63,330.30 for retrospective backwardation and £66,928.90 for retrospective shaping) in relation to Neon Reef and Social Energy. During the minded-to consultation period, this claim was updated to £64,134.36 for retrospective backwardation and £66,079.91 for retrospective shaping.

Following the above assessments, we consider that the claimed amount is consistent with our criteria¹⁵, and we consent to British Gas making a claim for the following:

- A claim of £64,134.36 for retrospective backwardation.
- A claim of £66,080.15 for retrospective shaping.

The total consented to for this claim is £130,214.51. When taking into account the amount approved for the wholesale claim in the December 2022 Decision, the total wholesale costs approved to date would be £15,472,360.52.

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	£7,963,351.81	£7,378,794.20			
	Retrospective backwardation			£63,330.30	£62,752.58	£64,134.36
	Retrospective shaping			£66,928.90	£66,080.15	£66,080.15
	Total					£130,214.51

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 Neon Reef and Social Energy, in our decision in the subsequent claim from British Gas (our December 2022 decision), based on our best view (given the information submitted by the supplier as part of its claim) of (a) the

¹⁵ There is a small difference between the amount claimed and the amount consented to; this is due to rounding.

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 British Gas' subsequent claim for Neon Reef and Social Energy, were based on our best view of information submitted by the supplier at the time, we provided British Gas an opportunity to submit evidence in September 2023 to substantiate actual allowances received.

British Gas submitted a claim of £63,330.30 for retrospective backwardation in September 2023, and provided demand values adjusted for seasonal normal weather and consumption, which we were minded-to allow based on previous decisions allowing Seasonal Normal Demand for British Gas. We were minded-to consent to £62,752.58.

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

Summary of consultation responses

We did not receive any specific comments on our minded-to position on wholesale costs, in relation to this claim.

Reasons for decision

During the minded-to consultation period, British Gas submitted updated demand data for April 2023 to September 2023, beyond our request for updated data only for August and September 2023. British Gas submitted adequate evidence to substantiate the changes in actual demand numbers, attributed to increased churn and lower average annual consumption.

The updated demand figures submitted by British Gas were lower than the submission in September 2023, leading to an increase in the overall wholesale claim. British Gas' submission was based on Seasonal Normal Demand, which is consistent with previous submissions. After reviewing British Gas' outturn demand data, we concluded that using outturn demand (instead of Seasonal Normal Demand) would be inconsistent with our previous evaluation of claims and further increase the claim amount.

We have decided to consent to £64,134.36 for retrospective backwardation, which is the difference between the amount of £495,453.47 deducted in the December 2022 Decision and the amount of £431,319.11 actually received by British Gas for retrospective backwardation allowances between April 2022 and September 2023.

Retrospective Shaping

Summary of minded-to position

As shaping costs were included in British Gas' initial claim for Neon Reef and Social Energy the price cap shaping allowance was rightly accounted for and removed in

calculations by British Gas. However, we also noted that in February 2022¹⁶ Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover additional revenue in relation to electricity shaping and imbalance costs incurred in price cap period seven, which had been materially higher in winter 2021/22 than the price cap had accounted for. An amount of £12 per electricity customer (at typical consumption) was included within the price cap for the year starting 1 April 2022, applied via an increase to the additional wholesale risk allowance component of the price cap.

This allowance would be recovered from all customers, SoLR and non-SoLR¹⁷. Given this, we considered that the revenues collected under this allowance should be offset against any claims made by SoLRs in relation to the costs of shaping and imbalance.

To calculate the appropriate amount to deduct, we had, as with the backwardation allowance (and for similar reasons), used our best estimate of the remaining SoLR customer accounts as of the end of winter 2021/22, combined with an estimate of annualised demand for these customers, whilst adjusting the price to account for line losses.

Given that the retrospective shaping deductions included in the decision on the subsequent claim for Neon Reef and Social Energy, 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.

British Gas submitted a claim in September 2023 of £66,928.90 for retrospective shaping, and provided demand values adjusted for seasonal normal weather and consumption. We were minded-to allow this approach based on previous decisions allowing Seasonal Normal Demand for British Gas. We were minded-to consent to the £66,080.15.

Summary of consultation responses

We did not receive any specific comments on our minded-to position on wholesale costs, in relation to this claim.

Reasons for decision

As explained above, during the minded-to consultation period, British Gas submitted updated demand data for April 2023 to September 2023, beyond our request for updated data only for August and September 2023. This updated data was relevant to the assessment of the retrospective backwardation claim, given the time period it covered. As the claim for the retrospective shaping allowance spanned across the period of April 2022 to March 2023, the updated demand data did not impact the retrospective shaping claim.

¹⁶ Ofgem (2022), Price Cap - Decision on the potential impact of increased wholesale volatility on the default tariff cap, <https://www.ofgem.gov.uk/publications/price-cap-decision-potential-impact-increased-wholesale-volatility-default-tariff-cap>

¹⁷ This is in contrast to the allowance for Unexpected SVT Demand, which did exclude costs related to SoLR customers

Therefore, our final decision is unchanged from the minded-to position of £66,080.15¹⁸, which is the difference between the amount of £297,373.43 deducted in the December 2022 Decision (in addition to the amount of £416,807.00 already included by British Gas in the claim for shaping) and the amount of £648,100.28 actually received by British Gas for retrospective shaping allowances between April 2022 and March 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

British Gas claimed £15,053.66 in compensation to ex-customers of Neon Reef and Social for their credit balances. We consider that, consistent with SLC 9.4(b), British Gas has made payments to customers for credit balances that they held with Neon Reef and Social. We have consented to British Gas claiming £15,053.66 amount as part of a LRSP.

Table 3: Summary of claims and decision for credit balances

Item	Cost	Initial Claim	Subsequent Claim	This claim	Minded-to position	Decision on this claim
2	Credit Balances	£0	£4,561,369.68	£15,053.66	£15,053.66	£15,053.66

Summary of minded-to position

British Gas requested our consent to claim £15,053.66 through the LRSP for the cost of refunding credit balances of customers and former customers held at the time the Neon Reef and Social 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 and, we were minded-to allow the claim.

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

¹⁸ We note that British Gas' submission during the minded-to consultation period included a slightly different claim amount of £66,079.91. We attribute this difference to rounding.

In our minded-to-position we considered whether the costs British Gas is seeking to claim for credit balances are otherwise unrecoverable; it may still be the case that British Gas is able to recover some of this claimed amount through the ongoing administration process for Neon Reef and Social, to which British Gas has submitted a subrogated creditor claim for the costs incurred in repaying credit balances. In our minded-to-position, proposed to make our final decision on British Gas' 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. If British Gas recovers any of these funds through the liquidation of Neon Reef and Social, it should be repaid to the relevant network operators.

Summary of consultation responses

We did not receive any response from stakeholders to our minded-to position on the credit balance element of this claim.

Reasons for decision:

British Gas requested our consent to recover £15,053.66 for the cost of refunding credit balances to some former customers of Neon Reef and Social. 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 £15,053.66 for sums paid to compensate customers for credit balances.

Recovery of LRSP claim

British Gas 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