

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

Email: solrlevyteam@ofgem.gov.uk

22 February 2024

Dear Colleague

Termination of the True-up Agreement between Utilita Energy Limited and Ofgem in relation to Omni Energy Limited

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

On 29 December 2023, Utilita 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 Omni.

Although Utilita is not seeking a further LRSP for costs incurred from acting as a SoLR, we consider that the submission made by Utilita on 29 December 2023 meets 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 2023.¹

This letter sets out the reasons why we are minded to terminate the True-up Agreement entered into by Utilita and Ofgem in relation to Omni.

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."*

¹ [Update on the last resort claim process for 2023 | Ofgem](#)

Following our consideration of the information submitted by Utilita in relation to this claim, we consider that it meets 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 Utilita, we are minded-to to terminate the True-up Agreement under the provision set out in Clause 2.2(c). This means that the True-up Agreement will cease to have effect on the date of termination specified in our notice of termination.

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 our final decision making and may make changes to our minded-to position in response to such representations if we consider it appropriate to do so.

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 notice².

Failed Supplier event

On 7 November 2021 we appointed Utilita as the SoLR for Omni gas³ and electricity⁴ 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 Utilita as the SoLR to those customers in our decision letter published 23 June 2022⁵

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.

² 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).

³ [Direction to appoint Utilita Energy Limited as Gas Supplier of Last Resort to Omni Energy Ltd.](#)

⁴ [Direction to appoint Utilita Energy Limited as Electricity Supplier of Last Resort to Omni Energy Ltd;](#)

⁵ [Appointment of Utilita Energy as Supplier of Last Resort](#)

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.

This involves SoLRs submitting an 'initial claim' for costs faced in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. These initial claims were therefore limited to the recovery of costs for energy delivered within 6 months of their SoLR appointment or up to the end of March 2022, whichever was earlier. 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 2022⁶ we published our policy decisions on our approach to these true-up claims. These policies have been applied in order to reach our position on subsequent and true-up claims.

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.

⁶ [Decision \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/decision)

On 25 May 2023 we published a further consultation on ending 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 after winter 2023/24, at which point we would again review and consult on whether the temporary process should be ended.⁷

In May 2023, we also 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.⁸

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.

Utilita's Claim

Utilita indicated during our SoLR appointment process that it would not waive its right to make a claim for LRSP, and that it would claim for the cost of procuring wholesale energy and gas, and honouring customer credit balances.

The initial claim(s) were consented to on 17 December 2021,⁹ and the subsequent claim was consented to on 20 December 2022.¹⁰ 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.

Rationale for our minded-to position to terminate

Based on the information available and consideration of the circumstances in which the claims for LSRPs by Utilita were consented to, and in accordance with the True-up Agreement in relation to former customers of Omni, Ofgem is 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. We have set out below our reasons for our 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.

Item	Cost	Initial Claim Approved	Subsequent Claim Approved	True-up Claim Submitted
1	Wholesale	£2,607,751.00	-£56,106.23	£0
2	Credit Balances	£0	£162,583.88	£0
	Total	£2,607,751.00	£106,477.65	£0

⁷ [Decision on ending the temporary Last Resort Supply Payment claim process | Ofgem](#)

⁸ [Update on the last resort claim process for 2023 | Ofgem](#)

⁹ 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](#)

¹⁰ [Decision on last resort levy true-up claims | Ofgem](#)

Requirements for final True-up claim

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 Utilita has met 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 Utilita's claims.

We propose to treat this claim as a Valid Final Levy Claim so that the True-up Agreement will cease to have effect on the date of termination specified in our notice of termination.

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 terminating the True-up Agreement. We invite any representations by 14 March 2024. Responses should be emailed¹¹ to 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 Utilita's final levy claim under the True-up Agreement. We expect to make our final decision in March 2024.

Yours faithfully,

Rohan Churm
Director, Financial Resilience and Controls

¹¹ Although we prefer responses in electronic format, responses can be posted to the address below.