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Email: solrlevyteam@ofgem.gov.uk

9 May 2024

Dear Colleague

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

As part of the faster multiple-claim process for Last Resort Supply Payments (LRSPs) introduced by Ofgem in Winter 2021/22¹, Utilita Energy Limited ("Utilita") entered into a True-up Agreement with Ofgem in respect of acting as Supplier of Last Resort (SoLR) for customers of the former Omni Energy Ltd ("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 for customers of Omni.

We published a minded-to position in relation to the claim for Omni² on 22 February 2024. In that document, we stated that we considered that the submission made by Utilita on 29 December 2023 met the requirements for a final True-up claim set out in Clause 5 of the True-up Agreement.³

We received one response to our minded-to position, which did not specifically address termination of the True-up agreement between Utilita and Ofgem; but rather was a more general reflection on LRSPs as a whole. After considering this response, we have decided to not to make a change from our minded-to position. Therefore, we are making a decision as proposed in the minded-to document and formally terminating the True-up Agreement between Utilita and Ofgem.

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

¹ [Decision letter faster levy process \(ofgem.gov.uk\)](#)

² [Utilita SoLR Levy True-up Claim for Omni | Ofgem](#)

³ These requirements were reiterated to SoLRs in Ofgem's update letter on 25 May 2023. [Update on the last resort claim process for 2023 | Ofgem](#)

- (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 Utilita in relation to this claim, we have determined 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 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 Utilita acting as SoLR for the former customers of Omni 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.⁴

Failed Supplier event

On 7 November 2021 we appointed Utilita as the SoLR for Omni gas⁵ and electricity⁶ 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

⁴ 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).

⁵ [Direction to appoint Utilita Energy Limited as Gas Supplier of Last Resort to Omni Energy Ltd | Ofgem](#)

⁶ [Direction to appoint Utilita Energy Limited as Electricity Supplier of Last Resort to Omni Energy Ltd | Ofgem](#)

material factors behind our decision to appoint Utilita as the SoLR to those customers in our decision letter published on 23 June 2022⁷.

Claim for Last Resort Supply Payment

Utilita indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP⁸ and that it would claim for the cost of procuring wholesale energy and gas, and honouring customer credit balances.

The initial claim was 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 decision on this claim.

Rationale for decision

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 customers of the former Omni, we were 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 and final decision on deductions and amounts in relation to Omni.

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

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:

⁷ [Appointment of Utilita Energy Limited as Supplier of Last Resort for Omni Energy Limited | Ofgem](#)

⁸ [Gas Supply Standard Licence Conditions \(ofgem.gov.uk\)](#) Condition 9; [Electricity Supply Standard Consolidated Licence Conditions - Current.pdf \(ofgem.gov.uk\)](#) Condition 9

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](#)

- 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 Omni 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 Utilita's claims.

Notice of termination of the True-up Agreement

As a result of Utilita submitting its final True-up Claim in relation to acting as SoLR for former customers of Omni, and our assessment of the evidence provided, we have determined that the claim is a Valid Final Levy Claim for the purposes of the True-up Agreement between Utilita and Ofgem. As set out above, there is no Excess to be repaid or Deficit to be recovered by Omni in relation to this final True-up claim.

This decision letter is to be considered the Notice of Termination provided for under clause 2.2(c) of the True-up Agreement. The True-up Agreement entered into by Ofgem and Utilita with respect to Omni will cease to have effect on the date of publication of this notice.

Yours faithfully,

Rohan Churm
Director, Financial Resilience and Controls