

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

Email: solrlevyteam@ofgem.gov.uk

27 September 2024

Last Resort Supply Payment Claim from British Gas Trading Limited

On 29 July 2024, 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 Together Energy (Retail) Limited (“Together 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.

This letter sets out the reasons why we are minded-to recover **£14,422,098.49** from British Gas in relation to this claim.

We are minded-to recover costs incurred in complying with a Last Resort Supply Direction¹ relating to:

- protecting the credit balances owed to former customers of Together Energy

During winter 2021/22 we introduced a number of temporary changes to the LRSP claim process, which were designed to ensure that the SoLR process continues to protect consumers in volatile market conditions. As part of that faster multiple-claim levy process, each of the SoLRs entered into a true-up agreement with us. Under this 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 are minded-to consider this claim to be a Subsequent Levy Claim for the purposes of the True-up Agreement. This would mean that the final True-up claim would happen next year, or the years after. 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, under the terms of the True-up Agreement, we will require a final True-up claim to be

¹ [Direction to Appoint British Gas Trading Limited as Electricity Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#); [Direction to Appoint British Gas Trading Limited as Gas Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#)

submitted in the future. In the meantime, we note that obligations under the True-up Agreement continue to apply and will remain in place until a final True-up claim has been finalised.

The True-up Agreements that SoLRs entered into with Ofgem address the possibility that a SoLR may have received overpayments (an Excess). Clause 7 of the True-Up Agreement provides:

*7.1 Where any Valid True-up Amount is an Excess, the Authority shall, acting reasonably, determine that the SoLR must repay an amount equal to the Excess including any interest accrued. Where it so determines and acting reasonably, the Authority shall provide a draft direction setting out the time, method and amount of any such repayment, together with the rate of interest, where relevant, and shall provide such draft to the SoLR and other relevant stakeholders, consulting where appropriate (a **Draft Repayment Direction**).*

*7.2 The Authority will consider any representations received from the SoLR, and, if relevant, any consultation on the Draft Repayment Direction and will issue a final repayment direction setting out the time, method and amount that the SoLR will be required to repay, including any interest (a **Final Repayment Direction**).*

Ofgem is minded-to issue a Draft Repayment Direction in accordance with clause 7 of the True-up Agreement following consultation on this claim. We are minded-to require that the method of repayment be through British Gas making payments to the relevant Gas Distribution Networks (GDNs) and the relevant Distribution Network Operators (DNOs), which would then be passed through to all energy customers in the form of adjusted charges.

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 consider any representations before making our final decision.

In addition, before we make our final decision, we will conduct an additional assurance process in respect of the calculations contained in our minded-to position, the results of which may also be reflected in our final decision.

We expect to make our final decision in November 2024.

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

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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 23 January 2022 we appointed British Gas as the SoLR³ for Together Energy gas⁴ and electricity⁵ 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 British Gas as the SoLR to those customers in our decision letter published on 01 December 2022⁶.

British Gas 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 costs and that it would claim for the cost of credit balances. The initial claim was consented to on 20 December 2022⁷, with a subsequent claim consented to on 14 December 2023.⁸ Consistent with the terms of those consents 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.

Summary of our minded-to decision

Based on the information available and consideration of the circumstances in which the claims for LSRPs by British Gas were consented to, and in accordance with the True-up Agreement in relation to customers of the former Together Energy, Ofgem is minded-to recover £14,422,098.49. This does not include interest accrued by British Gas, but in line with the True-up agreement, SoLRs must repay an amount equal to the Excess including any interest accrued.

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 minded-to 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.

Reasons for our minded-to decision

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'.

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 [Ofgem appoints British Gas to take on customers of Together Energy Retail Ltd | Ofgem](#)

⁴ [Direction to Appoint British Gas Trading Limited as Gas Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#)

⁵ [Direction to Appoint British Gas Trading Limited as Electricity Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#)

⁶ [Appointment of British Gas Trading Limited as Supplier of Last Resort for Together Energy \(Retail\) Limited | Ofgem](#)

⁷ [Decision on last resort levy true-up claims | Ofgem](#)

⁸ [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

Decision:

British Gas's claim includes £224,901.61 for credit balances repaid to date to former customers of Together Energy. This consists of £6,173.35 for new CCB claims from former customers of Together; and £218,728.26 for refunded cheques cashed by customers. In addition, British Gas has informed us that it has received £14,647,000.10 in 'post-acquisition credits' from the administrator of Together. As British Gas have already claimed LRSP payments for CCBs relating to Together, British Gas recognise that post-acquisition credits are required to be repaid to consumers. As such British Gas included these amounts in the overall claim. We consider that the claimed amount is consistent with the definition of Customer Credit Balances in SLC 9.4(b) and are minded-to consent to the claim. We have set out our rationale for this position below.

Table 1: Summary of claims and minded-to position for credit balances

Item	Cost	Claimed to date	This claim	Post-acquisition credits	Minded-to position on This Claim
1	Credit Balances	£46,927,997.60	£224,901.61	£14,647,000.10	-£14,422,098.49

Rationale for decision:

As part of our assessment of the closed account credit balances, our position is that costs incurred by SoLRs as a result of credit balance refunds being made by cheque should only be recovered by the supplier through the levy once that cheque is cashed. This is to avoid consumers bearing the cost of compensation for credit balances that are yet to be received or not cashed by customers of the failed supplier and to ensure the SoLR does not benefit from a situation where some cheques are never cashed.

British Gas has submitted evidence as part of its claim demonstrating instances where previously disallowed uncashed cheques have since been cashed by former customers of Together. Additionally, British Gas has submitted evidence where former customers of Together have received CCB refunds which have not been previously included in LRSP claims for Together.

British Gas has also notified us of a post-acquisition credit of £14,647,000.10 received from the administrator of Together. This is money that British Gas would have normally recovered from the administrator at an earlier stage in the SoLR process. If the credit had been received earlier British Gas may have adjusted previous CCB claims in 2022 or 2023 to account for this. British Gas recognises that this post-acquisition credit relates to CCBs already claimed via LRSP and therefore is required to be returned to consumers. Therefore, we are minded-to approve the claimed amount of CCBs minus the post-acquisition credit and recover **£14,422,098.49** from British Gas.

We have 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 Together, to which British Gas has submitted a subrogated creditor claim for the costs incurred in repaying credit balances. We propose to make our final decision on British Gas's claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. If

British Gas recoups any money through the creditor claim relating to the Together liquidation process, it should be repaid to the relevant Network operators.

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 this LRSP claim. We invite any representations by 18 October 2024. Responses should be emailed⁹ 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 British Gas' claim. We expect to make our final decision in November 2024.

Yours faithfully,

David Hall
Deputy Director, Financial Resilience and Controls

⁹ Although we prefer responses in electronic format, responses can be posted to the address below.