

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

Email: solrlevyteam@ofgem.gov.uk

16 October 2024

Last Resort Supply Payment Claim from E.ON Next Energy Limited

On 1 August 2024, E.ON Next Energy Limited ("E.ON Next") 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 Symbio Energy Limited ("Symbio").

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 E.ON Next included its calculation of the claim amount and information to support the calculation.

This letter sets out the reasons why we are minded-to consent to E.ON Next claiming a LRSP of up to **£333,633.87**.

We are minded-to consent to E.ON Next making a claim for costs incurred in complying with a Last Resort Supply Direction¹ relating to:

- Additional wholesale costs incurred as a result of commitments to supply energy to SoLR customers;
- protecting the credit balances owed to former customers of Symbio.

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 E.ON Next and Ofgem, Initial, Subsequent and final True-up Claims may be made.

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;*

¹ [Direction to Appoint E.ON Next Energy Limited as Electricity Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)
[Direction to Appoint E.ON Next Energy Limited as Gas Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

*(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 assessment of this current claim, we consider that it meets the requirements of a True-up claim under clause 5 of the True-up Agreement. We are minded-to consider this claim for Symbio as a Final True-up under the True-up Agreement.

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 later this year.

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 4 October 2021, we appointed E.ON Next as the SoLR³ for Symbio 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 E.ON Next as the SoLR to those customers in our decision letter published on 19 October 2021⁶.

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 E.ON Next to take on customers of ENSTROGA, Igloo Energy Supply Limited and Symbio Energy | Ofgem](#)

⁴ [Direction to Appoint E.ON Next Energy Limited as Gas Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

⁵ [Direction to Appoint E.ON Next Energy Limited as Electricity Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

⁶ [Direction to Appoint E.ON Next Energy Limited as Gas Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

E.ON Next claim

E.ON Next indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP costs and any would include costs for wholesale energy and customer credit balances. The initial claim was consented to on 17 December 2021,⁷ with a subsequent claim consented to on 20 December 2022⁸. Consistent with the terms of those consents and the True-up Agreement between the E.ON Next 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 E.ON Next were consented to, and in accordance with the True-up Agreement in relation to customers of the former Symbio, Ofgem is minded-to consent to E.ON Next claiming a LRSP of up to £333,633.87

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.

Table 1: Summary table of initial claim, subsequent and minded-to position on final claim amounts.

Item	Cost	Initial Claims approved	Subsequent Claims approved	This Claim as Submitted	Minded-to position on this Claim
1	Wholesale	£23,019,099	£2,811,839.91	£287,136	£287,136
2	Credit Balances	-	£8,611,719.73	£46,497.87	£46,497.87
3	Working Capital	-	£2,059,418.94	-	-
4	Other Costs	-	£1,071,138.57	-	-

Reasons for our minded-to decision

Cost category: Wholesale

In our published decision on the temporary multi-claim process⁹ we explained that all SoLRs appointed in the period from September – December 2021 should be able 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 SoLR direction, whichever is later.

⁷ 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](#)

⁸ [Decision on last resort levy true-up claims | Ofgem](#)

⁹ [Decision on last resort levy claims true-up process | Ofgem](#)

Retrospective backwardation

In February 2022 Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover the systematic and unrecoverable backwardation cost 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 each supplier in our decision in the subsequent claim (our December 2022 decision), based on our best view (given the information submitted by the supplier as part of its claim) of (a) the 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 the subsequent claim were based on our best view of information submitted by the supplier at the time, we provided SoLRs an opportunity to submit evidence to substantiate actual allowances received.

This claim

In this claim we have analysed the information provided by E.ON Next, to:

- Assess the actual retrospective backwardation allowances received by E.ON Next based on actual demand (MWh) and updated allowance numbers (£/MWh), adjusted for actual UIG and line losses.
- Assess the claim value for retrospective backwardation by calculating the difference between the deduction amount published in the decision on the subsequent claim and the actual retrospective backwardation allowances received by E.ON Next.

Table 2: Summary of claims and minded-to position for wholesale

Item	Cost	Previous claims approved	This Claim as Submitted	Deductions	Minded-to position on this Claim
1	Wholesale	£25,830,938.91	£287,136	£0	£287,136

Decision

This claim from E.ON Next includes £287,136 for retrospective backwardation. Following the above assessment process, we are minded to consent to the following claim.

When taking into account the amount approved for the wholesale claim in the decision on the initial, subsequent and final claim, the total wholesale costs approved to date would be £26,118,074.91

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'.

Decision

E.ON Next claim includes £46,497.87 for credit balances repaid to date to ex-customers of Symbio. We consider that the claimed amount is consistent with the definition of Customer Credit Balances in SLC 9.4(b) and we are minded-to consent to the claim. We have set out our rationale for this position below.

Table 3: Summary of claims and minded-to position for credit balances

Item	Cost	Previous claims approved	This Claim as Submitted	Deductions	Minded-to position on this Claim
2	Credit Balances	£8,611,719.73	£46,497.87	£0	£46,497.87

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. E.ON Next has submitted evidence as part of its claim demonstrating instances where previously disallowed uncashed cheques have since been cashed by former customers of Symbio.

We have considered whether the costs E.ON Next is seeking to claim for credit balances are otherwise unrecoverable; it may still be the case that E.ON Next is able to recover some of this claimed amount through the ongoing administration process for Symbio, to which E.ON Next has submitted a subrogated creditor claim for the costs incurred in repaying credit balances. We propose to make our final decision on E.ON Next's claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. If E.ON Next recoups any month through the creditor claim relating to the Symbio liquidation process, it should be repaid to the relevant Network operators. Given this, we are minded-to approve this element of the claim.

Requirements for final True-up claim

The True-up Agreements set out the requirements for final True-up claims. We are content that the claim meets all the requirements under the True-up Agreement for a final True-up claim, and that the internal audit and declaration provides sufficient assurance of the accuracy of the information provided to us to support E.ON Next's claim.

We propose to treat this claim as a Valid Final Levy Claim so that the True-up Agreement for Symbio will cease to have effect from the date of our published final decision.

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 06 November 2024. Responses should be emailed¹⁰ 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 E.ON Next claim. We expect to make our final decision later this year.

Yours faithfully,

David Hall
Deputy Director, Financial Resilience and Controls

¹⁰ Although we prefer responses in electronic format, responses can be posted to the address below.