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Last Resort Supply Payment Claim from British Gas

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 we consent, 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 regarding post-acquisition credits to support the calculation (outlined in Table 1).

On 27 September 2024, we published a minded-to position for consultation in relation to that claim.¹ Summaries of the responses to the minded-to position consultation can be found within this document. In addition to reviewing the consultation responses, we undertook further internal assurance of our minded-to position.

Decision

After taking into consideration the consultation responses and the results of our internal assurance process, we have decided that British Gas will be required to repay **£14,422,098.49**² plus applicable interest in relation to acting as the SoLR for Together Energy.

This letter is the notice of reasons for our decision on the subsequent claim for the costs incurred in complying with a Last Resort Supply Direction in relation to:

- protecting the credit balances owed to former customers of Together

We have assessed this LRSP claim in accordance with our policy published 21 September 2022,³ and consistent with our published *Guidance on supplier of last resort and energy*

¹ [Last Resort Supply Payment claims minded-to positions 2024 | Ofgem](#)

² The Excess repayment has derived from post-acquisition credits received from the administrator of Together.

³ [Decision on last resort levy claims true-up process | Ofgem](#)

*supply company administration orders.*⁴ In addition, in making this decision, we have had regard to our principal objective of protecting the interests of current and future energy consumers⁵, the public sector equality duty⁶, 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 us. Under the True-up Agreement between British Gas and us, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim.

We set out in the consultation 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, we have made our 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 us. 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 (by British Gas or otherwise), 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 our 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.

We 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.⁷

⁴ [Supplier of Last Resort: Revised Guidance 2016 | Ofgem](#)

⁵ s4AA Gas Act 1986 and s3A Electricity Act 1989

⁶ *Equality Act 2010* Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](#)

⁷ 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).

Failed Supplier event

On 23 January 2022, we appointed British Gas as the SoLR for Together Energy gas⁸ and electricity⁹ customers, following Together's 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 2022¹⁰.

Decision-making process

Under SLC 9.5, we must decide whether it is appropriate in all the circumstances of the case for the SoLR to make the LRSP claim notified to Ofgem in accordance with Standard Licence Condition 9.3. In making this decision we have considered evidence provided by British Gas, our own knowledge of the energy markets, and responses to consultation on the minded-to position on this claim.

In exercising this decision-making function, we have had regard to the interests of current and future consumers of gas and electricity and considered the public sector equality duty.

We published a minded-to position on this claim on 27 September 2024 and invited consultation responses. In reaching our decision we have taken into consideration the consultation responses received in relation to the published minded-to position.

Overview of 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 a LRSP costs and that it would claim for the cost of credit balances. The initial claim was consented to on 20 December 2022¹¹, with a subsequent claim consented to on 14 December 2023¹². Consistent with the terms of those consents and the True-up Agreement between the SoLR and us, we have taken those claims into consideration in reaching our minded-to position on this claim

Summary of 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, we have decided that we will recover **£14,422,098.49** plus applicable interest from British Gas.

General points raised in consultation

We received 32 responses to our minded-to consultation. 31 came from members of the public with one coming from a supplier.

Members of the public who responded to the minded-to position supported the recovery of consumer money. There was a request for amounts recovered from the SoLR to have interest applied and for the rate of interest to be publicised.

⁸ [Direction to Appoint British Gas Trading Limited as Gas Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#)

⁹ [Direction to Appoint British Gas Trading Limited as Electricity Supplier of Last Resort to Together Energy \(Retail\) Limited | Ofgem](#)

¹⁰ [Appointment of British Gas Trading Limited as Supplier of Last Resort for Together Energy \(Retail\) Limited | Ofgem](#)

¹¹ [Decision on last resort levy true-up claims 2022 | Ofgem](#)

¹² [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

The supplier supported the minded-to position with respect to the amount to be recovered. However, concern was raised about the potential application of interest to this amount with the supplier disagreeing that interest should be applied in this case. The supplier submitted that we should act reasonably in this respect and that interest should not apply. There was also comment regarding the repayment itself and that it should be a single payment rather than 12 monthly payments.

Our response

Where a SoLR has an Excess, however that comes about (from overpayment through the levy directly, through a creditor dividend or other means) we think it is right that where a SoLR has benefitted from having such an Excess that interest is applied until the Excess amount is repaid in full. This is consistent with the no gain, no detriment principle that SoLRs return any Excess benefits to consumers. Not applying interest over the repayment period would be detrimental to consumers, who have already borne the costs of LRSP claims. We have therefore, decided that interest will apply to the amount to be recovered from British Gas. We consider the rate applied to the interest to be reflective of the potential for gains made from these funds.

We have decided that the directions for repayment will state that payment should be made over 12 months rather than via a single payment. We need to balance all stakeholders' views in taking this position and note that in response to our SoLR Levy Offset statutory consultation¹³ we received responses on this issue that supported the approach of payment being made via 12 monthly repayments.

We will publicise the overall amount of interest to be applied in our repayment direction. However, we will not publicise the rate that has been applied. The interest rate could be deemed as being commercially sensitive information and as such may disadvantage a future SoLR from submitting the most competitive bid at any future SoLR event. This could have a detrimental impact on the overall costs to consumers in a future SoLR event.

Reasons for decision

We set out our general approach to SoLR levy claims in our September 2022 policy decision¹⁴.

Our general preference is for a SoLR not to make a LRSP claim for costs it has incurred carrying out its role. However, we 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 included in this claim 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

¹³ [Statutory Consultation: SoLR Levy Offset](#)

¹⁴ [Decision on last resort levy claims true-up process | Ofgem](#)

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: 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 with a positive credit balance with a failed supplier.

Decision

British Gas claimed £224,901.61 in compensation to ex-customers of Together Energy for their credit balances. We consider that the claimed amount is consistent with SLC 9.4(b). Additionally, British Gas informed us of post-acquisition credits amounting to £14,647,000.10 received from the administrators of Together. This is money which British Gas recognises is required to be returned to consumers as British Gas has previously claimed LRSP for this. We are therefore consenting to the claim for £224,901.61 minus £14,647,000.10 for the post-acquisition credits resulting in an overall repayment by British Gas of £14,422,098.49 plus applicable interest.

Table 1: Summary of claims and decision for credit balances

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

Summary of minded-to position

British Gas requested our consent to claim £224,901.61 through a LRSP for the cost of refunding credit balances of customers and former customers held at the time British Gas was appointed as SoLR for Together. Where British Gas had compensated customers for credit balances by issuing cheques, we were minded-to allow British Gas to claim the value of the cheques that had been cashed. We also took into account post-acquisition credits received by British Gas from the administrator of Together to be returned to consumers. Therefore, we were minded to recover £14,422,098.49 plus any applicable interest.

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 Together, to which British Gas has submitted a subrogated creditor claim for the costs incurred in repaying credit balances. In our minded-to-position, we 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 Together, it should be repaid to the relevant network operators.

Summary of consultation responses

We only received one specific comment regarding credit balances and our minded-to position. That was agreement that the credit balances we were minded-to consent to matched expectations.

Reasons for decision

British Gas requested our consent to recover £224,901.61 for the cost of refunding credit balances to some former customers of Together. 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 are yet to be received or not cashed by customers of the failed supplier and to ensure the SoLR does not benefit this.

We have decided to consent to a LRSP claim of £224,901.61 for sums paid to compensate customers for credit balances. Taken with the post-acquisition credits of £14,647,000.10 British Gas has received from the administrator of Together for which it has already been compensated through a LRSP we have decided to recover £14,422,098.49 plus applicable interest from British Gas.

Recovery of Excess

The True-up Agreement entered into by Ofgem and British Gas sets out the process for repaying any Excess:

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).

As a result of this decision, British Gas is required to repay the determined Excess of **£14,422,098.49** plus the relevant amount of interest specified in the Final Repayment Direction. The specific amounts to be paid to each relevant licensed gas and electricity network operator will be set out in the Final Repayment Direction.

Yours faithfully,

David Hall
Deputy Director, Financial Resilience and Controls