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13 December 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 we consent, 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 (outlined in Table 1).

On 16 October 2024 we published a minded to position for consultation in relation to that claim and our intention that this would lead to the termination of the underlying True-up Agreement.<sup>1</sup> A summary of the response we received to the minded-to position consultation can be found within this document. In addition to reviewing the consultation response, 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, on 13 December 2024 we consented to E.ON Next making a LRSP claim of up to **£333,633.87**.

This letter is the notice of reasons for our decision on the final True-up claim in relation to costs incurred by E.ON Next in complying with the Last Resort Supply Direction and our decision to consent to E.ON Next making a final true-up LRSP claim from relevant network operators for costs 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.

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<sup>1</sup> [E.ON Next Last Resort Supply Payment minded-to position 2024 | Ofgem](#)

We have assessed this LRSP claim in accordance with our policy decision on the true-up process published 21 September 2022,<sup>2</sup> and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.<sup>3</sup> In addition, in making this decision, we have had regard to our principal objective of protecting the interests of current and future energy consumers<sup>4</sup>, the public sector equality duty<sup>5</sup>, relevant licence provisions, and the particular circumstances of the case.

As part of the faster multiple-claim levy process introduced in winter 2021/22, each of the SoLRs entered into a True-up Agreement with us. Under the True-up Agreement between E.ON Next and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim. Clause 2.2 of the True-up Agreement sets out when the agreement will terminate:

*"This Deed shall continue in force (and the undertakings contained herein shall be irrevocable) until the earlier of:*

- (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."*

We set out in the consultation in relation to this claim that we were minded to consider that this claim meets the requirements of a True-up claim described in clause 5 of the True-up Agreement. Our decision will enable E.ON Next to make a Valid Final Levy Claim for LRSPs in accordance with the consent issued by us. The True-up Agreement between E.ON Next and us with respect to Symbio will cease to have effect on date of publication of this decision (subject to, and as noted below, the recovery of any funds through the liquidation of Symbio).

Nothing in this decision should be taken as setting a precedent for any future LRSP claims (by E.ON Next 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 E.ON Next'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.

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<sup>2</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

<sup>3</sup> [Supplier of Last Resort: Revised Guidance 2016 | Ofgem](#)

<sup>4</sup> s4AA Gas Act 1986 and s3A Electricity Act 1989

<sup>5</sup> *Equality Act 2010* Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](#)

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.<sup>6</sup>

### Failed Supplier event

On 4 October 2021, we appointed E.ON Next as the SoLR for Symbio gas<sup>7</sup> and electricity<sup>8</sup> 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 18 March 2022<sup>9</sup>.

### 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 claim notified to Ofgem in accordance with Standard Licence Condition 9.3. In making this decision we have considered evidence provided by E.ON Next, 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 16 October 2024 and invited consultation responses. We received one consultation response, which we have taken into consideration in reaching our final decision.

### Overview of E.ON Next's 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 a LRSP costs and that any claim would include wholesale energy costs and Customer Credit Balances (CCBs). The Initial Levy Claim was consented to on 17 December 2021<sup>10</sup>, with a Subsequent Levy Claim consented to on 20 December 2022.<sup>11</sup> Consistent with the terms of the LRSP consents and the True-up Agreement between the SoLR and us, we have taken those claims into consideration in reaching our decision on this claim.

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<sup>6</sup> 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).

<sup>7</sup> [Direction to Appoint E.ON Next Energy Limited as Gas Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

<sup>8</sup> [Direction to Appoint E.ON Next Energy Limited as Electricity Supplier of Last Resort for customers of Symbio Energy Limited | Ofgem](#)

<sup>9</sup> [Appointment of E.ON Next Energy Limited as Supplier of Last Resort for Symbio Energy Limited | Ofgem](#)

<sup>10</sup> [Faster SoLR levy process: consents to Last Resort Supply Payments | Ofgem](#)

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

## Summary of decision

Based on the information available and consideration of the circumstances in which the claims for LSRPs by E.ON Next were consented to, we have decided that, in order to true-up all the claims made in respect of acting as SoLR for customers of Symbio, we consent to E.ON Next claiming a True-up amount of LRSP of up to £333,633.87.

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

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

## General points raised in consultation

We received one response to the minded-to consultation, which came from a member of the public. They opposed E.ON Next's claim for a LRSP and questioned why we would allow a claim given consumers have to ultimately pay for it.

## Reasons for decision

We set out our general approach to SoLR levy claims in our September 2022 policy decision<sup>12</sup>.

Our general preference is for a SoLR not to make a claim for a LRSP for costs it has incurred carrying out its role. However, we do 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 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 summarised in Table 1 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 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.

<sup>12</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

## Cost category: Wholesale

In our published policy decision on the true-up process<sup>13</sup> we explained that all SoLRs appointed in the period from September – December 2021 would be able to make claims 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 Last Resort Supply Direction, whichever is later.

In our December 2022 decision on E.ON Next's subsequent claim we made deductions for amounts recovered through retrospective backwardation. As deductions were based on our best view of information submitted by E.ON Next at the time, we provided SoLRs an opportunity to submit evidence to substantiate the actual value of allowances received.

In this claim we 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.

### Decision

E.ON Next claimed £287,136 for retrospective backwardation. Following the above assessment process, we consider that the claimed amount is consistent with our criteria and have consented to E.ON Next claiming this amount as part of a LRSP.

Table 2: Summary of claims and decision for wholesale costs

Item	Cost	Previous claims in 2021 and 2022	This claim as submitted	Minded-to position on this claim	Decision on this claim
1	Wholesale	£25,830,938.91	£287,136	£287,136	£287,136

### Summary of minded-to position

In February 2022 we 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

<sup>13</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

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.

E.ON Next submitted a claim of £287,136 for retrospective backwardation which we were minded-to consent to.

#### Summary of consultation responses

We received one consultation response, but it did not specifically mention our minded-to position on wholesale costs.

#### Reasons for decision:

E.ON Next submitted its calculations for its retrospective backwardation claim along with detailed workings and supporting narrative. We have ensured that the claim is consistent with our approach with other suppliers. Consistent with other claims, we have used a split of £3.75 per gas account and £4.39 per electricity account to calculate the allowance introduced in February 2022; and a split of £2.82 per gas account and £3.30 per electricity account to calculate the allowance introduced in August 2022. Upon assessment of the claim, we found the costs claimed met our criteria.

We have therefore decided to consent to E.ON Next claiming £287,136 for retrospective backwardation, which is the difference between the amount we deducted in our December 2022 decision for retrospective backwardation allowances and the amount calculated as received by E.ON Next for retrospective backwardation allowances between April 2022 and September 2023.

#### **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

E.ON Next claimed £46,497.87 in compensation to ex-customers of Symbio for their credit balances. We consider that the claimed amount is consistent with SLC 9.4(b) and have, therefore consented to E.ON Next claiming £46,497.87 as part of a LRSP.

*Table 3: Summary of claims and decision for credit balances*

<b>Item</b>	<b>Cost</b>	<b>Previous claims in 2021 and 2022</b>	<b>This claim as submitted</b>	<b>Minded-to position on this claim</b>	<b>Decision on this claim</b>
2	Credit Balances	£8,611,719.73	£46,497.87	£46,497.87	£46,497.87

### Summary of minded-to position

E.ON Next requested our consent to claim £46,497.87 through a LRSP for the cost of refunding credit balances of customers and former customers held at the time E.ON Next was appointed as SoLR for Symbio. Where E.ON Next had compensated customers for credit balances by issuing cheques, we were minded-to allow E.ON Next to claim the value of the cheques that had been cashed. Therefore, we were minded to consent to E.ON Next claiming a LRSP of up to £46,497.87.

In our minded-to-position we 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. In our minded-to-position, we proposed 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. Therefore, we were minded-to approve this element of the claim. If E.ON Next recovers any of these funds through the liquidation of Symbio, it should be repaid to the relevant network operators in accordance with the mechanisms in the True-up Agreement.

### Summary of consultation responses

We received one consultation response, but it did not specifically mention our minded-to position on Credit balances.

### Reasons for decision

E.ON Next requested our consent to recover £46,497.87 for the cost of refunding credit balances to some former customers of Symbio. 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 from this.

We have decided to consent to a LRSP claim of £46,497.87 for sums paid to compensate customers for credit balances. This consent is conditional, however, on E.ON Next

repaying any sums it receives through the liquidation process of Symbio to the relevant network operators.

### **Recovery of LRSP claim**

E.ON Next will be paid the amounts specified in our consent documents, published alongside this letter, by the relevant licensed gas and electricity network operators. This will be recovered by the network operators in proportion to the total number of nationwide gas and electricity supply points.

### **Notice of termination of the True-up Agreement**

We have determined that the claim for Symbio is a Valid Final Levy Claim for the purposes of the True-up Agreement.

This decision letter is to be considered the Notice of Termination as set out under clause 2.2(c) of the True-up Agreement.

Yours faithfully,

**David Hall**  
**Deputy Director, Financial Resilience and Controls**