

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

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Dear colleague,

Decision on Last Resort Supply Payment claim from Shell Energy Retail Limited

On 5 December 2019, we¹ published our minded-to position on a claim by Shell Energy Retail Limited ("Shell Energy") for a Last Resort Supply Payment ("LRSP")². Shell Energy is seeking to claim for costs incurred in acting as a Supplier of Last Resort ("SoLR") to customers of the former Usio Energy Supply Limited ("Usio").

We received one response to our consultation which did not raise any issues that have given us reason to change our minded-to position in this case. This letter confirms our decision to consent to Shell Energy claiming a LRSP of up to £354k³. We also explain additional factors we have taken into consideration in making our decision, including representations made to us by interested parties in response to our consultation.

Our decision will allow Shell Energy to recover the costs of protecting the credit balances owed by Usio to the customers Shell Energy acquired in line with commitments given at the time of appointment. In taking this decision, we have had due regard to Ofgem's principal objective of protecting the interests of current and future energy consumers⁴, the relevant provisions of Shell Energy's gas and electricity supply licences⁵, Ofgem's "*Guidance on supplier of last resort and energy supply company administration orders*" (our "guidance")⁶, the terms of the LRSD and the particular circumstances of compliance with the LRSD⁷.

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.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

² <https://www.ofgem.gov.uk/publications-and-updates/consultation-last-resort-supplier-payment-claim-shell-energy-retail-limited>

³ Precisely £354,147.

⁴ See section 3A of the Electricity Act 1989 and section 4A of the Gas Act 1986.

⁵ See standard licence conditions 8 and 9 of Shell Energy's gas and electricity licences.

⁶ <https://www.ofgem.gov.uk/publications-and-updates/supplier-last-resort-revised-guidance-2016>

⁷ https://www.ofgem.gov.uk/system/files/docs/2018/10/last_resort_supply_direction_gas_002.pdf and https://www.ofgem.gov.uk/system/files/docs/2018/10/last_resort_supply_direction_electricity.pdf

It is Ofgem’s statutory duty to protect customers’ interests in light of supplier failure. When a supplier fails, our focus is to ensure continuity of supply for its customers and to minimise wider negative impacts on the market. These wider effects stem from the fact that if an energy supplier fails, its customers will continue to be physically supplied with gas and / or electricity, but the supplier will not be able to meet the costs of providing this energy. In these circumstances, the costs of procuring the necessary electricity will be smeared across all suppliers and the costs of procuring gas will fall to the relevant shipper. There is also a real risk that if a supplier fails without urgent intervention, consumer trust and confidence in the energy market could be materially damaged.

Ofgem can ensure continuity of supply to the failed supplier’s customers and minimise these wider negative effects by appointing a SoLR to supply the failed supplier’s customers at very short notice⁸.

Claim for a Last Resort Supply Payment

As set out in the gas and electricity supply standard licence conditions, a supplier may make a claim for any additional costs it incurs in complying with a Last Resort Supply Direction (“LRSD”)⁹.

Shell Energy indicated at the time of the SoLR appointment process that it would not waive its right to make a claim and would claim for the recovery of a percentage of credit balances. In keeping with that commitment Shell Energy’s claim is for the cost of credit balances owed to customers of Usio when the company ceased trading. Shell Energy has indicated that the cost of credit balances for which it is claiming are final and based on actual meter reads.

LRSP claim

Shell Energy has claimed a LRSP of £354,147 for the cost of refunding credit balances owed to customers of Usio when the company ceased trading. Shell Energy is not claiming for the cost of ‘closed’ credit balances owed to former customers of Usio who had switched to another supplier at the point the company ceased trading. The LRSP claim is net of a contribution by Shell Energy to credit balances.

Shell Energy LRSP claim summary

Cost Category associated with SoLR	Cost claimed (£)
Recovery of 46% of net customer credit balances	354,147

Shell Energy has indicated that it incurred a number of other costs in relation to its role as the SoLR for which it has not claimed. These costs relate to third party contracts, customer call and contact handling.

⁸ The obligation for a supplier to comply with a LRSD derives from standard licence condition 9 of each suppliers’ 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). The duties of a SoLR are further described in our Guidance and the LRSD contains specific details of Shell’s obligations to supply Usio Energy Supply Limited’s former customers.

⁹ Standard condition 9 of the electricity and gas supply licences

In our letter of 5 December 2019¹⁰, we explained that we were minded to consent to Shell Energy claiming a LRSP of up to £354k¹¹.

Our decision

We received one non-confidential response to our consultation, which we have published on our website¹². The respondent called for greater disclosure of information on the details of the bid made by the appointed SoLR and other suppliers.

We appreciate the desire for greater transparency. We aim to share as much information as we can with stakeholders on the SoLR process and on LRSP claims. However, the requirement to preserve commercial confidentiality limits the information we can disclose without breaching confidentiality, or disclosing suppliers bidding strategies which could undermine the effectiveness of the SoLR process. In our consultation we confirmed that Shell Energy's claim is in line with the commitments made at the time of the SoLR appointment.

On balance, taking into consideration all information available to us and the specific circumstances of this case, we are minded to consent to Shell Energy claiming a LRSP of up to £354k¹³. We are minded to make this decision in light of the broader market considerations and our wider statutory duties to protect both existing and future consumers. Our decision will enable Shell Energy to recover up to this amount from relevant distribution network licensees. This is subject to any costs recovered from the Usio liquidation process.

For the avoidance of any doubt, we consider on a case-by-case basis whether it may be appropriate for any SoLR to make a claim for a LRSP. We have set out below our reasons for our decision in 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 decision

Our guidance¹⁴ states that we may in certain circumstances approve a claim associated with costs incurred in repaying credit balances to customers who had a positive credit balance with a failed supplier. We are satisfied in this case that the claimed amount is consistent with the relevant criteria and consistent with the commitments made by Shell Energy to claim only for the cost of credit balances and to make a financial contribution to offset the cost of credit balances.

We have considered whether the costs Shell Energy is seeking to claim for credit balances are otherwise unrecoverable. It may still be the case that Shell Energy is able to recover some of this claimed amount through the ongoing administration process for Usio. The

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/consultation-last-resort-supplier-payment-claim-shell-energy-retail-limited>

¹¹ Exactly £354,147.

¹² <https://www.ofgem.gov.uk/publications-and-updates/consultation-last-resort-supplier-payment-claim-shell-energy-retail-limited>

¹³ Precisely £354,147.

¹⁴ <https://www.ofgem.gov.uk/publications-and-updates/supplier-last-resort-revised-guidance-2016>

current licence provisions related to LRSPs do not require us to make our decision on Shell Energy's claim ahead of the conclusion of the liquidation process.

However, in our view delaying a decision until the conclusion of the liquidation process would introduce a disproportionate degree of uncertainty around the timing of any approved LRSP claim, and ultimately increase the future costs liable to be by paid by energy suppliers and consumers. Given this, we consent to the claim, subject to the outcome of the Usio liquidation process. At this point, the final amount Shell Energy can claim for credit balances would be adjusted to remove any sums recovered through the liquidation process.

Recovery of LRSP

Shell Energy will be paid¹⁵ the amount specified in our Direction by relevant gas and electricity distribution networks¹⁶. This will be recovered by the relevant gas and electricity distribution networks allocated in proportion to the total number of nationwide gas and electricity supply points. We consider this apportionment to best enable broad socialisation of the claim costs in line with the intent of the SoLR regime to protect all consumers in the market, for example, through limiting the extent of unpaid industry bills of a failing supplier.

As per the supply standard licence conditions regarding LRSP claims¹⁷, Shell Energy will be able to submit a claim to each relevant distribution network, based on the amounts we have consented to and each network's share of the total premises served by the relevant networks, in each fuel respectively. We expect Shell Energy to do this on the basis of the data on customer numbers contained within the network companies' regulatory reporting packs. This has the advantage of being a data source that is transparent and consistent between gas and electricity

Yours faithfully,

Philippa Pickford
Director, Future Retail Markets, Consumers and Markets

¹⁵ Our decision should enable relevant Gas Distribution Network (GDN) companies to make payment of the relevant share of the LRSP claim in charging year 2020/21, assuming a valid claim is made by the SoLR in time. Relevant Electricity Distribution Network Operators (DNOs) are required to begin payment no later than 3 months after being presented with a valid LRSP claim and to complete payment within a further period of 12 months.

¹⁶ The relevant distributors according to standard licence condition 9 of the electricity and gas supply licences are distributors in whose distribution areas there were premises supplied under the Last Resort Supply Direction, excluding independent distribution network operators and independent gas transporters.

¹⁷ Standard supply licence condition 9