

Gas and Electricity Suppliers,

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

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Date: 9 September 2019

Dear Colleague,

### **Decision on Last Resort Supplier Payment Claim from Together Energy (Retail) Limited**

On 28 June 2019, we<sup>1</sup> published our minded-to position on Together Energy (Retail) Limited's (Together Energy) claim for a Last Resort Supply Payment (LRSP) for additional costs they incurred in acting as a Supplier of Last Resort (SoLR)<sup>2</sup>.

This letter sets out our decision to consent to Together Energy claiming a LRSP of up to £4.52m<sup>3</sup>. 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 Together Energy to recover the costs of protecting the credit balances owed by OneSelect to the customers Together Energy acquired in line with commitments given at the time of the appointment, and to former customers of OneSelect who had a credit balance with OneSelect at the time the company went into administration, and certain other costs incurred by Together Energy in complying with Ofgem's Last Resort Supply Direction (LRSD)<sup>4</sup>.

In taking this decision we have had due regard to Ofgem's principal objective of protecting the interests of current and future energy consumers<sup>5</sup>, the relevant provisions of Together Energy's gas and electricity supply licences<sup>6</sup>, Ofgem's "*Guidance on supplier of last resort and energy supply company administration orders*" ("**our Guidance**")<sup>7</sup>, the terms of the LRSD and the particular circumstances of compliance with the LRSD.

### **Background**

#### The SoLR process

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<sup>1</sup> 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.

<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2019/06/together\\_energy\\_-\\_published\\_minded\\_to\\_letter\\_-\\_28\\_june\\_2019\\_-\\_website\\_pdf.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/06/together_energy_-_published_minded_to_letter_-_28_june_2019_-_website_pdf.pdf)

<sup>3</sup> Precisely £4,513,805.

<sup>4</sup> The LRSD consists of two documents which took effect on 14 December 2018: [https://www.ofgem.gov.uk/system/files/docs/2018/12/20181212\\_solr\\_direction\\_-\\_elec.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/12/20181212_solr_direction_-_elec.pdf) and <https://www.ofgem.gov.uk/publications-and-updates/eddington-energy-supply-limited-gas-supplier-last-resort>

<sup>5</sup> See section 3A of the Electricity Act 1989 and section 4A of the Gas Act 1986.

<sup>6</sup> See standard licence conditions 8 and 9 of both Together Energy's gas and electricity licences.

<sup>7</sup> This was published on 21 October 2016 and is available here: <https://www.ofgem.gov.uk/publications-and-updates/supplier-last-resort-revised-guidance-2016>. This guidance was supplemented with a decision on our approach to dealing with supplier insolvency and its consequences for consumers, which was published on the same day and is available here: <https://www.ofgem.gov.uk/ofgem-publications/105387>.

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 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 notice.<sup>8</sup>

### The LRSP process

Once appointed, a SoLR may make a claim for a LRSP from relevant distribution networks where we have given our consent to the amount claimed. On 31 January 2019 Together Energy notified us of its intention to claim for a LRSP as the SoLR<sup>9</sup> for OneSelect's gas and electricity customers following OneSelect's announcement that it had ceased trading. This followed a competitive process aimed at getting the best deal for consumers, in line with our principal objective to protect the interests of existing and future consumers and our published guidance.

In our June 28 letter<sup>10</sup> we explained that we were minded to consent to Together Energy claiming for up to £4.8m, and the factors behind our decision. As explained below, our decision consents to Together Energy recovering up to £4.52m in costs.

We received four non-confidential responses and two confidential responses to our consultation. The non-confidential responses are published on our website<sup>11</sup>. We received no representations from stakeholders that have led us to revise our approach to assessing the LRSP claim submitted by Together Energy but we have taken the opportunity to clarify our expectations regarding both SoLR bids and our treatment of future claims.

## **Claim for Last Resort Supply Payment**

As set out in the gas and electricity supply standard licence conditions<sup>12</sup>, a supplier may make a claim for any additional costs it incurs in complying with a LRSD. As part of their competitive bid to become a SoLR, a supplier will include whether they expect to make a claim for a LRSP, or whether it will waive this right, in whole or in part. As stated in our revised guidance, our preference is for the SoLR not to make any claim, and we expect

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<sup>8</sup> The obligation for a supplier to comply with a Last Resort Supply Direction (LRSD) derives from standard licence condition 8 of the 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>9</sup> <https://www.ofgem.gov.uk/publications-and-updates/ofgem-appoints-together-energy-take-customers-oneselect>

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

<sup>11</sup> <https://www.ofgem.gov.uk/publications-and-updates/last-resort-supplier-payment-claim-together-energy-limited>

<sup>12</sup> Standard licence condition 9.

efficient SoLRs to be able to minimise their exposure to otherwise unrecoverable costs to reduce the costs smeared across the rest of the market through a LRSP.

In our guidance, we explain that we will decide on a case-by-case basis whether it might be appropriate for a SoLR to make a claim under these arrangements. We also explain that we would consider whether the amount of any claim or the reasons for any claim were reasonable. In that guidance, we note that, in certain circumstances, we may consider it appropriate to approve a claim where it relates to costs associated with the protection of customers who held a credit balance with the failed supplier.

Together Energy indicated at the time of our SoLR appointment process that it would not waive its right to make a claim. Together Energy's claim consists of the following elements:

**Table 1: Together Energy Retail Limited LRSP claim**

<b>Item</b>	<b>Cost Category associated with SoLR</b>	<b>Cost claimed by (£)</b>
1	Recovery of 63% of OneSelect customers' net credit balances	3,288,604
2	Wholesale energy emergency purchase	21,381
3	IT migration, data cleansing and billing	776,544
4	Interest on LRSD payment profile	716,901
<b>Total</b>		<b>4,803,430</b>

### **Our decision**

On balance, given the specific circumstances of this levy claim case and taking into consideration all information available to us, we are minded to consent to Together Energy claiming a LRSP of £3m<sup>13</sup> in respect of the amount they have incurred to honour credit balances for former OneSelect customers. This is subject to the removal of any costs recovered from the liquidation process. We also think it is appropriate to enable Together Energy to recover certain other costs of up to £1.5m<sup>14</sup>.

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 on the levy. 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 minded-to decision**

#### Cost item 1: Recovery of OneSelect customers' net credit balances (£3m)

In our published guidance we state that, in certain circumstances, we may approve a claim for costs incurred by a SoLR to repay customers who had a positive credit balance with a failed supplier. In our consultation we said that we are minded to approve this element of Together Energy's claim. Respondents broadly supported our minded to position to approve the recovery of credit balance costs.

We have considered whether the costs Together Energy is seeking to claim for credit balances are otherwise unrecoverable; it may still be the case that Together Energy is able to recover some of this claimed amount through the ongoing administration process for OneSelect. The current licence provisions related to LRSPs do not require us to make our

<sup>13</sup> Precisely £3,000,879.

<sup>14</sup> Up to £1,512,926.

decision on Together 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 paid by energy suppliers and consumers.

Together Energy's claim includes £763k<sup>15</sup> for closed credit balance refunds due to former OneSelect customers. Together Energy has to date refunded £475k<sup>16</sup>, which it says reflects a lower than expected number of claims for credit balance refunds. Our decision therefore is Together Energy's claim for this cost should be for the amount paid to date, £475k. We note that the expected level of closed credit balances relies on the accuracy of the data from the failed supplier, and as such the indicative amount (£763k) may not be an accurate reflection of actual amounts owed to customers with closed accounts.

In our letter of 28 June we also noted that the overall cost of the claim for credit balances could change depending on the final value realised by Together Energy from OneSelect's customer debt book. Together Energy reached an agreement to collect debt on behalf of OneSelect's administrator and in return to receive a share of the debt. This agreement was underpinned by a minimum sum to be returned to the administrator which has not been exceeded. Together Energy is in the process of repaying to the administrator the debt collected to date and withdrawing from the agreement. As a result, all debt recovered from former OneSelect customers will accrue to the administrator.

Our decision is to consent to £3m<sup>17</sup> of the cost of credit balances to be recovered via the LRSP mechanism, including an adjustment to reflect the lower than expected amount paid to date to former OneSelect customers with closed account credit balances. The final amount that Together Energy can claim for credit balances is subject to a reduction to reflect any proceeds from the liquidation process.

#### Cost item 2: Wholesale emergency purchase (£21k)

The claim for wholesale electricity costs is for £21k<sup>18</sup> and represents the additional costs of purchasing electricity in the period 14 – 21 December 2018 over and above the wholesale energy purchasing arrangements which Together Energy had in place to meet the demands of its existing customer base. Together Energy has not submitted a claim for the cost of wholesale gas purchases.

Responses to our consultation offered broad support for our minded to position. One respondent noted that smaller suppliers may be more exposed to higher costs of emergency procurement purchase (and interest on working capital) than larger suppliers, but was comfortable that Ofgem is able to factor this into the assessment of SoLR bids.

We note that in making the SoLR bid Together Energy estimated the cost of wholesale energy purchases to be potentially higher than this amount, and so this element of the claim is lower than Together Energy initially indicated may be the case. Our decision is to consent to the recovery of this cost.

#### Cost item 3: IT migration, data cleansing and billing (£777k)

This item relates to the costs incurred in transitioning OneSelect's customers to Together Energy, where these costs arose directly as a result of the SoLR process, which as noted in our minded to letter were higher than set out in the SoLR bid.

Together Energy say that a key driver for the higher cost is the work undertaken to establish a process and system to verify customer accounts and credit/debit positions, to

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<sup>15</sup> Precisely £762,649.

<sup>16</sup> Precisely £474,924.

<sup>17</sup> Precisely £ 3,000,879.

<sup>18</sup> Precisely £21,381.

migrate these details to Together Energy's systems and to support customers during the transition from OneSelect. Together Energy also say in making the bid it understood OneSelect's administrator would cover the cost of maintaining the licence used by OneSelect for access to its billing system.

Respondents to our consultation broadly supported our minded to decision to approve this element of the claim. One respondent noted that its own recent experience of acting as a SoLR had shown that data access and quality can be a significant challenge in establishing credit or debit balances with the failed supplier and that additional costs can arise that are unlikely to be foreseeable. One respondent agreed with our minded to position but stressed the need for suppliers to submit SoLR bids that are as accurate as is reasonably practical. Other respondents noted concerns about the potential impact on the SoLR process of approving claims for costs higher than stated in the SoLR bid.

As noted in our consultation letter the costs claimed under this item are higher than those estimated in the SoLR bid, but we are minded-to agree that the approach taken by Together Energy was appropriate<sup>19</sup>. We note respondents concerns about the approval of costs that are higher than those stated in the SoLR bid. We accept that SoLR suppliers can, however, encounter unexpected issues relating to data access and quality. We understand Together Energy's approach was intended to ensure that customers were not disadvantaged by seeking, as far as possible in the circumstances, to verify actual account positions and to provide customer support during the transition to Together Energy. Our decision is to consent to the recovery of this cost.

#### Cost item 4: Interest on LRSP profile costs (£717k)

Together Energy has made a claim of £717k for the cost of interest on the working capital used to finance the activities carried out under its role as a SoLR, in advance of the repayment of the approved LRSP claim by relevant gas and electricity network companies. In its SoLR bid Together Energy estimated a lower amount for the cost of interest on working capital. Together Energy says that this reflected its assessment of the market at the time and that conditions have changed. The amount Together Energy is now seeking to claim reflects the interest rate they have secured in the market.

We expect suppliers' bids to be based on solid assumptions and fully reflect the information available to them at the time. We give more weight to bids which include firm price commitments and fully expect these to be honoured. Where indicative or estimated costs are provided, these are given against clear assumptions and we apply significant scrutiny where the outturn figure claimed for is materially different from the indicative amount bid. Together Energy did not provide a firm bid for the interest rate but an indicative level.

In this case, we recognise that Together Energy has a degree of flexibility to negotiate potential finance deals, but in practice the number of offers and the rates of interest are outside of its control. Our decision is therefore to consent to the recovery of this cost. In making our decision we note that the contribution of £1.9m by Together Energy to the cost of credit balances means that, including the higher than expected costs, the bid was the most competitive on price.

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<sup>19</sup> We consider that a small element of this cost item, amounting to £1.9k for certain project related costs, is the type of expenditure we would expect a SOLR supplier to absorb and have deducted this from the sum we have consented to.

**Table 2: Together Energy LRSP claim**

<b>Item</b>	<b>Cost Category associated with SoLR</b>	<b>Cost consented to (£)</b>
1	Recovery of 61% of OneSelect customers' net credit balances	3,000,879
2	Wholesale energy emergency purchase	21,381
3	IT migration, data cleansing and billing	774,644
4	Interest on LRSD payment profile	716,901
<b>Total</b>		<b>4,513,805</b>

### **Cost recovery**

Relevant electricity distribution network companies have up to 3 months after receipt of a valid LRSP claim from Together Energy to begin payment and for payment of the relevant amount to be completed with a further period of 12 months. The amount we consent to be recovered from gas network charges will be paid by relevant gas distribution network companies in charging year 2020/21.

As per the supply standard licence conditions regarding LRSP claims<sup>20</sup>, Together 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 Together 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.

### **SoLR levy claims**

Our preference is that a SoLR does not make a claim for a LRSP. Where a claim is made our expectation is that a SoLR should look to absorb any costs higher than those indicated in the SoLR bid. Where a claim is made for costs that are higher than indicative costs set out in the SoLR bid suppliers should recognise that these will require compelling evidence to justify them, and that costs higher than those set out in the SoLR may not be approved.

Yours faithfully,

**Philippa Pickford**  
**Director, Future Retail Markets**

<sup>20</sup> Standard licence condition 9.