

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

Email: supplier@ofgem.gov.uk

Date: 24 September 2020

Dear colleague,

Last Resort Supply Payment Claim from EDF Energy Customers Limited

On 20 May 2020, EDF Energy Customers Limited¹ ("EDF") gave notice to Ofgem of its intention to submit a claim for a Last Resort Supply Payment ("LRSP"). EDF is seeking to claim additional costs incurred in acting as Supplier of Last Resort (SoLR) to customers of the former Solarplicity Supply Limited ("Solarplicity").

As per Supply Licence Condition 9, a SoLR may make a claim for a LRSP from relevant distribution networks where we have given our consent to the amount claimed. The claim from EDF included its calculation of the claim amount and information to support the calculation (outlined in Table 1).

This letter sets out the reasons why we are minded to consent to EDF claiming a LRSP of up to £4.5m.² We are minded to allow EDF to claim for the costs of protecting the credit balances owed to former customers of Solarplicity, in line with commitments given at the time of the SoLR appointment, and certain other costs incurred as part of complying with the terms of the Last Resort Supply Direction ("LRSD")³.

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 currently expect to make our final decision in November 2020.

¹ Company Number 02228297

² £4,513,129

³ [Direction to appoint EDF Energy Customers Limited as Electricity Supplier of Last Resort](#) and [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort](#)

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 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 the real risk that if a supplier fails without urgent intervention, consumer trust and confidence in the energy market would 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.⁴

Solarplicity SoLR event

On 16 August 2019, we appointed EDF as the SoLR⁵ for Solarplicity's gas⁶ and electricity⁷ 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 EDF as the SoLR in our decision letter published on 21 October 2019.⁸

Claim for Last Resort Supply Payment

⁴ 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). The duties of a SoLR are further described in our Guidance and the LRSD contains specific details of EDF Energy's obligations to supply Solarplicity Supply Limited's former customers.

⁵ [Ofgem appoints EDF Energy to take on customers of Solarplicity](#)

⁶ [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort](#)

⁷ [Direction to appoint EDF Energy Customers Limited as Electricity Supplier of Last Resort](#)

⁸ [Appointment of EDF as Supplier of Last Resort](#)

As set out in the gas and electricity supply standard licence conditions, a supplier may make a claim for any additional costs they incur 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 they wish to waive this right. As stated in our guidance⁹, our preference is for the SoLR not to make any claim, and we expect efficient SoLRs to be able to minimise their exposure to otherwise unrecoverable costs to reduce the costs smeared across the rest of the market.

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.

Approach when appointing certain SoLRs

As set out in our SoLR guidance our preference is given to suppliers who volunteer to undertake the role of SoLR. As we noted in our letter setting out the reasons for the appointment of EDF¹⁰, we received 8 responses to our information request of which 6 were from suppliers that were mandated to reply to our information request under standard condition 5 of their licences. No supplier confirmed they wished to volunteer for this role. Following a review of the responses to identify the best outcome for customers and ensure a universal service for GB energy consumers, we appointed EDF as the SoLR.

Our decision process and methodology

Our process to reach our minded-to position consisted of:

- A quantitative check of EDF's methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by EDF and ensuring these costs were in line with commitments EDF made at the time of its SoLR appointment
- Undertaking validation of some assumptions with other data sources, where appropriate
- A qualitative assessment of the claim for credit balances against our methodology criteria.

Our methodology criteria for SoLR levy claims are as follows:

⁹ [Supplier of Last Resort: Revised Guidance 2016](#)

¹⁰ [Appointment of EDF as Supplier of Last Resort](#)

- **Additional:** whether the costs claimed are additional to the costs to the SoLR of serving existing customers. In addition, we consider whether these costs would have been expected at the time of the SoLR's bid and whether any commitments were given in relation to these costs in their competitive SoLR bid. Although the SoLR is generally expected to know or predict to some extent the costs they will incur in serving a new customer base and take these into account in their competitive bid, there may be cases where this is not possible.
- **Directly incurred as part of the SoLR role:** whether the costs were incurred as a result of taking on customers in an emergency situation as opposed to normal customer acquisition routes. It would not be appropriate for us to allow the SoLR to claim for costs they would have incurred through a normal acquisition route.
- **Otherwise unrecoverable:** whether the SoLR could have recovered the costs through other means. It would not be appropriate for us to allow the SoLR to claim for costs it could have recovered through the administration process or customer charges, for example.
- **Unavoidable:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.
- **Efficient:** whether the SoLR has taken all reasonable steps to reduce the magnitude of any unavoidable and unrecoverable costs incurred, and therefore the total amount claimed.

EDF's claim

EDF indicated at the time of our SoLR appointment process that it would not waive its right to make a claim and that it would claim for the cost of credit balances and certain other costs.

Table 1: EDF claim

Item	Cost	£
1	Credit balances	£3,665,205
2	Customer facing costs	£149,773
3	Operational costs	£303,091
4	Working capital	£395,059
	Total	£4,513,129

Our minded-to decision

On balance, given all specific circumstances of this levy claim case and taking into consideration all information available to us, we are minded to consent to EDF claiming a LRSP of up to £4.5m¹¹.

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 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.

Reasons for our minded-to decision

Cost item: Credit balances

EDF's claim includes consent to recover £3.3m¹² in credit balances repaid to date to ex-customers of Solarplicity. In addition, EDF is working to verify and refund as appropriate a further sum of approximately £371k of credit balances. Our final decision will take account of the actual amount repaid to customers at that time.

Our published guidance sets out that we may in certain circumstances consider it appropriate to 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 (subject to the points discussed below) the claimed amount is consistent with the relevant criteria and in particular, is consistent with EDF's commitment at the time of its appointment as SoLR.

Credit balance costs for ex-customers of Solarplicity are additional to the costs that EDF would face as a supplier and costs that EDF Energy cannot influence in any meaningful way (beyond working with the administrator to establish the amount properly due to customers). We have considered whether the costs EDF is seeking to claim for credit balances are otherwise unrecoverable; it may still be the case that EDF is able to recover some of this claimed amount through the ongoing administration process for Solarplicity, to which EDF has, in accordance with the requirements of the LRSP process, submitted a subrogated creditor claim for the costs incurred in repaying credit balances. We propose to make our final decision on EDF's claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain. Given this, we are minded to approve this element of the claim, subject to the outcome of the Solarplicity liquidation process.

¹¹ £4,513,129

¹² £3,294,205

At this point, the final amount EDF can claim would be adjusted to include costs recovered through the liquidation process.

Customer facing costs

EDF is seeking consent to recover £150k¹³ for this element of its claim. The bulk of the costs are accounted for by work to handle enquiries and complaints from former customers of Solarplicity, with the balance largely related to credit balance related correspondence. EDF has provided data to show that the volume of enquiries and complaints from former customers of Solarplicity was significantly higher than it would have expected for a comparable group of customers. The costs incurred in dealing with these customer service issues are related to EDF's SoLR role, are additional to those that it would have faced in the course of its normal retail operations, and are not recoverable in any other way. We are minded to agree that the approach taken by EDF was reasonable and appropriate in the circumstances.

Operational costs

EDF is seeking consent to recover £303k¹⁴ for operational costs incurred in onboarding former customers of Solarplicity. These include costs relating to tariff pricing for SoLR customers, related business processes, data migration and data quality, credit balance related work, billing, metering issues and regulatory compliance. The costs incurred in dealing with these customer service issues are related to EDF's SoLR role, are additional to those that it would have faced in the course of its normal retail operations, and are not recoverable in any other way. We are minded to agree that the approach taken by EDF was appropriate. We understand EDF's approach was aimed at ensuring former customers of Solarplicity were not disadvantaged, while at the same time seeking to minimise costs claimed through the levy by seeking, as far as possible in the circumstances, to verify actual account positions. We are therefore minded to consent to the recovery of this element of the claim.

Working capital

In the period between its appointment as SoLR and recovering funds through the industry levy, EDF will have incurred costs in making capital available to fund costs associated with the SoLR process. EDF's LRSP claim includes £395k¹⁵ for the cost of working capital. We are minded to agree that the methodology used to calculate this element of EDF's claim is appropriate. The calculation includes costs incurred over the

¹³ £149,773

¹⁴ £303,091

¹⁵ £395,059

course of a number of months to reflect actual costs incurred and the timescale for the recovery of those costs. EDF was appointed on the basis that a claim could be made for the cost of interest on working capital. We are therefore minded to approve this element of the claim. Our decision on the final amount we consent to for the cost of working capital will reflect the most up to date information at that time.

Next steps

The purpose of this letter is to provide interested parties with an opportunity to make any representations to us, ahead of us making our final decision. We invite any representations by **22 October 2020**. Responses should be emailed¹⁶ to supplier@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, in reaching our final decision on EDF's claim. We currently expect to confirm our final decision in November 2020.

Yours faithfully,

Lesley Nugent

Deputy Director, Retail Directorate

¹⁶ Although we prefer responses in electronic format, responses can be posted to the address below.