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Email: solrlevyteam@ofgem.gov.uk

14 December 2023

Dear Colleague

Last Resort Supply Payment Claim from EDF

On 7 September 2023, EDF Energy Limited ("EDF") 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 Zog Energy Limited ("Zog").

Under Standard Licence Condition (SLC) 9.1 of the Supply Licence, SoLRs are entitled, provided Ofgem consents, to make a claim for a LRSP from each Relevant Gas Transporter and Electricity Distribution Operator. The claim from EDF included its calculation of the claim amount and information to support the calculation (outlined in Table 1).

On 20 October 2023 Ofgem published a minded-to position in relation to that claim.¹ Summaries of the responses to the minded-to position consultation, including any relevant general representations made in response to the consultations on other SoLR claims, can be found within this document.

In addition, we undertook further internal assurance of our minded-to position.

Decision to consent

After taking into consideration the consultation responses and the results of our internal assurance process, on 14 December 2023 Ofgem consented to EDF making a LRSP claim of up to **£21,901.00**.

This letter is the notice of reasons for Ofgem's decision to consent to EDF making a LRSP claim from relevant network operators. Our decision will allow EDF to claim for:

- Additional wholesale costs incurred as a result of commitments to supply energy to customers of Zog Energy;
- financing costs incurred as a result of becoming a SOLR.

¹ [Last Resort Supply Payment claims minded-to positions 2023 | Ofgem](#)

We have assessed this LRSP claim in accordance with our policy published 21 September 2022,² and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.³ In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the interests of current and future energy consumers⁴, the public sector equality duty⁵ relevant licence provisions, and the particular circumstances of the case.

As part of the temporary multiple-claim levy process introduced in December 2021, EDF entered into a True-up Agreement with Ofgem. Under the True-up Agreement between EDF and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim.

We set out in the consultation in relation to this claim 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, Ofgem has made its consent to this LRSP claim conditional on confirmation by EDF 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 EDF to submit additional LRSP claims with supporting evidence for costs that have not yet been approved by Ofgem. 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, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances.

An overview of EDF'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 Ofgem's 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.

Ofgem 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.⁶

² <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

³ https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf

⁴ s4AA Gas Act 1986 and s3A Electricity Act 1989

⁵ *Equality Act 2010* Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/15/part_11)

⁶ 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 3 December 2021, we appointed EDF as the SoLR⁷ for Zog gas⁸ 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 to those customers in our decision letter published on 18 March 2022⁹.

Last Resort Supply Payment

Under SLC 9.1, SoLRs are entitled, with Ofgem's consent, to make a claim for a Last Resort Supply Payment ("LRSP") from each Relevant Gas Transporter and Electricity Distribution Operator ("network operators").

SLC 9.4 provides that the total amount of the LRSP must not exceed the amount by which the total costs (including interest on working capital) reasonably incurred by the SoLR in supplying customers under the Last Resort Supply Direction and a reasonable profit plus any sums paid or debts assumed by the SoLR to compensate customers in respect of any customer credit balances plus any additional (actual or anticipated) interest and finance costs associated with a financing arrangement approved under SLC 9.7C are greater than the total amounts recovered by the SoLR through charges for that supply.

SLC 9.6 makes clear that Ofgem may determine that an amount other than the one calculated by the SoLR is a more accurate calculation of the relevant amount and, in such cases, the amount specified by Ofgem must be treated as the relevant amount when the licensee submits its claim to each relevant electricity or gas network licensee in accordance with SLC 9.8.

LRSPs are paid for by the relevant network operators, who then recover the cost through charges to suppliers. SLC 38B of the Electricity Distribution Licence and Standard Special Condition A48 of the Gas Transportation Licence set out the details of this.

Multi-stage claims

During winter 2021/22 we introduced a number of changes to the process for making LRSP claims, which were designed to ensure that the SoLR process continues to protect consumers in the current market conditions. The changes included the temporary introduction of a faster, multiple-claims process whereby SoLRs are able to submit more than one claim in relation to each Last Resort Supply Direction.

This involves SoLRs submitting an 'initial claim' for costs incurred in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. SoLRs may then follow this claim with an additional claim (or claims) in accordance with SLC 9. We refer to these additional claims as either a Subsequent claim or a final True-up claim. SoLRs entered into a 'True-up Agreement' with Ofgem to support the faster process. The Initial, Subsequent and True-up claim consents are conditional on SoLRs meeting the requirements of the True-up Agreement. The true-up

⁷ [Ofgem appoints EDF to take on customers of Zog Energy Ltd](#)

⁸ [Direction to appoint EDF Energy Customers Limited as Gas Supplier of Last Resort to Zog Energy Ltd](#)

⁹ [Appointment of EDF Energy Limited as Supplier of Last Resort for Zog Energy Limited](#)

process is intended to reconcile suppliers' initial and subsequent claims with actual costs incurred and determine any additional payments or repayments that should be made.

Following consultation, on 21 September 2022¹⁰ we published our policy on our approach to these claims. In December 2022, Ofgem consented to SoLRs making LRSP claims totalling £405m on the condition that these claims be treated as Subsequent levy claims under the True-up Agreements, and that the Agreements remain in place until a valid final True-up claim is made.

In May 2023, we set out in an open letter our expectations for SoLRs' final True-up claims following the LRSP claims that were approved in December 2022 under the temporary multiple claim process.¹¹

Decision-making process

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

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

Ofgem published a minded-to position on this claim and invited consultation responses. EDF was offered the opportunity to meet with us to clarify aspects of the minded-to position during the consultation period. In reaching its decision Ofgem has taken into consideration any additional evidence provided by EDF during the consultation period and any consultation responses received in relation to the published minded-to position.

In reaching its decision Ofgem carried out:

- a. A quantitative check of EDF 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;
 - b. A true-up and cross check of any evidence that may result in a change to the initial claim or subsequent claim made by the SoLR;
 - c. Undertaking validation of some assumptions with other data sources, where appropriate;
 - d. Review and audit of the calculations made in the published minded-to position; and
 - e. A qualitative and quantitative assessment of the claim for costs related to wholesale costs and financing in accordance with our criteria and methodology, set out below.
- **Additional:** whether the costs claimed are additional to the costs to the SoLR of existing customers. In addition, we consider whether these costs would

¹⁰ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

¹¹ [Update on the last resort claim process for 2023 | Ofgem](#)

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.

- **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.
- **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 – or reasonably be expected to recover – through the administration process or customer charges, for example.
- **Economic:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.

EDF claim

EDF indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP for any costs but that it would claim for the cost of wholesale and financing costs.

The initial claim was consented to on 17 December 2021.¹² A Subsequent claim was consented to on 20 December 2022.¹³ Consistent with the terms of the LRSP consents and the True-up Agreement between the SoLR and Ofgem, we have taken those claims into consideration in reaching our decision on this claim.

Summary of decision

Ofgem has consented to EDF claiming a LRSP of up to **£21,901.00**.

The reasons for the decision are set out below. This decision 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.

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

| Item | Cost | Initial Claim Approved | Subsequent Claim Approved | This claim | Minded-to position | Decision on this claim |
|---------------|-----------------|------------------------|---------------------------|-------------------|--------------------|------------------------|
| 1 | Wholesale | £4,348,260.00 | £2,204,287.68 | £22,414.34 | £22,414.34 | £20,407.99 |
| 2 | Working capital | £211,623 | £339,727.95 | £1,564.80 | £1,564.80 | £1,493.01 |
| Total: | | | | £23,979.14 | £23,979.14 | £21,901.00 |

¹² [Faster SoLR levy process: consents to Last Resort Supply Payments | Ofgem](#)

¹³ <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-true-claims>

General points raised in consultation

We received two responses to our minded-to consultation, one from a supplier and one confidential response that was not specifically related to our minded-to positions.

The supplier supported the minded-to positions on its claims and flagged that updated data had been submitted as requested in our minded-to positions. The supplier also queried how we will treat claims for customer credit balances refunded to customers by cheques that remain unpresented - for example, cheques that have not been cashed after five years from issue.

In response to this query, we note that further LRSP claims (subsequent claims and true-up claims) can continue to be made by a SoLR as long as the True-up Agreement remains open, which may be beyond the default five-year limitation period in SLC 9.3. Where customer credit balance cheques remain uncashed, we encourage SoLRs to be proactive in following up with customers where appropriate.

Reasons for decision

General

Ofgem's 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 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 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.

Cost category: Wholesale

In our decision in December 2022 on EDF'S claim for Zog, we made deductions for amounts recovered through retrospective backwardation. As these deductions were based on our best view of information submitted by EDF at the time, we provided SoLRs an opportunity to submit evidence in September 2023 to substantiate the actual value of allowances received.

As these allowances were recovered from customers until the end of September 2023, during the minded-to consultation period we invited SoLRs to provide actual data in instances where forecasts had been submitted in September 2023.

This data was used to calculate actual retrospective allowances received by EDF, calculated by multiplying outturn demand on a quarterly basis from Q2 2022 to Q3 2023

with the relevant £/MWh retrospective backwardation allowances for each quarter, adjusted for UIG and line losses.

In the claim we analysed the information provided by EDF to:

- Assess whether costs being claimed are consistent with our criteria (set out earlier in this letter);
- Assess the accuracy of the submitted data by reviewing evidence provided by EDF;
- Assess the overall changes to the wholesale claim amount caused by changes to the retrospective backwardation claims.

Decision

EDF's first submission in September 2023 contained a claim for £22,414.34 for wholesale costs in relation to Zog. Due to updated data and methodology, EDF's claim was subsequently revised to £18,161.82.

Following the above assessments, we consider that the claimed amount is not fully consistent with our criteria, and we have decided to consent to EDF making a claim for the following:

- A claim of £20,407.99 for retrospective backwardation.

The total consented to for this claim is £20,407.99. When taking into account the amount approved for the wholesale claim in the December 2022 Decision, the total wholesale costs approved to date will be £6,572,955.67.

Table 2: Summary of claims and decision on wholesale costs

| Item | Cost | Initial Claim Approved | Subsequent Claim Approved | True-up Claim Submitted | Minded-to Position on True-up Claim | Decision on True-up Claim |
|------|-----------------------------|------------------------|---------------------------|-------------------------|-------------------------------------|---------------------------|
| 1 | Wholesale | £4,348,260.00 | £2,204,287.68 | | | |
| | Retrospective backwardation | | | £22,414.34 | £22,414.34 | £20,407.99 |
| | Total | | | | | £20,407.99 |

Retrospective Backwardation

Summary of minded-to position

In February 2022 Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover the systematic and unrecoverable backwardation costs 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 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 Zog in our decision in the subsequent claim from EDF (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 EDF's claim for Zog, were based on our best view of information submitted by the supplier at the time, we provided EDF an opportunity to submit evidence in September 2023 to substantiate actual allowances received.

EDF submitted a claim of £22,414.34 for retrospective backwardation in September 2023, as part of its working capital submission. We asked EDF to provide some more narrative and explanation for its calculation. EDF provided this, along with a revised claim, during the consultation period.

As we told SoLRs they could submit August and September 2023 numbers as forecasts, during the minded-to consultation period we asked EDF to confirm if the figures it submitted in its claim were final.

Summary of consultation responses

EDF responded to our minded-to position, stating that it was supportive in principle on adjustments made for retrospective allowances subject to clarification on the methodology used.

Reasons for decision

During the minded-to consultation period, EDF resubmitted its calculation for its retrospective allowances claim, along with detailed workings and supporting narrative. The claim decreased from £22,414.34 to £18,161.82 as a result of this updated data.

In its resubmission, EDF updated customer demand to meter-point level and used a £/MWh allowance that was unadjusted for unidentified gas and line losses. As part of our analysis, we noticed that EDF had split the February 2022 allowance evenly across electricity and gas accounts. This assumed a total allowance of £4 per gas account and £4 per electricity account.

For our decision, we have recalculated the claimed amount to be consistent with our approach with other suppliers. This approach takes customer demand at National Balancing Point (NBP) level and uses a £/MWh allowance that accounts for unidentified

gas and line losses. To do this, we requested EDF resubmit its customer demand at NBP level, which it provided. Consistent with the other claims, we have used a split of £3.75 per gas account and £4.39 per electricity account to calculate the allowance, as opposed to an even £4 split. This methodology results in an updated claim value of £20,407.99.

This represents an increase compared to EDF's updated claim for Zog. In principle, the correction to the allowances reduces the value of claims for electricity and increases the value of claims for gas. Because Zog only supplied customers with gas, the value of EDF's claim for Zog has increased.

We have therefore decided to consent to EDF claiming £20,407.99 for retrospective backwardation, which is the difference between the amount of £91,073.43 we deducted in our December 2022 decision for retrospective backwardation allowances and the amount of £70,665.44 actually received by EDF for retrospective backwardation allowances between April 2022 and September 2023.

Cost category: Working capital

When a SoLR is appointed, it incurs costs associated with taking on the new customers which need to be financed. There are a range of ways in which a SoLR can finance this activity. Regardless of the finance option used, there is a cost in doing so. Under Supplier SLC 9.4(a) a SoLR may claim total costs reasonably incurred in supplying premises under the Last Resort Supply Direction, which includes the interest on working capital.

Our published policy decision on last resort levy claims True-up process¹⁴ sets out the requirements for SoLRs seeking to claim financing or working capital costs.

Decision

EDF sought to claim £1,564.80 for the cost of working capital. The calculation includes costs incurred to reflect actual costs incurred and the timescale for the recovery of those costs as set out in our published policy decision.

Following the recalculation of the wholesale cost element, as set out in the wholesale section above, our decision is to allow EDF to claim up to £1,493.01 for working capital costs. We set out our rationale for this decision below.

Our decision as to a reasonable rate of interest on working capital in this case has been taken considering our criteria for these SoLR levy claims and what we consider to be reasonable and appropriate in all these circumstances and for these purposes only.

Table 3: Summary of claims and decision for working capital

| Item | Cost | Initial Claim Approved | Subsequent Claim Approved | This claim | Minded-to position | Decision on this claim |
|------|-----------------|------------------------|---------------------------|------------|--------------------|------------------------|
| 2 | Working capital | £211,623 | £339,727.95 | £1,564.80 | £1,564.80 | £1,493.01 |

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

Summary of minded-to position

EDF requested our permission to claim for the cost of working capital amounting to £1,564.80, supported by evidence that detailed its expenditure relevant to the claim as well as justification for claiming interest at the specified rate.

EDF's claim for the cost of working capital was based on applying a specified interest rate to the amount that it has claimed for wholesale costs and other costs reasonably incurred as a result of acting as SoLR.

Through assessing its supporting evidence and rationale, we were minded-to consider that the rate EDF has applied meets our criteria for assessing whether costs are reasonably incurred, in accordance with SLC 9.4(a). As a result of those assessments, we were minded-to consent to EDF's requested claim amount. However, we noted in our minded-to position that we expected EDF to provide updated evidence to support its wholesale costs claimed, and that this would impact on our final decision regarding working capital costs.

Summary of consultation responses

We received one consultation response from EDF in relation to this claim, which was supportive of our minded-to position. No other responses were received in respect to the working capital element of this claim, or any working capital elements of minded-to positions we consulted in the same time period.

Rationale for decision

Based upon our assessment of the evidence provided we have decided that the rate at which working capital has been calculated, and the methodology followed, is consistent with our criteria and reasonable in these cases and for these purposes only.

We have also determined that in the preceding section that the costs claimed for wholesale (backwardation) costs meet our overarching assessment criteria, and are reasonable costs incurred as a direct result of acting as a SoLR. Our decision on the reasonableness of the rate applied by EDF applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

Following the submission of updated evidence for the wholesale (backwardation) claim element, we have recalculated the working capital cost element appropriately, using the working capital model submitted by EDF as part of its claim. Following this recalculation, we have decided to allow EDF to claim for up to £1,493.01 in working capital costs for this claim. This reduction in working capital costs compared to the minded-to position is a result in our recalculation and reduction of the approved wholesale element of the claim, as explained in the wholesale section of this decision letter above.

Recovery of LRSP claim

EDF will be paid the amounts specified in the Ofgem's consent documents, published alongside this letter, by the relevant licensed gas network operators. This will be recovered by the network operators in proportion to the total number of nationwide gas supply points.

Yours faithfully,

Rohan Churm
Director, Financial Resilience and Controls