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13 December 2024

## **Last Resort Supply Payment Claim from Octopus Energy Limited**

On 31 July 2024, Octopus Energy Limited ("Octopus") 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 Avro Energy Limited ("Avro").

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 Octopus included its calculation of the claim amount and information to support the calculation.

On 27 September 2024 we published a minded-to position in relation to that claim.<sup>1</sup> Summaries of the responses to the minded-to position consultation can be found within this document. In addition to reviewing consultation responses, 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 13 December 2024 we consented to Octopus making a LRSP claim of up to **£1,130,381.04**.

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

- financing costs incurred as a result of becoming a SOLR.

We have assessed this LRSP claim in accordance with our policy 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

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<sup>1</sup> [Last Resort Supply Payment claims minded-to positions 2024 | Ofgem](#)

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

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

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 temporary multiple-claim levy process introduced in December 2021, Octopus entered into a True-up Agreement with us. Under the True-up Agreement between Octopus and us, 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, we have made consent to this LRSP claim conditional on confirmation by Octopus 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 Octopus to submit additional LRSP claims with supporting evidence for costs that have not yet been approved by us. 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 (by Octopus 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 Octopus' 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 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>

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<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 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/154/part_11)

<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).

### Failed Supplier event

On 26 September 2021, we appointed Octopus as the SoLR for Avro gas<sup>7</sup> and electricity<sup>8</sup> customers, following Avro's 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 Octopus as the SoLR to those customers in our decision letter published on 23 June 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 Octopus, 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 27 September 2024 and invited consultation responses. In reaching its decision we have taken into consideration any consultation responses received in relation to the published minded-to position.

### Overview of Octopus's claim

Octopus indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP costs and that any claim would include working capital. The initial claim was consented to on 17 December 2021<sup>10</sup>, with subsequent claims consented to on 20 December 2022<sup>11</sup> and 14 December 2023.<sup>12</sup> Consistent with the terms of those consents and the True-up Agreement between the SoLR and us, we have taken those claims into consideration in reaching our final decision on this claim.

### **Summary of decision**

Based on the information available and consideration of the circumstances in which the claim for LSRPs by Octopus were consented to, and in accordance with the True-up Agreement in relation to customers of the former Avro Energy, we have decided to consent to Octopus claiming a LRSP of up to **£1,130,381.04**. 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.

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<sup>7</sup> [Direction to appoint Octopus Energy Limited as Gas Supplier of Last Resort for customers of Avro Energy Limited | Ofgem](#)

<sup>8</sup> [Direction to appoint Octopus Energy Limited as Electricity Supplier of Last Resort for customers of Avro Energy Limited | Ofgem](#)

<sup>9</sup> [Ofgem appoints Octopus Energy to take on customers of Avro Energy | Ofgem](#)

<sup>10</sup> Our Notice of Reasons for granting consent to the initial claim was published on 23 June 2022. [Faster SoLR levy process: Notice of Reasons for Last Resort Supply Payment \(LRSP\) claims | Ofgem](#)

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

<sup>12</sup> [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

## General points raised in consultation

We received 32 responses to our minded-to consultation. One from a supplier and 31 coming from members of the public.

The supplier disagreed with our position over the rate applied, which the supplier believes is too low. Members of the public who responded to the minded-to position disagreed with our position of withholding the applied interest rate and asked for clarity surrounding what the working capital applied to.

In response to these points, we are of the view that the decision to apply a lower rate is correct in as far that it reflects the cost of capital at the time the cost was incurred. The cost was incurred in autumn 2021, following appointment as SoLR, and as such we have applied a rate that reflects this period.

We appreciate that ultimately the costs of LRSP claims are borne by consumers and as such do what we can to explain our decisions and provide as much information as possible. However, we have a stated policy of not publicising interest rates for working capital claims. This could be deemed as being commercially sensitive information and as such may disadvantage a future SoLR from submitting the most competitive bid at a future SoLR event. This could have a detrimental impact on the overall costs to consumers at any future SoLR appointment.

Working capital claims are linked to costs we approve in other claim categories. For Avro, Octopus has claimed for costs for Wholesale Energy, Customer Credit Balances and Other Costs and we have previously outlined our decisions in these claims<sup>13</sup>. For this working capital claim the cost relates to the Other Costs claim consented to in 2023.<sup>14</sup>

## Reasons for decision

We set out our general approach to SoLR levy claims in our September 2022 policy decision<sup>15</sup>.

Our general preference is for a SoLR not to make a LRSP claim 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 included in this claim 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.

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<sup>13</sup> [Faster SoLR levy process: Notice of Reasons for Last Resort Supply Payment \(LRSP\) claims | Ofgem](#); [Decision on last resort levy true-up claims 2022 | Ofgem](#); [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

<sup>14</sup> [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

<sup>15</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

## 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 LRSP claims True-up process<sup>16</sup> sets out the requirements for SoLRs seeking to claim financing or working capital costs. The policy decision also set out the requirement for suppliers to demonstrate, with sufficient evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

### Decision

Octopus claimed £2,295,030.35 for the cost of working capital. This claim reflects the financing costs associated with 'administrator withheld funds'; costs Octopus incurred in September 2021 after being appointed as SoLR. We consented to Octopus recovering the costs relating to the administrator withheld funds in December 2023.

The calculation includes costs incurred in September 2021, until recovery of those costs started in April 2024, to reflect actual costs incurred and the timescale for the recovery of those costs as set out in our published policy<sup>17</sup>.

We consider that the claimed amount is not fully consistent with our criteria. We have, however consented to Octopus claiming up to £1,130,381.04 which we consider to be a more accurate calculation of the amount of costs for working capital to be paid as part of a LRSP claim.

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 1: Summary of claims and decision for working capital*

<b>Cost</b>	<b>Previous claims approved</b>	<b>This Claim as Submitted</b>	<b>Deductions</b>	<b>Minded-to position on This Claim</b>	<b>Decision on this claim</b>
Working Capital	£42,875,071.66	£2,295,030.35	£1,164,649.31	£1,130,381.04	£1,130,381.04

### Summary of minded-to position

Octopus requested our permission to claim an amount of £2,295,030.35 for the cost of working capital. While Octopus submitted an explanation of the rate claimed, we were not satisfied that adequate evidence was submitted to demonstrate the rate claimed in respect of working capital costs was reasonable. Instead, we applied a different rate which took into account our assessment of the evidence provided on costs of financing

<sup>16</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

<sup>17</sup> [Decision on last resort levy claims true-up process | Ofgem](#)

and broader market conditions. Additionally, we made minor adjustments to the methodology used by Octopus to bring the methodology in line with our published templates<sup>18</sup> and applied to previous working capital claims from SoLRs. We also made an adjustment to the claim, to reflect that Octopus started to receive payments from networks for the costs on which the working capital was incurred (the administrator withheld funds) in April 2024. Octopus' claim as submitted did not reflect that those payments started in April 2024.

After making adjustments to the rate and the methodology we were minded-to consider that the claimed costs incorporated into the working capital calculation met our criteria for assessing whether costs are reasonably incurred in accordance with SLC 9.4(a), and our adjusted rate was reasonable in this circumstance and for this purpose only. As a result, we were minded-to consent to a reduced claim amount of £1,130,381.04.

### Summary of consultation responses

In the 32 responses we received there were 31 from members of the public and 1 from a supplier. The supplier accepted our change to the methodology used to calculate the claim, however there was disagreement over the rate applied, which the supplier believes is too low. The supplier noted that it would have been prudent to adjust the cost of capital over the period in which working capital costs were incurred in line with changing market conditions. Members of the public who responded to the minded-to position disagreed with our position of withholding the applied interest rate and asked for clarity surrounding what the working capital applied to.

### Rationale for decision

We have decided to apply a reduced rate of interest compared to the rate that Octopus claimed, which we have not included for commercial confidentiality purposes. The rate we have applied reflects our best view of the cost of capital at the time the cost was incurred, which takes into account the evidence provided and broader market conditions.

In its claim Octopus submitted an explanation of the rate claimed. However, we are not satisfied that Octopus have provided adequate evidence to demonstrate the rate they claimed for in respect of working capital costs is reasonable. Octopus did not supply additional evidence in its consultation response to demonstrate this.

As our policy decision on last resort levy claims true-up process<sup>19</sup> set out, suppliers need to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances. In our view Octopus did not provide sufficient evidence to demonstrate this.

Moreover, Octopus indicated in its bid to be appointed as SoLR for Avro that it would claim working capital at a lower rate than it has claimed for. We take what the cost to consumers of a levy claim will be into account, amongst other things, when we appoint a SoLR and as such the cost of capital should reflect what Octopus has stated it would claim for to ensure best value for consumers.

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<sup>18</sup> Relevant template published here: [Update on the last resort claim process for 2023 | Ofgem](#)

<sup>19</sup> [Decision on last resort levy claims true up process \(ofgem.gov.uk\)](#)

We have therefore applied a different rate, which we consider is reasonable taking into account our assessment of the evidence currently provided on costs of financing and broader market conditions. This adjustment results in a reduction of £1,161,505.43.

Furthermore, we were minded-to make minor adjustments to the methodology and time period used by Octopus to calculate its working capital claim, as set out in our minded-to position. We did not receive any feedback on these points in response to our minded to consultation. Therefore, our final decision reflects the adjustments made which will result in a reduction in working capital costs of £3,143.88.

We noted in our 2022 decision<sup>20</sup> that there were several complexities with Octopus' working capital claim, including because it re-financed some of the costs it incurred in acting as a SoLR for Avro. Given the complexity of the claim, we are open to further discussions with Octopus. As this is a Subsequent claim, Octopus will have to submit a Final True-up next year or later.

### **Recovery of LRSP claim**

Octopus will be paid the amounts specified in the Ofgem 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.

Yours faithfully,

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

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<sup>20</sup> [Decision on last resort levy true-up claims 2022 | Ofgem](#)