

Distribution Commercial Forum
Credit Cover Sub Group
Minutes of Meeting held 14 Jan 05

Attendees

Louise Boland (Opus) (Chair)LB	Lindsay McNicol (Scottish Power)....LM
Melanie Chilcott (Scottish Power)..MC	David Edward (Ofgem).....DE
Ron Slade (Edf).....RS	Mike Harding (YEDL).....MH
Amanda Rose (npower)AR	Dipen Gadhia (Ofgem)DG
Keith Munday (Bizz Energy).....KM	

Minutes

- 1) DE informed all that Ofgem was still keen to release its next consultation document by the end of January. DE informed that the document is likely to be a Decision document and that there may not be another impact assessment and that it may be preferable to conduct individual IAs prior to changes being proposed to the relevant documents. DE also stated that Ofgem was considering asking for further comments from industry on aspects of its Decision Paper. It was considered that the benefits of this would be to refine the thinking, to provide better governance and transparency; although, at this stage, it was considered unlikely that the final proposals would differ significantly from those currently published. The document will contain Ofgem's conclusions on Best Practice Guidelines and Pass Through. Ofgem are also considering an annual review to keep the Guidelines up to date.
- 2) MC stated that there was some concern over (i) meeting the April deadline and all agreed that this would be impossible if there were a further round of responses requested; and (ii) that the detail and fine mechanics of the processes are still not there and would require a lot of work to establish.
- 3) There was comment that although the detail may be worked through within this forum, that the individuals could not guarantee to represent fully their company's views, and that the details agreed may not be accepted by companies not represented by the group. Consequently it was agreed that any drafting of the legal documents carried out by the group in order to implement Ofgem's proposals would be carried out on the basis of providing a template which will be of practical benefit and help in bilateral contract negotiations to follow.
- 4) Specific concerns with the proposal provided to date were raised which included:
 - a. There is a wealth of specific detail on the recommended actions for short term default, but very little concrete guidelines for practice after the first few days of default.
 - b. IDNOs will not be obliged to follow this process and fall outside of the proposals.
 - c. The proposals provide an incentive on a NWO to move a supplier who is experiencing difficulties into administration as soon as possible in order to ensure pass through. There was suggestion that a NWO should be rewarded for entering into discussions with a supplier which could prevent supplier failure where better for the end consumer.
 - d. Further guidelines were requested from Ofgem to cover the situation of multiple suppliers within a group using PCGs.

- 5) The group stepped through the Drafting Assessment document and made the following comments:
- a. **Setting Unsecured Limits:** There was discussion as to how much of the mechanism should be within the condition 4 statement. It was felt that if there was to be an annual review of the mechanism that possibly all the mechanism should be here, but consensus was to keep the bulk of the mechanism in Sch 1 of the DUOSA and keep the variables in the condition 4 statement.
 - b. **Limits of Security:** LB stated that Ofgem had confirmed the formula within this document to calculate the % of Indebtedness over Credit Provided was correct as:

$$\% = (\text{Billed but Unpaid} + 15 \text{ Days}) / (\text{Credit Provided} + \text{Cover Provided})$$
The NWOs were agreed that daily calculation of the formula could be time consuming.
 - c. **Payment Failure:** In order to allow a NWO to suspend registrations for payment default, the MRA needs a trigger within the DUOSA. MH had suggested creating this trigger by putting a requirement for prompt payment in the condition precedent statement which can trigger breach of the MRA if the CP is not met. However, AR suggested that this would not make sense since payment of bills cannot be a condition precedent to an agreement. Consequently it is likely that a modification of the MRA will be needed to effect this proposal requirement.
MH also noted that there needs to be clarity within the drafting of what represents the date from which the payment term commences and an unambiguous wording relating to the receipt of “cleared funds”.
MH also noted that there may need to be further clarity relating to the “charging period” for which the supplier is invoiced and to define clearer the invoicing timetable.
- 6) The Group stepped through the Drafting Requirement document. Points raised included:
- a. Clause 4 – These changes could best be included in a new clause handling default.
 - b. Clause 7 & 8 need also to include a right of set off and for payment to be received by electronic cleared funds unless below a minimum threshold. It was agreed the interest rate charges and administration charges would best be held in the condition 4 statement.
 - c. Clause 20 may be revised to include confidentiality relating to information provided for credit assessments.
 - d. Sch 1 (1.5) This would cover the escalation process only and then would move to section (3).
Sch 1 (2) This would need to cover the process for calculating (i) the original level of Cover based on VAR and then (ii) the daily calculation of indebtedness. Further clarity or a decision would need to be made on how often the calculation for (i) based on VAR would or should be carried out (eg is currently every 6 months)
Sch 1 (7) Agreed that disputes should be handled in same way for all disputes and within the main body of the DUOSA
- 7) Next steps \ actions were agreed as follows:

- a. Drafting: MH will add further bullet point details to the Drafting Requirements Document and will ask an internal lawyer to carry out an initial review. (This should hopefully also clarify the question of whether Payment Failure can be included in the CP or whether an amendment to the MRA will be required).
- b. Funding: DE stated that there was an obligation on the NWO to maintain the DUOSA. However, MH stated that it may be difficult to manage or arrange a syndicated alteration to the DUOSA. RS agreed to request funding for the drafting from NWOs at the next DCG meeting due for Thursday 20th Jan.
- c. LB to arrange next meeting once the final proposals document has been released with possible date for meeting being in 2nd week in Feb (not Friday) at Millbank.