

Proposed variation:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP080 and DCP080A – Theft in Conveyance</b>		
Decision:	The Authority <sup>1</sup> directs that proposal DCP080A be made <sup>2</sup>		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested Parties		
Date of publication:	19 September 2011	Implementation Date:	To be confirmed by DCUSA Limited

## Background to the modification proposal

The existing regulatory framework provides suppliers and distributors with rights to take certain actions where a customer has taken, or is suspected of taking an illegal supply of electricity, where the illegal abstraction originates upstream of the cut-out<sup>3</sup>. Both distributors and suppliers may have rights to undertake similar actions and the current arrangements do not explicitly set out which party (or parties) should do so and when<sup>4</sup>. In some circumstances it is desirable to clarify which party should seek to exercise its rights. Examples of where both suppliers and distributors may have rights, in relation to illegal abstraction upstream of the cut-out, include rights to inspect, disconnect where an offence has occurred and recover charges from the customer.

This lack of clarity on roles and responsibilities has hampered the development of improved arrangements for tackling electricity theft. In particular, this issue has been identified as a constraint on the development of reform proposals under DCP054<sup>5</sup> which is currently being assessed by a DCUSA Workgroup.

## The modification proposal

DCP080 was raised by British Gas Trading Ltd in January 2011. The proposal would clarify that, when it comes to enforcement of rights in relation to the illegal abstraction of electricity, there will be a rebuttable presumption<sup>6</sup> that theft in conveyance is the responsibility of the distributor and all other unlawful abstraction is the responsibility of the supplier. DCP080 would introduce a definition for theft in conveyance which links the distributor responsibility to instances where the theft originates from distributor-owned equipment other than any meter or metering equipment.

DCP080A was raised by Eastern Power Networks plc in May 2011 as an alternative proposal. The alternative would also clarify that theft in conveyance is the responsibility of the distributor and all other unlawful abstraction is the responsibility of the supplier. However, rather than focusing on the ownership of equipment, the alternative links responsibility to whether the illegally-taken electricity is consumed at a customer's premises<sup>7</sup>. Under DCP080A, theft in conveyance would be defined as any illegal abstraction of electricity for use other than at a premises where any metering points or metering systems are registered by a supplier.

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of Gas and Electricity Markets.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> Used in this letter to describe the fusible cut-out or circuit breaker that denotes the end of the distributor's network and the start of the customers connection.

<sup>4</sup> SLC 12.1 of the electricity supply licence requires suppliers to detect and prevent theft or abstraction of electricity at premises that they supply. There are no equivalent requirements for distributors.

<sup>5</sup> DCP054 'Revenue Protection/Unrecorded Units into Settlements' is a DCUSA change proposal raised by Electricity North West Limited on 21 Oct 2009. Details can be found on the DCUSA website: <http://www.dcusa.co.uk/Public/CP.aspx?id=68>

<sup>6</sup> A rebuttable presumption is an assumption that something is correct unless it is shown to be otherwise in any particular circumstance.

<sup>7</sup> 'Premises' is given the same meaning as that in Section 64(1) of the Electricity Act 1989, which defines premises to include any land, building or structure.

The Authority may approve one or other of DCP080 or DCP080A. Both DCP080 and DCP080A, whichever is approved, propose an implementation date of the earlier of the implementation date for DCP054 (were it to be approved by the Authority) or 28 June 2012.

### **DCUSA Parties' recommendation**

The Change Declaration for DCP080 and DCP080A indicates that DNO, IDNO/OTSO, Supplier and Distributed Generation (DG) parties were eligible to vote on DCP080 and DCP080A. There was unanimous support amongst suppliers for DCP080. DNO and IDNO/OTSO parties did not support this proposal. There was unanimous support amongst DNO and IDNO/OTSO parties for DCP080A. Suppliers did not support this proposal. There was unanimous support amongst all parties for the proposed implementation date for each proposal if either was approved.

As support for either proposal did not reach the required threshold (greater than 50% in all party categories eligible to vote in accordance with the weighted vote procedure), the recommendation to the Authority is that the change solutions for both DCP080 and DCP080A are rejected but that the implementation date, were one of the proposals to be approved, is accepted. Details of the party vote appear in the Change Declaration.

### **The Authority's decision**

The Authority has considered the issues raised by the proposal and the Change Declaration dated 15 August 2011. The Authority has considered and taken into account the vote of the DCUSA Parties on the proposals, which is set out in the Change Declaration. The Authority has concluded that:

1. Implementation of either of change proposals DCP080 and DCP080A will better facilitate the achievement of the DCUSA General Objectives<sup>8</sup>
2. That DCP080A will better facilitate the achievement of the Authority's principal objective and statutory duties<sup>9</sup> when compared with DCP080
3. Directing that DCP080A is approved is consistent with the Authority's principal objective and statutory duties.

### **Reasons for the Authority's decision**

We note that support for the change proposals was split with suppliers favouring DCP080 and distributors favouring DCP080A.

For the reasons set out below we consider that both change proposals, if implemented, would better facilitate DCUSA General Objective 3.1.1 and 3.1.2. We have further considered the change proposals under our principal objective and statutory duties. In this context and for the reasons set out below we consider that DCP080A rather than DCP080 should be approved.

*DCUSA General Objective 3.1.1 'the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System'*

We agree that both DCP080 and DCP080A would assist with the coordination of the distribution system as distributors would better understand the limits of their responsibilities in relation to theft. This would decrease the risk of gaps in addressing suspected theft or any potential duplication of effort.

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<sup>8</sup> The DCUSA General Objectives (Applicable DCUSA Objectives) are set out in Standard Licence Condition 22.2 (a) to (d) of the Electricity Distribution Licence and are also set out in Clause 3.1 of the DCUSA.

<sup>9</sup> The Authority's statutory duties are wider than matters that the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

To the extent that clarification of responsibilities increases theft detection and a reduction in system losses, this would also likely to lead to improvements in the efficient and economical operation of the distribution system. We also consider that both proposals would remove an impediment to the development of improved arrangements for tackling theft of electricity.

*DCUSA General Objective 3.1.2 'the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity'*

We agree that both DCP080 and DCP080A would better facilitate this objective as they would better ensure that responsibilities are clearer and more transparent. Each proposal provides a platform to clarify which party should take action in the first instance. This would give greater clarity to suppliers on the scope of their obligations and associated costs of operating in the electricity market.

To the extent that this led to an improvement in theft detection and prevention, then this should improve the allocation of settlement and distribution costs between suppliers.

### **Authority's principal objective and statutory duties**

In this context, we consider that the primary relationship with the customer for the supply of electricity should, where possible, be through a supplier. Where this is not practical, for example where there is no registered supplier at a premises or the supply is consumed otherwise than at a premises, then the responsibility for the matter should fall to the distributor. This view is supported by the Government's original policy proposals when introducing deemed contracts into the electricity market<sup>10</sup>.

We consider that this position offers the best opportunity to protect the interests of existing and future customers, including in particular vulnerable customers, in line with the Authority's principal objective. For example, the electricity supply licence sets out specific consumer protections in relation to billing, debt management and disconnection<sup>11</sup>. We note that there may be particular benefits for customers, in particular vulnerable customers, who may be able to agree with a supplier to enter into repayment arrangements through a prepayment meter and avoid disconnection. Such an option is not available to a distributor for the collection of debt and may increase the chance of disconnection (including for vulnerable customers) should theft be identified at such premises. In addition to the regulatory requirements, we further note that suppliers are likely to have greater skills and experience in dealing with customers on such issues.

Whilst distributors may be required to take action in more limited circumstances under DCP080A compared to DCP080, we still consider that they will be required to undertake an active role in electricity theft management. We consider that there would be merit, in terms of consistency and transparency, in setting out how distributors should treat customers where theft in conveyance is suspected or found, for example in the proposed new theft code of practice<sup>12</sup>.

Distributors will continue to have primary responsibility for safety on their networks and making good any necessary repairs where damage has occurred. In some theft circumstances, it may be appropriate for the distributor to use its powers in the first

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<sup>10</sup> See "A Fair Deal for Consumers: Modernising the Framework For Utility Regulation, The Future of Gas and Electricity Regulation, The Government's Proposals for Legislation" (September 1999). See also Hansard, 5 July 2000: Column 1520.

<sup>11</sup> See, for example, SLC 26 'Services for specific Domestic Customer groups' and SLC 27 'Payments, Security Deposits and Disconnections' <http://epr.ofgem.gov.uk/index.php?pk=folder430120>.

<sup>12</sup> This work is being taken forward by a sub-group of the DCP054 Workgroup.

instance, in particular where this relates to safety. The industry arrangements should clarify how these obligations should be discharged and we welcome further consideration in the proposed new code of practice. We consider that such an approach would be consistent with the use of the term “rebuttable presumptions”. However, parties may at that time want to consider whether any amendments to the definition of theft in conveyance are deemed necessary to facilitate the introduction of the code of practice.

Finally, Ofgem has powers under Part 8 of the Enterprise Act 2002 to take enforcement action against distributors in so far as any breaches of consumer protection law occur in respect of their behaviour in relation to theft in conveyance (eg for a breach of the Consumer Protection from Unfair Trading Regulation 2008). However, we consider that the protection of customers in this context would, where possible, be better supported by enforcement of the existing obligations on suppliers under their licence conditions.

## **Further issues**

In this section we set out our expectations on the next steps in improving the arrangements for tackling electricity theft. We consider the links between these proposals with theft of conveyance in the gas market. We then set out views on two issues raised by respondents on rights of entry and distributor charges.

DCP080A provides a framework for suppliers and distributors to address theft of electricity in a transparent and coordinated way. We consider that this framework should now be used to develop more detailed arrangements for the operation of each party and the co-ordination requirements between suppliers and distributors when illegal abstraction is suspected or found. More broadly, in our recent consultation on improving the arrangements for tackling gas theft<sup>13</sup>, we have requested that the electricity industry brings forward clear proposals for reform by the end of 2011. Once these proposals have been established we intend to consider the need for Ofgem to consult more broadly on the appropriate framework, including on the need for new licence requirements.

In considering these change proposals, we have reviewed any potential similarities with the arrangements in the gas market. The licence conditions for gas transporters establish rebuttable presumptions that gas transporters are responsible for investigating and recovering charges from customers for theft upstream of the Emergency Control Valve (ECV)<sup>14</sup>. We consider that the role of the gas transporter is likely to be driven by the safety concerns relating to gas leaks and explosions occurring from interference with the network upstream of the ECV. This may have led policy makers to conclude that the obligation in relation to theft upstream of the ECV best sat with those parties that had the primary safety obligation, namely, gas transporters. This consideration is important in the electricity market but does not bear the same weight given the different nature of the safety risk. As noted above, we consider that detailed coordination requirements, on matters such as safety, should be established in a code of practice.

One supplier raised specific concerns regarding DCP080A and the rights of a supplier to exercise rights of entry where the source of the theft occurred from different premises. In our view, the relevant supplier at the premises of the customer that has taken an illegal supply is still likely to be in a position to take action using its own statutory powers or, where appropriate, seek authorisation to act on behalf of a distributor. Whilst suppliers will need to seek their own legal advice on rights of entry, Ofgem has the following general and non-binding observations:

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<sup>13</sup> See Tackling Gas Theft, 31 August 2011 (Ref: 112/11)

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=70&refer=Markets/RetMkts/Compl/Theft>

<sup>14</sup> See Standard Licence Condition 7 (Provision of Information Relating to Gas Illegally Taken)

<http://epr.ofgem.gov.uk/index.php?pk=folder414978>

- under subparagraph 7(2) of Schedule 6 to the Electricity Act 1989 (the Act) suppliers have a right of entry for purposes which include the inspection of the meter;
- where a supplier has the power to disconnect premises and remove a meter on grounds of meter interference under paragraph 11 of Schedule 7 to the Act (including where a meter is prevented from duly registering the quantity of electricity supplied), that supplier would have rights of entry for the purposes of exercising that power under subparagraph 8(1) of Schedule 6 to the Act;
- where appropriate, distributors would have the ability to authorise a supplier to exercise rights of entry on their behalf under subparagraph 7(1) of Schedule 6 to the Act for the purposes of inspecting any electric line or plant provided by that distributor.

One supplier expressed concern that, were DCP080A to be approved, distributors would not be appropriately constrained in the charges that they could make to suppliers rectifying interference with equipment. We note distributors have licence requirements<sup>15</sup> to ensure that their charges meet their reasonable costs and a reasonable margin in providing the service in question. We therefore consider that there is an existing route for concerns to be addressed.

### **Implementation date**

We note that there were two proposed implementation dates for DCP080A which received unanimous support. One of these dates depends on our decision on DCP054 and whether we approve it. However, we also note that DCP054 is still under assessment through the DCUSA change process. If we have not made a decision to approve DCP054 with an implementation date earlier than the alternative proposed implementation date for DCP080A of 28 June 2012, we would expect confirmation that DCP080A will be implemented on 28 June 2012.

### **Decision notice**

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP080A '*Theft in Conveyance*' be made.

**Colin Sausman**  
**Partner - Smarter Markets**

Signed on behalf of the Authority and authorised for that purpose

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<sup>15</sup> In the Electricity Distribution licence special conditions Charge Restriction Condition CRC 15 defines 'services treated as Excluded Services' which are excluded from the revenue subject to the price control. CRC 15 Appendix 1 lists specific categories of Excluded Service (ES). ES5 'Revenue protection services' is described as follows: 'This category consists of the provision ...of services relating to the prevention of Electricity Meter interference and other forms of illegal abstraction of electricity'. CRC 15 states how the charges for such services should be set. CRC Part B paragraph 15.10 states: 'Charges levied in respect of Excluded Services provided within categories ES5 and ES7 of Appendix 1 are to be set at a level that will allow the licensee to recover its reasonable costs and a reasonable margin in providing the service in question'.