

Modification proposal:	Distribution Connection and Use of System Agreement (DCUSA) DCP247 – Introduction of TRAS disputes procedure; and Supply Point Administration Agreement (SPAA) CP 15/315 – Introduction of TRAS disputes procedure		
Decision:	The Authority ¹ directs modifications ² DCP247 and CP15/315 be made ³		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties SPAA Panel, Parties to the SPAA and other interested parties		
Date of publication:	08 February 2016	Implementation date:	13 February 2016

Background

In October 2012 we modified the standard conditions of the gas supply licence⁴, strengthening obligations regarding the prevention, detection and investigation of gas theft. An equivalent modification was made to the electricity supply licence in May 2014⁵. These modifications require gas and electricity suppliers to be a party to, comply with, and maintain such “*Theft Arrangement*” as may be directed by us to help improve the detection, prevention and investigation of theft. We subsequently issued a direction requiring the establishment of the Theft Risk Assessment Service (TRAS). The aim of the TRAS is to assist suppliers’ efforts in detecting theft by using data analytics to profile the risk of theft at given premises.

During the development of our proposals parties argued, and we agreed, that a dual-fuel TRAS had the potential to be more cost-efficient and more effective than separate services being developed for gas and electricity. We subsequently accepted modifications to both the DCUSA and SPAA which introduced schedules 25 and 34 respectively to those agreements. These schedules set out the TRAS arrangements⁶, including the governance and funding of the service, as well as DCUSA and SPAA parties’ roles and responsibilities with respect to data provision, etc. These schedules formed that basis on which the service was procured, with the TRAS contract being a tripartite agreement between DCUSA Ltd, SPAA Ltd, and the TRAS provider - Experian.

Whilst the TRAS contract contains provision for resolution of disputes, during its development the need for a complementary arrangement covering suppliers’ rights and responsibilities was identified.

The modification proposal

DCP247 and CP15/315 seek to introduce these complementary arrangements for resolving disputes between suppliers and the TRAS provider. They seek to do this through modifying schedules 25 and 34 of the DCUSA and SPAA respectively. The proposed changes seek to clarify that whilst each supplier may have directly enforceable contractual rights in the event of a breach by the TRAS provider, they will appoint SPAA Ltd and/or DCUSA Ltd as the case may be, to pursue this on their behalf. Similarly, if the TRAS provider wished to pursue a claim against any supplier for any breach of contracted terms, it would raise this claim with SPAA Ltd and/or DCUSA Ltd as appropriate. If the

¹ References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² ‘Change’ and ‘modification’ are used interchangeably in this document.

³ This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986.

⁴ Gas Suppliers Licence Standard Condition 12A: “Matters relating to Theft of Gas”

⁵ Electricity Suppliers Licence Standard Condition 12A: “Matters relating to Theft of Electricity”

⁶ As agreed by the TRAS Working Group, which reported jointly to the DCUSA and SPAA Panels

dispute is settled in the TRAS provider's favour, it would then be left to SPAA Ltd and/or DCUSA Ltd to recover costs from the relevant offending parties.

DCUSA Parties' recommendation

There was unanimous support from those who submitted a vote, for both the proposal and the proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP247 is accepted.

SPAA Parties' recommendation

There was unanimous support from those who submitted a vote, for both the proposal and the proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that CP15/315 is accepted.

Our decision

We have considered the issues raised by the proposals and the respective Change Declarations and Change Reports. We have considered and taken into account the vote of the DCUSA and SPAA Parties on the proposals and have concluded that:

- implementation of DCP247 will better facilitate the achievement of the DCUSA relevant objectives;⁷ and
- the implementation of SPAA CP15/315 will better facilitate the achievement of the SPAA relevant objectives;⁸ and
- directing that the modifications are approved is consistent with our principal objective and statutory duties.⁹

Reasons for our decision

We note the strong support for both proposals from the respondents and the respective Panels. These proposals seek to facilitate the effective implementation of a disputes procedure, without which parties to the DCUSA and SPAA will need to take independent steps to resolve a dispute.

We consider TRAS to be an important tool in tackling electricity and gas theft. Whilst the development of an effective disputes procedure may make the TRAS arrangements more robust, we note that there is already provision for a disputes process in the TRAS contract. We therefore consider that these changes are specifically aimed at ensuring the efficient administration of the DCUSA and SPAA and would have a neutral impact on the provision of the service itself.

(f) the promotion of efficiency in the implementation and administration of the Supply point administration arrangements

(d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements.

We note that in the absence of an agreed procedure suppliers would need to

⁷ The DCUSA General Objectives (Applicable DCUSA Objectives) are set out in Standard Licence Condition 22 of the Electricity Distribution Licence and are also set out in Clause 3.1 of the DCUSA.

⁸ The SPAA General Objectives (Applicable SPAA Objectives) are set out in Standard Licence Condition 30 of the Gas Supply Licence

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

individually resolve disputes with the TRAS provider. These changes make it clear that whilst each supplier may have directly enforceable contractual rights, they should continue to use the relevant code organisations to maintain that relationship in the event of a dispute. We consider any breach by the TRAS provider is likely to affect all suppliers, with the potential for dozens of separate disputes. This could be inefficient.

Conversely, we consider that these changes will provide a greater degree of certainty to the TRAS provider. In the event of a supplier breach, these changes will again ensure that the established contractual arrangement is maintained, and that the TRAS provider is not left pursuing an action against an individual supplier with whom it may have no prior relationship with.

We consider that the establishment of clear and robust procedures for the progression of disputes will ensure that they are resolved in the most administratively efficient way.

Decision notice

In accordance with standard licence condition 22 of the Electricity Distribution Licence, we direct that modification proposal DCP247: '*Introduction of TRAS Disputes Procedure*' be made.

Further, in accordance with standard licence condition 30 of the Gas Suppliers Licence we direct that modification proposal CP15/315: '*Introduction of TRAS Disputes Procedure*' also be made.

Angelita Bradney
Head of Smarter Markets

Signed on behalf of the Authority and authorised for that purpose