

DCUSA CP15/315 - DCP 247 Consultation responses – collated comments

Company	Confidential/ Anonymous	1. Do you understand the intent of the CP?	Working Group Comments
British Gas	Non-confidential	Yes	Noted
Electricity North West	Non-confidential	Yes	Noted
ScottishPower Energy Retail Ltd	Non-confidential	Yes	Noted
E.ON UK	Non-confidential	Yes	Noted
Undisclosed	Anonymous	Simplifying complaints/resolution process	Noted

Company	Confidential/ Anonymous	2. Are you supportive of the principles of the CP?	Working Group Comments
British Gas	Non-confidential	Yes	Noted
Electricity North West	Non-confidential	Yes	Noted
ScottishPower Energy Retail Ltd	Non-confidential	Yes – subject to comments below	Noted
E.ON UK	Non-confidential	Yes	Noted
Undisclosed	Anonymous	Yes	Noted

Company	Confidential/ Anonymous	3. Do you have any comments on the draft legal text?	Wragges Response	Working Group Comments
British Gas	Non-confidential	<p>We have had the schedule reviewed by our Data Protection lawyer and received the comment below:</p> <p>"I would caution SPAA and DCUSA on the possibility that their involvement in this process will bring them into contact with personal information relating to individuals affected by the incident under investigation. I would also want to see some commitment of confidentiality on all the parties making up the review panel as they may come into contact with another suppliers data or internal procedures that should be considered business sensitive."</p>	Noted. This should be considered in the context of the TRAS Contract Manager contract.	<p>It was highlighted that there are potential data protection issues as the dispute process will bring DCUSA/SPAA into contact with personal information.</p> <p>It was noted that a confidentiality agreement may be required once a Dispute Committee is set up.</p> <p>The Working Group agreed an action to consider mitigation for the risk of data protection issues during the TRAS dispute process.</p>
Electricity North West	Non-confidential	<p>Yes:</p> <p>Para 3.1 – schedule 25, para 7.5(a) (i) refers to a claim rather than a dispute. The language is inconsistent between the two. Is a dispute always going to result in a claim?</p> <p>Para 3.2 – this infers that the Secretariat is negotiating on behalf of DCUSA Ltd. We would expect that within the contract it</p>	<p>3.1 – a 'dispute' will exist before there is a claim, but all claims are disputes (so the wording is OK).</p> <p>3.2 – to be changed to TRAS</p>	<p>3.1 - No change required based on Wragges comment.</p> <p>3.2 - Secretariat to be amended to TRAS</p>

		<p>would refer to the contract manager undertaking such an activity. Would it be better to refer to the “DCUSA Ltd’s TRAS Contract Manager”? Currently there is no agreement in place with the Secretariat to undertake this activity and existing service provision is undertaken by DCUSA Panel members rather than the Secretariat. Whichever way this falls it future proofs the outcome.</p> <p>Para 3.3 – ‘within a reasonable period of time’ this is very open ended. I suggest this is replaced by 20 Working Days (similar to billing disputes – schedule 4 of DCUSA) or a timescale that is reflected in the TRAS Contract if such a timescale exists.</p> <p>Para 3.3 – Expedited Dispute Timetable – not sure what this means since not privy to the contract. To do this, parties need to understand what this timetable is. If suppliers have access to this section of the contract i.e. not redacted then it should be ok. Is the redacted version available on the TRAS website under access control should a supplier (new or otherwise) request to see it?</p> <p>Para 3.4 - same comment as that under Para 3.2 with reference to Secretariat.</p>	<p>Contract Manager.</p> <p>3.3 – the WG previously considered (and rejected) express timescales. Do you want to include an express period?</p> <p>3.3 – the Expedited Timetable simply provides for shorter time periods in some places, as set out in the drafting.</p> <p>3.4 – to be changed to TRAS Contract Manager</p>	<p>Contract Manager.</p> <p>3.3 - No change required. The Working Group didn't want to limit the time by which the Supplier could issue a dispute notice.</p> <p>3.3 - The Working Group agreed that details of the Expedited Dispute Timetable should be included in the TRAS Schedules based on the timescales included in Schedule 18 clause 2.5 of the TRAS contract.</p> <p>3.4 - Secretariat to be amended to TRAS Contract Manager.</p>
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		<p>terms of reference rather than Panel terms of reference?</p> <p>Para 5.5 – how can we give notice to the TRAS Service provider in a clause contained within DCUSA that it is not a party to?</p> <p>Para 5.6 – what does appoint advisors cover?</p> <p>Para 5.11 – is this in the TRAS Contract because the TRAS Service provider is not a party to DCUSA</p> <p>Para 5 – overall assessment - this is a difficult read and we are not sure that all parties will understand it. It may be helpful to use Dispute committee rather than Dispute Agent because we are not sure how many agents are being set up here.</p> <p>Para 6.3 – what timetable in this appendix? What is the normal timetable and where is this referenced? Is this under Para 6.6? If please refer to such to aid understanding.</p> <p>Para 6.8 – then what? Surely either party should have the right to seek mediation. Is the issue what type of mediation is to apply or are parties happy to progress straight through to arbitration or the</p>	<p>to terms of reference specified by the SPAA EC?</p> <p>5.5 – DCUSA/SPAA are public documents and highly relevant to the TRAS SP. I nevertheless agree that notice should be given by other means too.</p> <p>5.6 – appointment of professional advisers and others.</p> <p>5.11 – the dispute is between the supplier and the SP, so the money is legally payable to the supplier. This statement is clarifying the extent of the SPAA/DCUSA agency role – i.e. it does not extend to taking receipt of monies.</p> <p>5 – happy to change terminology if the WG wishes.</p> <p>6.3 – a number of steps in the text are subject to timing requirements. This is the timetable. Would the WG prefer 'timescales'?</p> <p>6.8 – The mediation specified is CEDR, which is incorporated by</p>	<p>accordance with the DCUSA Panel/SPAA EC Terms of References.</p> <p>5.5 - The Working Group agreed that there is a need to ensure that this limitation is reflected in the TRAS Contract or notice is given to the TRAS Service Provider in some other way.</p> <p>5.6 - The Working Group agreed to change 'advisors' to 'professional advisors'.</p> <p>5.11 - No change required based on Wragges comment.</p> <p>5 - The Working Group agreed that the term Dispute Agent should be changed to Dispute Committee.</p> <p>6.3 The Working Group agreed to change the word 'timetable' to 'timescales'</p> <p>6.8 - No change required based on Wragges comment.</p>
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		<p>courts?</p> <p>Para 6.13 – this is a sensible timescale and should equally be applied to para 6.8</p> <p>Para 6.14 (d) surely this should be based on 20WDs from receipt of an invoice from the successful party.</p> <p>Para 6.17 – why is it 10 days and not 10 Working Days</p> <p>Para 7.2 - same comment as that under Para 3.2 with reference to Secretariat</p> <p>Para 7.4 - same comment as that under Para 3.2 with reference to Secretariat</p>	<p>reference (see 6.7).</p> <p>6.13 – to be considered by WG.</p> <p>6.14(d) – invoices are not a legally pre-condition to payment. This might help internal systems, but this timescale reflects the SP contract.</p> <p>6.17 – I wasn't privy to the SP contract discussions that landed on 10 days, but there is nothing inherently wrong with 10 days.</p> <p>7.2 – to be changed to TRAS Contract Manager.</p> <p>7.4 - to be changed to TRAS Contract Manager.</p>	<p>6.13 - No change required as this reflects the timescale in the TRAS Contract.</p> <p>6.14 - No change required as this reflects the requirement in the TRAS Contract.</p> <p>6.17 The Working Group agreed to amend to 10 working days and add this to the list of housekeeping changes to the TRAS Contract.</p> <p>7.2- Secretariat to be amended to TRAS Contract Manager.</p> <p>7.4 - - Secretariat to be amended to TRAS Contract Manager.</p>
ScottishPower Energy Retail Ltd	Non-confidential	<p>It is not clear why there is a separate notification procedure under paragraph 3.2 and a requirement for a separate formal dispute notice procedure under paragraph 3.3. If a Supplier raises a breach the relevant information is notified at that stage and there should be actions and timescales (including whether the expedited Dispute Timetable is applicable) agreed at that stage that are appropriate to the breach raised. It is</p>	<p>The SP contract does contain a two stage process of commercial negotiation, and then formal mediation etc. The code text is far more detailed though, as even the commercial negotiation stage involves information sharing and some administration at a SPAA/DCUSA level.</p>	<p>The Working Group considered whether something should be added to the TRAS Contract to require the TRAS Service Provider to respond within a defined time when notified of a breach.</p> <p>It was agreed a CCN should not be raised yet and that this should be added to the TRAS risk register.</p> <p>3.4(c) - No change required based on the</p>

		<p>not clear why timescales are set out in respect of a response from a Supplier in respect of a TRAS User Breach (Paragraph 4) but not a TRAS Provider Breach (Paragraph 3). Do either procedures reflect what has been agreed in the TRAS Agreement?</p> <p>Paragraph 3.4 (c) should be amended to state “follow the process in Paragraph 5 to appoint a Dispute Agent” as the Secretariat do not establish if a dispute should be joined with another that is the decision of each Supplier.</p> <p>In paragraph 3.5 it is not clear in what circumstances the TRAS Service Provider would serve a notice in respect of its own TRAS Provider Breach. Please clarify.</p> <p>In paragraph 4 It is not clear why there is a separate procedure for an initial response and a response to a formal Dispute Notice to the TRAS Service Provider. If the TRAS Provider raises a breach the relevant information is notified at that stage and if there should be actions and timescales (including whether the expedited Dispute Timetable is applicable) agreed at that stage that are appropriate to the breach raised.</p> <p>In paragraph 5, the procedure for</p>	<p>It is the supplier's prerogative how quickly it wants to progress a claim against the SP. However, when defending a claim by the SP, the supplier needs to act within a time period that allows the timescales in the SP contract to be met.</p> <p>3.4(c) - The Secretariat is following a process to establish whether it should be joined. It is the suppliers who make the decision pursuant to this process.</p> <p>3.5 - We agree this is not a common occurrence. However, as the drafting states, it is possible for this to happen, and so it should be dealt with. The scenario is that the SP wishes to encourage the supplier to drop a spurious allegation against the SP by escalating the dispute.</p> <p>4 – This is the same point as the first issue raised by Scottish Power. It's to permit a 'commercial negotiation' with a view to settling the dispute without having to establish a</p>	<p>Wragges comment.</p> <p>3.5 - No change required based on the Wragges comment.</p> <p>4 - The Working Group noted the concern that the TRAS Service Provider is required to agree to the use of the expedited dispute process. It was agreed that this should be added to the TRAS risk register.</p> <p>5 - No change required based on the Wragges comment.</p> <p>5.8 - No change required as the affected Supplier Party will have to give consent to the dispute agent.</p> <p>Paragraph 7 of the TRAS Schedules sets out the limited circumstances where Suppliers have a directly enforceable contractual right against the TRAS Service Provider in respect of data protection, IPR and confidentiality. The Working Group agreed that the limitation in the third party rights should be added to the risk register as breaches may arise that are not covered by these provisions.</p>
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		<p>appointing a Dispute Agent does not make clear the process for appointing the same Dispute Agent to one or more claims and the process for joining the claims together. It is also not clear if a Supplier agrees to a joint claim or a common dispute agent if they can change their mind throughout the process (e.g. conflict of interest). SP require that this process is more clearly defined.</p> <p>Dispute Agents should not be allowed to disclose details of a dispute with other suppliers without consent from the affected Supplier (Paragraph 5.8).</p> <p>Each party should be liable for their own costs and in the case of joint actions these should be agreed in advance.</p> <p>This Appendix states at paragraph 7 that a Supplier may take proceedings or seek remedies in respect of interim remedies for IPR infringement or where a limitation period may expire. Please confirm and highlight the relevant provisions of the related documentation that indicate this right is consistent with the Supplier's rights set out in Schedule 34 and the undertakings of DCUSA and SPAA in the TRAS Services Agreement. A Supplier raising an urgent claim should not be at risk of a counter claim from the TRAS</p>	<p>Dispute Agent.</p> <p>5 – seems clear to me. It's just a question of whether suppliers want their claims to be dealt with together. See 5.4 on opting to go alone.</p> <p>I'm afraid I don't follow the other points. If the concern is around 7.5(a)(ii) that is dealt with by the supplier acting as Dispute Agent while one is established.</p>	
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		<p>Service Provider/ DCUSA/ SPAA in these circumstances.</p> <p>In paragraph 7 there should be additional rights for Supplier's to raise urgent proceedings e.g. in respect of data protection or confidentiality breaches (however, such rights would need to be reflected in the Codes and the TRAS Services Agreement as highlighted above).</p>		
E.ON UK	Non-confidential	<p>In 5.7 it refers disagreements to the SPAA EC / DCUSA Panel however no members of the Dispute Panel appear to be bound to the decision given. Does this require additional processes to make it ensure that panel decisions/recommendations are given consideration?</p> <p>In 5.9 it the costs appear to only apply to 'Suppliers' represented – how are costs to the Service Provider (especially if they raise the dispute) being applied? Currently it reads as though Suppliers would pick up the costs for a Dispute raised by the Service Provider and we do not believe this is the correct principle.</p> <p>Should the comments relating to 5.11 actually be within Section 6? This is because monies are likely to be paid through dispute resolution.</p>	<p>The dispute is first and foremost a dispute between the energy supplier and the TRAS service provider. The SPAA EC / DCUSA Panel will act in accordance with their duties, and consequently may very well not have any particular view on how the dispute should be settled. It will clearly depend upon the nature of the dispute and the course of action proposed by the supplier (eg does it have an impact on the industry generally), but the dispute is the supplier's so for the most part the supplier should have control.</p> <p>5.9 – each individual supplier will need to bear the cost of</p>	<p>5.7 -No change required. The Working Group noted that all Suppliers have a final say in relation to their own claims.</p> <p>5.9 - The Working Group noted that the TRAS Service Provider costs are covered in the TRAS Contract.</p> <p>5.11 - No change required based on Wragges comments.</p>

			<p>bringing or defending claims against or by the SP. This is the position suppliers would have been in had they contracted directly. Obviously, if a supplier is successful in bringing/defending the claim, the SP will be liable for the supplier's costs.</p> <p>The comment relating to 5.11 is dealing with the extent of the agency, so should really stay in paragraph 5 I think.</p>	
Undisclosed	Anonymous	None		Noted

Company	Confidential/ Anonymous	4. The redacted TRAS Contract was issued to all Suppliers on 4 August 2015. Based on your review of the redacted TRAS Contract, do you have any comments on the proposed disputes process?	Wragges Response	Working Group Comments
British Gas	Non-confidential	We do not have any comments		Noted
Electricity North West	Non-confidential	We are not a supplier		Noted

ScottishPower Energy Retail Ltd	Non-confidential	None at this time		Noted
E.ON UK	Non-confidential	<p>Main contract:</p> <p>44.6 state the Disputes Resolution Process as Schedule 16 rather than Schedule 18.</p> <p>Schedule 18:</p> <p>1.1 b refers to not exceeding a 3 month period – this timing is not made clear within the SPAA/DCUSA legal text</p> <p>2.1 makes it clear that parties shall continue to comply with obligations – this is not made as clear in the SPAA/DCUSA legal text. What happens where the dispute impacts a supplier's confidence in the service provider and for example withholds their data submission?</p>	<p>For consideration in context of TRAS contract.</p> <p>1.1 b - This is a meaningless 'restriction' in practice. There is the option to raise a formal dispute earlier, and no restriction on raising one subsequently.</p> <p>2.1 – parties always have to comply with their obligations. A statement such as this in the SPAA/DCUSA would suggest that there are instances in which parties do not have to comply with their obligations.</p>	<p>44.6 - The Working Group agreed that changes to paragraph 44.6 should be included in the housekeeping change to the TRAS Contract.</p> <p>Schedule 18 para 1.1b - No change required based on Wragges comment.</p> <p>2.2b No change required based on Wragges comment. The Working Group noted that the contract states Parties have to continue to comply with the Contract while a dispute is being progressed. However in some circumstances e.g. a security breach, Suppliers may chose not to continue providing data. It was agreed that this should be added to the risk register.</p>
Undisclosed	Anonymous	None		Noted

Company	Confidential/ Anonymous	5. Are you supportive of the proposed implementation date 25 February 2016?	Working Group Comments
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British Gas	Non-confidential	Yes	Noted
Electricity North West	Non-confidential	Yes	Noted
ScottishPower Energy Retail Ltd	Non-confidential	This should be the latest date it is implemented. We would prefer it is implemented the day after Authority Consent or 25 th Feb at the latest.	The Working Group agreed to change the implementation date to 5WD after the Authority decision.
E.ON UK	Non-confidential	Yes	Noted
Undisclosed	Anonymous	No opinion	Noted

Company	Confidential/ Anonymous	6. Do you consider that the proposal better facilitates the DCUSA/SPAA objectives? Please give supporting reasons.	Working Group Comments
British Gas	Non-confidential	<p>DCUSA</p> <p>We agree that General Objective Four is better facilitated by DCP 247 as the establishment of a clear and robust process for the progression of disputes under the TRAS Contract will ensure that disputes are resolved in the most efficient way.</p> <p>SPAA</p> <p>Objective (c) – ‘Promotion of efficiency in the implementation and administration of the supply point administration arrangements’</p> <p>We agree that Objective (c) is better facilitated as the establishment of a clear and robust process for the progression of disputes under the TRAS Contract will ensure that disputes are resolved in the most efficient</p>	Noted

		<p>way.</p> <p>Objective (f) – ‘Securing compliance with standard condition 12A of the Gas Suppliers Licence [Matters relating to Theft of Gas]’.</p> <p>We agree that Objective (f) is better facilitated as ensuring a robust dispute process will facilitate the implementation and ongoing management of the TRAS solution</p>	
Electricity North West	Non-confidential	It better facilitates objective 4 - the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it by developing processes to handle any disputes between parties and the TRAS Service provider	Noted
ScottishPower Energy Retail Ltd	Non-confidential	Yes	Noted
E.ON UK	Non-confidential	<p>Objective C (Promotion of efficiency in the implementation and administration of the supply point administration arrangements.)</p> <p>It supports effective administration of the SPAA/DCUSA by creating a defined process for disputes management.</p>	Noted
Undisclosed	Anonymous	No opinion	Noted

Company	Confidential/ Anonymous	7. Do you have any other comments on the proposed disputes procedure?	Working Group Comments
British Gas	Non-confidential	No	Noted

Electricity North West	Non-confidential	We assume that this complies with the TRAS contract regarding disputes and the TRAS Service Provider's expectations of the process especially where we seen to have references to what their rights are.	The Dispute Procedure is based on the process in the TRAS Contract.
ScottishPower Energy Retail Ltd	Non-confidential	No	Noted
E.ON UK	Non-confidential	No	Noted
Undisclosed	Anonymous	No opinion	Noted

Company	Confidential/ Anonymous	8. Are you aware of any wider industry developments that may impact upon or be impacted by this CP?	Working Group Comments
British Gas	Non-confidential	No	Noted
Electricity North West	Non-confidential	No.	Noted
ScottishPower Energy Retail Ltd	Non-confidential	None	Noted
E.ON UK	Non-confidential	No	Noted
Undisclosed	Anonymous	None	Noted