

DCUSA DCP 127 RFI 2 Responses – Collated Comments

NOTE: This document should be read in conjunction with the minutes of the DCP 127 Working Group (WG) held on 8 March 2013, and the responses to the earlier DCP 127 consultations and Requests for Information. These documents are available on the DCUSA website (www.dcusa.co.uk)

This Consultation was issued to DCUSA Contract Managers.

Question One	For Electricity Suppliers - For the indemnity from the gas supplier, where his actions cause suffering to the electricity supplier (e.g. from damage to metering equipment and/or the premises), is £1m sufficient, or would you propose a different value?	Working Group Responses
British Gas	In view of the existing Limitation of Liability Clause in Section 53 where liability for physical damage is already capped at £1m it would seem reasonable that the indemnity in favour of the electricity supplier for damage to metering equipment and premises should also be capped at £1m.	The WG noted the comment.
EDF Energy	<p>We do not believe that the amount of £1 million is sufficient; surely the liability should be unlimited and not capped. £1 million appears to be totally unrealistic and would not account for scenarios such as a block of flats being destroyed or significantly damaged.</p> <p>These costs should be entirely borne by the party responsible for the damage.</p>	<p>A WG member clarified EDF's original view, but confirmed that after further consideration EDF was of the view that the £1m cap was sufficient for now, and a Change Proposal could be raised at a later date to review this cap.</p> <p>The WG noted the revised response.</p>

	POST MEETING NOTE – EDF explained it had revised its view and considers that £1m is sufficient, and would raise a Change Proposal at a later date to change the cap if required.	
Electricity North West Ltd	N/A	
SSE Energy Supply	<p>We believe that the £1m indemnity should be sufficient for damage to equipment and/or the premises in most cases. However, where actions of the Gas Supplier have caused death or personal injury then the Electricity Supplier should be indemnified to an unlimited amount.</p> <p>We believe that the question of ongoing responsibility for the Comms Hub will impact the indemnity provisions. Where a customer changes their gas supply to a Gas Supplier who is not party to DCUSA, who will indemnify the Electricity Supplier? This question needs to be resolved or there is a risk that Electricity Suppliers will be left with the liability where a Gas Supplier is not a DCUSA party.</p>	<p>The WG's view was that death/personal injury was already covered in the DCUSA liabilities.</p> <p>The WG agreed to confirm the following position with the legal advisor: if the new gas supplier was not a DCUSA party, the old gas supplier would remain liable for the installation as the 'installing supplier'. If the new supplier wanted to work on the gas hub, it would have to sign up to the DCUSA or make the relevant bilateral arrangements. In the foundation period, the gas supplier could also chose to remove the comms hub</p> <p>The WG noted that DCP 127 just provides a contractual framework that parties can chose to use or not; it provides a standard agreement to cover the liabilities, prior to the Data and Communications Company (DCC) going live.</p>
UK Power Networks	N/A	

Western Power Distribution	N/A	
Question Two	For Electricity Suppliers - For the indemnity from the gas supplier, where his actions cause the electricity supplier to breach his MAP or MOP contract, is £1m sufficient, or would parties propose a different value?	
British Gas	<p>We have reviewed our electricity MAP and MOP contracts including legacy metering JPW agreements and we do not believe allowing a gas supplier or his agent to work on the metering asset would put us in breach of contract. We have also discussed with our MAPS what the likely nature of loss could be suffered by a MAP by the actions of a gas supplier other than physical damage and we have not identified any material losses that could be incurred other than physical damage which is covered by the indemnity mentioned in question1.</p> <p>In light of this we would suggest a slight amendment to clause 52H.12.2 as follows</p> <p>52H.12.2 directly or indirectly from any claim by the owner of the electricity metering equipment at the Premises or by the Electricity Supplier's Meter Operator Agent that the Electricity Supplier is in breach of its contracts with such persons in providing consent under Clause 52H.11 provided it has suffered loss as a result of such breach (but only to the extent such contracts were entered into prior to 1 October 2013, and subject to a cap of £1 million per contract).</p>	The WG had no comments or questions and agreed to pass the suggested change to the legal advisor

EDF Energy	<p>We do not believe that the amount of £1 million is sufficient; surely the liability again should be unlimited and not capped. £1 million appears to be inadequate and as a minimum should cover the MAP/MAM liability.</p> <p>These costs should be entirely borne by the party responsible for the breach.</p> <p>POST MEETING NOTE – EDF explained it had revised its view and considers that £1m is sufficient, and would raise a Change Proposal at a later date to change the cap if required.</p>	Refer to comment / response earlier.
Electricity North West Ltd	N/A	
SSE Energy Supply	<p>We are concerned that the £1m indemnity per MAP or MOP contract will not be sufficient. The potential number of Gas First installations may result in many individual indirect or direct breaches that could easily put Electricity Supplier liabilities beyond the indemnity level.</p> <p>We believe that the question of ongoing responsibility for the Comms Hub will impact the indemnity provisions. Where a customer changes their gas supply to a Gas Supplier who is not party to DCUSA, who will indemnify the Electricity Supplier? This question needs to be resolved or there is a risk that Electricity Suppliers will be left with the liability where a Gas Supplier is not a DCUSA party.</p>	<p>The WG considered it would be useful to have some examples of scenarios that would incur more than £1m for breach of contract. Noted that it would be hard for the WG to evaluate a reasonable value for breach of contract. Members could not envisage what the loss might be.</p> <p>It was agreed to leave £1m in, recognising that might be amended by further DCP later.</p> <p>The WG considered that if the gas supplier wasn't a DCUSA party, it wouldn't have permissions to work on the electricity equipment. Any breach or damage therefore is tort rather than liability. WG members referred to the earlier point on liabilities on change of gas supplier.</p> <p>It was noted non-DCUSA Parties can't be tied to DCUSA obligations.</p>

UK Power Networks	N/A	
Western Power Distribution	N/A	
Question Three	For Electricity Distributors - Do you have any concerns about the liability provisions in the legal drafting for DCP 127?	
EDF Energy	(blank)	
Electricity North West Ltd	Our understanding is that gas suppliers will be subject to the general legal provisions of DCUSA and as such will be subject to the liabilities covered off in Clause 53.1.	The WG noted the comment.
SSE Energy Supply	N/A	
UK Power Networks	<p>The distributor is exposed to similar risks as the supplier, in particular the distributor is exposed to risks around the customer's connection and consequences arising from issues there, which the meter operative will be working on.</p> <p>We therefore suggest it is equitable to include an indemnity similar to that proposed for suppliers along the lines of;</p> <p>The Gas Supplier shall indemnify the Company [Distributor] against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising directly from physical damage to the property of any person caused by the Gas Supplier's Gas Meter Asset Manager in exercising the Gas Supplier's rights under this Section 2C (but excluding</p>	The WG agreed to consult the legal advisor on inclusion of this text.

	<p>liability for any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill, and subject to a cap of £1 million per incident or series of related incidents)</p> <p>While this is similar to the indemnity proposed for suppliers, we question whether the indemnity in respect of distributors' liability to customers should be capped as shown or should be linked to their risk under the national terms of connection (which may exceed £1m for domestic customers). Something like replacing the last phrase with;</p> <p>and subject to a cap of £1 million per incident or series of related incidents in respect of the property of persons whose premises are not whole current metered domestic premises.</p> <p>Note also that the circulated draft of 52H.12.1 says "(but excluding liability any loss of profit," , where it should say "(but excluding liability for any loss of profit,"</p>	<p>The WG decided not to take this second wording suggestion forward as distributors don't get an equivalent indemnity from electricity suppliers' Meter Operators. The respondent was content to leave the additional wording out, noting it could be amended later via another DCP if required.</p> <p>Noted, would be passed to legal advisor</p>
Western Power Distribution	<p>In our understanding the liabilities under gas first installations is no different to the normal liabilities we have under the DCUSA, on this basis we do not have any concerns.</p>	<p>The WG noted the comment.</p>