DCUSA Change Report

DCP 080 and DCP 080A – 'Theft in Conveyance'

1 PURPOSE

1.1 This document is issued in accordance with Clause 11.20 of the DCUSA. The Change Report details DCP 080 and DCP 080A – 'Theft in Conveyance'. The voting process for the proposed variation and the timetable of the progression of the CP through the DCUSA Change Control Process is set out in this document.

1.2 Parties are invited to consider the proposed amendments attached as Appendix A and Appendix B and submit votes using the form attached as Appendix D to dcusa@electralink.co.uk by 11 August 2011.

2 SUMMARY

2.1 DCP 080 "Theft in Conveyance" has been raised as a result of developments under the DCP 054 'Revenue Protection/Unrecorded Units into Settlement' Working Group. The intent of DCP 054 is to ensure that revenue protection procedures are undertaken and that all reported energy illegally extracted reaches and is processed through the settlement process. Further that the revenue Protection Code of Practice is incorporated into an appropriate governance framework to ensure it is maintained to reflect best practice. As part of its assessment of DCP 054, the Working Group consulted on a number of matters including the issue of "Theft in Conveyance".

2.2 The DCP 054 Working Group found that there is uncertainty as to the definition of 'Theft in Conveyance' amongst industry Parties. This lack of a definition, and hence clarity around the commercial relationships, has led to different interpretations by Distributors and Suppliers regarding their responsibilities when theft is detected. The DCP 054 Working Group therefore sought legal advice on this issue with the intention of clarifying the interpretation of the Electricity Act on this point. However, different interpretations of certain key statutory provisions have led to difficulties in agreeing the detail of the legislative framework. A Consultation exercise regarding this was carried out in December 2010 confirmed that a consensus could not be reached.

2.3 Wragge & Co has reviewed the Consultation comments on 'Theft in Conveyance' and concluded that the majority of responses agreed that "electricity in the course of being conveyed by an electricity distributor" (paragraph 4(1) of Schedule 6 to the EA) is electricity which is on the distribution network only. Wragges confirmed that the responses did not

impact or change the advice that was previously given on electricity theft to the DCP 054 Working Group.

2.4 The DCP 054 Working Group concluded that the inclusion in the DCUSA of an approved definition of 'Theft in Conveyance', as well as providing clarity around the associated roles and responsibilities of Parties, would better enable the future development of theft incentive schemes, help to facilitate the entry of stolen units into settlement, and to aid in the development of the Revenue Protection Code Of Practice. DCP 080 has therefore been raised to facilitate that Working Group's conclusion and define 'Theft in Conveyance' so that it is consistent with the view of the industry.

3 DCP 080 – 'THEFT IN CONVEYANCE'

3.1 DCP 080 was raised by British Gas and submitted to the DCUSA Panel in January 2011. The DCUSA Panel established a Working Group to further assess and develop the Change Proposal (CP).

3.2 The original proposal (DCP 080) defines "Theft in Conveyance" as:

"*The abstraction of electricity while it is passing through Electric Lines or Electrical Plant provided, owned or operated by the Company.*"

3.3 Under DCP 080, if electricity is abstracted from any point at or above the outgoing terminal of the cut-out, then it falls to the Supplier to pursue the person responsible. If electricity is abstracted from the cut-out or any point prior to that, then this constitutes 'Theft in Conveyance' and it falls to the Distributor to pursue the customer for charges. Paragraph 4(1) of Schedule 6 to The Electricity Act includes provisions which enable the Distributor to recover the value of any electricity so taken.

3.4 The DCP 080 Working Group was unable to reach agreement that the definition of "Theft in Conveyance" proposed in the CP was correct. The Working Group subsequently developed an alternative, DCP 080A, to reflect the views of those who did not support DCP 080. The alternative defines "Theft in Conveyance" as the theft for use at premises where there is no Supplier registered in respect of any metering point.

3.5 The alternative proposal (DCP 080A) is based on the concept that 'Theft in Conveyance' occurs where the electricity abstracted is not for use at a

Premises for which a Supplier has responsibility, through the registration of an MPAN or MSID.

It defines 'Theft in Conveyance' as:

"The abstraction of electricity for use other than at a Premises where any Metering Points or Metering Systems are Registered by a User."

3.6 Premises are defined in the Electricity Act (see section 64(1)) to include land, buildings and structures.

3.7 Under DCP 080A, if a Supplier has registered a metering point at a Premises they are responsible for the recovery of costs associated with the abstraction of electricity. If no registration exists then such recovery is the responsibility of the Distributor.

3.8 The Working Group had initially considered using the presence of a supply contract, whether deemed or actual, to indicate the existence of such a relationship but decided that this was sometimes difficult to evidence. However, if a Supplier is registered and energy is consumed, the Working Group's view was that there must be a supply contract, whether deemed or actual, and so the Working Group settled on registration as clear evidence of a relationship.

3.9 The following scenarios highlight the Parties deemed responsible under each definition:

Scenario.	**DCP 080: 'Theft in Conveyance' is the abstraction of electricity while passing through lines and plant owned / provided by DNO, i.e. up to outgoing cut- out terminals.**	**DCP 080A: In circumstances where a Supplier is registered under the definition relating to premises.**
Stolen from the meter	Supplier	Supplier
Stolen from the outgoing Terminal of cut out	Supplier	Supplier
Stolen from the cut-out	Distributor	Supplier

Stolen from the incoming Terminal of cut out	Distributor	Supplier
Stolen from the mains	Distributor	Supplier
Stolen from a neighbouring property	Distributor	Supplier
Stolen from the services cable directly	Distributor	Supplier
Taken to a property where there is no supply contract or deemed contract.	Distributor	Distributor
		Note: Under DCP 080A, where no MPAN or Supplier is present, it will be the Distributor who is responsible for all scenarios.

3.10 As part of its discussions, the Working Group considered whether either of the proposed definitions had an impact on existing obligations and rights in respect of damage to equipment or to safety and concluded that there is no impact. .

3.11 As part of its discussion, the Working Group considered whether either of the proposed definitions have an impact on the existing obligations or rights which are specified in the Electricity Act.

3.12 The group focused on two particular parts of the Electricity Act. Firstly, Schedule 6, Paragraph 5 of the Electricity Act, which is concerned with the restoration of supply without consent. This gives whoever disconnected the supply, that has been reconnected, the right to disconnect it again. The group was interested in how the definitions of 'Theft in Conveyance' would interact with this right. The group concluded that the rights given by the Electricity Act should not be altered or distorted by the definition of 'Theft in Conveyance' and believed that they would not be affected.

3.13 Secondly, the group considered Schedule 7, Paragraph 11 of the Electricity Act, which is concerned with meter tampering. The group was interested in how the definitions of 'Theft in Conveyance' would interact with this

Paragraph. The group concluded that both definitions would place rights and responsibilities for meter tampering with the Supplier, so long as industry rules have been followed, and so on balance the definition of 'Theft in Conveyance' did not impact this Paragraph.

3.14 The DCP 080 Working Group proposes that DCUSA Clause 32.3 'Revenue Protection' should be given the status of a Part 1 matter. In order to enable this, an amendment to Clause 9.5 of the DCUSA was included in the legal drafting.

4 CONSULTATION

4.1 The DCP 080 Working Group issued a Consultation to all DCUSA Parties, DCUSA Parties, Consumer Focus and the Authority. The consultation documents and Working Group responses to the comments are attached in Appendix C.

4.2 The group reviewed responses from 11 Parties of which all respondents understood the intent of the CP and were supportive of the principles it aims to establish.

Which definition of ''Theft in Conveyance'' do you support?

4.3 Five Parties were supportive of DCP 080, while six Parties were supportive of DCP 080A. Supplier Parties were supportive of DCP 080 and Distributors were in support of DCP 080A.

What impact does each definition have on Parties and Customers?

4.4 All respondents agreed that each CP has an impact on Suppliers, Distributors and Customers.

4.5 Suppliers felt that should DCP 080 be implemented, Distributors will be incentivised to ensure distribution assets are repaired and replaced at the lowest cost possible; as these costs will be borne by the distribution businesses themselves. Supplier parties considered that DCP 080 will facilitate a robust process which will enable action to be taken to deal with 'Theft in Conveyance' effectively, and to ensure that customers are dealt with appropriately in a given set of circumstances.

4.6 The majority of respondents felt that DCP 080A would have an impact on Suppliers. They would need to procure services directly from distribution businesses for the repair and replacement of damaged distribution

equipment. The group noted concerns that without the proper regulation of charges for these services, Suppliers could be exposed to costs which ultimately would be borne by all customers if they are unable to recover those costs from the responsible persons. It was also noted that DCP 080A could have a significant impact on Suppliers and Meter Operators who will not generally have the technical expertise required to deal with illegal connections at the cut out. Therefore they would have no alternative but to employ Distributors on a contractual basis. Even though Suppliers can recover costs from their customers, in practice this is difficult and seldom happens.

Please provide examples if you believe that either of the proposed definitions create issues with regard to existing obligations or rights under the Electricity Act, for example in Schedule 6 or Schedule 7.

4.7 Supplier respondents believed the obligations and rights as currently documented under Schedule 6 and Schedule 7 of the Electricity Act support the definition of 'Theft in Conveyance' as defined under DCP 080. One Supplier respondent gave the example that under Schedule 6, rights to disconnect where damage has occurred to electrical line or electrical plant equipment is given to the Distributor. They noted that rights to disconnect where an offence has been committed in relation to the electricity meter are given to the Supplier. A second Supplier respondent gave the example that under DCP 080A, if a Customer is at one property and, (A) steals from a neighbouring property, (B) by illegally making a connection to the electric line before the cut out; then the Supplier for property A would be responsible for resolving the situation. However the Supplier at property A has no right of access to property B to investigate or rectify the situation, and is unaware of the identity of the Supplier to property B.

4.8 Distributors believed that DCP 080 appears to be flawed as it is at odds with current rights and obligations. Specifically, paragraph 3(8) of Schedule 6 of the Electricity Act states the Supplier's recovery of the cost of illegally-abstracted electricity (in setting out the need for the terms of deemed contracts to provide for the calculation of the quantity of electricity taken illegally). A respondent gave the example that paragraph 4 (2) Schedule 6 of the Act is referring to restoration of connection. The reference to the fact that Distributors only need to put in place a scheme for the recovery of the value of lost units if there is no supply contract in place, seems to support the argument that where supply contracts exist, then recovery should be via

the Supplier for existing connections.

Does either of the proposed definitions have implications for Parties operating under the existing Revenue Protection Code of Practice (CoP)?

4.9 The majority of respondents gave a neutral response to this question; but the Working Group agreed that the CoP will need to define of 'Theft in Conveyance'.

Are there any unintended consequences of this proposal?

4.10 One Supplier noted that DCP 080 could have an impact on the Consumer Focus complaints process, in that complaints about the actions taken by Distributors in dealing with theft cases may be recorded against Suppliers who have had little or no involvement in what has happened. The Working Group agreed that the issue will be addressed under the DCP 054 Working Group.

4.11 One Distributor noted that the definition proposed in DCP 080 could create a perverse incentive for Suppliers to not inspect beyond the meter and customer's equipment in contradiction with obligations placed on Suppliers under Supply Licence Condition 12. The Working Group agreed that the issue will be addressed under the DCP 054 Working Group.

4.12 All other comments have been included in the Working Group responses in Appendix C.

Under DCP 080A what should happen if more than one Supplier was registered to different MPANs at a Premises?

4.13 This is a contested area for respondents. However, the DCP 080 Working Group agreed that the relevant Supplier would be identifiable by the MPAN of the specific occupied property.

Are there any scenarios of theft that have not been captured in the list included in paragraph 3.8 of this document?

4.14 A number of areas of theft that had not been captured in the list and the Working Group agreed to issue the responses to the DCP 054 Working Group for their consideration.

Do you agree that the DCUSA should be amended to ensure that any changes to clause 32.3 are classified as Part 1 matters, and therefore require Authority consent?

4.15 The majority of respondents agreed that the DCUSA should be amended to ensure that any changes to clause 32.3 are classified as a Part 1 matter.

Do you consider that the proposal better facilitates the DCUSA objectives?

4.16 Respondents views were noted by the Working Group and it agreed that DCP 080 and 080A better facilitate DCUSA General Objective 1[1] as the CP will give clarity to the issue of ''Theft in Conveyance'' and will assist with coordination of the Distribution System as Distributors will understand their role in relation to where theft is detected.

4.17 It was agreed that DCUSA General Objective 2[2] is also better facilitated as the CP will ensure that costs and responsibilities of Suppliers and Distributors in relation to Theft in Conveyance is transparent.

4.18 It was also agreed by the Working Group that DCUSA General Objective 3[3] is not impacted as there is no licence obligation in relation to this CP.

4.19 The group agreed that DCUSA General Objective 4[4] is not impacted by the CP as this objective deals mainly with the administration of the agreement.

Are there any alternative solutions or matters that should be considered?

4.20 One respondent stated that one area which should be considered is who should make the initial visit to establish whether the Supplier or Distributor is responsible for investigating the theft. They also noted that joint responsibility should be included within the definition, to ensure that the work being carried out is done in a timely manner and that the customer is dealt with correctly.

Are you supportive of the proposed implementation date?

4.21 The Working Group noted that all respondents were supportive of the proposed implementation date.

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[1] The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System.

[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.

[3] The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences.

[4] The promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it.

Please state any other comments or views on the Change Proposal.

4.22 The Working Group noted that a number of respondents were not satisfied with the definition of 'Theft in Conveyance' in the Electricity Act. The group noted that DCP 080 and 080A cannot make any amendments to the Act, but can provide a clear interpretation of it for Parties.

4.23 Appendix C of this Change Report sets out the Working Group responses to the Consultation comments. A number of responses state that the comment was 'noted'. This means that the comment was considered by the Working Group but was felt to be an observation or a matter related to the practicalities associated with the definition. The Working Group will issue the consultation comments and responses to the DCP 054 Working Group for consideration as part of its assessment of DCP 054.

5 LEGAL DRAFTING

5.1 The proposed legal drafting for DCP 080 and DCP 080A is attached as Appendices A and B.

5.2 Note that the DCUSA currently makes reference to a Revenue Protection Code of Practice and for clarity this is not the CoP being developed by the DCP 054 Working Group but is a document that originates from 1998. The Working Group recognises that this may subsequently be amended by DCP 054.

5.3 The drafting for both CPs goes on to state that where 'Theft in Conveyance' occurs, the Distributor shall be entitled to take action. All other instances of theft are for the User (generally the Supplier) to act upon. The drafting does not prescribe what action should be taken as that will be for the relevant Party to determine. Note that the Electricity Act gives Distributors a right to recover revenue in the event of 'Theft in Conveyance', not an obligation to do so.

6 ASSESSMENT AGAINST THE DCUSA OBJECTIVES

6.1 The Working Group considers that DCP 080 and DCP 080A will better facilitate General DCUSA Objective 1[5], as the CP will give clarity to the issue

[5] The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-

of 'Theft on Conveyance' and will assist with the coordination of the Distribution System as Distributors will understand their responsibilities in relation to where theft is detected.

6.2 The Working Group also considered that DCUSA general objective 2[6] is also facilitated, as the CP will ensure that costs and responsibilities are transparent.

7 IMPLEMENTATION

7.1 DCP 080 and 080A are deemed to be Part 1 matters in accordance with Clause 9.4.2(D). The CPs will therefore require Authority consent.

7.2 The proposed implementation date for DCP 080 and DCP 080A is the earlier of the implementation of DCP 054 or 28 June 2012. Parties are asked in their response to describe any implications of implementing DCP 080 or 080A prior to DCP 054.

8 ENGAGEMENT WITH THE AUTHORITY

8.1 Ofgem has been fully engaged throughout the development of DCP 080 and DCP 080A as members of the Working Group and the DCUSA Panel.

9 PANEL RECOMMENDATION

9.1 The Panel approved this Change Report at its meeting on 20 July 2011. The Panel considered that the Working Group had carried out the level of analysis required to enable to Parties to understand the impact of the proposed amendment and to vote on the CPs.

9.2 The timetable for the progression of the Change Proposals is set out below:

Activity	**Date**
Change Report issued for voting	21 July 2011
Voting closes	11 August 2011
Change Declaration	12 August 2011
Authority Decision	12 August – 23 September 2011
Implementation	The earlier of the Implementation of DCP 054 or the June 2012 release

ordinated, and economical Distribution Networks

[6] The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity

10 APPENDICES:

A. DCP 080 - Legal Drafting

B. DCP 080A - Legal Drafting

C. DCP 080 and DCP 080A– Consultation Documents

D. DCP 080 and DCP 080A - Voting Form