



DCUSA Change Report

DCP 054 - Revenue Protection / Unrecorded
Units into settlements

1 PURPOSE

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA and details DCP 054 - Revenue Protection / Unrecorded Units into settlements.
- 1.2 The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.
- 1.3 Parties are invited to consider the proposed amendments (Attachment 2) and submit their votes using the form attached as Attachment 5 to dcusa@electralink.co.uk no later than **16 August 2013**.

2 EXECUTIVE SUMMARY

- 2.1 DCP 054 was raised on the 21 October 2009 to develop a Code Of Practice (CoP) for detecting and reporting illegal abstraction of electricity. Over a period of three years of developing the Revenue Protection Code of Practice, the DCP 054 Working Group had 38 meetings, issued three consultations and there has been two Working Groups (DCP080A and DCP 054 subgroup) who have helped to progress this change. The main output of this Working Group is a Revenue Protection CoP for the GB electricity industry which was progressed at times in tandem with a SPAA Working Group developing a gas CoP. This allowed for elements of the electricity and gas CoP to be co-ordinated as appropriate. The Working Group also strove to comply with the Principles in Schedule 1 of the Data Protection Act (DPA) by developing a Privacy Impact Assessment along side the Revenue Protection CoP and its appendices which are attached as Attachment 4 and Attachment 2 to this report.

3 DCP 054 – WORKING GROUP CONSIDERATIONS

- 3.1 The Working Group comprised of Supplier, DNO, IDNO, revenue protection agents, ELEXON and Ofgem representatives. Meetings were held in open session and the minutes and papers of each meeting are available on the DCUSA website – www.dcusa.co.uk. All Working Group members are supportive of the general principle of DCP 054. Distributor and Supplier members confirmed that they experience the same issues as those identified by the Proposer and the CP would let them mitigate those risks which occur due to the theft of electricity.

4 DCP 054 BACKGROUND

4.1 DCP 054 was raised by Electricity North West Limited in October 2009. The CP seeks to ensure that:

1. Suppliers must provide or procure a revenue protection service in accordance with the Revenue Protection CoP
2. The Revenue Protection CoP should become a schedule to the DCUSA
3. Where Suppliers identify theft, the calculation of stolen units should be made in accordance with the Revenue Protection CoP and the Supplier should ensure that the units are entered into settlement.
4. Distribution businesses should have the right to audit Suppliers to ensure that the units are entered into settlement.

4.2 At the time that the CP was raised Electricity North West Limited considers that the failure of Users to detect and report illegal abstraction and to enter unrecorded units into settlements can have a major impact on Distributor's allowed revenue and the level of reported losses. The failure to enter units into settlement will also negatively impact the distributor's losses incentive calculation. Balancing and Settlement Code (BSC) Audits have identified weaknesses in the existing process and ELEXON has commenced Technical Assurance visits to assess the process and recommend any changes as required. The proposer considers that this CP will ensure all parties are responsible for the energy used.

4.3 The DCUSA Working Group has been seeking to formulate an industry approach to the problem of detection of electricity theft. The Group has been working with the DCUSA legal advisers to understand the legislative framework within which this approach must operate, and in particular the existing rights and responsibilities that legislative framework places on Distributors and Suppliers.

4.4 The DCUSA Working Group met with the Information Commissioner's Office in order to consult on data that could be shared between industry participants and as a result developed a Privacy Impact Assessment (PIA) which acted as a tool in helping to develop and refine this CP and its Revenue Protection CoP.

- 4.5 The Working Group agreed early on in the process the principle that all units should enter settlement and be appropriately charged and it should not be limited solely to Suppliers. All parties should follow the Revenue Protection CoP as both Suppliers and Distributors are able to procure a service from a revenue protection agency.
- 4.6 The Working Group could not come to an agreement on the definition of theft in conveyance. In order to resolve the definition of theft in conveyance a separate CP was raised to define theft in conveyance DCP 80 and DCP 80A. DCP 80A then defined theft in conveyance.
- 4.7 The Working Group also raised an issue under the BSC to look at how units could be entered in to settlement. It was agreed that a party could then raise a change if they wished under the BSC and that two of the original aims, to ensure all units were entered into settlement and the Distributors ability to audit Suppliers, could only be achieved through the BSC and would not be pursued under this change.
- 4.8 The Working Group set up a separate subgroup to review the CoP with the SPAA Theft of Gas (ToG) Working Group in 2010. This resulted in a more consolidated document which was sent back to the two main working groups for review and final revisions.
- 4.9 There is no intent to obligate a Distributor to offer a service from this CP but where one is offered or taken then parties will be obligated to adhere to this CoP. The CoP is designed to be able to be used as a standalone document which acts as best practice and may duplicate some of the DCUSA principles.
- 4.10 The Working Group and the proposer believed that the work of the group had and was likely to further move away from the original intent of the DCP. Guidance was sought from the DCUSA Panel to understand if the original DCP would need to be withdrawn. The Panel advice was that the group should continue to develop the new CoP and that a new working was not needed even though some of the original intent would not now be met.
- 4.11 The final submission for this DCP will only look to incorporate the CoP into DCUSA. Ofgem have indicated that there is likely to be further work required in the Electricity sector in the future and the Working Group believe that these changes should be taken up by a fresh group.

5 DCP 054 – CONSULTATION ONE (DATE OF ISSUE: 8 JUNE 2010)

5.1 Consultation One sought information on Parties' current revenue protection policy and the potential incentive schemes to oblige parties to report on theft of electricity. These incentive schemes have since been removed from the CP as it is felt that they would more naturally sit under the BSC and a party could raise a change to the BSC at any time. There were fifteen responses received to the consultation. The Working Group discussed each response and its comments are summarised alongside the collated Consultation responses in Attachment 3.

5.2 The DCP 054 Working Group sought a response to the following questions to assist it in the development of DCP 054 and the CoP. A summary of the responses received, and the Working Group's conclusions are set out below:

- Revenue Protection Policy

Question One: Suppliers: What are your current practices for Revenue Protection; do you have a statement of requirements that you require Revenue Protection Service providers to follow and, if so, would you be willing to share this statement of requirements in order to ensure any Code of Practice incorporates your requirements?

5.3 There were 7 respondents.

5.4 One of the respondents noted that they offered a revenue protection service via a third party service in line with the existing Revenue Protection CoP. This respondent stated that:

"At the present time, all Suppliers bar one use this service and the remaining Supplier provides their own revenue protection service".

5.5 Two of the respondents provided a detailed list of the main areas of their policy which was used in the identification of areas to address under the CoP. These included:

- the reporting of theft information on the same or next Working Day
- resolving any safety concerns
- checking for vulnerability criteria
- assets not owned but being held for period consistent with evidence storage requirements

- a procedure for assessing unrecorded units by:
 - Reviewing recorded consumption patterns prior to the judged period of interference
 - Use of standard consumption figures of major appliances
 - Standard load profiles with typical consumption levels taking into account types of premises, tariff in use, number of occupants, other fuels available and geographic location
- where theft is identified at or before the cut-out, these instances are reported to the Distribution Business, as under paragraph 6 of Schedule 6 of the Electricity Act (EA), theft at or before the cut-out is the responsibility of the Distribution Business to resolve
- taking steps to prevent repeated instances of theft through procedures in relation to:
 - visiting the premises
 - access to the premises
 - actions to be taken during the visits
 - the collection of evidence and
 - prosecution

Question Two: What is your Disconnection Policy with regard to discovering theft at customer's premises, does this differ depending on the circumstances of each case?

- 5.6 The seven respondents differed on their response to a first time offence of stealing electricity. One respondent noted that they disconnected the supply of the offender and demanded full payment for reconnection whilst another respondent advised that they did not disconnect a first time offence but removed the meter and installed and energised a key meter, without providing the key until a payment plan had been created to clear the outstanding balance. The first respondent noted that if an assessment was made that the Customer did not have the finances to pay the bill in full, they would consider a payment arrangement on the first offence to clear the balance.
- 5.7 On the discovery of a repeat offence all respondents disconnected and requested payment in full of the balance before reconnecting even if the customer was classified as vulnerable. One respondent noted that they would contact social services or care agencies in cases to alert them to the

disconnection of the vulnerable customer as appropriate. One respondent noted that they would also disconnect for safety reasons.

Question Three: When a meter change is required on site after incidence of theft, who should be responsible for changing this meter?

- 5.8 One of the DNO respondents noted that the meter is the responsibility of the Supplier and the Supplier should arrange for the appointed meter operator to exchange the meter after the incidence of theft. The distribution business would only exchange a meter in exceptional circumstances such as a vulnerable customer. Another DNO respondent noted that they referred the incident to their revenue protection service or Meter Operator (MoP) to provide a replacement meter. The distribution representative before leaving ensured the site was safe. A customer may need to be left off supply until the Revenue Protection Service (RPS) or MoP can attend. The majority of respondents stated that the RPS should attend to the installation of the meter with some Suppliers stating that it was referred to the MoP. The reason stated for using the RPS is they were accredited and authorised to undertake the work and would only require the customer to provide access once.

Question Four: DNOs: There is some evidence that there are many sites that are energised without a supplier being appointed. This situation results in units not being entered into settlement. What is your policy when discovering sites that have no supplier appointed?

- 5.9 One of the DNO respondents noted that where the Customer refused to contract with a Supplier, the DNO should have the power to disconnect in those circumstances as the cost of the energised sites was being paid for by all Customers. Another DNO respondent advised that they monitored the MPAN and spoke with the Customer to request for them to contract with a Supplier. The respondent would look to identify how they became connected without a Supplier in the first instance.
- 5.10 One respondent noted that although there were an increasing number of these energised sites with no Supplier, they had never been requested to put any of those units in to settlement. Another respondent advised that as part of their procedure they issued a soft letter in the early stages, a hard letter and eventually a warrant.

Question Five: How do you ensure stolen units are accounted for?

5.11 One of the DNO respondents noted three main methods they used for the assessment of stolen units:

- Actual reading available - This method is used in cases where based on actual readings it is clear that there has been a sudden drop in consumption (indicating when the tampering or fault of the meter/installation took place). The principal is that, using pre-theft/fault consumption, it can be calculated what the customer should be using
- Appliances Known – This method is used where there is accurate details of the appliances being used at the property. Estimated annual consumption figures for each appliance is used to estimate the amount of stolen energy used.
- Theft usage known – This method is used in circumstances where a substitute meter fitted to a supply is found and the DNO is able to calculate the energy used from the meter installed (typically with gas meters).

5.12 One respondent noted that the matter was referred to the RPS, the stolen unit calculations carried out and then passed to the registered Supplier to enter the units in to settlement. In cases where there is no registered Supplier the new Supplier may be reluctant to pass on the stolen units in to settlement.

5.13 Another DNO respondent pointed out that the DNO cannot ensure that stolen units are entered into settlement as the current mechanism and communication channels do not allow for visibility/transparency of Revenue Protection Unit (RPU) assessments of un-recorded units to be tracked via the appointed supplier into the settlement system.

- **Potential Incentive Schemes**

5.14 Information on the Potential incentive schemes and the parties' comments is in Attachment 3 of this Change Report. These incentive schemes were removed from the CP as the WG felt that it would more naturally sit under the BSC and a party could raise a change to the BSC at any time.

6 DCP 054 –CONSULTATION TWO (DATE OF ISSUE: 8 DECEMBER 2010)

- 6.1 The second consultation was based on scenarios identified and legal clauses drafted by the Working Group. Respondents were asked to choose between two options ("Position A" and "Position B) as to their interpretation of the legal text.

Question 1: CONTRACTUAL DISCONNECTION RIGHTS

Position A

It has been suggested that Suppliers and Distributors may only exercise disconnection rights where there is a statutory basis for doing so. This suggestion flows from a view that Parliament's intention in providing specific statutory disconnection rights was to restrict disconnection in all other circumstances.

Position B

Subject to the general law and any express restrictions imposed by the EA or electricity licences, Suppliers and Distributors are able to contract as they wish. The EA does not expressly prohibit the creation of contractual disconnection rights. The licences only restrict disconnection in certain circumstances – standard supply licence condition 27, for example. Suppliers and Distributors will not be able to use statutory rights of entry in respect of contractual disconnection rights, but such rights may allow for disconnection in circumstances other than those set out in the EA.

Comments were invited as to whether distribution and supply contracts may include disconnection terms above and beyond the statutory disconnection rights provided by the EA. The following table summarises the responses.

Respondent Party Type	Position A	Position B	Undecided
DNOs	0	2	5
Suppliers	1	1	2

- 6.2 One Supplier responded that its position on disconnections was closer to position A but that it did *"not believe that legally there is anything which prevents Suppliers from adding contractual terms"*. One Supplier and two Distributors advocated position B and noted that they believed they had the right to *"add additional disconnection rights into our contracts"*. The other seven respondents were undecided and noted that they did not believe that

either position A or position B were correct and instead highlighted their interpretation of the disconnection rights. The Working Group noted that respondents recognised that domestic Customers had greater statutory protection than Commercial Customers.

QUESTION 2: INTERPRETATION OF PARAGRAPH 1(1) OF SCHEDULE 7 TO THE EA

Paragraph 1(1) of Schedule 7 to the EA provides that:

“Where a customer of an authorised supplier is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter”.

Position A

It has been suggested that this provision creates a statutory duty on Suppliers only to supply electricity via a meter and that, as abstracted electricity will in most circumstances not be supplied via a meter, such supply will constitute a breach of this duty. Given this breach of statutory duty, it is suggested that the supply will not be made by an authorised Supplier. The supplier will therefore be prevented from charging for the abstracted electricity under any express supply contract.

It is further suggested that a Supplier that is not an authorised Supplier would not be prevented from charging for such abstracted electricity under a deemed contract (Schedule 6 paragraph 3(2) of the EA), on the basis that deemed contracts are created by statute and therefore have a special overriding status.

Position B

It has been suggested that while paragraph 1(1) imposes a duty on a Supplier to ensure that a meter is provided, it would be unduly onerous to construe a Supplier to be in breach of that duty where (despite the Supplier having provided a meter) that meter is circumvented by the criminal acts of a consumer. In such circumstance, as long as the supply contract was worded to cover all electricity Supplied to the premises (as opposed to just electricity supplied through the meter) the Supplier would be able to recover relevant charges in respect of the abstracted electricity under an express supply contract.

However, if paragraph 1(1) of Schedule 7 to the EA is to be interpreted as preventing the supplier from charging for abstracted electricity, then this would affect express contracts and deemed contracts equally. Deemed contracts are created by statute, but once created it could be argued, have the same status as any other contract. There is certainly no express statement that this paragraph should be interpreted differently depending upon whether an express or deemed contract applies.

Consultation respondents were invited to comment on the interpretation of paragraph 1(1) of Schedule 7 to the EA, and in particular whether this provision prevents the supply of abstracted electricity under an express supply contract. The following table provides a summary of the responses received.

Respondent Party Type	Position A	Position B	Undecided
DNOs	0	3	4
Suppliers	0	2	2

- 6.3 Five respondents agreed with position B with one respondent noting that in the case of Illegal abstraction it "is catered for in paragraph 11 of Schedule 7 in any case, with paragraph 11(1)(b) covering abstraction before the meter". Another respondent noted in relation to position A *"if Suppliers have to rely on deemed contracts to charge for stolen electricity, the unintended consequence will be that customers (particularly business customers) may be asked to repay the stolen electricity on deemed rates which are generally higher than "in-contract" rates"*.
- 6.4 Whilst six respondents did not state which position they supported the majority of these respondents were against position A with one respondent advising that the position was *"untenable"* and another noting *"The illegal actions of the customer cannot, in our opinion, place the supplier in breach of its statutory duty"*.
- 6.5 Another respondent pointed out that *under position A "if electricity is stolen before it gets to the meter, Schedule 7(11)(1)(a) might apply, in that the person stealing the electricity is preventing the meter from duly registering the quantity of electricity supplied ('supply' is defined by section 4(4) of the EA as '..electricity conveyed by a distribution system to premises..')"*

because it's being diverted before it gets there (to the meter). In Schedule 7(11)(3), the provisions for recovering the charges include withholding the supply until the matter has been remedied. Remedying the matter includes the payment of charges for electricity used but not metered".

- 6.6 At the DCP 054 Working Group meeting of 14 January 2011 when reviewing the Consultation responses it was noted that Ofgem's view was that any form of tampering to the meter should be charged at the billing contract rate, however currently this is optional. The Working Group agreed with the definition of position B.

QUESTION 3: APPLICATION OF DEEMED CONTRACTS

Paragraph 3(2) of Schedule 6 to the EA provides that:

"Where –

- (a) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;*
- (b) that supply is not made by an authorised supplier; and*
- (c) a supply of electricity so conveyed has been previously made by an electricity supplier, the owner or supplier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time ("the relevant time") when he began to take such a supply."*

Position A

The suggestion is that an abstracted supply which by-passes the meter will not have been made by an authorised Supplier (as the paragraph 1(1) of Schedule 7 to the EA duty prevents the Supplier from making an unmetered supply), and so a deemed contract will arise in respect of the abstracted supply. This deemed contract would operate in respect of the abstracted supply only, and would therefore exist in parallel with any express contract in respect of supply delivered via the meter.

Position B

The suggestion is that only one supply contract (either express or deemed) can exist at any one time in respect of a supply taken at a single premises. Paragraph 3(2)(c) refers to a supply having been previously made; a deemed contract will only therefore be created where an express contract (or a previous deemed contract) ceases to exist.

Consultation respondents were invited to comment on the circumstances in which a deemed contract may arise, and in particular whether express and deemed contracts may exist in parallel in respect of supply (abstracted and metered) to a single premises. The following table summarises the responses received.

Respondent Party Type	Position A	Position B	Undecided
DNOs	0	4	3
Suppliers	0	1	3

6.7 Five respondents stated that they supported position B. Six of the respondents provided their own interpretation with a number of respondents pointing out that their understanding of a deemed contract was that it existed *“where a customer moves into a premise and has not entered into a contract with a supplier”* and one respondent noting *“It is our understanding that both a deemed and express contract could not exist in parallel”*.

6.8 The Working Group discussed the responses to this question and noted that the position may be different under an express contract and may impact charges to customers. Ofgem noted a difference in relation to charges for metering. The Working Group Chair noted if the meter is bypassed, parties may not be able to charge for the meter, as it is not damaged.

6.9 The group agreed with the definition of position B.

QUESTION 4: INTERPRETATION OF PARAGRAPH 4(1) OF SCHEDULE 6 TO THE EA

Paragraph 4(1) of Schedule 6 to the EA provides:

“Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken.”

Position A

It has been suggested that the phrase “in the course of being conveyed by an electricity distributor” may be widely construed to include electricity at any time prior to its consumption (whether it is abstracted from the wires owned/operated by a licensed distributor, or from the meter (or other assets) for which the supplier is responsible, or from the wires owned by the consumer).

Position B

It is suggested that electricity is only “in the course of being conveyed by an electricity distributor” while it is on the electric lines (or other plant and apparatus) owned/operated by the licensed distributor. If it is abstracted from the meter (or other assets) for which the supplier is responsible, or from the wires owned by the consumer, it is no longer in the course of being conveyed by the licensed distributor.

Consultation respondents were invited to comment on the interpretation of the phrase “in the course of being conveyed by an electricity distributor” in paragraph 4(1) of Schedule 6 to the EA. A summary of the responses received is provided in the table below.

Respondent Party Type	Position A	Position B	Undecided
DNOs	0	3	4
Suppliers	0	3	1

6.10 The majority of the respondents agreed with position B on the basis that “*Electricity can only be*”in the course of being conveyed by an electricity distributor “*when it is within the wires or plant owned by the distributor conveying it*”. Five respondents provided their own interpretation and some of the respondents did not agree with either position A or position B.

6.11 One of the respondents noted that “*In general, when discussing anything other than theft/abstraction, the industry tends to agree that distribution businesses are responsible for all equipment up to and including the cut-out and the supplier is responsible for the incoming tails (terminal 1 and 2), the meter itself, and the attachment of terminals 3 and 4 (i.e. the terminal cover and lugs). The customer is responsible for the outgoing tails (apart from the connection to the meter) and everything from that point onwards*”.

6.12 The group reviewed comments on the statement *"Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken"*. The Working Group noted that there is still no clear agreement¹ as to the definition of theft in conveyance. It was noted that if a Supplier is responsible under a deemed contract then it is up to the Supplier to pursue the theft. The group noted that the worst outcome is that no party takes responsibility for the theft and it goes un-investigated.

6.13 The group agreed that theft in conveyance stops when the Supplier takes responsibility; the issue is at what physical point of the metering system the Supplier becomes responsible for the theft. The Working Group noted that in order for work to progress a CP should be raised seeking to clarify the roles and responsibilities around theft in conveyance. Ofgem indicated its support for such a proposal².

QUESTION FIVE: INTERPRETATION OF PARAGRAPH 11 OF SCHEDULE 7 TO THE EA

Paragraph 11 of Schedule 7 provides that:

"(1) If any person intentionally or by culpable negligence –

(a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an authorised supplier; or

(b) prevents any such meter from duly registering the quantity of electricity supplied, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.(2) ...

(3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.(4) ..."

Position A

¹ DCP 080A introduced a definition of Theft in Conveyance which was implemented in to DCUSA on the 28 June 2012. Please refer to section 8.

² In April 2010 the DCP 054 Sub Group was set up to draft the Code Of Practice. Please refer to section 10.

It is suggested that the abstraction of electricity will in most circumstances prevent the customer's meter from duly registering the quantity of electricity supplied, wherever the abstraction takes place. It is therefore suggested that paragraph 11 of Schedule 7 will apply in the case of all abstractions that are not registered on a meter, and that the Supplier may accordingly disconnect the premises under paragraph 11(3). Furthermore, as the Supplier may withhold reconnection until charges in respect of the abstracted electricity have been paid, (including any relevant costs of any disconnection, reconnection and investigation of the offence), this offers a mechanism for Suppliers to recover charges for abstracted electricity.

Position B

It is suggested that paragraph 11 of Schedule 7 is only intended to apply in circumstances of meter tampering, or abstractions from a point reasonably proximate to the meter (perhaps within the curtilage of the premises in question). Furthermore, it is considered that withholding reconnection until payments are made will be problematic in most cases because the person responsible for the abstraction may not be, or may cease to be, the owner or occupier of the disconnected premises.

Consultation respondents were invited to comment on whether withholding reconnection under paragraph 11(3) of Schedule 7 to the EA offers an effective mechanism for Suppliers to recover relevant charges in respect of abstracted electricity. A summary of the responses received is provided in the table below.

Respondent Party Type	Position A	Position B	Undecided
DNOs	2	0	5
Suppliers	0	1	3

6.14 Two Distributors stated that they supported Position A. One of the respondents did not provide detail on the reason why they chose position A. The other respondent pointed out that in addition to Schedule 7.11 of the EA, *additionally Schedule 6.2 (1) of the EA also applies and states that:*

"Where a customer has not, within the requisite period, paid charges due from him to an electricity supplier in respect of the supply of electricity to any premises...the supplier may disconnect the premises".

It was the respondent's view that *"This implies that the supply at one premises may be disconnected in respect of supplies at other premises of the customer. Notwithstanding this we recognise that where a person*

moves away from a premises so that they are no longer the owner or the occupier of the premises the supplier may have difficulty in tracing the person in debt, and recording such debt from the person".

6.15 One Supplier stated that they supported Position B as *"Position A is in line with para 4 and of Schedule 6 of the Act, which give a distributor the right to recover charges from a person illegally taking a supply from the distributors equipment"*.

6.16 Eight respondents did not state which position they supported but instead provided an interpretation and comments on both position A and position B. The consensus view was that the responsible party is the Supplier of the individual committing the illegal action. The Working Group also discussed disconnection and noted that supply can be withheld in certain circumstances and the customer will not be reconnected until the debt has been resolved.

7 ADDITIONAL COMMENTS

7.1 The Working Group reviewed the additional comments received.

7.2 Central Networks expressed concern that the consultation questions were Supplier orientated. The group considered the response and noted that distributors and Ofgem had been present during the development of the issues and were involved in the drafting of the consultation.

7.3 The Electricity Network Company (ENC) stated that as a distributor it is no longer mandated to provide metering services and those distributors who chose not to be active meter operators do not necessarily have the required skills base to deal with meter tampering instances. ENC suggested that such parties could, therefore, experience high costs to procure those services. The party also asked whether the work carried out by this Working Group has been/should be linked to the Revenue Protection work developed by the Gas Forum, to ensure consistency. The group was of the opinion that the benefits across the industry would outweigh the costs to individual parties and noted that there has been open communication between the DCP 054 Working Group and the Gas Forum as well as the SPAA Expert Group.

7.4 SSE Energy Supply Limited suggested that *"given the other consultations and work on this issue being carried out by the industry and Ofgem at the current time, it is premature to carry out further work on this matter under*

the DCUSA". The group noted that the work is being carried out in parallel with the other codes and comes in line with the Ofgem Impact Assessment on the issue expected in April 2011.

- 7.5 SSE Power Distribution questioned the reasonableness of some of the positions presented in the consultation. The group noted that the areas for consultation were the outcome of discussions between Ofgem and DCUSA legal advisers. Additionally, that work is being conducted by Ofgem on this issue and that the DCUSA is not the relevant area for its progression. The Working Group considered that Ofgem was aware of, and contributing to, the developments under the DCUSA and areas that are not relevant to the DCUSA are being progressed under other industry codes.
- 7.6 The Working Group noted that Ofgem will review all consultation comments and take them into consideration when making its determination on DCP 054.

8 WORK IDENTIFIED FOLLOWING CONSULTATION TWO

- 8.1 The Working Group discussed question 4³ of Consultation Two and noted that there was a split in the view on the definition of Theft In Conveyance and a CP should be raised to address the issue. DCP 080 'Theft in Conveyance' and an alternative DCP 080A were raised to define theft in conveyance. DCP 080 was preferred by Suppliers and DCP 080A was preferred by Distributors. The Authority approved DCP 080A, which was implemented in to the DCUSA on the 28 June 2012 and introduced the definition of Premises, Theft In Conveyance and clause 32.3:

Premises – *"has the meaning given to that term in the Act"*.

Theft in Conveyance – *"means the abstraction of electricity (regardless of where such abstraction takes place) for use otherwise than at a premises for which there is a Metering Point or Metering System that Registered by a User"*.

³ Consultation respondents were invited to comment on the interpretation of the phrase "in the course of being conveyed by an electricity distributor" in paragraph 4(1) of Schedule 6 to the EA.

Clause 32.3 - *"The Company and the User (where it is a Supplier Party) agree that, in enforcing their respective rights in relation to the unlawful abstraction of electricity, there shall be a rebuttable presumption that Theft in Conveyance is the responsibility of the Company and that all other unlawful abstraction is the responsibility of the User."*

9 DCP 054 – CONSULTATION THREE (DATE OF ISSUE: 20 NOVEMBER 2012)

Question One: Are you supportive of the Code of Practice?

Respondent Party Type	Yes	No	Undecided
DNOs	2	0	0
Suppliers	5	0	0
UK Revenue Protection Agency	1	0	0

9.1 All respondents were supportive of the Revenue Protection CoP.

Question Two: What do Parties expect in relation to a governance framework of the CoP?

9.2 Four respondents stated that they were happy for the CoP to sit as a schedule under the DCUSA governance framework. The other respondents stated that they were looking for a robust governance framework which needed to apply to all parties so that if a party or their agent fails to deliver the service levels then there is a resulting consequence.

Question Three: Do you have any comments on any part of the drafting?

- There were several comments in relation to paragraph two: *"Revenue Protection Agents may be instructed by Parties to proactively undertake cold calls as a means of deterring interference and energy theft"*. One respondent suggested that this may need clarifying so there is no ambiguity. *"Currently the RPAs should only visit a premise where the party they work on behalf of has a contractual relationship with the Consumer or where they are authorised to visit by the party with the contractual relationship with the Consumer"*. The Working Group noted this point and updated the Revenue Protection CoP accordingly.

Question Four A: Is Section 6.3 - Provision of Information by the Supplier to the RP Service adequate:

- 9.3 Six of the eight respondents agreed that the section was adequate. One respondent did not agree that the section was adequate and advised that it did not *"take account of the industry structures whereby some RP services will be in-house and will be directly managed by the supplier as to its policies and some will be provided on a commercial basis governed by contracts. The original Code covered only the latter (RP services being provided by the DNO to all Suppliers in its area) where guidance was needed to ensure that the RP services had sufficient information to do its job whilst taking account of differing general policies between different Suppliers. Where a supplier directly employs RP services such matters will be part of internal policy guidelines and may not necessarily be made public. There needs to be something to explain and take account of this"*.
- 9.4 The Working Group noted that regardless of where you take your RP services from they will be subject to DCUSA.

Question Four B: What items do RP Services request/what items do Suppliers usually provide? Should these be mandatory?

Respondents to this question provided a list of items:

- MPAN
- Customer name and Address
- Contact telephone numbers if available
- Meter serial number
- Meter Location
- Nature and source of tip off
- Any remedial action already taken
- Consumption History
- Indicative theft start date
- Recent Payment History
- Vulnerability Status
- Relevant notes from the account
- Meter Operator contact details

The list of items was compiled and compared against the information that could be provided in the D0238 flow. The Working Group agreed that the D0238 flow could be used to report on issues of theft in conveyance. Industry parties could interpret on a case by case basis the information they

supplied over the D0238 flow in accordance with their inhouse data protection rules.

Question Five: Section 6.4 - Provision of information by the RP Service to a Supplier

- **Is this section adequate?**

9.5 There were eight respondents to this question. Four of the respondents considered the section to be adequate. Three of the respondents provided general comments. One respondent did not agree that the section was adequate, stating that *"the section on RP Service to Distributor needs further work. The RP provider should be aware of the party they are acting for and work accordingly"*. The Working Group noted the comment and requested further information.

- **What information does the RPS currently provide to the Supplier?**

9.6 There were six respondents to this question. The respondents provided a list where abstraction or tampering is confirmed.

Question Six: Section 6.3 - Provision of Information by the Supplier to the RP Service

- **Should the requirements set out in the Information Exchange Table be mandatory?**

9.7 The respondents noted that the appendices that contained the Information Exchange Table were not in this Consultation.

Question Seven: Section 6.4 - Provision of information by the RP Service to a Supplier

- **Is this section adequate?**

- 9.8 Four of the respondents considered that the section was adequate for its purpose. Whilst other respondents advised that they felt it may need some further work. One respondent raised a question in relation to providing information to a Supplier to who the Revenue Protection agent does not provide a service and whether this would be considered to be a breach of data protection. The Working Group agreed to raise it with the Information Commissioners Officer (ICO).
- 9.9 One of the respondents requested that section 6.4 exchanges the wording 'full report' to 'preliminary site visit update'. The Working Group considered the comment and replaced it with interim position or site specific report.

Question Eight: Section 6.4 - Provision of information by the RP Service to a Supplier

- **What information does the RPS currently provide to the Supplier?**

- 9.10 The Working Group compiled a list from the items identified. One respondent noted "*We believe that the details of data items transferred between Revenue Protection agent and Supplier cannot be fully mandated and there should be flexibility to agree data items between parties*". The Working Group considered the comment and agreed that the detail on how to deliver services is required.

Question Nine: Section 7.2 - Priorities and Timescales

- **Are the timescales for safety issues outlined in the CoP sufficient?**

- 9.11 Seven of the respondents believed the timescales to be sufficient. One of the respondents noted that they were "*concerned that the timescales do not align with the recent Gas Theft Code of Practise and we feel there would be benefit aligning timescales for all Energy Theft*".

The Working Group agreed to not align with the Gas as the timescales in the electricity processes are shorter than those for Gas.

Question Ten: Section 7.2 - Are the timescales for the completion of investigation adequate?

9.12 Five of the respondents were happy with the timelines for the completion of the investigation. Two respondents noted that the category C timescale was quite short, with one respondent noting the length of time it may take to get a warrant. One respondent pointed out that *"Further work may be required to review the information provided for a Cat C (back office). For this reason it may be appropriate to increase the timescale to 5 WD. The information is typically weaker than a Cat B."*

9.13 The Working Group discussed the comment and added the wording "as soon as reasonably practical for category B and C" in to the Revenue Protection CoP.

Question Eleven: Section 12 - Collection and retention of evidence:

- **How long should physical evidence be retained by the RPS?**

9.14 Each of the respondents provided a different view of how long physical evidence should be held. One respondent noted that if there was photographic evidence it should be held only for the duration of the prosecution, whilst if there was no photographic evidence then it should be held for a minimum of three months and a maximum of twelve months. Another Supplier suggested that it should be held for up to 6 years following a court case and up to 6 months when there is no police involvement.

9.15 The Working Group agreed that as guidance the minimum length of time to retain a physical meter once the police have been notified is 6 months.

Question Twelve: Section 15.10 - Reports:

- **Do DNOs need the Report and if so what frequency? i.e. monthly or quarterly.**

9.16 One respondent requested for monthly reports and one respondent requested for quarterly reports. The other six respondents did not feel they could provide a gauge for the regularity of the report but suggested that it may depend on the mechanism used to bring these units in to settlement under the BSC.

- 9.17 The Working Group considered the response and agreed that reports should be on a monthly basis.

Question Thirteen: Section 15.10 - Do Suppliers require reciprocal reporting from DNOs?

- 9.18 Four of the respondents thought it would be beneficial to have reciprocal reporting on a monthly basis. One of the respondents thought it might be useful to have an anonymised industry letter as opposed to the report.

Question Fourteen: Section 15.10 - Is there value in trend information being collated by DCUSA and made available to the industry?

- 9.19 There were eight respondents to this question and four of the respondents agreed that there would be value in trend information being collated. One respondent chose not to comment and other respondents noted that it should be an outcome of a future electric TRAS and another respondent stated that it might be useful if done on a geographic level.

Question Fifteen: Section 15.10 - If there is an obligation to report on all stolen units, can this reporting be issued to the BSC?

- 9.20 Four of the respondents agreed that the stolen units should be reported to the BSC. Other respondents noted that stolen units should be reported through a separate mechanism to get them in to settlement. One respondent queried if there would be Data Protection concerns and how would the BSC use that information.

Question Sixteen: Are the Titles of the Appendices below appropriate?

- 9.21 The respondents were asked to comment on the appropriateness titles of the CoP appendices. The Working Group noted the responses received.

10 INITIAL DEVELOPMENT OF THE REVENUE PROTECTION CODE OF PRACTICE

- 10.1 The DCP 054 Sub Group was set up to develop a Revenue Protection CoP for gas and electricity theft. It met 12 times between 22 April 2010 and 17 May 2011. The Sub Group consisted of 12 representatives including Ofgem, Consumer Focus, one energy consultancy, two representatives of National

Grid, four Suppliers with two of those Suppliers providing five representatives throughout the duration of the sub group.

10.2 The Sub Group looked at a number of issues throughout its development of the Revenue Protection CoP including:

- Provision of information to the Supplier by the RPS
- Provision of information to the Supplier by the DNO/Gas Transporter (GT)
- Provision of information from RPS from DNO/GT
- Provision of information from RPS to Supplier
- Collection and retention of evidence
- Maintenance of records
- Assessment of unrecorded units
- Supplier policies
- Reports
- Information to Customer
- Procedures for Investigation
- draft a new section in the CoP defining the difference between principles and obligations
- Priorities and Timescales
- Conduct of Investigations
- Safety and Security
- Qualification of Staff
- Incentive Schemes

10.3 The Sub Group also developed a series of appendices to the CoP:

- Relevant Statutory and Regulatory Provisions

- Disconnections
- Guidelines of Suppliers' Revenue Protection policy
- Statements
- Impact of Human Rights Act on use of warrants
- Impact of Data Protection Act on Exchange of Information
- Collection and Retention of Evidence
- Guidelines for Record Keeping and Reporting
- Site Information Exchange
- Reporting

10.4 In relation to reporting, the Sub Group reviewed existing reports for gas and electricity: the Theft of Gas (TOG) 5 form for gas which is produced by Conquest and the D0238⁴ DTN flow for electricity. It was noted that both could be a means of reporting theft by the RPS to Suppliers or GTs. It was noted that the D0238 flow asks for standard information including addresses, meter numbers and the flow structure group but that not all fields within the form are mandatory. The Sub Group agreed that it would be more beneficial to amend the D0238 than to create a new flow.

10.5 The Sub Group concluded in May 2011 with the CoP being split into two versions, one for gas and one for electricity. Responsibility for further development of the CoP was handed back to the main DCP 054 Working Group. The next steps in developing the CoP included taking into account responses from the DCP 080 / 080A 'Theft in Conveyance' consultation.

11 FINAL DEVELOPMENT OF THE CODE OF PRACTICE

11.1 The DCP 054 Working Group continued meeting from May 2011, reviewing and revising the CoP up to final draft "version 15" of the CoP – now referred to as the Revenue Protection Code of Practice.

11.2 The DCUSA mandates that electricity Distributors who provide a revenue protection service do so in accordance with the Revenue Protection Code of

⁴ D0238 - Request and Information for Revenue Protection Investigation

Practice and that electricity Suppliers shall also comply with their obligations under the CoP.

11.3 The DCP 054 Working Group developed the CoP with the understanding that it be placed into the DCUSA as a Schedule, but that it also be useable as a standalone document, so long as it is used in accordance with the relevant sections and definitions in DCUSA. This means that a Supplier or Distributor taking a service from a provider other than one that is a DCUSA Party should also follow the requirements under the CoP.

11.4 The CoP is divided in sections of "OBLIGATIONS", "BEST PRACTICE" and "REFERENCES".

- (a) Sections marked "OBLIGATIONS" detail actions which must be taken by the relevant Party. Failure to take these actions constitutes, where appropriate, a breach of the CoP and therefore the DCUSA Schedule;
- (b) Sections marked "BEST PRACTICE" provide information on how a Party may proceed. They confer no obligation, and Parties may choose whether they follow the advice provided or another course of action entirely. They are therefore provided for information only and denote the way in which DCUSA believes best handles the issue at hand; and
- (c) Sections marked "REFERENCES" provide detail on relevant information from documents outside of this CoP, but which are relevant to Party's actions in Theft of Electricity administration. Failure to adhere to any obligations described in these references is not a breach of this CoP itself, but may lead to a Party being in breach of their obligations elsewhere. They are provided for information only.

12 Please see Attachment 2 for the legal text which is the final version of the CoP. PRIVACY IMPACT ASSESSMENT (PIA) (START DATE: 22 JUNE 2012)

12.1 As certain sections of the CoP deal with communication between Parties, the Working Group undertook a PIA alongside the drafting of the CoP, to determine if the document impacts any aspect of the Principles in Schedule 1 of the Data Protection Act (DPA). Specifically, the PIA assessed whether the personal information aspects of the CoP comply with the DPA. The

Working Group determined that there were no impacts on the principles. The PIA is provided as Attachment 4.

12.2 The CoP outlines the relationships between Parties where abstraction of electricity is suspected and/or confirmed. It sets out a number of obligations and minimum service standards that Parties are expected to meet in relation to:

1. Communication between Parties where abstraction of electricity is suspected or confirmed;
2. Procedures for investigation where abstraction of electricity is suspected or confirmed;
3. Procedures for site visits and gaining entry to premises where abstraction of electricity is suspected or confirmed;
4. The manner in which Parties will deal with Consumers who are suspected of and are identified as having taken electricity illegally (defined in this document as "abstraction of electricity");
5. The manner in which Parties will treat Vulnerable Customers where Abstraction of electricity is suspected or confirmed;
6. The manner in which unrecorded units are to be assessed;
7. De-energisation and Disconnection of Supply where abstraction of electricity is suspected or confirmed; and
8. Provision of information following investigation where Abstraction of electricity is suspected or confirmed.

12.3 The Working Group assessed the potential privacy impacts of DCP 054 in relation to:

1. Personal data being shared between the Parties;
2. Passing of unproven facts, registered against an individual, between Parties;
3. Passing information to external Parties such as care agents, social services, etc... as well as their ability to maintain confidentiality; and
4. Sharing information with a Consumer's representative.

12.4 A joint meeting with the SPAA ToG Working Group and the ICO was set up on [date] to progress the PIA on areas such as what information could be shared, can sensitive information on vulnerable customers be reported to

care agencies and the list of conditions under which information can be disclosed.

12.5 Under the DPA principles, sharing information comes down to whether there is an ultimate purpose. The Working Group identified the following reasons for sharing information under the CoP:

1. For the detection and prevention of theft;
2. To accurately assess the energy stolen over the theft period; and
3. To ensure Parties meet legal and regulatory obligations.

12.6 The Working Group agreed that it would be in the interest of all parties to insert a privacy notice in to the Customer's contract so that the individual is aware that personal information may be shared with other parties in cases where electricity is being stolen or the meter or fuse is being abused. However, the Working Group agreed that the privacy notice was outside the scope of DCP 054.

12.7 Parties are allowed to share information where there is an on-going investigation or strong evidence for suspecting theft under the DPA. For example, if a customer who was being prosecuted for illegal abstraction of electricity moves Suppliers, or if a customer that a party has suspicions about, moves Suppliers which the party can back up with fact, then this instance of changing Suppliers triggers the parties' need to share the information with the new Supplier. However, in a scenario where a tip-off about theft of electricity was received with no evidence of theft and without further investigation, the information could not be justifiably shared.

12.8 The Working Group agreed that the industry would need to build up scenarios for theft of electricity and identify false positives where Customers were innocent of the theft of electricity.

12.9 Where a premise is unsafe due to electricity theft, the Working Group noted that Parties had an obligation to make the premises safe. The ICO confirmed it would prioritise safety over data protection issues. The Working Group discussed the scenario where operators on site have discovered theft of electricity at a premise and are in a situation where they are fully qualified to make the situation safe but cannot do so as the Supplier does not have the powers. The Working Group agreed to approach the HSE to ask whether the Distributor can delegate the authority to de-energise or

disconnect to a Supplier or an agent with those particular competencies and whether such general commission given in advance. The Working Group are awaiting a response from the HSE to this question. Members agreed that the outcome of this response will not impact this change. However, participants may wish to raise a consequential change based on the answer.

12.10 As per paragraph 10.4 above, the Working Group identified the D0238 data flow as the best way to report on theft of electricity to other parties. In relation to data protection, it assessed the sensitivity of the obligatory fields within the data flow. The Working Group recommended removal of the obligatory field of "disconnected for non payment status" and to add site information to identify relevant information about the customer / site (e.g. a dangerous dog at the property). A separate Master Registration Agreement (MRA) change will need to be raised to make these changes to the D0238.

12.11 Parties will be expected to review the CoP and interpret it in line with their own data protection rules. Parties are to pass accurate information, keep it up to date and hold it only for a reasonable time period and the information needs to be relevant and factual. Parties will be expected to ensure that only the relevant data which they can justify in sharing is inserted in to the D0238 flow to be shared with Parties.

12.12 The retention period for data to be held on persons suspected of theft of electricity cannot be kept within the industry records for longer than the applicable sentence for committing the offence.

12.13 Vulnerable customers who are repeat offenders of the theft of electricity may be disconnected. The Working Group discussed with the ICO if Suppliers could send a report about a vulnerable customer to social services and care agencies if they believed that they were at risk due to the disconnection of the electricity. It was agreed that the party would need to justify why it would share the information with another body, and weigh up the risk to the customer versus any DPA issues. The report of vulnerable customers to care services will therefore occur on a case by case basis only.

13 DCP 054 – WORKING GROUP CONCLUSIONS

13.1 The Working Group concluded that the majority of respondents to the consultations understood the intent of DCP 054 and were supportive of its principles.

13.2 The Working Group is seeking to achieve the following key objectives:

1. Put in place robust revenue protection procedures;
2. Develop and implement a theft of energy / revenue protection Code of Practice;
3. Bring the Revenue Protection CoP under formal governance and facilitate the on-going development and implementation of the Revenue Protection CoP.

13.3 The Working Group concluded that the CP will provide the following benefits:

- Detecting theft of electricity
- Providing guidance for sharing information industry wide
- Developing theft scenarios for the prevention of theft
- Ensuring that units from theft can be placed in to settlement

13.4 The Working Group concluded that parties may use the D0238 data flow to report on theft of electricity. Each party will be responsible for their interpretation of the guidance in line with their in house data protection rules and justification for sharing the information with other parties. The group concluded that there will be an administration cost to use the D0238 data flow but it would be a solution to ensure all parties can share theft information and as a result be compliant with the Revenue Protection CoP following the November 2013 DCUSA release.

13.5 The Working Group unanimously agreed that the introduction of centralised reporting on theft of electricity is a good idea but considered it to be outside of the scope of DCP 054.

14 PROPOSED LEGAL TEXT

14.1 The proposed legal text has been reviewed by the DCUSA Legal Advisor and is attached as Attachment 2.

14.2 DCP 054 amends Clauses 1 and 32 of the DCUSA and introduces a new Schedule (the Revenue Protection Code of Practice) in to the DCUSA.

15 EVALUATION AGAINST THE DCUSA OBJECTIVES

15.1 The Working Group unanimously considers that DCUSA Objectives One and Three are better facilitated by DCP 054. The reasoning against each objective is detailed below:

DCUSA Objectives	
Objective One	<i>The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks.</i>
	The Working Group agreed that the objective was better facilitated as it relates to section nine of the electricity act and it better co-ordinates the network as due to the implementation of the CoP Parties will know how much electricity is being used in different areas of the network.
Objective Two	<i>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.</i>
	The Working Group agreed that there is no impact on this objective.
Objective Three	<i>The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences.</i>
	The Working Group pointed out that by placing the CoP under the DCUSA; it places the CoP in a framework which allows the CoP to be developed in the future and as a result better facilitates this objective.
Objective Four	<i>The promotion of efficiency in the implementation and administration of this Agreement.</i>
	The Working Group agreed that there is no impact on this objective.
Objective Five	<i>Compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.</i>
	The Working Group agreed that there is no impact on this objective.

16 IMPACT ON GREENHOUSE GAS EMISSIONS

16.1 In accordance with DCUSA clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if DCP 054 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this CP.

17 IMPLEMENTATION

17.1 Subject to Party approval, DCP 054 will be implemented in to the DCUSA on the 07 November 2013.

18 PANEL RECOMMENDATION

18.1 The DCUSA Panel approved the DCP 054 Change Report at its meeting on 17 July 2013.

18.2 The timetable for the progression of the CP is set out below:

Activity	Target Date
Change Report Agreed	17 July 2013
Change Report Issued for Voting	19 July 2013
Party Voting Ends	16 August 2013
Change Declaration Issued	20 August 2013
Authority Decision	24 September 2013
Implementation	07 November 2013

19 APPENDICES:

- Attachment 1 – DCP 054 Change Proposal
- Attachment 2 – DCP 054 Proposed Legal Drafting
- Attachment 3 – DCP 054 Consultation Documents and meeting minutes
- Attachment 4 – DCP 054 Privacy Impact Assessment
- Attachment 5 – DCP 054 Voting Form