

DCUSA Change Report		At what stage is this document in the process?
<h1 data-bbox="145 280 577 369">DCP 360</h1> <h2 data-bbox="145 392 1026 649">Ofgem Targeted Charging Review (TCR) Implementation – Allocation to Bands and Interventions</h2> <p data-bbox="145 656 888 696"><i>Raised on 14 January 2020 as an Urgent Change</i></p>	01 – Change Proposal	
	02 – Consultation	
	03 – Change Report	
	04 – Change Declaration	
<p><b>Purpose of Change Proposal:</b></p> <p>The intent of DCP 360 is to implement certain areas of Ofgem’s TCR Decision<sup>1</sup>; specifically relating to the allocation and reallocation of ‘customers’ to residual charging bands. This CP seeks to address paragraphs 21-23, paragraphs 29-30, and paragraph 33, whilst having regard for paragraphs 34 and 36-39, of the TCR Direction<sup>2</sup>.</p>		
	<p>This document is issued in accordance with Clause 11.20 of the DCUSA, and details DCP 360 – Ofgem Targeted Charging Review (TCR) Implementation – Allocation to Bands and Interventions</p> <p>DCP 360 is considered a Part 1 matter and Parties are invited to consider the proposed amendment (Attachment 1) and submit their votes using Interventions Voting form (Attachment 2) to <a href="mailto:dcusa@electralink.co.uk">dcusa@electralink.co.uk</a> by <b>12 June 2020</b></p> <p>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.</p> <p>If you have any questions about this paper or the DCUSA Change Process, please contact the DCUSA by email to <a href="mailto:dcusa@electralink.co.uk">dcusa@electralink.co.uk</a> or telephone 020 7432 3011.</p>	
	<p>Parties Impacted: <b>DNOs, IDNOs, Suppliers and CVA Registrants</b></p>	
	<p>Impacted Clauses: <b>A new Schedule [‘XX’] will be required.</b></p>	

<sup>1</sup> [TCR Decision Document](#)

<sup>2</sup> [TCR Direction](#)

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## Timetable

The timetable for the progression of the CP is as follows:

Activity	Date
Initial Assessment Report Approved by Panel	15 January 2020
Consultation issued to Parties	25 March 2020
Change Report approved by Panel	20 May 2020
Change Report issued for Voting	21 May 2020
Party Voting Closes	12 June 2020
Change Declaration Issued to Parties and the Authority	16 June 2020
Authority Decision	21 July 2020
Implementation	01 August 2020 <sup>3</sup>

 **Any questions?**

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<sup>3</sup> Subject to Authority approval of DCP 359 and DCP 360 at the same time.

# 1 Executive Summary

## What?

- 1.1 On 21 November 2019, the Authority published its Targeted Charging Review (TCR) Significant Code Review (SCR) Decision (the 'TCR Decision'). The Authority Directed that Distribution Network Operators (DNOs) raise one or more modifications to the Distribution Connection and Use of System Agreement (the 'DCUSA') to implement the TCR Decision on 01 April 2022 (the 'TCR Direction').
- 1.2 On 20 December 2019, DNOs and National Grid Electricity System Operation (NGESO) published a joint plan (the 'detailed plan') to deliver the requirements of the TCR Directions<sup>45</sup>. The detailed plan sets out the proposed delivery approach (section 4.5) which included a package of four DCUSA CPs; of which this CP is one.
- 1.3 DCP 360 seeks to address paragraphs 21-23, paragraphs 29-30, and paragraph 33 of the TCR Direction. DCP 360 will therefore seek to develop an appropriate process to allocate and reallocate customers to charging bands. The existing Common Distribution Charging Methodology (CDCM) tariffs where the customers will need to be split into bands are Non-Domestic Aggregated, LV Site Specific, LV Sub Site Specific, HV Site Specific, plus the site specific Extra-High Voltage (EHV) Distribution Charging Methodology (EDCM) tariffs. The relevant paragraphs of the TCR Direction are set out below for completeness, with only the highlighted section of paragraph 30 being applicable:

21. *that the band boundaries for distribution-connected consumers will be established on a GB wide basis and consumers will be allocated to bands based on industry agreed capacity where available, or final consumption data, as applicable. In setting and allocating users to charging bands, regard must be had to paragraph 3.57(9) of the TCR Decision relating to redundant connection capacity.*

22. *that the data to be used for consumer allocation will relate to and be averaged over a period of no less than 24 months prior to the setting of the applicable residual charges, or longer if the requisite data can be made readily available at proportionate cost. For any consumers for whom data is not available for a period of 24 months, the process for new consumers in paragraph 23 below is to be followed.*

23. *that a process must be established to allocate 'new' consumers and consumers for whom the appropriate data is not available to be the relevant charging band, based on an assessment of their agreed capacity or consumption, as applicable. The process shall make use of such information as is available to best estimate the expected usage of the consumer, e.g. by taking an average of all of the data that is available, or based on an understanding from such sources as are considered appropriate of the typical profile of a similar consumer.*

### Disputes

29. *an appropriate process to manage any disputes in relation to consumers' residual charges, using and building upon (as necessary) any disputes processes already in place in the*

<sup>4</sup> <http://www.chargingfutures.com/media/1390/tcr-joint-eso-dno-pid-v10.pdf>

<sup>5</sup> The Authority also directed that NGESO raise modifications to the Connection and Use of System Agreement (the 'CUSC') to implement the TCR Decision.

relevant industry code(s) and ensuring that the process should be efficient and proportionate. In developing the process, the DNOs must consider any data which may be needed to support this process and ensure the process has clear interfaces with such other processes as may be relevant.

## Further arrangements

30. appropriate arrangements to develop the following:
  - a. the frequency and relevant units of the fixed charge, considering a proposal of a pence/site/day structure;
  - b. the mechanism to identify which sites should be classified as final demand for the purposes of determining the residual charges. In doing so, the DNOs must have regard to paragraph 3.58(2) of the TCR Decision;
  - c. any consequential changes that may be required in relation to residual charges for Independent Distribution Network Operators (IDNOs), consumers connected to private wire and complex sites, noting that the Authority expects that the IDNO charging regime (which operates via a Relative Price Control) to continue to function as it does today; and
  - d. the systems and processes to implement the Proposal(s). In doing so, the DNOs must have regard to paragraph 3.58(4) of the TCR Decision.
  
33. such alternative modification proposals as it considers necessary following consideration of whether there should be mechanisms available for dealing with situations where there have been changes in use or ownership of a site. This should include an exceptions process to apply for reclassification of a user to another band in tightly defined circumstances, where substantial changes in usage occur, resulting in significant changes in the level of agreed capacity required (having regard to paragraph 3.59(3) of the TCR Decision).

## Why?

- 1.4 This CP has been raised to enable DNOs to satisfy specific requirements set out in the TCR Direction. Failure to develop this proposal together with the three related DCUSA CPs that form the package of DCUSA CPs<sup>6</sup> in sufficient time to implement these changes effective as of 01 April 2022 will result in failure to implement the TCR Decision.

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<sup>6</sup> DCP 358 'Ofgem Targeted Charging Review Implementation: Determination of Banding Boundaries' seeks to implement certain areas of Ofgem's TCR Decision; specifically relating to the determination of charging bands for nondomestic distribution connected customers.

DCP 359 'Ofgem Targeted Charging Review (TCR) implementation – customers: who should pay?' is to implement certain areas of Ofgem's TCR Decision; specifically relating to the identification of which 'customers' are eligible for a residual fixed charge.

DCP 361 'Ofgem Targeted Charging Review Implementation: Calculation of Charges' seeks to implement certain areas of Ofgem's TCR Decision; specifically relating to the calculation of charges.

1.5 This CP should also support NGENSO in satisfying the requirements set out in its TCR Direction. The residual charging arrangements for transmission are to be implemented into the Connection and Use of System Code (CUSC) on 01 April 2021<sup>7</sup>, which is a year ahead of those which are required for the DCUSA. However, consideration must be given to the need to facilitate the timely progression of each code's respective code modifications proposals as explicitly stated in paragraph 34 of the TCR Direction:

*“34. In preparing the Proposal(s), the DNOs must:*

- a. work and cooperate with NGENSO (who are subject to a similar direction to bring forward a proposal to modify the Connection and Use of System Code (CUSC) to give effect to the TCR Decision (the CUSC Direction)) to ensure that a consistent approach is taken to issues or matters common to both Directions and to facilitate the timely progression of their respective code modifications proposals. Issues or matters common to both Direction include but are not limited to i) final demand; ii) single site; and iii) the review of charging bands. Such co-operation might include (but would not be limited to) participation in the working groups for the modification proposals being developed under the respective Directions;*
- b. include such modification to Section 1A (Definitions and Interpretation) of DCUSA and any associated provisions as required as a result of the Proposal(s); and*
- c. have regard to (and to the fullest extent practicable comply with) the SCR Decision Principles as defined in paragraph 3.53 of the TCR Decision.”*

## How?

1.6 This change proposal introduces the allocation of Final Demand Sites (definition introduced by DCP 359) to the four charging bands associated with each of the customer groups into a new schedule (introduced by DCP 358).

1.7 Two separate processes are introduced dependent upon whether the DUoS charge has a charge associated with the Maximum Import Capacity (MIC) at that Final Demand Site or not.

1.8 For those that do have a DUoS charge associated with the MIC the allocation is based on the average of the MIC over the most recent twenty-four-month period. Otherwise it is based on the average of the MIC on data that is available. Only if the above two are not available is it based on a typical profile of a similar customer.

1.9 For those that do not have a DUoS charge associated with the MIC the allocation is based on whether the Final Demand Site is elective half-hourly (HH) or non-half hourly (NHH) settled, as set out below:

- For elective HH, it is the average annual import consumption based on metered data over the most recent twenty-four months. Otherwise, when a minimum of twelve months of data is available it will average the annual import consumption over the period for which metered data is available. Only if the above two are not available is it based on a typical profile of a similar customer to best estimate the expected annual import consumption

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<sup>7</sup> This date has subsequently changed during the development of this CP to the 01 April 2022.

- For NHH it the most recent Estimated Annual Consumption (EAC) where available, otherwise, it is the Default EAC. Only if the above two are not available is it based on a typical profile of a similar customer to best estimate the expected annual import consumption.
- 1.10 In addition to the allocation of Final Demand Sites to the charging bands, this CP introduces two additional processes to cater for a challenge to the allocation based on either exceptional circumstances or the raising of a dispute.
  - 1.11 Exceptional circumstances cover a change to either the voltage of connection or a change of use or site configuration which results in a significant change to either the MIC or the annual consumption. A significant change being plus or minus 50%.
  - 1.12 The disputes process introduces a Disputes Committee, how it is elected and meeting quoracy. It covers who can raise a dispute and what information is required, through to a decision being made.
  - 1.13 Where there is a successful challenge the Final Demand Site will be moved to a different band and the DUoS charge refunded subject to up to a maximum of six years (five years in Scotland).

## 2 Governance

### Justification for Part 1 Matter

- 2.1 DCP 360 is a Part 1 Matter in accordance with the following DCUSA clause 9.4.1 as it is likely to have a significant impact on the interests of electricity consumers.
- 2.2 The DCUSA Panel also agreed that this is an Urgent Change. The process to allocate sites to the charging bands will be required to be followed by Autumn 2020.
- 2.3 This CP cannot be withdrawn without the Authority's consent to do so. In accordance with Clause 11.9A, the Authority may also, by direction, specify and/or amend the relevant timetable to apply to each stage of the Assessment Process.

### Requested Next Steps

- 2.4 The Panel considered that the Working Group has carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 360.
- 2.5 The DCUSA Panel recommends that this CP be issued to Parties for Voting.

### 3 Why Change?

#### Background

3.1 As noted in section 1 above, this CP seeks to address paragraphs 21-23, paragraphs 29-30, and paragraph 33 of 'the Direction', whilst having regard for paragraph 34 (set out under paragraph 1.5 above) and paragraph 36-39, of the TCR Direction. For completeness, paragraphs 36-39 of the TCR Direction are set out below:

"Miscellaneous Terms

- 36) *For the avoidance of doubt, the Proposal(s) put forward by the DNOs pursuant to this Direction are intended to facilitate and not preclude (a) any further consideration of the relevant issues; and/or (b) development of the Proposals under the DCUSA Modification Process so that it addresses the issued identified above in a way that better achieves the purposes and objectives of the Proposal(s) a set out in this Direction.*
- 37) *In addition to the Proposal(s), the DNOs must raise any such consequential proposals for modification to the DCUSA or other industry codes (to the extent the DNOs are able to raise modification to such codes), as are required for the purpose of giving effect to the proposals specified above.*
- 38) *Modification proposals developed pursuant to this Direction must serve the TCR SCR objectives and relate to the specific issues the TCR SCR seeks to address.*
- 39) *In order to keep the Authority apprised of progress under this Direction (in particular, but not limited to progress against the detailed plan referred to in (paragraph 35 above), the Authority directs the DNOs to advise it (in a timely manner) of potential issues arising which could prevent the Proposal(s) being effective as of 01 April 2022 along with information as to its proposed steps to address any such issues."*

3.2 This CP, when combined with the associated DCUSA CPs will implement the TCR Decision. will Specifically, this CP, seeks to create the necessary processes to:

- allocate relevant sites (and their customers) to one of a set of residual charging bands (as defined within the DCP 358 solution);
- reallocate a customer's site to a different charging band within a price control period, using certain criteria or in tightly defined exceptional circumstances; and
- allow customers or their Supplier/Registrant and/or other third parties authorised to act on their behalf to dispute/challenge the charging band to which a customer's site has been allocated.

## 4 Working Group Assessment

### DCP 360 Assessment

- 4.1 The DCUSA Panel established a Joint Working Group to assess/develop the DCUSA CPs that were raised to implement the TCR Decision. In establishing this Joint Working Group, the Panel agreed that it shall be for that Working Group to consider and decide whether there is a need to set up subsequent Working Groups whose duties will be to assess one or more of the CPs, whether in isolation or grouped, where it consider it beneficial to do so. During the initial Joint Working Group meeting, the following was agreed:
- DCP 358 and DCP 360 will be jointly progresses via a subset of any interested members;
  - DCP 361 will be progress on its own via a subset of any interested members; and
  - DCP 359 will be progressed with its sister CUSC Modification Proposal ‘CMP 334’, as both are concerned with the definitions for a ‘Single Site’ and for ‘Final Demand’ and this will be a cross-code Working Group with the CUSC.
- 4.2 The Joint DCP 358 and DCP 360 Working Group held seven meetings prior to issuing this Change Report, with members of the Working Group consisting of representatives from DNOs, Suppliers, IDNOs, Generators and National Grid Electricity System Operator (NGESO) as well as observers from a number of consultancies and Ofgem. Meetings were held in open session and the minutes and papers of each meeting are available on the DCUSA Website – [www.dcusa.co.uk](http://www.dcusa.co.uk)
- 4.3 The Working Group developed a consultation document to gather information and feedback from market participants on this CP.
- 4.4 Following initial meetings of the Working Group, it was agreed that the following items would be addressed in the consultation:
- Allocation of sites to the charging bands;
  - Exceptional circumstances resulting in reallocation to a different charging band within a price control period; and
  - Handling disputes, which may also result in reallocation of a site to a different charging band without a price control period.
- 4.5 Table 1 below maps which DCUSA CPs and CUSC Modifications have been raised to fulfil the various aspects of both the ‘DCUSA Direction’ and the ‘CUSC Direction’, as well as a BSC Modification which has been raised to enable the ESO to be provided with data for the purposes of billing the residual fixed charge.

TABLE 1 – TCR CODE MODIFICATIONS

<b>DCUSA</b>	<b>DCP358</b> Seeks to implement the determination of charging bands for non-domestic distribution connected customers.	<b>DCP359</b> Seeks to implement the identification of which 'customers' are eligible for a residual fixed charge	<b>DCP360</b> Seeks to implement the allocation and reallocation of 'customers' to residual charging bands.	<b>DCP 361</b> Seeks to implement elements required for the calculation of charges.
<b>CUSC</b>	<b>CMP332<sup>8</sup></b> Creation of a methodology to determine (i) the charging bands and (ii) the tariffs for each band.	<b>CMP334</b> This will identify who will be liable to pay the TDR by defining 'Final Demand' and 'Site'.	<b>CMP335/CMP336</b> Update all of the 'post tariff setting' processes (e.g. band allocation, securitisation etc) to reflect the TDR methodology.	
<b>BSC</b>	<b>P402</b> This modification aims to establish the processes and data flows to enable Elexon to collect aggregate data from DNOs and subsequently provide the required data to the National Electricity Transmission System Operator (NETSO).			

## Allocation of Customers to Charging Bands by DNO Parties

4.6 It was noted that there were a number of views related to the approach to be utilised for the allocation of sites to charging bands, which was set out in the TCR Direction which stated:

22. *that the data to be used for consumer allocation will relate to and be averaged over a period of no less than 24 months prior to the setting of the applicable residual charges, or longer if the requisite data can be made readily available at proportionate cost. For any consumers for whom data is not available for a period of 24 months, the process for new consumers in paragraph 23 below is to be followed.*
23. *that a process must be established to allocate 'new' consumers and consumers for whom the appropriate data is not available to be the relevant charging band, based on an assessment of their agreed capacity or consumption, as applicable. The process shall make use of such information as is available to best estimate the expected usage of the consumer, e.g. by taking an average of all of the data that is available, or based on an understanding from such sources as are considered appropriate of the typical profile of a similar consumers.*

<sup>8</sup> Following approval by the Authority, CMP332 was withdrawn from the CUSC Modification Process. It is expected that a new CUSC modification will be raised that will change the implementation date from 01 April 2021 to 01 April 2022.

4.7 There was a significant amount of discussion on various aspects of the two paragraphs above, which included the following items:

- 1) **Existing sites for which 24 months of data (or more than 24 months as the case may be) is available.** The Working Group questioned whether or not it is the right to use however much data is available (e.g. 10 years' worth of data if it was available for some and only 24 months if that is all that is available for some), or should it be restricted only (e.g.) 24 months of data taken from a point in time just prior to allocating a site to a charging band?
- 2) **Sites with less than 24 months of data available.** The Working Group agreed that the TCR Direction clearly shows an intent to average data where there is a minimum of 24 months available, however, debated that where it is not available, whether averaging that data is necessarily the appropriate approach to “best estimate the expected usage” of that site.
- 3) **For any customers with a MIC as a basis for their current Use of System Charge.** The Working Group discussed concerns with averaging MIC regardless, and considered how this impacts upon a site, where adjustments to capacity can only be done periodically<sup>9</sup> and will generally reflect a define change in use, and last for a period of time generally in excess of twelve months. Therefore, the Working Group questioned whether a site should be allocated on the basis of its most recent MIC only.
- 4) Notwithstanding the dispute process, the Working Group questioned whether the allocation of a site to a specific charging band should be undertaken annually or once during a price control period, as certain extracts of the TCR Decision could be interpreted either way.

**For existing customers for which 24 months of data (or more than 24 months as the case may be) is available**

4.8 The Working Group considered the following scenarios:

- a) Where a distributor has 24 months of data available for a particular site, it would appear to be appropriate to average that time period of data as per the TCR Decision.
- b) Where a distributor has greater than 24 months of data available for a particular site, which could be anything from (e.g.) three years (36 months) to ten year (120 months) or more, then would it be appropriate to average the data over whatever time period exists for that site, or should the number of months of data to be used to obtain an average be capped at (e.g.) 24 months?

4.9 During subsequent discussions on the above scenarios, it became apparent that there were differing views with respect to what the correct approach should be, and more specifically, the interpretation of two related paragraphs from the TCR Decision. Given the differing views and interpretations the Working Group agreed that it would be sensible to seek clarification from Ofgem on the topic, and, as such, issued the following request for clarification to Ofgem:

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<sup>9</sup> A customer can generally only reduce the MIC once in a 12-month period but can increase it at any timer – providing the capacity is available, and if not, the customer would risk facing reinforcement costs.

- 1) *Separately, some members of the DCUSA workgroup have a concern with the requirement to allocate a consumer based on data averaged over a greater period than 24 months', where the data is available, which would not be strictly in line with paragraph 3.57(7) above. Would the Authority consider a proposal which limited the averaged period to 24 months' **only**, where data for more than 24 months was available, providing the workgroup sufficiently demonstrated that it better achieved the TCR Decision Principles?*

4.10 With respect to the request for clarification issued by the Working Group, Ofgem provided the following response:

- 1) *Firstly, for existing consumers, the information in the decision sets out, as you have correctly shown in paragraph 7 (page 57 of the decision document), 'Settling and allocating consumers to residual charging bands' should be carried out using at least 24 months of data. The decision says 'This [allocation of customers into bands using existing industry data] is to be averaged over a period of no less than 24 months prior to the setting of the applicable residual charges, or longer if the requisite data can be made readily available at proportionate cost.'*
- 2) *It is for the workgroup to determine whether to extend this if there is a longer period than 24 months over which 'the data can be made readily available at proportionate cost'.*

4.11 The Working Group agreed that the maximum period to be averaged for the purpose of allocating a site to a band should be 24 months. The Working Group considered that averaging over more than 24 months, being the minimum requirement set out in the TCR Decision, could create further distortions relative to the historical data available, e.g. if for most sites there is only 24 months data, but for a few there is 10 years of data, would it be right to use all or any of the data beyond 24 months? The Working Group agreed that limiting the period to a maximum of 24 months ensured a consistent approach could be adopted. This approach could prevent a customer from raising a dispute based on historical site data, which may support allocation to a different charging band than assigned initially by the distributor, by cherry picking the length of historical data beyond 24 months' which aligns a charging band with the lowest charge that could be reasonably assigned to that site.

**Sites with less than 24 months of data available**

4.12 Some Working Group members considered that, where a site is allocated to a charging band based on its annual consumption, using any data available to produce an 'average' would be appropriate. For NHH sites, the most recent EAC would be sensible data in isolation, as it may be based on a form of averaging, or multiple EACs within a 24-month period could be averaged. For HH sites, the metered data held pertaining to the 24-month period would be used in order to determine an average annual consumption.

4.13 The Working Group considered the following scenarios:

- a) Where a distributor has 23 months of data available for a particular site, would it be appropriate to use an average of the 23 months of available data rather than a non-averaging approach; or
- b) Where a distributor has only two months of data available for a particular site, would it be appropriate to use a non-averaging approach rather than an average.

4.14 During subsequent discussions on the above scenarios, it became apparent that there were differing views with respect to what the correct approach should be and more specifically, the interpretation of two related paragraphs from the TCR Decision. Given the differing views and interpretations the Working Group agreed that it would be sensible to seek clarification from Ofgem on the topic and as such, issued the following request for clarification to Ofgem:

- 1) Paragraph 3.57(7-8) of the TCR Decision (updated 18 December version) states:
- 2) “7) **Setting and allocating consumers to residual charging bands:** Boundaries are to be established by the network licensees on a consistent basis and users will be allocated to bands based on available industry agreed capacity where available, or net consumption data, as applicable. This is to be averaged [emphasis added] over a period of no less than 24 months prior to the setting of the applicable residual charges, or longer if the requisite data can be made readily available at proportionate cost. For any [emphasis added] customers for whom data cannot be made available for the period of 24 months, the process for New customers and customers lacking appropriate data below should be followed.
- 3) 8) **New customers and customers lacking appropriate data:** A process shall be established to allocate customers for whom the requisite data is not available or available for a period of less than 24 months, such as new customers connected within that period, to the appropriate charging band, based on an assessment of their agreed capacity or consumption, as applicable. The process shall make use of such information as is available to best estimate the expected usage of the customer, e.g. [A] by taking an average of all the data that is available, or [B] based on an understanding from such sources as are considered appropriate of the typical profile of a similar customer, updating as needed [emphasis added].”
- 4) It is our understanding that the wording (highlighted in yellow) in the last sentence of paragraph 3.57(8) addresses two customer scenarios, shown as ‘[A]’ and ‘[B]’, namely: for an existing consumer with less than 24 months of data or for a new consumer with zero months of data available.
- 5) Some Workgroup members believe that the first element ‘[A]’ relates solely to existing customers (who lack the appropriate 24 months or greater of data) as it accords with the intent of paragraph 3.57(7) that an average of the consumers’ monthly data should be used where it is available (however, noting the specific reference to averaging “over a period of no less than 24 months prior to the setting of the applicable residual charges”), and that element ‘[B]’ relates solely to new customers (for whom no monthly actual data is available).
- 6) Other Workgroup members believe that element ‘[B]’ can be used (instead of ‘[A]’) for the allocation of an existing consumer (where a number of months of data is available to calculate an average) as well as using element ‘[B]’ for the allocation of new consumers: for example where a consumer’s expected demand has changed significantly in recent months/or is expected to in the coming months.
- 7) In other words, is it the Authority’s intention that where a consumer has, say, 12 months’ of data, that consumer would only be allocated “by taking an average of all the data that is

available” (i.e. 12 months) and **not** using, instead, any other information which may be “based on an understanding from such sources that are considered appropriate of the typical profile of a similar customer, updating as needed”?

4.15 With respect to the request for clarification issued by the Working Group, Ofgem provided the following initial response:

- 1) *For customers who do not meet the data criteria for existing customers (i.e. without at least 24 months of historic data) the directions state:  
  
that a process must be established to allocate ‘new’ consumers and consumers for whom the appropriate data is not available to the relevant charging band, based on an assessment of their agreed capacity or consumption, as applicable. The process shall make use of such information as is available to best estimate the expected usage of the consumer, e.g. by taking an average of all of the data that is available, or based on an understanding from such sources as are considered appropriate of the typical profile of a similar consumer.*
- 2) *The policy intent is that a process is designed for ‘new’ customers, or existing customers with less than at least 24 months of data, to be allocated into a band which accurately and fairly represents their agreed capacity needs or volumetric consumption based on the information available.*
- 3) *The examples included in the decision document illustrate a possible way to do this, by averaging the data which is available or by using a profiling methodology where no data is available. These examples do not necessarily provide the best option for this process. It is for the workgroup to determine the best approach to allocating ‘new’ consumers and those with less data than is required for an ‘existing’ customer’.*

4.16 Following this response from Ofgem, a number of Working Group members still had differing views, but it was agreed that, in addition to seeking further clarity from Ofgem, these would be set out in the consultation and party views would be sort as to the two approaches below:

### **Approach 1**

4.17 If, hypothetically, we have two existing consumers (X) and (Y).

4.18 For (X) we have, say, 24 months of data, the Working Group view was that the distributor should use the average of those 24 months of data to determine which charging band that customers falls into.

4.19 For (Y) we have, say, 23 months of data, should the distributor be able to choose not to use the average of this 23 months of data, and instead apply some form of profiling or other methodology instead to determine which charging band that customer falls into? For example, the distributor could use the most recent MIC, or consider only the most recent 12 months of consumption data, where that data use best estimates the demand of that site.

4.20 One Working Group view was that it seems difficult to treat two identical situations; except for the number of months of data available; differently without running the risk of the distributor falling foul of it being said to be acting in a discriminatory manner (especially as the distributor demonstrably has (i) data available and (ii) a process/procedure for calculating the average in both the (X) and (Y) situations, but is choosing not to average in the case of some, or all, (Y) situations.

4.21 The concern was primarily on the grounds of ensuring equality of treatment between existing sites and avoiding any undue discrimination. If, nevertheless, there is an 'option', for (Y) situations, for the distributor to apply a different methodology for determine the charging band into which the site will be places, then it was proposed that the legal text should robustly detail the non-averaging process, to avoid it being discriminatory or arbitrary in nature.

### **Approach 2**

4.22 In the case of existing site (Y), using an example scenario where if 22 of those 23 months that site had a MIC of e.g. 20,000kVA, and for the most recent month it is 10,000kVA, because the ownership or usage of the site has changed etc, the distributor should be able to allocate the site to a charging band based on 10,000kVA. It was suggested that if Approach 1 is taken, then the distributor won't be able to take this into consideration and that this increases the likelihood of a customer disputing why the change at the site had been ignored, and where a distributor would not generally agree to a reduction in MIC if the maximum demand of that site did not support the change.

4.23 It was noted that Approach 2 isn't saying that it should be prescriptive, and the reasoning for this is due to the belief that it is wrong not to provide for an approach to best estimate the expected usage of the site, which may not align to a simple but consistent approach of averaging the data available regardless. Approach 1 may not suitably recognise the changes in demand, in absolute terms and underlying reasons for the change, during that period. Further to this, it was explained that not averaging would be the exception, but that it needs to be an option.

4.24 The Working Group agreed that instances which 'fall through the gap' as a result of approach 1 would be potentially dealt with as an exceptional circumstance, or potentially a dispute, but approach 2 seeks to potentially proactively avoid the need for such an instance. However, it was also noted that approach 2 could result in a dispute if the customer deemed the decision to not average was not in favour of that site, e.g. if the most recent MIC represented a significant increase and therefore an averaged approach would have resulted in a lower figure used to allocate that site to a charging band.

### **For any customers with a MIC as a basis for their current Use of System Charge Working Group views as to the averaging of MIC**

4.25 Members of the Working Group discussed whether it was in fact sensible to average capacity for either setting bands or allocating sites to bands, as an adjustment to a site's MIC can only be done periodically and generally reflect a defined change in use, and last for a period of time generally in excess of twelve months.

- 4.26 One point where it was thought that clarity might be needed is on the following extract from the TCR Decision: *“based on available industry agreed capacity where available, or net consumption data, as applicable. **This is** to be averaged over a period of no less than 24 months prior to the setting of the ...”*. The decision states ‘This is’ and not ‘These are’ and some Working Group members considered that the statement therefore applies to annual consumption data only (given it is the context of the final part of the preceding sentence) and not to capacity site with a MIC. It was thought by some Working Group members that this was a sensible and pragmatic approach, as for the MIC charging bands, these can be determined, and customers allocated to them, on the basis of the MIC at a point in time. For a site with less than 24 months of MIC data available, it was noted that the customer must request a MIC as part of their application and therefore the demand requirement of that site is explicit in the absence of historical data.
- 4.27 Some Working Group members highlighted that they agreed with the position above but didn’t believe it was Ofgem’s intent, and therefore were of the view that the averaging of MIC over a period of time is the solution that the Working Group should proceed with.

### **Ofgem Clarification as to averaging of MIC**

- 4.28 With respect to the Working Group discussions on whether or not it was Ofgem’s intent that MIC should be averaged over a period of time, or if in fact the Working Group were able to proceed on a non-averaging basis, and to further clarify the approach to allocating a site with less than 24 months of data available, Ofgem provided the below clarification:
- 1) *I have been following the conversations in which there was a question on clarity around the averaging of data for ‘new’ customers, or those with less than 3 months data and also regarding the averaging method as it applies to agreed capacity.*
  - 2) *The policy intent behind the residual reform is to reduce harmful distortions. For fixed charges the distortions will arise where ‘gaming’ is enabled around the bandings for the fixed charges. For example, the band allocation method should not allow a site to artificially negotiate down its connection capacity at the time of band allocation, only to increase it later. Taking an average of historic capacity or consumption over a long time period makes this more difficult.*
  - 3) *Having said that the directions and decisions document also provide for an ‘exceptions process’ detailed in paragraph 3.59(3). This provides for a process to ‘apply for reclassification of a user to another lower band in tightly restricted circumstances, where substantial changes in usage occur, resulting in significant changes in the level of agreed capacity required’. I would suggest that consideration is given to the ‘exceptions process’ to provide a clear methodology to consider the ‘sites’ where averaging does not appear to provide a proportionate banding for the agreed capacity/consumption.*

### **Further considerations with respect to a non-averaging approach that meets the TCR intent**

- 4.29 The Working Group acknowledged that Ofgem’s concerns in this area are valid but the Working Group also generally believed that the proposed method of dealing with such a concern introduces unnecessary complexity alongside additional barriers or hurdles needed for a site to be allocated to the correct charging band from the beginning.

- 4.30 The Working Group believe that it is necessary to reflect the realities of how a customer would need to go about amending their MIC as contained within their connection agreement and thus the potential for gaming is actually not that easy at all.
- 4.31 To lower their MIC as contained within their connection agreement, the customer would need to apply to the distributor to do so and there is no guarantee that the distributor would actually accept the request. A distributor may agree to a reduction where it believes that the site genuinely doesn't have a need for the capacity (both now and in the foreseeable future) and that any request to increase later would give rise to certain consequences. The consequences of lowering MIC (if so agreed by a distributor) are two fold, the first being that if the customer requires the capacity later, then it may be the case that he capacity is no longer available and therefore would come at a cost if it was needed.
- 4.32 The second being that, in lowering a sites MIC to a point which would result in that the customer constantly exceed it, would mean that the customer is likely to incur excess capacity charges (potentially at a significantly higher rate) on top of the potential for the distributor to take actions in line with Clause 12 of the National Terms of Connection (NTCs). The provisions within Clause 12 of the NTCs are extensive (including a scenario where the customer must explain why they are exceeding their capacity and if they don't lower it, then distributors may seek to modify the connection agreement and if disputed by the customer then the customer could refer to Ofgem for resolution. Logically, that customer would face an uphill battle in obtaining a favourable decision when it was clear that they made a choice to lower their capacity to avoid a charge and now want it back.
- 4.33 It could be suggested that there are enough restrictions and measures in place to deter last minute changes to the MIC of a site in order to avoid/lower their residual fixed charges, especially where the expected maximum demand of that site would not support such a reduction. These restrictions and measures are already contained in the NTCs or by way of the provision of extra charges, being any fees payable to the DNO to make the necessary changes to their network or as excess capacity charges via DUoS charges.
- 4.34 It was noted that the following paragraphs from the NTCs should be considered if diverging from the TCR Decision was agreed:
- 12. LIMITATION OF CAPACITY
  - 14. MODIFCATIONS
  - 21. DISPUTES RESOLUTION
  - 22. VARIATIONS
- 4.35 The Working Group discussed whether diverging from their original proposal allocate a site to a charging band based on the sites MIC which is averaged 24 months in favour of one that only uses a snapshot in time (i.e. the most recent data) better achieves the TCR Decision. During these discussions it was agreed to progress with the solution set out in the TCR Decision but to seek views from industry as to whether they agree with the Working Groups solution, or whether they believe that using a snapshot in time is more proportionate and fair, given the information set out in paragraphs 4.25 – 4.34.

**At what point is a site to be allocated to a specific charging band (annually or once during a price control period)**

- 4.36 Some members of the Working Group questioned whether or not it was Ofgem’s intent that, save for exceptional circumstances or a dispute resulting in reallocation, a site would be allocated to a charging band prior to the commencement of each relevant price control review period only, or if it would be an annual process.
- 4.37 The Working Group had differing views, (i) that a site would generally be allocated to a charging band in advance of each relevant price control period, and remain in that band for the duration of that period, or (ii) that a site would potentially be allocated to a band as an annual exercise.
- 4.38 Working Group members highlighted Design parameter nine in support of the first interpretation, being:
- “Non-domestic consumers: All non-domestic consumers will be allocated to one of a set of charging bands. The boundaries of the charging bands, **and individual customers’ allocation to them**, will be reviewed and updated as needed in order that the required changes come into effect in line with the start of **each new transmission price control**. The reviews of the charging bands shall be based on the SCR Decision Principles.” [emphasis added]*
- 4.39 The Working Group agreed it would be sensible to seek clarity from Ofgem on the relevant extracts which caused confusion amongst Working Group members, and the following question was posed:
- 1) *With respect to using data to allocate customers to a charging band, 3.57(7) of the Decision includes the text:*
  - 2) *...This is to be averaged over a period of no less than 24 months **prior to the setting of the applicable residual charges**...*
  - 3) ***Interpretation 1:** A literal reading of the Decision would require that the process to allocate customers to bands should be performed annually **“prior to the setting of the applicable residual charges”** for each charging year, i.e. customers would move between bands if their most recent 24 months of data [or greater] allocated them into a different band (whether a lower or higher band).*
  - 4) ***Interpretation 2:** An alternative interpretation is that **“the applicable residual charges”** being referred to in 3.57(7) are the residual charges applicable to the first year of a new banding period **only**.*
  - 5) *Paragraph 4.4 and 4.5 of the current draft legal text states that sites will be re-allocated to charging bands prior to the start of each TO price control period and will remain in a charging band for the duration of the price control period (subject to any dispute process).*
  - 6) *The draft legal text is therefore based on Interpretation 2 above. Please could Ofgem confirm whether this is the correct interpretation of 3.57(7) of the Decision?*

4.40 In response, Ofgem quoted the following:

*“The decision document states in chapter 3:*

*Page 58 of the decision document:*

- (9) Non-domestic consumers: All non-domestic consumers will be allocated to one of a set of charging bands. **The boundaries of the charging bands, and individual customers’ allocation to them, will be reviewed and updated as needed in order that the required changes come into effect in line with the start of each new transmission price control.** The reviews of the charging bands shall be based on the SCR Decision Principles.

*Page 59 of the decision document:*

- (11) Review of charging band boundaries for non-domestic consumers: **The boundaries of the charging bands shall be reviewed at such times as to ensure that the outcome of the review can be implemented at the same time as the next transmission price control takes effect.** As part of each review, charging bands will be recalculated taking account of the SCR Decision Principles and percentiles established for banding. The review shall also be conducted so as to ensure a fair and proportionate progression of charges across bands, such as a limit of around an order of magnitude differential in charges between adjacent bands within a voltage level. Should agreed capacity or other capacity data become widely available for other LV user groups, bands will be reset at the next review on that basis. The first review of banding should have regard to the requirements in the paragraph below on First review of bands.
- (12) Disputes: An appropriate process shall be established to manage any disputes in relation to consumers’ residual charges. Any process should be efficient and proportionate, using and, where necessary, build upon existing dispute processes in the relevant industry code as applicable. In developing the process, the network licensees must consider any data which may be needed to support this process and ensure the process has clear interfaces with such other processes as may be relevant.”

4.41 The Working Group considered the response and supported interpretation two stating that any amendments to the banding should go through either the exceptional circumstances or disputes processes.

## Exceptional Circumstances Resulting in Re-Allocation to a Different Band within a Price Control Period

- 4.42 The TCR Direction states the DNOs should consider whether there should be mechanisms available for dealing with situations where there have been changes in use or ownership of a site. This should include an exceptions process to apply for reclassification of a site to another band in tightly defined circumstances, where substantial changes in usage occur, resulting in significant changes in the level of agreed capacity required (having regard to paragraph 3.59(3) of the TCR Decision).
- 4.43 This was discussed in depth by the Working Group. There was little debate that a change in voltage of connection would be a reason for re-allocation to a different band. Changes are infrequent and result in significant changes to customers' connection and significant changes to a customers' connection and significant costs to modify their internal electrical systems and probably significant charges from the DNO. Such charges are very unlikely to be driven by an attempt to game residual charges.
- 4.44 For change of use, such changes are difficult to police and an approach similar to that envisaged in DCP341/342<sup>10</sup> for storage connections was considered appropriate requiring a director's letter confirming such change of use before any re-allocation could be considered. There was debate on defining an approach to define significant change. An initial proposal was to define a change significant if it resulted in customers moving two bands not one. This was deemed unfair by many Working Group members.
- 4.45 It was noted that in most cases, using some initial analysis of the band boundaries based on the TCR impact assessment published alongside the TCR Decision, the upper band boundary was about double that of the lower band boundary and hence the policy intent was to include a wide range of customers in each charging band. It was therefore proposed that significance could be defined as whether the existing MIC/annual consumption either halved or doubled. This approach was widely acceptable by the Working Group and provided a significantly high hurdle to prevent customers proposing minor changes to avoid residual charges when they are close to the lower boundary threshold.

## Handling Disputes

- 4.46 There was general consensus that in any disputes process, the relevant distributor and the customer/agent/supplier should attempt to resolve the issue in the first instance. Consideration was then given to what should happen if agreement couldn't be reached. It was recognised that as this method of charging is new and the banding decision could have a significant financial impact, a large number of disputes could be possible. Whilst disputes could be referred to Ofgem for resolution it was suggested that the industry introduce an appeal process to reduce the number of potential disputes being referred to Ofgem. This is supported in the Ofgem Decision document and with the relevant text highted on paragraph 4.40 above.

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<sup>10</sup> [DCP 341 'Removal of residual charging for storage facilities in the CDCM'](#) and [DCP 341 'Removal of residual charging for storage facilities in the EDCM'](#)

- 4.47 It was suggested that a Disputes Committee be formed and was widely supported within the Working Group. The make-up of the Disputes Committee would be from elected three distributors and two suppliers (plus alternates) with at least three (with at least one distributor and supplier) to be quorate. The appointment process would be based on the current Panel election process and occur at the same time (Autumn each year).
- 4.48 Where a dispute could not be resolved between the customer/agent and the distributor a process would be followed which would obtain the information from both parties, share this information, seek any final consideration from each party and if required meet to determine the outcome. The Disputes Committee would meet as and when deemed appropriate to consider the evidence from both sides that then determine whether an appeal should be upheld or not. A simple majority decision being required.
- 4.49 One member noted that if a customer does go through dispute process and does change then there needs to be a process to notify NGESO of such a change so that they are made aware and can modify on their side of things. It was recognised that this would equally apply to the exceptional circumstances process.
- 4.50 One member suggested that consideration should be given to how to deal with a potential issue relating to backdating of charges to suppliers (to the benefit of customers), seeing as there is a relevant law surrounding this area but that it may be that it is only applicable to DNOs/IDNOs and not the ESO. It was agreed that their Use of System Charges would be backdated to the time when the analysis shows they were first charges in the incorrect band, up to a maximum of six years (five years in Scotland).

## 5 Summary of Consultation & Responses

### DCP 360 Consultation

- 5.1 The Working Group developed and issued a consultation that combined both DCP 358 and DCP 360 on 25 March 2020 seeking industry views on the solution set out above. There were twenty-four respondents to the consultation, of which eleven were from Suppliers, six were from DNOs, two were from IDNOs, two were from energy consultancy firms, one from the ESO, one from a DSR provider and one from Citizens Advice. A summary of the responses received, and the Working Group's conclusions and final solution are set out below.
- 5.2 Please note that as the consultation combined both DCP 358 and DCP 360 but that each has its own Change Report, there is some duplication where separation between the two was not considered necessary in the consultation. However, if separation between the two CPs was needed, this document only contains the questions and subsequent solutions for DCP 360. The full set of responses and the Working Group's comments are provided in Attachment 4.
- 5.3 The table below is included for reference and details which questions relate to either the DCP 358 or DCP 360 and where a question is related to both CPs.

**TABLE 2 - MATRIX OF WHICH QUESTIONS ARE APPLICABLE TO WHICH CP**

No.	Questions From Joint Dcp 358/360 Consultation	Applicable CP
1	Do you understand the intent of these CPs?	BOTH
2	Are you supportive of the principles that support these CPs, which is to create a process to determine the Banding Boundaries & Allocation of customers to those bands as well as a process for disputes and interventions?	BOTH
3	Are you aware of any other data sources DNOs should use for the purpose of setting band boundaries?	DCP 358
4	Where data is not available for a particular site, should the site be excluded for band setting or should estimated data be used, e.g. a default EAC be included to determine the band boundaries?	DCP 358
5	Do you agree that charging bands should be set on a GB wide basis and there is not sufficient justification to support introduction of regional banding?	DCP 358
6	Do you agree that band boundaries should be rounded up? If so, what level of rounding should be applied? (e.g. rounding up to the nearest integer or applying different tolerances to different voltage? If not, then please provide any supporting rationale and/or an alternative solution which you believe the Working Group should consider.	DCP 358
7	Do you agree that only MIC should be considered in setting band boundaries?	DCP 358
8	Do you support the Working Group proposals with regard to a Banding Agent?	DCP 358
9	Do you support the Working Group proposals with regard to the review of charging bands and the proposed timescales?	DCP 358
10	Do you agree with allocating a site based on a maximum of 24 months historical data, or do you support an alternative approach?	DCP 360
11	Where a site does has less than 24 months of data, do you think that data should always be averaged (Approach 1), or should an alternative approach be included (Approach 2), which may best estimate the demand for that site? If you support Approach 2, should this apply to MIC and/or annual consumption charging bands?	DCP 360
12	Do you agree with the Working Group view that, subject to exceptional circumstances or a successful dispute, a site will be allocated to a charging band effective for the duration of each onshore electricity transmission price control period? If not, please provide any supporting rationale.	DCP 360
13	Do you agree with the Working Group's proposals with regard to band reallocation?	DCP 360
14	Do you agree with the Working Group's proposals for defining significant change?	DCP 360
15	Do you support the proposed make up and appointment process of the Disputes Committee?	DCP 360
16	Do you support the process for handling disputes? Please provide your rationale especially if you do not support the process.	DCP 360
17	Do you consider that DCP 358 better facilitates the DCUSA Objectives? If so, please detail which of the Objectives you believe are better facilitated and provide supporting reasons. If not, please provide supporting reasons	DCP 358
18	Do you consider that DCP 360 better facilitates the DCUSA Objectives? If so, please detail which of the Objectives you believe are better facilitated and provide supporting reasons. If not, please provide supporting reasons	DCP 360
19	Are you aware of any wider industry developments that may impact upon or be impacted by these CPs?	BOTH
20	Are you supportive of the proposed implementation date being 5 Working Days following Authority approval?	BOTH
21	Do you have any comments on the draft legal text for DCP 358?	DCP 358
22	Do you have any comments on the draft legal text for DCP 360?	DCP 360

**Q1: Do you understand the intent of the CP?**

5.4 The Working Group noted that all respondents to the consultation agreed that they understood the intent of DCP 360 as well as DCP 358. One respondent suggested that consideration should be given to any potential implications to the development timelines of both CPs due to the withdrawal of CMP332 which will be re-raised with an implementation date of April 2022 instead of April 2021.

5.5 To which the Working Group commented that the withdrawal of CMP332, and the pending new modification with an implementation date of April 2022, has no real impact on the timelines for DCP 360 (nor DCP 358). This is because each DNO/IDNO Party will still need to provide the specified data to the Banding Agent by no later than 30 September 2020 in order that the bands can be produced and used in the Use of System Charges for April 2022 which are issued in December 2020 to cater for the fifteen month lead time. Therefore, the Working Group agreed to continue with the original timeline.

**Q2: Are you supportive of the principles that support this CP, which is to create a process to determine the allocation of customers to bands as well as a process for disputes and interventions?**

- 5.6 The Working Group noted that twenty three out of twenty four respondents were supportive of the principles that support both DCP 358 and DCP 360, which is to create a process to determine the Banding Boundaries & allocation of customers to those bands as well as a process for disputes and interventions. The respondent who was not supportive of the principles that support both DCP 358 and DCP 360 noted that *“We have been very clear in the past that we are not supportive of the principles behind Ofgem’s decision to recover Residual Charges via bandings.”*
- 5.7 The Working Group noted that some respondents who were supportive, also raised some general concerns or points for further consideration related to the withdrawal of CMP332; and the ongoing COVID-19 global pandemic.
- 5.8 With respect to comments around the withdrawal of CMP332, and the pending new modification with an implementation date of April 2022, the Working Group refer to their comments made against the responses to question 1, which is covered off under paragraph 5.4 above.
- 5.9 With respect to concerns related to the ongoing COVID-19 global pandemic, the Working Group collated them together and through the DCUSA governance process the DCUSA Panel Chair raised the issue with Ofgem for their consideration. At the time of this Change Report, Ofgem had requested additional information as a result of the issues raised and at their final meeting the Working Group agreed to the responses that have since been provided to Ofgem for their continued consideration.
- 5.10 One respondent raised a concern related to the *“general proposal to allocate a consumer to a residual charging band and have them remain in the same band for the duration of the Transmission Price Control period”*, however it was noted that the specific item in question is dealt with under question 12, and as such, will be considered as part of the Working Group review of that question.

**Q10: Do you agree with allocating a site based on a maximum of 24 months historical data, or do you support an alternative approach?**

- 5.11 The majority of respondents favoured using only the latest 24 months of data and not more than 24 months of data.
- 5.12 Alternatives were proposed that considered using the most recent change in capacity or using the MIC at the time the bands are set. Some went further and said these should be reviewed annually, which would form part of the solution for DCP 358 and not DCP 360.

**Q11: Where a site does have less than 24 months of data, do you think that data should always be averaged (Approach 1), or should an alternative approach be included (Approach 2), which may best estimate the demand for that site?**

**If you support Approach 2, should this apply to MIC and/or annual consumption charging bands?**

- 5.13 The Working Group note that there were mixed responses to this question, with some respondents supporting Approach 1, others supporting Approach 2, some that did not support either approach and some that put forward alternative approaches.
- 5.14 With respect to the suggested alternative approaches, these included a solution to enable the use of 24 months of data where that data had since become available to the DNOs/IDNOs, whilst another suggested that an annual review of the allocation of Final Demand Sites to charging bands should be considered.

**Q12: Do you agree with the Working Group view that, subject to exceptional circumstances or a successful dispute, a site will be allocated to a charging band effective for the duration of each onshore electricity transmission price control period?**

**If not, please provide any supporting rationale.**

- 5.15 The majority of respondents agreed with the Working Group view that, subject to exceptional circumstances or a successful dispute, a site will be allocated to a charging band effective for the duration of each onshore electricity transmission price control period. It was also agreed that this view was aligned with the TCR Direction.
- 5.16 However, three respondents did not agree with the approach but noted that it was aligned with Ofgem's TCR Direction. One respondent stated that *"If consumers are only to be reallocated every 5 years then consumers will have little or no incentive to reduce consumption, improve their patterns of consumption, or bring their flexibility to the market. The DNOs will find that customers will have no incentive to relinquish any MIC volumes within the 5 year price control periods as they may as well hold onto any unused capacity which they will be charged for regardless"*.

**Q13: Do you agree with the Working Group's proposals with regard to band reallocation?**

- 5.17 The Working Group note that there were mixed responses to this question with some respondents agreeing with the Working Group's proposals with respect to the circumstances for the reallocation of a Final Demand Site to another charging band and others who did not.
- 5.18 The Working Group noted that the main reason for respondents objecting to such a proposal was that the use of a halving/doubling threshold was an arbitrary approach, however the Working Group noted that the same can be said for the alternative proposals being put forward such as plus or minus 30%. These responses were discussed further as part of the Working Group review of responses to question 14.
- 5.19 Once again, the suggestion on an annual review approach was put forward in preference to an exceptional circumstances process which, they argued, may help to reduce the number of cases that would require the use of the process, which, in part, would reduce the administrative burden.

#### Q14: Do you agree with the Working Group's proposals for defining significant change?

- 5.20 As with question 13, the Working Group note that there were mixed responses to this question with some respondents agreeing with the Working Group's proposals for defining a significant change to a site or the usage at a site and other respondents who disagreed.
- 5.21 For those respondents' that disagreed, the Working Group noted a number of comments and suggestions (set out below) on what value the level of significance could be set at:
- *"a material change should be symmetrical around the current MIC/Annual consumption e.g. +/- 50% rather than doubling/halving"*
  - *"Using halving or doubling as a gatekeeping mechanism is rather arbitrary. If a site has a legitimate claim to have changed use, then even if it's a small change which drops it down a band, it should be able to do so."*
  - *"If the EAC or MIC has changed enough to warrant a band change the dispute should be valid. There should be a process to catch outliers on both sides which should be supported by industry. A 20% deviation is more realistic".*

#### Q15: Do you support the proposed make up and appointment process of the Disputes Committee?

- 5.22 The Working Group note that most respondents to this consultation question supported the make-up and appointment process of the Disputes Committee. However, the Working Group noted some respondents stated that further clarity within the legal text was needed to ensure Parties have a common understanding, whilst other respondents provided some suggestions around the make-up of the Disputes Committee.
- 5.23 Of particular note, there was a suggestion that Ofgem should be included on the committee as an observer so that they have oversight of any disputes that may be escalated alongside Ofgem's ability to appoint a person to the committee where it believed that a certain category of person was under-represented. It was also noted that a case was made for the consideration of a representative from Citizens Advice, a trade body or a large user group to be able to attend as an observer.
- 5.24 The Working Group noted further areas for consideration raised by respondents related to the Committee having equal representation from Distributors and Suppliers and what allowances could be put in place in the event that not enough potential members volunteer.

#### Q16: Do you support the process for handling disputes? Please provide your rationale especially if you do not support the process.

- 5.25 The Working Group notes that the majority of respondents agreed with the Working Group's proposed process for handling disputes, however, there were suggestions that the process needed to be developed further, including the need for published Terms of Reference and clear criteria for making decisions. It was also suggested that clearer timescales needed to be included.
- 5.26 Further comments covered the right to escalate to the Authority without first going through the disputes committee and some urged that the key is getting the process right in the first place to avoid the need for qualitative judgements by a disputes committee.

**Q18: Do you consider that DCP 360 better facilitates the DCUSA Objectives? Is so, please detail which of the Objectives you believe are better facilitated and provide supporting reasons. If not, please provide supporting reasons.**

5.27 The majority of respondents agreed with the Proposer that DCP 360 would better facilitate Charging Objective 1 and some support for Charging Objective 2. However, two respondents voiced concerns that DCP 360 would not better facilitate the DCUSA Charging Objectives.

5.28 One respondent who felt there was a negative impact on competition stated that; *“This modification is currently detrimental to competition. Many suppliers do not have yet have all the information they need to fully undertake IT system development to accurately price customers in a cost reflective manner (e.g. bandings, LLFCs, customer allocation). They are relying on workarounds, applying risk margin or will enforce contractual reopeners later meaning that some customers may not receive the fixed price contract that they wanted”.*

5.29 At a high level, the following table sets out whether each respondent considered that the proposal better facilitates the DCUSA Charging Objectives and which they believed to be in scope.

Respondent	Charging Objective 1	Charging Objective 2	Response did not specify which Charging Objective but provided a general view
1.			Positive
2.	Positive		
3.	Positive	Positive	
4.			Positive
5.		Positive	
6.	Positive		
7.			No answer
8.			Positive
9.	Positive		
10.	Questionable		
11.	Positive		
12.	Positive		
13.	Positive	Positive	
14.		Negative	
15.	Positive		
16.	Positive		
17.	Positive		
18.	Positive		
19.	Positive		
20.	Positive		
21.			Positive
22.	Positive		
23.	Positive		
24.	positive		

5.30 The Working Group noted their assessment of the DCUSA Objectives, and the Working Group view is provided in Section 7 below.

**Q19: Are you aware of any wider industry developments that may impact upon or be impacted by these CPs?**

5.31 The majority of respondents did not believe that there were any wider industry developments that may impact upon or be impacted by DCP 360.

5.32 However, some respondents reiterated their comments regarding the withdrawal of CMP332 and their concerns related to the ongoing COVID-19 pandemic, both of which were made with respect to the implementation timescales of the suite of TCR code modifications.

#### Q20: Are you supportive of the proposed implementation date being 5 Working Days following Authority approval?

5.33 All respondents, bar one, agreed with the implementation date for DCP 360 (and DCP 358) being 5 Working Days following Authority approval. However, some respondents reiterated their comments with respect to the implementation timescales due to the withdrawal of CMP332.

5.34 Working Group conclusions in this area can be found in section 9 below.

#### Q22: Do you have any comments on the draft legal text for DCP 360?

5.35 The majority of respondents did not have any comments on the draft legal text for DCP 360. However, one respondent noted the need to take into account the responses to the consultation questions when finalising the legal text. Discussion of the finalised legal text can be found in section 10 below.

## 6 Working Group Conclusions & Final Solution

6.1 Following the review of the consultation responses, the Working Group agreed that all respondents understood the intent and the majority supported the principles of the CP.

### Band Allocation

6.2 The Working Group agreed that where 24 months of data is available it will limit it to the most recent 24 months of data when considering the allocation to a band and:

- in the case of the MIC, it will be the average over that period;
- In the case of elective HH consumption, it is the average annual import consumption; and
- In the case of NHH consumption, it is the most recent Estimated Annual Consumption (EAC) in that period.

6.3 Where a site has less than 24 months of data, the Working Group discussed the responses and agreed that approach 1 resulting in:

- in the case of the MIC, it will be the average over the period where data is available;
- In the case of elective HH consumption, it is the average annual import consumption; over the period for which metered data is available; and
- In the case of NHH consumption, it is the Default Estimated Annual Consumption for that class of Final Demand Site.

6.4 If no data exists, the Distributor shall use any other available information that is appropriate for a typical profile of a similar site to best estimate the expected demand or annual import consumption of the Final Demand Site.

### **Duration of Band Allocation**

- 6.5 The Working Group had sympathy with the comments made by the respondent regarding consumers having little or no incentive to reduce consumption, improve their patterns of consumption, or bring their flexibility to the markets if band allocation is limited to each price control period. However, the approach adopted by the Working Group is in line with the intent of the TCR decision, The Working Group also stated that residual charges should not be sending signals to respond to (as this is one of the main concerns over the existing approach). In addition, Working Group members indicated that the customer would still benefit by undertaking these activities by reducing their forward-looking charge elements.
- 6.6 The Working Group concluded by stating that there will be no change to their stance that the allocation to a charging band will last until the next price control period unless an exceptional circumstance occurs, or a successful appeal is granted.

### **Exceptional Circumstances**

- 6.7 Having discussed the comments received on this topic the Working Group concluded that there should be a third criterion in addition to the two previously agreed. The criteria for which consideration will be given to a request for a change to the charging band allocated to a Final Demand Site will be if there has been.
- a) a change in voltage of connection at the customer's premises; or
  - b) an exceptional and significant change to the use of the site or the sites configuration, or consumption at the site; or
  - c) a Final Demand Site moves from one of the customer groups to another, and as a result it becomes a site for which the Maximum Import Capacity is to be used for the charging bands process (when annual consumption was previously being used) or becomes a site for which annual consumption is to be used for the charging bands process (when Maximum Import Capacity was previously being used).
- 6.8 In respect to 6.7(b) above:
- where there is a Maximum Import Capacity as part of the DUoS charge, any request must be accompanied with a signed Connection Agreement and a signed letter from the Customer's company director (or equivalent) confirming exceptional and significant changes to the use of the site; or
  - where the DUoS charge is based on consumption, a signed letter from the Customer's company director (or equivalent) confirming exceptional and significant changes to consumption (including historical consumption) for the Final Demand Site and the reason for the change of use or change of site configuration.
- 6.9 The debate on what should be classed as exceptional and significant resulted in a change to the materiality threshold from that which was consulted on, being one based on either doubling or halving to one that increases or decreases by more than 50 percent in comparison to the Maximum Import Capacity or consumption which was used for the purposes of the allocation which the applicant is seeking to have changed.

## **Disputes Process**

- 6.10 The respondents' comments on the make-up of the Disputes Committee was discussed and the Working Group agreed to amend the make-up resulting in:
- three distributors and their alternates;
  - three Suppliers and their alternates,
  - any additional appointment made by the Authority; and
  - any of the currently serving Panel Members but only acting in that capacity when called upon by a member of the Disputes Committee or the Secretariat to act in the capacity of a reserve member, where a scheduled meeting of the Disputes Committee would not otherwise be quorate.
- 6.11 In addition to the above a representative shall be entitled to attend and speak (but not vote) at any meeting of the Disputes Committee from the following:
- the Authority; and
  - the Consumer Body (Citizens Advice or Citizens Advice Scotland).
- 6.12 The Disputes Committee will be elected in accordance with the provisions for the election of Panel Members with terms of reference being approved by the Panel in line with all Working Groups under its control.
- 6.13 Where there is a potential dispute, the initial discussion is held directly with the Distributor. If an agreement cannot be reached, the customer, its Registrant (which covers both Suppliers and CVA Registrants) or an agent authorised to act on the customers behalf can raise a dispute via the DCUSA Secretariat. The Secretariat will seek written communication between the two parties prior to the Disputes Committee with time limits at each stage of the process.
- 6.14 Whenever the Disputes Committee meets, all members present will be independent of the dispute and decisions will be made on the basis of a simple majority of members present at that meeting. The decision shall be binding for the purposes of the DCUSA but this does not override any statutory rights that the Customer may have (e.g. to refer the matter the Authority).
- 6.15 Where there is a successful challenge the Final Demand Site will be moved to a different band and the DUoS charge will be refunded to the point in time subject to up to a maximum of six years (five years in Scotland).

## 7 Relevant Objectives

### Assessment against the DCUSA Objectives

- 7.1 For a DCUSA Change Proposal to be approved it must be demonstrated that it better meets the DCUSA Objectives. There are five General Objectives and six Charging Objectives. The full list of objectives is documented in the DCUSA.
- 7.2 The rationale provided by the Proposer as to which of the DCUSA Objectives are better facilitated by DCP 360 is set out in the CP form (Attachment 3) and also detailed below:
- DCUSA Charging Objective One is better facilitated by ensuring DNOs are compliant with licence requirements in relation to SCRs, by implementing specific requirements set out in the TCR Direction.

DCUSA Charging Objectives	Identified impact
<input checked="" type="checkbox"/> 1 That compliance by each DNO Party with the Charging Methodologies facilitates the discharge by the DNO Party of the obligations imposed on it under the Act and by its Distribution Licence	<b>Working Group view:</b> <b>Unanimous Positive</b>
<input type="checkbox"/> 2 That compliance by each DNO Party with the Charging Methodologies facilitates competition in the generation and supply of electricity and will not restrict, distort, or prevent competition in the transmission or distribution of electricity or in participation in the operation of an Interconnector (as defined in the Distribution Licences)	<b>Working Group view:</b> <b>Majority = Neutral</b> <b>Minority = Negative</b>
<input type="checkbox"/> 3 That compliance by each DNO Party with the Charging Methodologies results in charges which, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the DNO Party in its Distribution Business	<b>Working Group view:</b> <b>Majority = No Impact</b> <b>Minority = Negative</b>
<input type="checkbox"/> 4 That, so far as is consistent with Clauses 3.2.1 to 3.2.3, the Charging Methodologies, so far as is reasonably practicable, properly take account of developments in each DNO Party's Distribution Business	<b>None</b>
<input type="checkbox"/> 5 That compliance by each DNO Party with the Charging Methodologies, facilitates 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	<b>None</b>
<input type="checkbox"/> 6 That compliance with the Charging Methodologies promotes efficiency in its own implementation and administration	<b>None</b>

- 7.3 The Working Group sought Party views on which of the DCUSA Charging Objectives they thought would be better facilitated by the implementation of DCP 360. A summary of the Party views can be found in sections 5.22 – 5.25 above and in the consolidated consultation responses document found as Attachment 4.

- 7.4 The Working Group unanimously agreed that DCUSA Charging Objective One will be better facilitated by the implementation of the DCP 360 solution. The rationale for this view was in line with the view of the Proposer, which is that Charging Objective One will be better facilitated by ensuring DNOs are compliant with licence requirements in relation to SCRs, by implementing specific requirements set out in the TCR Direction.
- 7.5 A majority of those Working Group members who put forward a view with respect to DCUSA Charging Objective Two, agreed that on balance, DCP 360 will neither better facilitate, or not better facilitate, DCUSA Charging Objective Two. The rationale for this view was that DCP 360 will impact all Parties in the same manner and therefore has net neutral impact upon competition in the electricity market.
- 7.6 There was a minority view that DCP 360 will not better facilitate DCUSA Charging Objective Two, with the rationale for that view being that the implementation of DCP 360 will be detrimental to competition. It was noted that this was due to a view that many Suppliers do not have yet have all the information they need to fully undertake IT system development to accurately price customers in a cost reflective manner (e.g. bandings, LLFCs, customer allocation). Therefore, Suppliers are relying on workarounds such as applying a risk margin to any contracts that finalise during the intervening period or may enforce contractual reopeners later meaning that some customers may not receive the fixed price contract that they wanted.
- 7.7 A majority of those Working Group members who put forward a view with respect to DCUSA Charging Objective Three, agreed that on balance, DCP 360 has no impact upon the objective as all it seeks to implement are the processes for allocating charging bands for non-domestic distribution connected customers and any subsequent interventions that may be needed, alongside a disputes process.
- 7.8 There was a minority view that DCP 360 will not better facilitate DCUSA Charging Objective Three, with the rationale for that view being that the implementation of DCP 360 results in changes that are unfair to many customers. It was noted that the unfairness arises due to the preferred structure for residual charges meaning some customers will be paying much more than they were previously, through the application of arbitrary banding and it follows that a key concern is that Ofgem's preferred structure will be harmful to a subset of businesses (where the MIC is on the 'wrong' side of the banding threshold). A further concern was noted that related to a belief that the methodology behind the banding process does not encourage users to give up unrequired capacity since there is no financial benefit for doing so.
- 7.9 The Working Group unanimously agreed that the implementation of DCP 360 would not have an impact on DCUSA Charging Objectives, Four, Five and Six.
- 7.10 When looking at the DCUSA Charging Objectives in the round, a majority of those Working Group members who put forward a view with respect to the DCUSA Charging Objectives, agreed that on balance, DCP 360 will better facilitate the DCUSA Charging Objectives.

## 8 Impacts & Other Considerations

### Significant Code Review Impacts

- 8.1 It is not believed that this CP will impact on any existing SCR, and this CP needs to be raised as a result of the TCR Decision which therefore means the SCR phase of the TCR shall be treated as having ended.

#### **Electricity Network Access and Forward-Looking Charging Review SCR Interaction**

- 8.2 Following Ofgem's consultation issued on 23 July 2018, it was noted that on 18 December 2018 Ofgem published its decision to launch an SCR entitled 'Electricity Network Access and Forward-Looking Charging Review' (the 'Access SCR'). During 2019, Ofgem published two working papers that consisted of a suite of discussion notes and which set out Ofgem's current thinking with respect to issues that the SCR is seeking to resolve.
- 8.3 The scope of the Access SCR explicitly excludes residual charging, which was the subject of the TCR. It is noted that the Access SCR may have a material impact on the level of residual charging, and so does interact with this CP, however, the Working Group is unable to test any such interaction as there is still a long-list of options being considered by Ofgem.

#### **Settlement Reform SCR / Retail Code Consolidation SCR / Switching Programme SCR**

- 8.4 The Working Group does not consider that the solutions they have developed have any impact on nor are they impacted by the 'Settlement Reform SCR', the 'Retail Code Consolidation SCR' or the 'Switching Programme SCR'.

### Impacts on other Industry Codes

#### **Consideration of any interaction between DCP 360 and industry code arrangements**

- 8.5 As noted, NGENSO has also been directed to raise modifications to the CUSC to implement the TCR Decision. A key requirement of the TCR Directions is to ensure consistency between the DCUSA and the CUSC in certain areas, and this CP falls into this category. Therefore, changes as a result of this CP need to be consistent across both codes.

### Environmental Impacts

- 8.6 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 360 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this Change Proposal.

### Engagement with the Authority

- 8.7 Ofgem has been fully engaged throughout the development of the CP as an observer of the Working Group and regular attendee of the TCR Implementation Steering Group.

## 9 Implementation

- 9.1 Clause 11.9A(2) of the DCUSA sets out that in respect of all Authority Change Proposals, which DCP 360 is considered to be, the Authority may, by direction, specify and/or amend the date from which the variation envisaged by the Change Proposal is to take effect.
- 9.2 Within the TCR Direction, the Authority, in accordance with paragraph 22.9E(a) of SLC C22 directed the DNOs to raise one or more code modification proposals in the terms and for the reasons set out in the Annex of the Direction in sufficient time to enable the modifications to be effective as of 01 April 2022.
- 9.3 However, the definitions that DCP 359 seeks to introduce which are to be used in the processes put in place by this CP (the allocation of customers to charging bands) and in DCP 358 (creation of the residual charging bands), need to be implemented prior to the timetable that is specified by the Proposer in the CP form, which had been set to 01 October 2020. Given this, the Working Group had originally agreed and consulted on an implementation date that, subject to Authority approval of DCP 359 and DCP 358 at the same time, would be 5 Working Days from the Authority approving the CP.
- 9.4 Following the consultation period, the Working Group noted that their original approach had been supported by the respondents. However, the Working Group agreed to move away from an implementation date that would be 5 Working Days after Authority approval to a specific date, it was noted that this was due to the explicit procedural dates within the legal text for this CP and the consequential impact on DCP 358. This was subsequently agreed within the two other CPs so that all three will align.
- 9.5 The implementation date for DCP 360 will, subject to Authority approval, will be within a 'extra-special release' of the DCUSA on 01 August 2020.

## 10 Legal Text

- 10.1 The legal text for DCP 360 has been developed and refined by the DCP 358/360 Joint Working Group and has been reviewed by the DCUSA legal advisors and which the Proposer has confirmed as satisfying the intent of the Change Proposal. The DCP 360 legal text is provided as Attachment 1 to this Change Report.
- 10.2 The DCP 360 legal text adds a number of paragraphs to the new Schedule [XX] titled 'Residual Charging Bands' which DCP 358 proposes to introduce into the DCUSA. Specifically, DCP 360 add paragraphs 4, 6 and 7 (and any applicable definitions). The following bullet points provide a high-level summary of the legal text associated with DCP 360:
- Paragraph 4 '*Allocation Of Customers To Charging Bands By DNO/DNO Parties*', details the process by which each Final Demand Site will be allocated to a charging band based on the capacity/consumption data available for each site (with the charging bands themselves being covered by DCP 358);
  - Paragraph 6 '*Exceptional Circumstances Resulting In Re-Allocation To A Different Band Within A Price Control Period*' defines the rules and processes applicable to when consideration will be given to the reclassification of a Final Demand Site to another charging band within a price control period,

where there has been a significant change in either the level of agreed capacity required or level of consumption; and

- Paragraph 7 '*Disputes*' defines the rules and processes to manage any disputes, where a customer or their relevant Supplier, CVA Registrant or agent authorised to act on the customers' behalf can challenge the charging band to which a customer's site has been allocated by introducing a disputes committee, the governance around it and the process to be followed.

10.3 The legal text for DCP 360 should be read in conjunction with and be applied alongside that which is provided for by DCP 358 'Ofgem Targeted Charging Review Implementation: Determination of Banding Boundaries' and DCP 359 'Ofgem Targeted Charging Review Implementation: – Customers: who should pay?'. For ease of reference, the Working Group provide Attachment 5, which is a combined version of the legal text for all three CPs that has been colour coded to highlight which parts of the text are related to each CP.

## 11 Code Specific Matters

### Reference Documents

11.1 The below links are to the TCR Decision re-published in December 2019, the TCR DCUSA Direction published in November 2019 and the 'Detailed Plan' also known as the Joint ESO/DNO PID published in December 2019:

- The TCR Decision: [https://www.ofgem.gov.uk/system/files/docs/2019/12/full\\_decision\\_doc\\_updated.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/12/full_decision_doc_updated.pdf)
- The TCR Direction: [https://www.ofgem.gov.uk/system/files/docs/2019/11/dcusa\\_direction\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/11/dcusa_direction_1.pdf)
- The detailed plan: <http://www.chargingfutures.com/media/1390/tcr-joint-eso-dno-pid-v10.pdf>

11.2 The below links are to the three other DCUSA CPs that have been raised to implement the TCR Decision:

- [DCP 359 'Ofgem Targeted Charging Review \(TCR\) implementation – customers: who should pay?'](#)
- [DCP 358 – 'Ofgem Targeted Charging Review Implementation: Determination of Banding Boundaries'](#)
- [DCP 361 – 'Ofgem Targeted Charging Review Implementation: Calculation of Charges'](#)

## 12 Recommendations

### Panel's Recommendation

12.1 The Panel approved this Change Report on 20 May 2020. The Panel considered that the Working Group has carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 360.

12.2 The Panel have recommended this report be issued for voting and DCUSA Parties should consider whether they wish to submit views regarding this CP. The Voting Form can be found in Attachment 2.

## 13 Attachments

- Attachment 1 – DCP 360 Legal Text
- Attachment 2 – DCP 360 Voting Form
- Attachment 3 – DCP 360 Change Proposal
- Attachment 4 – DCP 360 Consultation and Collated Responses
- Attachment 5 – Colour Coded Combined Legal Text – DCP 358-359-360