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|------------------------|--|----------------------|----------------|
| Modification proposal: | <b>Distribution Connection and Use of System Agreement (DCUSA) DCP382 – 2021-22 Electricity Theft Detection Incentive Scheme (ETDIS) Timings</b> |                      |                |
| Decision:              | The Authority <sup>1</sup> has decided to reject <sup>2</sup> this modification <sup>3</sup>   |                      |                |
| Target audience:       | DCUSA Panel, Parties to the DCUSA and other interested parties   |                      |                |
| Date of publication:   | 11 June 2021   | Implementation date: | Not applicable |

## Background

We are undertaking a programme of code consolidation under the Retail Code Consolidation (RCC) Significant Code Review (SCR) that will consolidate and rationalise a number of energy retail codes and codes of practice. Ahead of the designation of RCC – planned for 1 September 2021 – we implemented v1.1 of the Retail Energy Code (REC)<sup>4</sup> in January 2021 and subsequently gave effect to Energy Theft Consolidation<sup>5</sup> from 1 April 2021.

Part of this process included migrating Theft arrangements from the DCUSA to the REC. To this end, we approved DCP374 on 11 December 2020<sup>6</sup>. Theft provisions that were previously administered through the DCUSA will migrate to the REC between 1 April 2021 and 1 September 2021, as laid out in DCP 374. Obligations relating to the Electricity Theft Detection Incentive Scheme (ETDIS) transferred from DCUSA Schedule 30 to the REC Theft Reduction Schedule on 01 April 2021, by virtue of Ofgem designating Energy Theft Consolidation.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> 'Change' and 'modification' are used interchangeably in this document.

<sup>4</sup> See 'Decision on proposals for Retail Energy Code v1.1' (17<sup>th</sup> December 2020), at <https://www.ofgem.gov.uk/publications-and-updates/decision-proposals-retail-energy-code-v1.1>

<sup>5</sup> See 'Designation for Energy Theft Consolidation: 1 April 2021' (31 March 2021), at <https://www.ofgem.gov.uk/publications-and-updates/designation-energy-theft-consolidation-1-april-2021>

<sup>6</sup> See 'DCP 374 – Energy Theft Transition into the Retail Energy Code' (14<sup>th</sup> December 2020), at <https://www.ofgem.gov.uk/publications-and-updates/dcp-374-energy-theft-transition-retail-energy-code>

However, there is a discrepancy between certain dates relating to ETDIS operation as previously set out in the DCUSA compared with the REC.

### **The modification proposal**

DCP382 was raised by British Gas (the “Proposer”) on 21 February 2021. This change proposal was raised due to an inconsistency identified between text in the DCUSA (at the time that the proposal was raised) and that which was implemented in the REC with respect to the start of the 2021/22 Theft Detection Incentive Scheme. The aim of this change proposal is to address a concern that parties may act in good faith by adhering to obligations in the DCUSA to provide details of Confirmed Thefts identified in February and March 2021. These Confirmed Thefts may not be deemed eligible for the ETDIS Scheme Year when the Scheme administered under DCUSA ends and the new Energy Theft regime under the REC is in operation and discharged by the Retail Energy Code (RECCo).

This change proposal would amend Schedule 30 to the DCUSA in order to align DCUSA and the REC drafting.<sup>7</sup> This change proposal would also make the necessary related amendments to the Confirmed Theft Targets and the Scheme pot value as well as updating the Appendix which contains the reporting timescales for Scheme Year 3 (SY3) and Scheme Year 4 (SY4).

Bringing these dates into alignment by amending the commencement date of Scheme Year 4 to begin on 1 April 2021, instead of 1 February 2021, intends to ensure that Confirmed Thefts would be reported and recorded in a consistent way, and would not fall between any perceived “gap” during the transition between the two sets of regulatory arrangements as governance of this passes from DCUSA to REC.

The Proposer considers that this modification better facilitates DCUSA General Objective (d)<sup>8</sup>, as it is designed to assist with the orderly transition of the Electricity Theft Detection Incentive Scheme which currently resides under the DCUSA but which will be transferred to the REC as of 01 April 2021.

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<sup>7</sup> See ‘Decision on proposals for Retail Energy Code v1.1’ (17<sup>th</sup> December 2020), at <https://www.ofgem.gov.uk/publications-and-updates/decision-proposals-retail-energy-code-v11>

<sup>8</sup> DCUSA Objective (d) – the promotion of efficiency in the implementation and administration of the DCUSA arrangements

This change proposal is related to SPAA SCP 512<sup>9</sup>, which seeks to make the equivalent amendments in the gas arrangements.

### DCUSA Parties' recommendation

In each party category where votes were cast (no votes were cast in the DNO, IDNO/OTSO or CVA Registrant party category<sup>10</sup>), there was unanimous support for the proposal and for its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP382 be accepted. The outcome of the weighted vote is set out in the table below:

| DCP382              | WEIGHTED VOTING (%) |        |                         |        |          |        |                              |        |
|---------------------|---------------------|--------|-------------------------|--------|----------|--------|------------------------------|--------|
|                     | DNO <sup>11</sup>   |        | IDNO/OTSO <sup>12</sup> |        | SUPPLIER |        | CVA <sup>13</sup> REGISTRANT |        |
|                     | Accept              | Reject | Accept                  | Reject | Accept   | Reject | Accept                       | Reject |
| CHANGE SOLUTION     | n/a                 | n/a    | n/a                     | n/a    | 100%     | 0%     | n/a                          | n/a    |
| IMPLEMENTATION DATE | n/a                 | n/a    | n/a                     | n/a    | 100%     | 0%     | n/a                          | n/a    |

### Our decision

We have considered the issues raised by the proposal and the Change Declaration and Change Report submitted to us for decision on 17 March 2021. We have considered and taken into account the vote of the DCUSA Parties on the proposal which is attached to the Change Declaration. We have concluded that:

- implementation of the modification proposal will not better facilitate the achievement of the Applicable DCUSA objectives.<sup>14</sup>

We are therefore rejecting this modification proposal.

### Reasons for our decision

<sup>9</sup> See 'SCP 512 - 2021 – 22 Theft Detection Incentive Scheme Timings' (15<sup>th</sup> February 2021), at <https://www.spaa.co.uk/change/theft-detection-incentive-scheme-timings/>

<sup>10</sup> There are currently no gas supplier parties.

<sup>11</sup> Distribution Network Operator

<sup>12</sup> Independent Distribution Network Operator/Offshore Transmission System Operator

<sup>13</sup> Central Volume Allocation

<sup>14</sup> The Applicable DCUSA Objectives are set out in Standard Licence Condition 22.2 of the Electricity Distribution Licence.

We consider that this modification proposal will not better facilitate Applicable DCUSA Objective (d) and has a neutral impact on the other applicable objectives.

***Applicable DCUSA Objective (c) - the efficient discharge by the licensee of the obligations imposed upon it by its licence***

One respondent felt that DCP382 would better facilitate objective (c) of DCUSA, although did not provide any further information in respect of this. In so far as suppliers' theft obligations are set out in their licences, we can see that improving the clarity of the theft obligations in the code could better facilitate the efficient discharge of those licence obligations. However, as we discuss further below, we consider that this modification has been superseded by the transition of theft arrangements to the REC, and therefore DCP382 would not have the intended effect on the DCUSA baseline and therefore we do not consider that this change proposal would better facilitate this objective.

***Applicable DCUSA Objective (d) – the promotion of efficiency in the implementation and administration of the DCUSA arrangements***

We do not consider that this change proposal would better facilitate this objective. We note that all respondents felt that DCP382 would promote efficiency in the implementation and administration of the DCUSA arrangements. However, DCP374 is already in effect; this inserted a new Clause 32B (Energy Theft Consolidation) into DCUSA which provided for, among other things, the deletion of various theft-related schedules to DCUSA, including Schedule 30, with effect from immediately prior to Energy Theft Consolidation. As noted above, we designated Energy Theft Consolidation as taking effect from 1 April 2021. For this reason this change proposal has been superseded.

One respondent observed that, unless changed, it is uncertain whether Confirmed Thefts would be deemed eligible for the ETDIS Scheme Year when the Scheme ends and is discharged by RECCo. They also note that implementing this change would improve clarity and ensure a consistent approach is taken towards recording and reporting Confirmed Theft, including ensuring the necessary amendments are made to the Confirmed Theft Targets and the Scheme pot value, as well as updating the Appendix which contains the reporting timescales for Scheme Year 3 (SY3) and Scheme Year 4 (SY4), something that would facilitate transition of ETDIS from the DCUSA to the REC.

As noted above, we designated Energy Theft Consolidation as taking effect from 1 April 2021<sup>15</sup>, meaning that these arrangements have transferred to the REC.

Consequently, as a result of DCP374 and our designation of Energy Theft Consolidation, the provisions of DCUSA that DCP382 proposes to amend have now been deleted and superseded by the REC, and obligations relating to theft detection and reporting requirements have since 1 April 2021 been governed under the terms of the REC.

### ETDIS Timings

While the Authority recognises that there was a discrepancy in the drafting relating to the Scheme reporting years between the DCUSA and the REC requirements, the REC requirements have now superseded those previously laid out by DCUSA.

Consequently, the text that DCP382 proposes to amend is no longer in effect and all governance and reporting procedures are now governed under the REC, not under DCUSA. Amending the text of DCUSA as proposed by DCP382 will therefore have no effect upon theft reporting years or procedures as the relevant schedules to DCUSA no longer exist. We therefore cannot see how this modification would better facilitate relevant objective (d) of the DCUSA.

### **Other issues**

We note that the legal drafting submitted alongside this change proposal was red-lined against incorrect baseline text. Specifically, paragraph 1.3 (a) of the attached legal text incorrectly states that SY3 would run from 1 June 2020 to 31 March 2021, when the version of DCUSA live at the time of the final modification report (v13.0) states that SY3 runs from 1 June 2020 until 31 January 2021. As the scheme year dates were a key issue for this change proposal, it was not immediately clear whether this deviation from the DCUSA baseline should have been red-lined and the change proposal sought to amend the SY3 dates, as well as the text relating to SY4, or if the red-lining shown was the complete set of proposed changes.

### **Decision notice**

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<sup>15</sup> [ofgem.gov.uk/publications-and-updates/designation-energy-theft-consolidation-1-april-2021](https://www.ofgem.gov.uk/publications-and-updates/designation-energy-theft-consolidation-1-april-2021)

With reference to standard licence condition 22.14 of the Electricity Distribution Licence, the Authority has decided that modification proposal DCP382: 2021-22 Electricity Theft Detection Incentive Scheme (ETDIS) Timings should not be made.

In accordance with Clause 13.12 of the DCUSA, the Authority hereby directs the DNO Parties<sup>16</sup> and IDNO Parties<sup>17</sup> that this proposal shall be rejected for the purposes of Clause 13 of DCUSA.

**Rachel Clark**

**Deputy Director, Switching Programme**

Signed on behalf of the Authority and authorised for that purpose

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<sup>16</sup> As defined in DCUSA

<sup>17</sup> As defined in DCUSA