

DCUSA Change Declaration		At what stage is this document in the process?
<h1>DCP 409</h1> <h2>Change to Credit cover calculations to include Last Resort Supply Payment.</h2> <p><i>Raised on the 10 May 2022 as a Standard Change</i></p>		01 – Change Proposal
		02 – Consultation
		03 – Change Report
		04 – Change Declaration
<p><b>Purpose of Change Proposal:</b></p> <p>DCP 409 seeks to adjust Suppliers' Value at Risk calculations to take account of Valid Claims under the Supplier of Last Resort Process that may be due to the Supplier as Last Resort Supply Payments over the coming months.</p>		
	<p>DCUSA Parties have voted on DCUSA Change Proposals (DCP) 409 with the outcome being a recommendation to the Authority as to whether or not the Change Proposal (CP) should be accepted. As DCP 409 is considered to be a Part 1 Matters, the recommendation will be issued to the Authority for their final decision.</p> <p>The DCUSA Parties consolidated votes are provided as Attachment 1.</p>	
	<p><b>For DCP 409, DCUSA Parties have been deemed to recommend to the Authority to:</b></p> <ul style="list-style-type: none"> <li>• <b>Reject the proposed solution A; and</b></li> <li>• <b>Reject the proposed solution B; and</b></li> <li>• <b>Reject the implementation date for DCP 409.</b></li> </ul>	
	<p>Parties Impacted: Parties Impacted: DNOs, IDNOs, Suppliers and CVA Registrants.</p>	
	<p>Impacted Clauses: Definitions and DCUSA Schedule 1.</p>	

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 **Any questions?**

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## Timetable

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

### Change Proposal timetable

Activity	Date
Initial Assessment Report Approved by Panel	18 May 2022
Consultation issued to Parties	20 July 2022
Change Report issued to Panel	21 December 2022
Change Report issued for Voting	22 December 2022
Party Voting Ends	20 January 2023
Change Declaration Issued to Parties	24 January 2023
Change Declaration issued to Authority	24 January 2023
Authority Decision	TBC
Implementation	Next scheduled release or within one month of the Authority Decision, whichever is the sooner

## 1 Summary

### What?

- 1.1 Suppliers are required to provide security cover as per DCUSA Clause 24 and Schedule 1 'Cover'. The amount of security is based on a User's Value at Risk in excess of its Credit Allowance. The Value at Risk is determined from charges billed to the User but unpaid plus 15 days' estimated further charges less Prepayments and Advanced Payments.
- 1.2 Currently sums of money that may be due to a Supplier from the network companies relating to a Valid Claim under the Supplier of Last Resort (SoLR) process, and scheduled as Last Resort Supply Payments, are not included in the calculation of Value at Risk. This means that these Suppliers are required to place a higher level of credit cover than would otherwise be the case if Last Resort Supply Payments were included.

### Why?

- 1.3 If Last Resort Supply Payment amounts are included this could significantly reduce the level of credit cover required and reduce costs for these Suppliers which in a competitive market could flow through to consumers.

### How?

- 1.4 The proposed solution is to add a definition of a Valid Claim under the SoLR process, which is due to a Supplier as scheduled Last Resort Supply Payments, to the DCUSA and to place an obligation on network companies to deduct any of these payments owing to a Supplier from the calculation of Value at Risk.

## 2 Governance

### Justification for Part 1 Matter

- 2.1 The Change Proposal (CP) has been designated as a "Part 1" matter as it satisfies one or more of the following criteria:
  - a) it is *likely to have an impact on the interests of electricity consumers*;
  - b) it is *likely to have a significant impact on competition in one or more of:*
    - i. *the generation of electricity*;
    - ii. *the distribution of electricity*;
    - iii. *the supply of electricity*; and
    - iv. *any commercial activities connected with the generation, distribution, or supply of electricity*
  - c) it is likely to discriminate in its effects between one Party (or class of Parties) and another Party (or class of Parties).

## Next Steps

- 2.2 DCUSA Parties have voted and the outcome of the Party vote acts as a recommendation to the Authority as to whether this CP should be accepted or not. The outcome of the Party voting will now be issued to the Authority for their final decision.

## 3 Why Change?

### Background of DCP 409

- 3.1 The obligation on Suppliers to provide adequate credit cover is there to ultimately protect distributors, if a Supplier defaulted the cost of their bad debts may be picked up by consumers. Following a supply business failure, any outstanding charges consented by the Authority are spread across all the other Suppliers, which may then be passed on to consumers through customer tariff charges. Consented claims for a Suppliers SoLR costs are notified to DNOs for inclusion and recovery through network charges. The DNOs make payments to Suppliers for notified amounts of their consented SoLR claims.
- 3.2 Currently when calculating the Value at Risk for Suppliers any payments which may be due to Suppliers in the coming months are not included in the calculation. This means Suppliers may be unable to reduce the collateral required based on the SoLR payments, which may cause them to incur higher costs than otherwise would be the case. This may impact consumers. In the event of a Supplier failure, it is possible that any debts owing to the distributors could be netted off against any credits owed to the Supplier in relation to Last Resort payments. This Change Proposal therefore intends to take into account Last Resort Supplier Payments when calculating Suppliers' Value at Risk.
- 3.3 With regard to the materiality of this issue, as a rule of thumb we estimate the costs of putting credit cover in place via Letters of Credit to be between 0.5% and 2% of the value of additional credit. Between September and November 2021 Ofgem approved £1.8 billion of claims from Gas and Electricity Suppliers who had taken on board customers from failed Suppliers through the SoLR process. This Change Proposal is only concerning Electricity customers.

## 4 Working Group Assessment

**\* The below Section details the Working Group analysis as issued in the DCP 409 consultation. References to any attachments are as per the consultation document and not this Change Declaration. To access these attachments, please refer to the DCP 409 consultation which can be found [here](#).**

### DCP 409 Working Group Assessment

- 4.1 The DCUSA Panel established a Working Group to assess this CP. This Working Group consists of Supplier, DNO, IDNO representatives and other interested industry participants. 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).

- 4.2 The Proposer walked the Working Group through the Change Proposal and noted that if approved, the potential benefit of the change is that it could result in releasing funds which could reduce customers' bills.
- 4.3 It was noted that there were only a few Suppliers actively engaged in the SoLR process so the change may only have a positive impact on a handful of Suppliers. A challenge to this was raised that as the Change Proposal is suggesting a better process for Suppliers, this could encourage more Suppliers to engage in the SoLR process leading to more competition and potentially better customer outcomes. The Working Group agreed that a consultation question would be beneficial to see if this change would lead to Suppliers becoming more engaged in the SoLR process.
- 4.4 It was noted that SoLR payments are made piecemeal, and the Working Group questioned how these payments would be taken into consideration when calculating the Value At Risk. Two options were discussed, full future value or monthly value. The Working Group didn't have a consensus as to how the SoLR payment be taken so it was agreed a consultation question would be raised to see if industry had a preference.
- 4.5 It was queried if there were any other DCUSA changes, past or current, that this change could impact. The consensus was that there were not any DCUSA changes that would be impacted as a result of this change being accepted but a consultation question should be raised to confirm this.
- 4.6 The Working Group also agreed it would be useful to know the proportion of Suppliers who are required to provide collateral under the current credit process and what that type of collateral was. A consultation question to Distributors only was agreed to find out these figures.
- 4.7 It was also queried, if the change were to be approved, whether the SoLR payment should be treated as collateral or whether it should reduce the Value At Risk.
- 4.8 The proposer has suggested that in the event of a Supplier failure, under the insolvency rules and energy supply company administration rules, there would be some set off of claims and that this supports the credit cover change. Further information on these rules can be found using the below links or in Appendix 1 and 2 below.
- Rule 14.25 "Winding up: mutual dealings and set off" of the Insolvency (England and Wales) Rules 2016 – Rule 14.25  
[The Insolvency \(England and Wales\) Rules 2016 \(Legislation.gov.uk\)](#)
  - Rule 54 "Mutual credits and set off" of the Energy Supply Company Administration Rules 2013  
[Energy Supply Company Administration Rules 2013 \(Legislation.gov.uk\)](#)
- 4.9 It was also noted that the consultation would need to seek feedback from industry on whether the change should be universally applied or only applied to new approved SoLR claims. The Working Group noted that if Suppliers, when calculating for their winter cover provisions, were to be able to use the provisions that DCP 409 seeks to introduce, then the change would need to be implemented in the standard DCUSA release scheduled for November.
- 4.10 The Working Group developed a consultation document to help develop further a solution.

## 5 Summary of Consultation and Responses

### Summary of response to the DCP 409 Consultation

- 5.1 The DCP 409 consultation was issued on 20 July 2022 and there was a total of six responses received.
- 5.2 Set out below are the questions that the Working Group sought views on, and a summary of the responses received with the Working Group's conclusions. The full set of responses and the Working Group's comments are provided in Attachment 3.

#### Question 1 - Do you understand the intent of DCP 409?

- 5.3 All respondents understood the intent of DCP 409, with the Working Group noting that no additional comments were made in response to this question.

#### Question 2 – Are you supportive of the principles of the CP?

- 5.4 The responses to this question were mixed with 50% supportive of the principles behind DCP 409 and 50% that were not. The Working Group noted concerns expressed by respondents related to with SoLR payments not being contracted within DCUSA. It was noted that without this change there will be no potential savings to the Supplier.

#### Question 3 - Suppliers Only - If this change were approved, would it alter your participation in the SoLR process? Please provide your rationale

- 5.5 The Working Group acknowledged that responses indicated that DCP 409 could have a positive impact on the overall costs associated with Suppliers participating in the SoLR process.

#### Question 4 – If the SoLR payment came to be taken, what value should be allowed to be offset? e.g. the full balance due to the user, the monthly balance due to the user or another value. Please provide your rationale.

- 5.6 The majority of respondents did not support the full balance being taken. Two respondents noted that if the full balance was taken then this could result in longer and more costly administrative processes for Suppliers and DNO's

#### Question 5 - Are there any other DCUSA changes that you are aware of (past, current or future) that this Change could impact? If so, please provide the change numbers and your rationale.

- 5.7 A minority of respondents were concerned that DCP 409 could undermine the provisions that were introduced via DCP 349 '*Effectiveness of the current provision of unsecured cover under Schedule 1*'. It was noted that DCP 349 sought to strengthen the criteria around the provision of unsecured credit cover and was implemented on 01 April 2023 but is due to become effective as of 29 June 2023.

**Question 6 – *Distributors Only*- What proportion of Suppliers are required to provide collateral under the current credit process within Schedule 1? e.g., cash, letter of credit, parent company guarantees.**

- 5.8 There was a mixed response to this question on volumes and type of collateral from respondents. The responses ranged from a high of 57% of Suppliers providing collateral in some form from one respondent, to a low of 14% from another.

**Question 7 - Should the value of the SoLR payment reduce the Value at Risk or be treated as collateral?**

- 5.9 Three responses stated they prefer a reduction to the Value At Risk, two preferred to treat the SoLR payment as collateral and one didn't state a preference. The Working Group discussed whether the SoLR payment could be used to offset DUoS payments and agreed to seek further advice from the DCUSA legal advisors as to whether this was allowed.

- 5.10 by asking the below question.

- If a SoLR Supplier went into administration does the insolvency act allow the offsetting of SoLR payments against any owed DUoS?

- 5.11 The response from the DCUSA legal advisor was as follows.

*In the case of the insolvency of a company incorporated in English & Wales or Scotland, the Insolvency Act 1986 provides for mandatory set-off, so that the sums due from one party shall be set off against the sums due from the other (except for sums incurred after the other party had notice of pending insolvency).*

**Question 8 – What are your views on the provision of the insolvency act and does this influence your answer to Q7? Please provide your rationale.**

- 5.12 It was agreed that seeking legal advice on whether Can the SoLR payments be treated as collateral in order to pay off unpaid DUOS and what are the consequences of doing so?
- 5.13 This question was also sent to Gowlings whose advice was as follows.

*"I think what you mean here is - can the DNO set-off its obligation to pay Valid Claims against the supplier's obligation to pay charges under the DCUSA?"*

*The consequence of set-off is that, where payments are due from both parties, the parties may agree that, instead of both parties making separate payments, the party due to make the larger payment should pay the difference between the two amounts.*

*As a matter of English law, parties can agree to allow set-off.*

*However, there are some oddities in this case, because the DNO's obligation to pay the Valid Claim arises under the DNO licence (not under contract). Two important consequences of that are: (1) there is nothing on the face of the licence about set-off (as would normally be the case where contractual set-off is agreed); and (2) enforcement of the DNO licence is primarily a matter for Ofgem (not the supplier to whom the Valid Claim is owed).*

*Nevertheless, I advise that the DCUSA could be amended to allow the DNO to set-off the Valid Claim payment against charges due under the DCUSA. This would constitute agreement of set-off*

*between the DNO and supplier; and also (because the DCUSA is regulated by Ofgem and supplemental to the DNO licence) Ofgem's agreement to the Valid Claim being treated in this way.*

*This would though require an express addition to the DCUSA.”*

**Question 9 - If approved, do you believe this should only apply to new SoLR's or would it need to be retrospectively applied? Please provide your rationale.**

5.14 The majority of respondents were in favour of this only applying to new SoLRs.

**Question 10 – Do you consider that the proposal better facilitates the DCUSA objectives? Please give supporting reasons.**

5.15 50% of respondents view was that it would better facilitate General Objective 2 and 50% didn't believe it better facilitated any DCUSA Objectives at all.

**Question 11 - Are you aware of any wider industry developments that may impact upon or be impacted by this CP?**

5.16 There were no wider industry CP's that respondents were aware of that could be impacted by this other than the previously raised DCP 349.

**Question 12 – Are you supportive of the proposed implementation date?**

5.17 The majority (four) of respondents were supportive of the proposed implementation date.

5.18 The Working Group noted that two respondents were not supportive of the implementation date. One DNO respondent cited that this change could lead to changes within their billing systems which can take time to design, test, train and implement and that 3 months was not an unreasonable estimate.

**Question 13 - Do you have any comments on the draft legal text?**

5.19 Four respondents had no comments. It was noted one respondent believed that as the text refers to the 'Value At Risk' rather than 'collateral' the text may need to be updated. Another respondent had the view that the drafting provided with the consultation did not cater for payments due in the month.

## 6 Working Group Conclusions & Final Solution

6.1 After consideration of the consultation responses, the Working Group identified the following areas for further consideration:

- Should the full balance or the monthly balance be offset?
- Should this change only apply to new SoLRs, or to existing SoLRs?

### **Should the full balance or the monthly balance be offset?**

6.2 The Working Group reviewed the consultation responses, noting that the majority of responders did not support the full balance being taken.

6.3 The Working Group discussed and agreed to progress with the monthly balance rather than the full balance.

6.4 The Proposer agreed that they would raise an alternative solution which included the full balance.

### Should this change only apply to new SoLRs, or to existing SoLRs?

6.5 The Working Group reviewed the consultation responses, noting that the majority felt that the change should apply to new SoLRs only. Following this review, the Working Group agreed with the majority view for this to be applied to new SoLRs only rather than all.

6.6 The Proposer agreed to for the alternative solution to apply to existing SoLRs.

## 7 Legal Text

7.1 Following the Working Group's review of the responses to the consultation, the amendments being made by DCP 409 include:

### Legal Text

7.2 After consideration of the consultation responses, the Working Group identified some amendments to the legal drafting which is explained in section 6 above.

7.3 The legal text for DCP 409 (options A and B) have been reviewed by the DCUSA legal advisors and is provided within Attachment 1.

7.4 The DCP 409 legal text (options A and B) introduces a change to Schedule 1 of the DCUSA as set out below:

#### **Proposal A**

2.2 At any time, the User's Value at Risk shall be the aggregate of:

- (a) billed but unpaid Charges which are not currently subject to a Designated Dispute (as defined in Schedule 4) and which have been billed to the User according to an established billing cycle operated by the Company pursuant to this Agreement;

plus

- (b) the Fifteen Days' Value, which shall be the estimated value of the Charges that would be incurred by the User for a further 15 days from that time, based on the average daily Charges billed to the User (whether under this Agreement or any use of system agreement applying between the User and the Company immediately before this Agreement became effective) using the latest available bill raised in respect of a full calendar month (or a number of days that approximates to a full calendar month), according to the established billing cycle operated by the Company;

less the sum of (c) and (d)

- (c) any credit notes and any amounts paid to the Company by the User in the form of a Prepayment or an Advance Payment; and

- (d) the value of the next monthly payment (if any) which will become due and payable to the User after that time as a result of one or more Valid Claims received by the Company after 1 December 2022.

PROVIDED THAT: if the above calculation results in a negative value, then the User's Value at Risk shall be deemed to be zero.

7.5 One of the Working Group members proposed an alternative solution which was aligned to the original proposal and the legal text for that is shown below.

## **Proposal B**

### ***The User's Value at Risk***

2.2 At any time, the User's Value at Risk shall be the aggregate of:

(a) billed but unpaid Charges which are not currently subject to a Designated Dispute (as defined in Schedule 4) and which have been billed to the User according to an established billing cycle operated by the Company pursuant to this Agreement;

plus

(b) the Fifteen Days' Value, which shall be the estimated value of the Charges that would be incurred by the User for a further 15 days from that time, based on the average daily Charges billed to the User (whether under this Agreement or any use of system agreement applying between the User and the Company immediately before this Agreement became effective) using the latest available bill raised in respect of a full calendar month (or a number of days that approximates to a full calendar month), according to the established billing cycle operated by the Company;

less the sum of (c) and (d)

(c) any credit notes and any amounts paid to the Company by the User in the form of a Prepayment or an Advance Payment-; and

(d) the full value of all monthly payments due (but not yet paid) to the User as a result of one or more Valid Claims (whether or not those payments are yet payable).

PROVIDED THAT: if the above calculation results in a negative value, then the User's Value at Risk shall be deemed to be zero.

7.6 For both options A and B, it is proposed to add a new defined term under Clause 1 (Definitions and Interpretation) as follows:

**Valid Claim** means a Valid Claim (as defined in the Distribution Licence) under Condition 38B of the Distribution Licence.

7.7 The Working Group has considered the legal text and is satisfied that it meets the intent of the solution.

## **8 Relevant Objectives**

### **Assessment Against the DCUSA Objectives**

8.1 For a DCUSA Change Proposal to be approved it must be demonstrated that it better facilitates the DCUSA Objectives. There are five General Objectives and six Charging Objectives. The full list of objectives is documented in the CP form provided as Attachment 4.

8.2 The Working Group considers that the following DCUSA Objectives are better facilitated by DCP 409.

DCUSA General Objectives	Identified impact
1. The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks	Neutral
2. The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity	Positive
3. The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences	Neutral
4. The promotion of efficiency in the implementation and administration of the DCUSA	Neutral
5. 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.	Neutral

8.3 This change will better facilitate DCUSA General Objective 2 in that by including Last Resort Supplier Payments in the calculation of Value at Risk, Suppliers can reduce their costs of providing credit cover and thereby could reduce costs to consumers which will better facilitate competition in the Supply of electricity.

## 9 Code Specific Matters

### Modelling Specification Documents

9.1 N/A

### Reference Documents

9.2 N/A

## 10 Impacts & Other Considerations

### Who (i.e., which Industry roles) are impacted?

10.1 N/a.

### Does this Change Proposal impact Other Codes?

- BSC
- CUSC
- Grid Code
- REC

- SEC
- Other
- None

## Consideration of Wider Industry Impacts?

10.2 The Working Group did not identify any additional wider industry impacts other than those already highlighted in other areas of the Change Declaration.

## 11 Implementation Date

11.1 The proposed implementation date for DCP 409 is the next scheduled release or within one month of the Authority Decision, whichever is the sooner.

## 12 Voting

12.1 The DCP 409 Change Report was issued to DCUSA Parties for Voting on 22 December 2022.

### DCP 409 Solution – Recommendation

**Part 1 Matter:** Authority Decision Required

#### DCP 409 Proposed Solution A – Reject

12.2 In accordance with Clause 13.5, for Parties to have been deemed to recommend to the Authority that the change solution be Accepted there needs to be a majority of Party Categories whose votes to accept, when summed together, equate to more than 50% of the total votes of Parties or Groups within in each category.

12.3 In the case where only two Party Categories vote on a Change Proposal, and one Category votes to accept and the other votes to reject, there can be no such majority and therefore, in accordance with Clause 13.5, the Parties have been deemed to recommend to the Authority that the change solution be Rejected.

#### DCP 409 Proposed Solution B – Reject

12.4 In accordance with Clause 13.5, for Parties to have been deemed to recommend to the Authority that the change solution be Accepted there needs to be a majority of Party Categories whose votes to accept, when summed together, equate to more than 50% of the total votes of Parties or Groups within in each category.

12.5 In the case where only two Party Categories vote on a Change Proposal, and one Category votes to accept and the other votes to reject, there can be no such majority and therefore, in accordance with Clause 13.5, the Parties have been deemed to recommend to the Authority that the change solution be Rejected.

## Implementation

### DCP 409 Implementation Date – Reject

12.6 For the majority of the Party Categories that were eligible to vote, the sum of the Weighted Votes of the Groups in each Party Category which voted to reject the Implementation date was equal to 50% and in accordance with Clause 13.5, the Parties have been deemed to recommend to the Authority that the Implementation date be Rejected.

12.7 The table below sets out the outcome of the votes that were received in respect of the DCP 409 Change Report that was issued on 22 December 2022 for a period of 15 working days.

DCP 409	WEIGHTED VOTING				
	DNO	IDNO	SUPPLIER	CVA REGISTRANT	GAS SUPPLIER
DCP 409 PROPOSED SOLUTION 1	Reject	No votes received	Accept	No votes received	n/a
DCP 409 PROPOSED SOLUTION 2	Reject	No votes received	Accept	No votes received	n/a
IMPLEMENTATION DATE	Reject	No votes received	Accept	No votes received	n/a

## 13 Recommendations

### DCUSA Parties Recommendation

13.1 DCUSA Parties have voted on DCP 409 and in accordance with Clause 13.5, the Parties have been deemed to recommend to the Authority that the Change Proposal be rejected.

## 14 Attachments

- Attachment 1: DCP 409 Consolidated Party Votes
- Attachment 2: DCP 409 Legal Text Solution
- Attachment 3: DCP 403 Consultation Responses and Working Group Comments
- Attachment 4: DCP 409 Change Proposal Form