




DCUSA Change Report		At what stage is this document in the process?
<h1>DCP 412</h1> <h2>Allocation of banding for Targeted Charging Review (“TCR”) Charges for ‘Peak’ Final Demand Customers</h2> <p>Date Raised: 11 October 2022</p> <p>Proposer Name(s): Lee Stone</p> <p>Company Name: E.ON UK</p> <p>Company Category: Supplier</p> <p>Governance: Part 1 Matter</p>		01 – Change Proposal
		02 – Consultation
		03 – Change Report
		04 – Change Declaration
<p>Purpose of the Change Proposal (“CP”):</p> <p>The intent of this CP is to consider the residual charge for ‘peaky’ customers, removing the disproportionate impact of allocating residual charges on the basis of the Maximum Import Capacity (“MIC”).</p> <p>The original intent of this CP was to reduce the residual charge for ‘peaky’ customers, specifically by applying a discount. Following the development of the solution, the title and intent has been amended to allow the development of a solution that does not specifically require a discount to be applied.</p>		
	<p>This document is issued in accordance with Clause 11.20 of the DCUSA. Parties are invited to consider the proposed amendment and submit their votes using the voting form (attachment 4) to dcusa@electralink.co.uk by no later than 13 March 2025. Votes received after this date cannot be counted.</p>	
	<p>The voting process for the proposed variation and the timetable of the progression of the CP through the DCUSA Change Control Process is set out in this document.</p> <p>If you have any questions about this paper or the DCUSA Change Process, please contact the DCUSA by email to dcusa@electralink.co.uk or telephone 020 7432 3011.</p>	
	<p>Impacted Parties</p> <p>Suppliers, DNOs and IDNOs</p>	
	<p>Impacted Clauses</p> <p>Schedule 32</p>	

Contents

1. Executive Summary	3
2. Governance	4
3. Why Change?	4
4. Working Group Assessment	5
5. Consultation 1 Working Group Review	5
6. Consultation 1 Customer Responses	12
7. Post Consultation 1 Decisions	12
8. Consultation 2 Working Group Review	14
9. Consultation 2 Customer Responses	30
10. Working Group Conclusions & Final Solution	31
11. Relevant Objectives	34
12. Impacts & Other Considerations	35
13. Implementation	37
14. Legal Text	37
15. Code Specific Matters	39
16. Recommendations	39
17. Attachments	40

Timetable

Activity	Date
Initial Assessment Report	14 October 2022
First Consultation Issued to Industry Participants	August 2023
Second Consultation Issued to Industry Participants	July 2024
Change Report Approved by Panel	19 February 2025
Change Report issued for Voting	20 February 2025
Party Voting Closes	13 March 2025
Change Declaration Issued to the Authority	18 March 2025
Proposed Implementation	10 working days after Authority decision



Any questions?

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1. Executive Summary

What?

- 1.1 The recent reform of residual charges through the Targeted Charging Review (TCR) and subsequent DCUSA Change Proposals (such as DCP 360 ([Ofgem Targeted Charging Review Implementation: Allocation to Bands and Interventions](#))) has, in the opinion of the Proposer, led to an unintended consequence whereby customers with low annual consumption, but with high-capacity requirement needs are seeing bills that are overly excessive on the basis that such customers' residual costs are allocated based on the MIC, over both Distribution & Transmission Use of System charging.
- 1.2 For such customers the new fixed residual charge is based on connection agreements which in most cases reflect the MIC as a regular anticipated peak capacity. However, for some sites, this peak capacity is very infrequently used and most of their demand is at significantly far lower levels of maximum capacity requirements. We shall refer to these exceptions as 'peaky' customers.

Why?

- 1.3 The Access & Forward-Looking Charging SCR considered the potential for flexible connection agreements to be introduced, which had the potential for customers to share their MIC with other users over time periods whereby they did not require use of their maximum capacity. However, this was latterly discounted. In the event that this option had been taken forward and developed, then it is likely that such 'peaky' customers could have both benefited from being flexible with available capacity allowing different treatment for the allocation of the residual charge to reflect their actual use of electricity system.
- 1.4 The [final decision and impact assessment of the Targeted Charging Review](#) outlines, under Paragraph 3.14 and 3.29 of the decision document, the principles pertaining to non-domestic customer segments. In the majority of cases, these principles have been achieved. However, it is the Proposer's belief that a number of exceptions, 'peaky' customers, as outlined in paragraph 1.2 above, are liable to pick up a disproportionate share of the residual costs comparative to their actual use of the total system.
- 1.5 The above will lead to some of these 'peaky' customers seeing in excess of a five-fold increase to their electricity bills from April 2023 compared to pre-April 2022, in particular in respect of TNUoS charges. Whilst the residual charge was not designed to send forward looking cost signals, such increases in costs have led to a disproportionate share of the residual costs being allocated to these customers which the Proposer believes is neither fair nor reasonable. In turn, this is posing an existential threat to their businesses' viability.
- 1.6 In the event that these demand customers do fail, then this might, at least for a period, increase charges for all customers.

How?

Initial Proposed Solution

- 1.7 In order to remove this new distortion, this CP initially recommended allowing 'peaky customers' to have access to discounts up to 85% against the full residual charge. The remainder of these customers' full charge would have been factored back into the residual charges for all other non-domestic users.

- 1.8 The discount levels would have been applied for by the customer or authorised representative (e.g., supplier or TPI) to the DNO on a case-by-case basis. If discount criteria were met, then the discount level would be valid for a charging year in order to ensure the validity of the discount remains and to ensure that change in behaviour does not continue receive discounts against the residual cost share.
- 1.9 The Proposer's initial proposal was to define 'Peakiness' customers as those who met the following criteria:
- Customers who have their residual charges calculated based on capacity rather than consumption i.e., excludes domestic customers, non-domestic customers without a connection agreement and transmission connected customers. This is on the basis that these customers do not have their charge set by their consumption shape (which is the defect this proposal looks to address).
 - Peak capacity is >500% of baseload capacity and demand > peak capacity/5 endures for no more than 10% of the year i.e., peak capacity is 30MW with a baseload of 0.5MW and # of periods per year where capacity exceeds 6MW < 876 hours. Whilst we acknowledge that these definitions of 'peakiness' are arbitrary, these levels have been chosen to only include those extreme user cases and to ensure that eligibility cannot be seen as something to take advantage of or gamed.
 - Proportion of total electricity bill set by TCR residual charges is > 33% i.e., for a total electricity bill of £1m, residual charges make up > £333k. Again, this definition of 'peakiness' has been set to ensure that only 'peaky' customers who are extremely exposed and at an existential risk should be eligible.

New Solution(s)

- 1.10 The Working Group, in agreement with the Proposer and following consultation, developed a new solution under which customers are assessed using a two-step process, using a site's load factor and capacity utilisation, and the resulting eligible customers are re-banded to the next lowest band. The title and intent of this CP were updated accordingly, following Panel consent. This will be referred to as the "original proposal", later in this change report, alongside two alternative proposals.
- 1.11 The Working Group's development and assessment of the new solutions can be found in sections 7 and 10 of this change report.

2. Governance

- 2.1 This CP is classified as a Part 1 matter and will go to the Authority for determination, after the voting process has completed.

3. Why Change?

- 3.1 As stated in 1.2 and 2.2, this code modification is being proposed to help rectify what the Proposer believes to be an unintended consequence of the residual charging methodology introduced by the TCR in DCPs 358 ([Ofgem Targeted Charging Review Implementation: Determination of Banding Boundaries](#)), 359 ([Ofgem Targeted Charging Review Implementation: Customers – who should pay?](#)), 360 ([Ofgem Targeted Charging Review Implementation: Allocation to Bands and](#)

[Interventions](#)) and 361 ([Ofgem Targeted Charging Review Implementation: Calculation of Charges](#)). Peak customers have in the past been able to support the network by shifting their peak consumption away from periods of system stress and have benefitted by receiving lower network charges. Under the TCR methodology, some of these customers are now seeing significantly higher electricity bills that pose an existential threat to their business survival.

- 3.2 One example is a customer with a connection agreement for 30MVA, putting them in Band 4 of the EHV category of residual charges. However, this customer uses the 30MVA rarely (their consumption is below 6MW more than 90% of the time). Their network charges were estimated to increase from £226k in 2021/22 to £1,442k in 2023/24 (including the TNUoS residual). This customer's total revenue is ~£13m pa with annual EBIT of ~£1m pa such that the increase in residual charges will make them unprofitable overnight. Should this customer fail, then other customers in EHV Band 4 will be required to pick up the £1.4m cost, thereby increasing pressures on their financial stability and potentially perpetuating the contagion of failing businesses.

4. Working Group Assessment

- 4.1 The DCUSA Panel established a Working Group to assess this CP. This Working Group consists of Supplier, DNO, IDNO, Generator and National Farmers' Union representatives. Meetings were held in open session and the minutes and papers of each meeting are available on the DCUSA website – <http://www.dcusa.co.uk>.
- 4.2 The Working Group considered, through its analysis of the data and the development of the solution, that a single consultation would be complex and resource-intensive to respond to. It was agreed that two consultations would be issued for this CP, covering:
- the identification and eligibility of customers in scope of this CP; and
 - the remedy that would be applied to eligible customers, including how it would be calculated, applied to the customer, and reviewed moving forwards.
- 4.3 The first consultation was issued on 3 August 2023, the non-confidential responses to which can be found in attachment 5.
- 4.4 The second consultation was issued on 10 July 2024, the non-confidential responses to which can be found in attachment 6.

5. Consultation 1 Working Group Review

Intent

Question 1 – Do you understand the intent of the CP?

- 5.1 The Working Group noted that all Parties understood the intent of the CP.

Support

Question 2 – Are you supportive of the principles of DCP 412? Please provide your rationale.

- 5.2 The Working Group noted the diverse views to this question.

5.3 The Working Group noted some responses were not supportive of the principles of the CP, citing reasons such as:

- the CP was raised on the basis of a very small number of customers complaining about the impact of the TCR on them;
- the TCR is working as intended and that it was known there would be some consumers who end up paying higher charges as a result of the implementation of the TCR;
- the Authority implemented the TCR in full knowledge of the existence of these types of customers;
- that it was not consistent with the Transmission Demand Residual/Distribution Demand Residual recovery principles in the Authority's TCR decision, particularly around avoiding behavioural incentives by recovering network demand residuals on a capacity (band) basis;
- that it would have an impact on Transmission Network Use of System Transmission Demand Residual recovery;
- that it was not in the remit of the DCUSA to make an assessment of the viability of a company;
- that it could give rise to unfair treatment of different customers on the network;
- that it is not the purpose of network charging arrangements to provide financial support;
- that only one example had been provided and that it was disproportionate to raise a CP on that basis;
- it was not known if the proposed solution would in fact help the example customer;
- that it creates a cross-subsidy between different network users; and
- that it could create an opportunity to 'game' the system.

5.4 The Working Group noted some responses were supportive of the principles of the CP, citing reasons such as:

- the intention never being to place an unfair burden on a small cohort of customers;
- that there is evidence the TCR is a direct existential threat to some businesses; and
- that customers who require a larger capacity but do not regularly need to use it are disproportionately impacted.

5.5 The Working Group also noted that one response, although supportive of the principles of the CP, was not convinced that the proposed solution was the most efficient one.

5.6 It was agreed that a number of topics would need to be discussed at a future Working Group meeting, and for consideration in consultation 2, such as:

- whether to limit the re-banding of a HCULU customer (i.e., balance their situation against the need to contribute towards the capacity they are reserving (e.g., a band 4 customer may be re-banded to band 2 or 3, instead of band 1));
- to ensure the process is as simple as possible; and

- to assess gaming risks and potential mitigations.

Threshold

Question 3 – What do you believe the appropriate threshold should be? Please provide your rationale.

- 5.7 The Working Group noted one response, from Northern Powergrid, proposed amending the eligible formula to use a combination of the customer's Load Factor and the customer's capacity utilisation. The response asserted that this was a simpler formula to understand than the one initially proposed.
- 5.8 The Working Group noted that some responses proposed that the eligibility criteria be kept stringent to keep the support ring-fenced to a smaller group of customers, prevent abuse by the wider customer base as a means to lower their residual charges, and to minimise the scope of the distortion that the CP may introduce.
- 5.9 The Working Group noted that Parties had considered the formula to be too complex and that a Party had suggested that the initial assessment of eligibility for HCULU status could be split into two steps. The Working Group agreed that this would be beneficial, in the interests of clarity and simplicity, and agreed to split the process into two steps as follows:
- a site's capacity utilisation is greater than or equal to 90% over a half hourly period; and
 - a site's load factor is less than or equal to 10% over a 12-month period.
- 5.10 The Working Group noted concerns raised around setting an appropriate threshold for eligibility due to a lack of clarity on the underlying reason for a site to become eligible. The Working Group analysed data obtained from industry to determine a threshold that it believed provided the benefit to genuinely peaky customers whilst limiting the scope of the support to only those customers genuinely needing it, reducing the opportunity for abuse or gaming.

Question 4 – Should the selected threshold be a hard limit or should DNOs have some discretion for customers close to/around the threshold? Please provide your rationale.

- 5.11 The Working Group noted that the majority of respondents favoured a hard limit on the eligibility threshold and did not agree that there should be any form of DNO discretion.

Question 5 – Should the eligibility or thresholds vary by different sectors? Please provide your rationale.

- 5.12 The Working Group noted that the majority of respondents favoured a single eligibility threshold for all sites, regardless of which sectors they are in.

Assessment Period

Question 6 – Over what period should a customer's usage be reviewed to determine eligibility as a HCULU customer? 12 months, 24 months, or something else? Please provide your rationale.

- 5.13 The Working Group noted that the majority of respondents favoured assessing a site's eligibility based on 12 months of data.
- 5.14 The Working Group noted some responses favoured the use of 24 months of data to provide a more robust view of the site's usage, removing potential data outliers.
- 5.15 The Working Group agreed that the assessment would be based on the previous (most recent) 12 months data.

Exceeding Maximum Import Capacity

Question 7 – 7. Do you agree that some customers who exceed their MIC should still be eligible to be a HCULU customer, and if so by what amount should the excessive use be limited to? Please provide your rationale.

- 5.16 The Working Group noted that there was split opinion on whether customers who exceed their MIC should qualify for HCULU status.
- 5.17 The Working Group noted that some responses favoured sites not being eligible if the customer has exceeded their MIC or that customers who have exceeded their MIC should not benefit by doing so (i.e., going over 100% of the MIC should not affect the assessment in the customer's favour).
- 5.18 The Working Group discussed that customers going over their MIC could be prevented from benefitting from this by constraining the MIC usage within the formula (i.e., a customer with a peak capacity usage of 105% would be assessed as if this was 100%).
- 5.19 The Working Group agreed that customers who exceed their MIC would not be excluded from eligibility and that it is for DNOs to manage breaches of customers' MICs.

Frequency/Timing of Peak Usage

Question 8 – Should frequency be considered as part of the criteria for being a HCULU customer, and if so, how should this be considered? Please provide your rationale.

- 5.20 The Working Group noted that the majority of respondents did not support including the frequency of use of capacity in the eligibility criteria.
- 5.21 The Working Group agreed that the formula used, be that a one step process or two step process, would not take frequency into consideration, but that the more a customer uses their MIC, the lower their baseload would need to be in order to qualify as HCULU.

Question 9 – Should the timing of high-capacity usage be considered in the assessment period, for example increases towards the end of a period? If so, how long should the customer wait to be able to demonstrate it was not a sustained increased in the use of their capacity. Please provide your rationale.

- 5.22 The Working Group noted the majority of responses did not support the consideration of frequency in the eligibility criteria.
- 5.23 The Working Group agreed that, as with the consideration of frequency above, the formula used, be that a one step process or two step process, would not take the timing of peak usage into consideration.
- 5.24 The Working Group noted one response had suggested that customers should only be able to use their capacity outside of red/super-red time bands, however the Working Group agreed that this would be sending signals to customers and that this was out of scope of this CP.

Using Customers' Utilisation/Other Options

Question 10 – Do you agree with the Proposer's suggestion to use the customer's utilisation to identify whether they would be classed as a HCULU customer instead of Load Factor alone? Please provide your rationale.

5.25 The Working Group noted the broad support for the current proposed approach but acknowledged that Load Factor may form part of a two-step process as per previous responses and undertook analysis to assess this approach, explored in more detail later in this change report.

Question 11 – Are there any other ways these customers could be identified? Please provide your rationale

5.26 The Working Group noted that aside from the proposed two-step process suggested by Northern Powergrid, no other alternative solutions were identified.

Customer Declaration

Question 12 – Should customers be required to confirm, as part of their application to be a HCULU customer, that they are unable to change their current usage patterns and that their current MIC is appropriate for their business needs? Please provide your rationale.

5.27 The Working Group noted that the majority of respondents supported customers being required to justify that they are unable to change their usage patterns in order to lower their MIC and avoid the higher TCR band charges.

5.28 The Working Group noted the suggestion that customers could reduce their residual charges in other ways, for example by installing on-site generation or batteries, however the Working Group considered that these could fail and that a customer could still require a high-capacity connection.

Potential Interaction with DCP 411 ([Charging De-energised Sites](#))

Question 13 – Do you agree that requiring 12 consecutive months of energised consumption data in order to apply to be a HCULU customer mitigates the interaction with DCP 411, and is this fair? Please provide your rationale.

5.29 The Working Group noted the suggestion that periods of de-energisation could be one area of discretion or flexibility by the DNOs, which is explored separately within this change report.

5.30 DCP 411 was rejected by the Authority on 19 April 2024 and, as such, there is no risk of interaction with that CP.

DCUSA Charging Objectives

Question 14 – Do you consider that the proposal better facilitates the DCUSA Charging Objectives? If so, please detail which of the Charging Objectives you believe are better facilitated and provide supporting reasons. If not, please provide supporting reasons.

5.31 The Working Group noted the differing views in responses to consultation 1, on whether this CP better facilitates the DCUSA Charging Objectives.

5.32 The Working Group noted that some responses did not consider the CP better facilitated the DCUSA Charging Objectives, noting reasons such as:

- the TCR decision was that residual charges for distribution connected sites with a MIC should be banded based on the MIC and not on any other metric; and
- the creation of a cross-subsidy which may impact the viability of other businesses.

5.33 The Working Group noted that some did consider the CP better facilitated the DCUSA Charging Objectives, noting reasons such as:

- ensuring that network charges are applied in a fairer and more cost reflective basis
- reducing the harmful distortions in residual charges allocated to the HCULU customers;
- implementing fairness across those highly impacted customers as a result of the TCR decisions;
- introducing a process for customers who genuinely cannot change their MIC to be banded according to actual usage;
- will ensure that customers who are eligible be a HCULU Customer are correctly charged based upon their usage of the network.

Wider Industry Developments

Question 15 – Are you aware of any wider industry developments that may impact upon or be impacted by this CP?

5.34 The Working Group noted the potential impacts on/from the DUoS SCR and the MHHS Programme, for further consideration in consultation 2.

5.35 The Working Group noted that one response highlighted potential interactions with:

- DCP 388 ([amendments to facilitate appropriate residual charging for sites with a mix of final and non-final demand](#));
- DCP 389 ([clarification on exceptional circumstances and allocation review for 'new' sites](#));
- DCP 410 ([fairer re-assessment of the allocation of final demand sites prior to subsequent price control periods](#));
- DCP 411 ([charging de-energised sites](#)); and
- DCP 420 ([provide targeted relief from residual charges for electric vehicle charging sites](#)).

5.36 The Working Group noted that, at the time of writing this change report, DCP 388 is still in the definition phase with no progress made on that CP since October 2023. It is therefore likely that this CP will be issued to the Authority sooner than DCP 388 and any such interaction will need to be investigated by that Working Group.

5.37 The Working Group noted that DCP 389 had been approved by the Authority and implemented on 1 April 2023, and that the legal text drafting for this CP had been completed against the updated legal text as implemented by DCP 389. The Working Group has further considered how the review of HCULU sites under this CP aligns against the annual allocation review for new sites, which is covered later in this change report.

5.38 The Working Group noted that DCP 410 had been approved by the Authority and implemented on 1 March 2023, and that the legal text drafting for this CP had been completed against the updated legal text as implemented by DCP 410. The Working Group noted that DCP 410 specifically dealt with the issue of sites that had been re-banded through the exceptional circumstances within the 24 month period leading up to the assessment under paragraphs [4.1 or 4.2 of Schedule 32](#) of the

DCUSA. The Working Group discussed that this would have the effect of limiting the data used for the assessment under paragraphs 4.1 or 4.2 of Schedule 32. However, unlike other exceptional circumstances, no specific change at the site has taken place, which means all the data usually used for the assessment would still be valid for a HCULU customer. The legal text was therefore updated to remove this limitation.

- 5.39 The Working Group noted that DCP 411 had been rejected by the Authority on 19 April 2024 and, as such, there is no risk of interaction with that CP.
- 5.40 The Working Group noted that, at the time of writing this change report, DCP 420 was in the consultation phase. It is therefore likely that this CP will be issued to the Authority sooner than DCP 420 and any such interaction will need to be investigated by that Working Group.
- 5.41 The Working Group noted that one response highlighted potential interactions with CUSC modifications CMP 363 and CMP 364 ([TNUoS demand residual charges for transmission connected sites with a mix of final and non-final demand & definition changes for CMP 363](#)). The Proposer confirmed to the Secretariat that he believed there to be no interactions between this CP and the CUSC modifications. The Proposer further confirmed that the CUSC modifications were live, effective for transmission connected customers only, and that he was the sponsor of the DCUSA CP to facilitate these modifications, DCP 388, mentioned above.

Legal Text

Question 16 – Do you have any comments on the proposed legal text?

- 5.42 The Working Group noted one response suggested amendments to the legal text relating to the submission of data to support the application, however whilst it was initially agreed to make these amendments, the requirement for customers to submit data to support their application has since been removed following further consultation.

General Comments on the CP

Question 17 – Do you have any other comments on DCP 412?

- 5.43 The Working Group noted the clarification from Northern Powergrid around the impact of changing a customer's band, in that this goes into under-recovery, which is then recovered via a correction mechanism, which results in higher charges for all customers during the following year.
- 5.44 The Working Group noted the feedback on the analysis, which was split by calendar year resulting in three different periods being assessed (one for two months, one for 12 months and one for 10 months) and agreed to repeat the analysis for two 12-month periods.
- 5.45 The Working Group noted NGESO's comment that no CUSC modification was expected to be needed based on the proposal being taken forward, but that a 6-month notice period would be preferred to assess TDR band charges. The Working Group discussed that this would not be a bulk exercise, that potentially customers would not be known of in advance, and that, like other exceptional circumstances under Schedule 32 of the DCUSA, customers would need to apply for HCULU status. It was agreed, on that basis, that a 6 month notice period would not be necessary or beneficial.

- 5.46 The Working Group noted the statement that this CP only goes so far in helping struggling customers and does not address the impacts of high wholesale prices, creating a two-tier market where only some customers receive support. The Proposer acknowledged this viewpoint but clarified that the intent of this CP was to support those most adversely affected.

6. Consultation 1 Customer Responses

- 6.1 The Working Group noted the high number of responses from customers on this CP, illustrating how important this CP is to some customers.
- 6.2 Whilst some of the responses to the consultation are confidential, and therefore cannot be shared, the Working Group noted the following themes:
- that for one customer, their standing charges had increased (at the time of consultation 1) by £22,000 per calendar month;
 - that for one customer, their annual cost base increased by over 600%, from around £225,000 per year to £1,500,000 per year;
 - that it brings the sustainability and viability of some businesses into question and presents an unintended existential threat to some businesses;
 - that at least one customer feels the TCR reforms benefit industry and not end consumers like themselves;
 - that a threshold of 95% may be too high to address the existential threat faced by some businesses;
 - that the TCR reforms have introduced a cliff-edge cut-off;
 - that the proposed solution will only go so far and there will still be some 'winners and losers'; and
 - that the TCR is impacting highly specialised UK businesses that are critical to UK infrastructure and security.

7. Post Consultation 1 Decisions

Two-Step Process/Eligibility Threshold

- 7.1 The Working Group agreed, as per paragraph 5.9 above, that the formula was complex and could be simplified by splitting it into a two-step process. The Working Group defined a HCULU site as one where over the previous 12 months:
- its capacity utilisation has been greater than or equal to 90% over a half hourly period; and
 - its load factor has been less than or equal to 10% over the 12-month period.

- 7.2 The Working Group analysed the impact to the overall numbers of customers in Period 1 (representing the first 12 months of data that DNOs provided to the Working Group) that would be eligible for HCULU status as a result of splitting the process into two steps.
- 7.3 The analysis showed that under the new two-step process, using the criteria specified in paragraph 7.1 above, 256 customers would have qualified for HCULU status. This is more customers than would have qualified under the initial one-step process at the 95 and 90% thresholds, under which 17 customers and 86 customers would have qualified respectively, but fewer customers than at an 85% threshold, under which 303 customers would have qualified.
- 7.4 It was noted that by splitting the process into two steps, this had the effect of making the process more efficient, as the DNO would eliminate some sites from being eligible based on performing just the first step of the assessment (i.e., whether the site used at least 90% of its capacity). The DNO therefore would not be performing the second step of the assessment on these sites, hence it being more efficient than the one-step process.

Eligibility Thresholds by Sector

- 7.5 The Working Group noted, as per paragraph 5.12 above, that the majority of respondents favoured a single eligibility threshold for all sites, regardless of which sectors they are in. The Working Group agreed with this, noting that it does not discriminate between specific sectors and results in consistent treatment for all 'peaky' customers.

Frequency & Timing of Peaky Usage

- 7.6 The Working Group noted:
- as per paragraph 5.20 above, that the majority of respondents did not support the consideration of the frequency of peaky usage in the eligibility criteria; and
 - as per paragraph 5.22 above, did not support to consideration of the timing of peaky usage in the eligibility criteria.
- 7.7 The Working Group agreed with this and noted that, in using a defined set of criteria as per the two-step process, it removed the need for looking at more granular consumption/usage data.

DNO Discretion

- 7.8 The Working Group noted, as per paragraph 5.11 above, that the majority of respondents favoured a hard limit on the eligibility threshold and did not agree that there should be any form of DNO discretion in relation to this. The Working Group agreed with this assessment, noting that it would ensure consistency between DNOs and potentially reduce the administrative burden by preventing non-eligible sites from attempting to influence particular outcomes with DNOs.

Historical Data

- 7.9 The Working Group noted, as per paragraph 5.13 above, that the majority of respondents favoured assessing a site's eligibility based on 12 months of data. The Working Group agreed that 12 months of energised data would be required, which may include a single period of de-energisation lasting no longer than 7 consecutive days.

Customers Exceeding Their MIC

- 7.10 The Working Group noted that, as per paragraph 5.16 above, that there was split opinion on whether customers who exceed their MIC should qualify for HCULU status.
- 7.11 The Working Group considered that policing customers who exceed their MIC is outside the scope of this CP and that there are existing processes for amending customers' MICs where necessary. As such, the Working Group agreed that customers who exceed their MIC would not be excluded from eligibility and that it is for DNOs to manage breaches of customers' MICs.
- 7.12 The Working Group discussed a concern around advisory buffers that DNOs suggest to end-consumers to mitigate risks of exceeding their capacities, and that the buffer could result in a MIC being agreed that means a customer misses out on being eligible for HCULU. The Working Group discussed that in these instances, the DNO would need to discuss with the customer whether the MIC should be reduced, but that mitigating this through the legal text is out of scope of this CP.

Customer Declaration

- 7.13 The Working Group noted, as per paragraph 5.27 above, that the majority of respondents supported customers being required to justify that they are unable to change their usage patterns in order to lower their MIC and avoid the higher TCR band charges. The Working Group agreed with this, further noting that such a requirement may prompt the customer to consider alternatives, such as changing their usage patterns, prior to applying for HCULU status.

Summary

- 7.14 In conclusion, following consultation 1, it was decided the initial assessment of customers will be based on the following process:
- a two-step assessment used for all customers, based firstly on capacity utilisation and, secondly, on load factor;
 - no additional assessment of consumption data would be required;
 - the thresholds are a hard limit, with no scope for discretion;
 - the assessment would be based on the previous (most recent) 12 months data;
 - customers who exceed their MIC would not be automatically excluded from eligibility; and
 - customers are required to make a declaration providing justification for HCULU status.

8. Consultation 2 Working Group Review

Regulation (EU) 2019/943 (also referred to as “the regulation”)

Question 1 – Do you believe there are any risks of non-compliance against Regulation (EU) 2019/943 if this CP is implemented? If so, please provide your reasoning for your answer.

- 8.1 The Working Group noted there were split views from respondents on whether there was a risk of non-compliance against the regulation, with a handful of respondents raising concerns.

8.2 The Working Group noted that respondents with concerns around the risk of non-compliance identified the following potential issues:

- customers could argue that, by separating them based on performance, it is not in keeping with the requirements that “charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner”;
- reducing residual charges for sites with a particular utilisation pattern could be considered to be discriminatory;
- it could be argued to violate the requirement that network charges shall be cost-reflective (in that residual charges are linked to a site’s TCR-specific characteristics (e.g., its MIC) as per Schedule 32 of the DCUSA;
- charges would no longer be reflecting what the TCR considered to be their fair contribution;
- the Authority had determined in its TCR decision that the arrangements were fair and non-discriminatory;
- it is likely that the re-banding would apply to certain ‘groups’ of customers at a cost to other ‘groups’ of customers; and
- as only a limited type of Customer would be eligible for this change due to the way they operate, this would risk discriminatory charging.

8.3 The Working Group also noted that some respondents did not believe there was a risk of non-compliance against the regulation, with one respondent stating that:

- they did not perceive this CP to discriminate against any specific user group(s) on the network; and
- there are already two arrangements within the DCUSA that offer a similar ‘carve out’ of standard cost allocation (e.g., Non-Final Demand and Eligible Services), which must be applied for, and which are granted on the basis that certain conditions are met.

8.4 The Working Group also noted that whilst several respondents had requested waiting for the legal advice sought by the DCP 420 Working Group, being that it is similar in nature to this CP and that any findings may apply here as well, the DCUSA Panel had made the decision not to seek further legal advice. The DCUSA Panel’s decision can be found attached to this change report as attachment 8.

8.5 The Proposer reiterated his position that he does not believe that the regulation affects this CP, and that this CP does not discriminate against any specific user group(s) on the network. In addition, the Proposer stated, as per one of the consultation responses, that the approach to this CP is aligned with Non-Final Demand and Eligible Services, which are existing precedents set out in the DCUSA.

8.6 The Working Group agreed that the diverse views above should be fully articulated in this change report for the benefit of voting Parties and, once voting has completed and final feedback collated, for the benefit of the Authority in its decision making. In summary, the concerns highlighted are:

- there is a risk that the proposal may violate the requirement that network charges are applied in a non-discriminatory manner;
- that reducing residual charges for sites with a particular utilisation pattern could be considered to be discriminatory; and
- that proposal could also be argued to violate the requirement that network charges shall be cost-reflective.

8.7 Whilst a specific respondent acknowledged that residual charges aren't cost-reflective of consumption, they considered that they are directly linked, as set out in Schedule 32 of the DCUSA, to a site's TCR-specific characteristics, which for many sites is their maximum import capacity (MIC) (as well as voltage level). Under the proposal, sites with the same TCR characteristics would be subject to different residual charges, no longer reflecting what the TCR considered to be their fair contribution

Re-banding approach

Question 2 – Do you agree with the proposal to re-allocate customers to the next lowest TCR band instead of applying some form of a discount?

8.8 The Working Group noted the majority of respondents agreed with the approach to re-band customers instead of applying some form of discount.

8.9 The Working Group noted that one respondent had suggested that a fixed percentage discount may be an alternative, additionally noting that the current proposed use of re-banding customers would not allow band 1 customers to benefit from this.

8.10 The Working Group discussed that applying discounts had already been discussed, noting that it would require the creation of new tariffs and be more complicated to administer than using an existing re-banding process.

8.11 The Working Group noted that one respondent had requested analysis to confirm that the assumption that a one-band move would have a lesser impact on the wider residual charging base than a move by more than one band.

8.12 The Working Group discussed that it is usual, and highly likely, that charges for TCR bands increase as the band increases (i.e., the charges for band 2, being a higher band, are higher than the charges for band 1). As such, it was agreed that any such analysis would be a forgone conclusion that moving only one band would be less impactful than moving more than one band.

8.13 The Working Group noted, however, that there are some niche instances where this may not be true, being:

- negative residual charges in some areas; and
- some higher bands having lower charges than the lower bands, due to the way these are calculated.

- 8.14 The Working Group noted that the Authority was investigating ways to resolve the issue of negative residual charging.
- 8.15 The Working Group discussed that whilst it was possible for some higher bands having lower charges than the lower bands, this was a niche situation that would only arise where there was a low number of users, or low consumption, within a TCR band. One Working Group member noted that in the four DNO areas his company was responsible for, this situation had never arisen.
- 8.16 The Working Group agreed that its position had not changed, and that re-banding to the next lowest band remained its preferred approach.

Customer Opt-Out

Question 3 - Do you believe HCULU customers should be able to opt out and be returned to their previous band if the charges in the lower band are higher?

- 8.17 The Working Group noted that the majority of respondents were not in favour of the customer being able to opt out, stating that:
- this would not be considered for any other Final Demand Customer;
 - this presents unnecessary and unpredictable volatility in banding; and
 - customers must accept that there is a risk that charges increase.
- 8.18 The Working Group discussed that, as per its discussion regarding the re-banding approach, there are scenarios where a lower band may have higher charges than a higher band.
- 8.19 The Working Group considered that the aim of this CP was to provide relief from the TCR charges and that to prevent the customer from opting out of this would seem to go against the principle of this CP.
- 8.20 A Working Group member suggested that, as phrased, the question alludes to customers being able to opt out only in a specific situation, and that it would be more pragmatic to allow these customers to simply be able to opt out at any time (e.g., a customer could opt out because they consider themselves to no longer be peaky).
- 8.21 The Working Group agreed that, whilst a majority of respondents were in not favour of a customer being able to opt out, that it would allow a customer to opt out at any time, rather than just in specific instances.

Review Periods and Process

Question 4 – Should customers have their eligibility re-assessed at each price control period or more frequently?

- 8.22 The Working Group noted that a strong majority of respondents favoured customers' eligibility being re-assessed at each price control period, citing reasons such as:
- aligning with the general review of charging boundaries;
 - providing long-term stability for sites, which would help businesses with planning;
 - sites could otherwise be switching bands on a yearly basis; and

- a more frequent review period would result in additional burdens on DNOs.

8.23 The Working Group noted that one respondent stated that the review should be in advance of the price control period.

8.24 The Working Group noted that a small number of respondents favoured a more frequent review period, due to:

- sites utilisation changing a lot over a short period of time; and
- ensuring fairness.

8.25 The Working Group discussed that the question did not allow for a consideration of whether a re-assessment of eligibility could be performed less frequently than at the price control periods. The Working Group discussed that in the case of Non-Final Demand customers, once a declaration had been made, this remained in perpetuity until there was a cause to revoke it, which was usually the result of a re-declaration made by the customer.

8.26 The Working Group noted that one response suggested to use similar arrangements to non-final demand certification.

8.27 The Working Group discussed that non-final demand sites will continue to be classed as such until they advise the DNO that they are no longer a non-final demand site. The Working Group noted that the DNOs may have a right to audit non-final demand sites but discussed that the DNOs do not proactively do so as this would require physical checks on the sites. The Working Group also noted that the proposed solution under this CP is that eligibility is reviewed at, at the very least, each price control period, which adds a safeguard against non-eligible sites gaming the system and benefitting from the reduction in band in the longer term.

8.28 The Working Group considered its position to this question in conjunction with its review of the responses to questions 5 and 7, articulated below, and concluded that the eligibility would be reviewed at the price control period.

Question 5 – If the review is performed at the price control period, should customers have to reapply, or should they retain their HCULU eligibility status?

8.29 The Working Group noted that a small majority of respondents favoured the customer retaining eligibility at the price control period review, rather than requiring customers to re-apply. These respondents stated that:

- customers are not Parties to the DCUSA and are not obliged to adhere to any timescales stated within the DCUSA;
- customers would not know when they needed to apply;
- retaining eligibility reduced the level of bureaucracy for both customers and DNOs; and
- the analysis performed by the DNO for the price control period would already be able to confirm ongoing eligibility.

8.30 The Working Group noted that some respondents favoured customers needing to re-apply, so that:

- it removes the need for DNOs to maintain a register of eligible customers; and

- it ensures customers to prove their situation has not changed.

- 8.31 The Working Group had noted, as per paragraph 8.25 above, in the case of Non-Final Demand customers, once a declaration had been made, this remained in perpetuity until there was a cause to revoke it, which was usually the result of a re-declaration made by the customer. A Working Group member noted that to assess a site's eligibility for Non-Final Demand would require the DNO to visit the site and check its use, which was not feasible to do in an efficient manner.
- 8.32 A Working Group member noted that on some charging statements that had been checked, there were clauses included in the charging statements around the scenarios where a Non-Final Demand site's certification could be revalidated or revoked, including:
- where the DNO has reason to believe that the property no longer qualifies as a Non-Final Demand Site;
 - significant time has passed since the certification was submitted; or
 - there is a change to the connection characteristics (i.e., capacity change.)
- 8.33 The Working Group discussed that, unlike the Non-Final Demand process which relied on a customer declaration to avoid the need for site visits, this CP relied on data the DNO already holds, which could be used to reassess eligibility at specified times.
- 8.34 The Working Group considered this question in conjunction with question 4, articulated above, and question 7, articulated below, and concluded that, where the DNO analysis of the previous 12 months of data shows that a customer remains eligible, they would retain their eligibility status.
- 8.35 The Working Group discussed that, in the case of retaining HCULU status if the data shows the customer continues to be eligible, the data for the next price control period is assessed 14 months in advance of the price control period and is based on the previous 24 months of data, which is arguably nearly two years out of date by the time the price control period commences.
- 8.36 The Working Group considered whether HCULU eligibility, for retaining the status:
- should be performed at the same time the data is submitted for the next price control period (i.e., 14 months in advance); or
 - should be performed closer to the commencement of the price control period, using more recent data.
- 8.37 The Proposer highlighted a competition concern, noting that the DNOs send the information on all MPANs to all Suppliers, but only the Supplier for each specific MPAN would be aware of the HCULU status, leading to advantages in pricing.
- 8.38 The Working Group noted that one respondent had stated that the obligations and timescales needed to be stated clearly in the legal text and considered that, if the review period was to be closer to the commencement of the next price control period, the timescales for doing this may need to be specified in the DCUSA, to ensure consistency across DNO areas.
- 8.39 The Working Group considered whether DNOs could assume that, for the next Price Control Period, customers who have HCULU status during the review would retain their status, meaning

HCULU sites would be included in the data based on the assumption that they remain HCULU sites. This would ensure that the data sent to all Suppliers is consistent and would mitigate the competition concerns.

- 8.40 The Working Group considered that it would be preferable to reassess customers' continued eligibility closer to the price control period, as otherwise it is being assessed long in advance and on data that would be out of date by a significant amount of time. The Working Group agreed that DNOs should have some flexibility in scheduling this reassessment of HCULU customers, but that it would be necessary to be complete before the price control period commences. The Working Group agreed the review could be completed between 1 January and 31 March, immediately preceding the commencement of the price control period, and the reassessment would be performed using the previous calendar years' data (i.e., 1 January to 31 December, inclusive, for the previous year.)

Question 6 – If the review is more frequent, do you agree that customers who are no longer eligible for HCULU status should be allocated to their previous charging band?

- 8.41 The Working Group noted that, in the event the review period was to be more frequent, respondents had agreed unanimously that sites which are no longer eligible should be returned to their previous bands.
- 8.42 The Working Group noted, however, that as per its discussions under question 4 above, it had concluded the reviews would be conducted at the price control periods.
- 8.43 The Working Group noted that one respondent had stated there needed to be a communication of any change of band from the DNO to the Supplier, so that the Supplier could communicate this to the customer. A Working Group member further noted that it was less likely that the DNO would hold up-to-date contact information for the site, meaning that without Supplier involvement in the communication of the band change, customers' charges could increase without explanation.

Question 7 - Do you agree that the DNOs should have the ability to review sites where their behaviours have changed in a significant way?

- 8.44 The Working Group noted that a strong majority of respondents were in favour of the DNO having the ability to review sites where their behaviours have changed in a significant way.
- 8.45 The Working Group noted that one respondent had cited concerns around fairness, whereby some sites may be reviewed whilst others may not. The Working Group discussed that to ensure fairness, it could be necessary to ensure every site is reviewed as least once in every price control period.
- 8.46 The Working Group also noted that one respondent had stated that the ability to review a site should be a right of the DNOs and not an obligation on them, to avoid additional DNO burden.
- 8.47 The Working Group discussed that if, under questions 4 and 5, articulated above, customers were not reviewed and instead retained their eligibility status on an ongoing basis, this could mean that sites would remain eligible on an enduring basis, potentially benefitting for a prolonged period where they would otherwise have been deemed to not be eligible, had they been reviewed, at a cost to other customers.

8.48 The Working Group agreed that, as a compromise, it would therefore be a right of the DNOs to review sites at any time, rather than an obligation to do so, on the basis that sites would be reviewed at each price control period.

Changing Capacity

Question 8 - Do you agree that customers who change their capacity whilst classed as a HCULU customer will remain on their current band until they are reassessed?

8.49 The Working Group noted that a strong majority of respondents favoured leaving customers who change capacity in their current band, stating that:

- this works alongside the existing exceptional circumstances process; and
- capacity changes do not currently trigger a review of a customer's band.

8.50 The Working Group reviewed Schedule 32 of the DCUSA relating to the exceptional circumstances. Whilst it was not stated that the exceptional circumstances cannot be triggered by the DNOs, it was discussed that this is usually a customer-triggered process.

8.51 The Working Group noted that if a customer increased their capacity at a site, it is possible that they will increase activity in such a way that remains peaky in nature, and they remain eligible. The Working Group also noted that in such cases, it would not be possible to reassess their eligibility for another 12 months against the new capacity, as 12 months of usage against the new capacity would be required.

8.52 The Working Group agreed that customers who change their capacity would remain on their current band.

Applications

Question 9 - Should customers be limited in how many times they can apply for HCULU status over a given period, and if so, what should the limit and period be?

8.53 The Working Group noted that a strong majority of respondents favoured a limit on the number of applications that a customer could make, stating that:

- there was a risk of customers submitting repeat applications, increasing the burden on DNOs;
- there are costs associated with each application;
- that once a year, in advance of the charging year, would be appropriate; and
- a limit would allow the build-up of new, recent consumption data.

8.54 The Working Group discussed whether the application should be for or at the start of a new charging year or could be made at any time within the charging year. The Working Group considered that if the timescales were bound to charging years, there would be a bottleneck of applications aligning with the start of each charging year.

8.55 The Working Group agreed that allowing one application every 12 months would provide the necessary mitigation against repeat applications causing issues for the DNO whilst avoiding the potential for a backlog of applications to build up.

Retrospective Re-banding

Question 10 – Should there be a transitional period of 6 months during which customers who apply for HCULU status would be eligible for retrospective re-banding? Please provide your rationale.

Question 11 – Do you agree that customers should be re-banded up to a maximum of 12 months unless they are able to provide data showing that the excessive charges began on 1 April 2023, which would justify that they be re-banded back to that date? Please provide your rationale.

Question 12 – Do you agree that customers who request to be re-banded further back than 12 months should first be assessed on the basis of the previous 12 months, as part of a two-step process, and only customers who are eligible based on the previous 12 months will be assessed for further retrospective re-banding? Please provide your rationale.

- 8.56 The Working Group noted the split views from respondents around whether there should be any retrospective elements of the proposal.
- 8.57 The Working Group discussed that the most contentious retrospective element of the proposal was intended to be a one-off exercise, to allow eligible customers who had experienced detriment under the TCR to be rebated for some or all of the detriment (e.g., 12 months or back to 1 April 2023) and that this would be subject to a sunset clause. The Working Group discussed that, as currently proposed, this would be for a six-month period following the implementation of the CP.
- 8.58 The Working Group agreed that the retrospectivity should not be an enduring option for existing customers and that those who don't apply within the window will have, unfortunately, missed out on any potential rebates.
- 8.59 The Working Group discussed whether there were any precedents for retrospectivity of this kind. The Proposer noted that there had been proposal related to the charges for LVN (Low Voltage Network) and LVS (Low Voltage Switchgear) as a result of errors in distinguishing between the two, which resulted in retrospective claims for charges back to the implementation of the CDCM.
- 8.60 The Working Group considered whether, in the case of this CP and the potential low impact it would have, whether that would have any bearing on whether retrospectivity was appropriate. One Working Group member noted that whilst he did not agree with retrospectivity as a general principle, if this CP was accepted and it was concluded that these customers had indeed suffered a detriment as a result, that it would be only right that they be retrospectively rebated.
- 8.61 The Working Group discussed that any retrospective rebates could be backdated to a maximum of 12 months or, if evidence showed detriment, back to 1 April 2023. The Proposer noted that, assuming this was approved in 2025 and taking into account the potential 6-month transition period for retrospective rebates, that rebates could be for up to two years or more, if rebates went back to 1 April 2023.
- 8.62 The Working Group noted the split views on whether customers who may be eligible for a rebate back to 1 April 2023 should first be assessed for eligibility against the previous 12 months of data, and that only those customers who are deemed to be eligible based on the previous 12 months of data would then be assessed for eligibility 1 April 2023. The Working Group noted that one response suggested this would be needlessly complicated and the entire period could be assessed as a single exercise.

- 8.63 The Working Group discussed that if the solution was to only allow rebates of up to 12 months, the need for a two-step process for retrospective rebates is removed. However, as noted in paragraph 8.69 below, no consensus on this has been reached and it is proposed to take forward both options as alternatives.
- 8.64 A Working Group member highlighted a concern that the legal text for a transition period could result in a logjam of applications, if the maximum rebate was 12 months and depending on how the solution was developed. The Working Group member compared the two options:
- that eligible customers would be eligible for a maximum rebate of 12 months from their application date; or
 - that eligible customers would be eligible for a maximum rebate of 12 months from the implementation date.
- 8.65 The Working Group member noted that in the first scenario, this could lead to a rush of applications, likely of poor quality, in order to secure the maximum rebate possible, contrary to the second scenario whereby customers would be rebated for the same period regardless of when they submitted their application, so long as this was within the transition period. It was also noted that backdating all eligible customers to 1 April 2023 would also avoid the potential logjam of applications.
- 8.66 The Secretariat noted that for the second option under paragraph 8.64 above (customers being eligible for a maximum rebate of 12 months from the implementation date), that this could result in rebates of up to nearly 18 months if customers delayed their applications to the end of the transition period (e.g., if the CP was implemented on 1 February 2025 and the customer successfully applied on 31 July 2025, the customer would be eligible for a rebate back to 1 February 2024.)
- 8.67 The Working Group noted that customers may also be eligible for rebates for more than 12 months under the first option, in the event that there were any delays in processing the applications.
- 8.68 The Working Group discussed that to include retrospectivity for these customers:
- would result in a complicated set of legal text;
 - could result in more volatility in charges; and
 - could be particularly divisive with Parties, making the difference between there being support for the CP or the CP being recommended for rejection.
- 8.69 The Working Group could not reach a consensus on whether there should be retrospective rebates and, additionally, noted that as this is a particularly divisive part of the proposal, that it could be the difference between voting Parties to vote for or against this CP, it may be prudent to put all options forward for consideration by voting Parties and the Authority.
- 8.70 The Working Group concluded that the retrospective elements should be put to voting Parties and to the Authority as 'alternatives', providing the Authority with three proposals:
- including retrospectivity, subject to a sunset clause, with up to 12 months maximum rebate;
 - including retrospectivity, subject to a sunset clause, with a maximum rebate back to 1 April 2023;
 - including no retrospectivity.

- 8.71 The Working Group agreed that three proposals would be put forward, with the Proposer's preferred approach, to rebate to a maximum of 12 months, submitted as the first option.

Sites Lacking Insufficient Data

Question 13 – Should sites with insufficient data (i.e., sites with less than 12 consecutive months of data) be required to wait until there is sufficient data in order to be assessed for HCULU eligibility? Please provide your rationale.

Question 14 – If sites require 12 months of consecutive data to support becoming a HCULU customer, should those sites with insufficient data, which need to wait until there is sufficient data, be eligible for a backdated re-banding? Please provide your rationale.

- 8.72 The Working Group discussed whether customers lacking sufficient data should be rebated back 12 months or back to their application date.
- 8.73 A Working Group member suggested that to backdate to the date an application was made could be considered to not be retrospective, and that in this scenario the customer, having made an application, is asked to wait for sufficient data to be built to allow the assessment to take place and would be eligible for re-banding only from the date of their application, if successful.
- 8.74 A Working Group member highlighted a concern that there should be some discretion for DNOs to assess what constitutes 'complete data', as within a 12-month period there could be small gaps (e.g., de-energised for a few days for works) and it would be disingenuous to exclude these customers from applying.
- 8.75 The Working Group discussed the potential for customers to receive different treatment based on the date they applied for HCULU status. The Working Group discussed that two sites, which for all intents and purposes are the same, could receive different rebates based purely on the date they apply for HCULU status.
- 8.76 The Working Group deliberated on whether it was fair to customers to receive different treatment as a result of the application date and noted that such a precedent existed for non-final demand. It was noted that customers who apply for non-final demand are subject to this classification from the next billing month and that any customers who fail to apply in a timely manner will miss out. Some Working Group members felt that some of the onus needed to be placed on the customer to know when to apply.
- 8.77 The Working Group concluded that rebates would only be made to the application date and that it was for customers to ensure they submit their applications in a timely manner.
- 8.78 The Working Group discussed whether the customer should require 12 calendar months of data to perform the assessment (rather than allowing part months at either end of the assessment period.) The Working Group noted that the impact on the customer would be minimal (delaying the benefit by less than one calendar month) but would make the assessment process simpler. The Working Group agreed that the customers would require 12 calendar months of data for the assessment to be performed.

Applying Before or After the Annual Allocation Review

Question 15 – Should new connection sites be able to apply for HCULU status prior to the first re-allocation under paragraph 6.7 of Schedule 32 or only after the first re-allocation has taken place? Please provide your rationale.

- 8.79 The Working Group discussed whether new connection customers should be able to apply for HCULU status prior to undergoing the first annual allocation review. The Working Group noted that the majority of consultation responses supported waiting until after the annual allocation review.
- 8.80 The Working Group discussed that some sites may be on a default or estimated MIC, as per Schedule 32 paragraph 4.(b)ii and that these sites, assuming they had 12 months of data available, would be potentially re-banded following the annual allocation review and could be subject to a rebate or additional charges. The Working Group noted that the majority of customers agree a MIC and are placed into a charging band as a result and would not be subject to the Annual Allocation Review. This issue therefore arises for a minority of customers.
- 8.81 The Working Group considered three options:
- that customers must wait until after the first annual allocation review before they can apply for HCULU status;
 - that customers can apply for HCULU status before the first annual allocation review but would not be re-banded until after the first annual allocation review; and
 - that customers can apply for HCULU status and be re-banded before the first annual allocation review.
- 8.82 The Working Group discussed that the first option, not allowing an application prior to the first annual allocation review, was the simplest option but resulted in the least benefit to customers.
- 8.83 The Working Group discussed that the second option would require DNOs to hold the applications until after the first annual allocation review, delaying the benefit to the customer, to perform the review whilst considering the site's HCULU eligibility and potentially to rebate the customer.
- 8.84 The Working Group discussed that the third option would allow DNOs to progress the application sooner, delivering the benefit to the customer sooner, and that as DNOs would assess customers' bands at this point and re-band them if their application was successful, these customers would no longer be subject to the annual allocation review.
- 8.85 The Working Group noted that under option 3, it was possible that HCULU customers would be subject to additional charges at the first annual allocation review. For example, if a customer on band 2 successfully applied for HCULU status prior to the first annual allocation review, they would be re-banded to band 1. If the annual allocation review subsequently concluded that the customer should have been in band 3, the customer would therefore be re-banded to band 2 as a HCULU customer and would be liable for the difference in charges between the two bands.
- 8.86 The Working Group considered whether, if customers were able to apply before they had 12 months of data available, they should be eligible for rebates back to their application date. The Proposer suggested this should be in line with the solutions put forward under section 10 of this change report,

which may or may not result in retrospective rebates for existing customers. The Working Group agreed that:

- if no retrospective rebates were to be provided to existing sites, no rebates would be provided to newly connected sites; and
- if retrospective rebates were to be provided to existing sites, rebates would be provided to newly connected sites back to the date of their application.

Interactions for Consideration

Question 16 – Can you think of any other interactions that the Working Group should consider? Please provide your rationale.

- 8.87 The Working Group noted that DCPs 420 ([provide targeted relief from residual charges for electric vehicle charging sites](#)), 433 ([limitation for backdating of rebates/charges under Schedule 32](#)) and 439 ([backdating tariff changes](#)) had been highlighted by consultation responses as areas for concern.
- 8.88 The Working Group noted that, at the time of issuing the consultation, that DCPs 433 and 439 had been sent to the Authority for a decision, and that it was therefore not possible to write legal text catering for these proposals at that time.
- 8.89 The Working Group noted that the DUoS SCR and MHHS Programme had been highlighted by consultation responses as areas for concern.
- 8.90 The Working Group discussed that it did not believe residual charges were currently in scope of the DUoS SCR and that, in the event that they were, the impacts on this CP, if approved, would need to be considered in the future.
- 8.91 The Working Group noted that, under the MHHS Programme, rebates would become limited. The Working Group discussed that the transitional period for retrospective rebates would be subject to a sunset clause and that it was possible that this would have closed before the MHHS Programme has implemented its changes.

Unintended Consequences

Question 17 – Do you believe this change will lead to any unintended consequences? If so, can you think of ways to mitigate these? Please provide your rationale.

- 8.92 The Working Group noted that consultation responses had highlighted the following potential unintended consequences:
- that the majority of residual charge payers would cross-subsidise 'peaky' network users;
 - that the proposal could lead to unfair, preferential or discriminatory treatment of customers; and
 - that the proposal could lead to a small number of customers moving bands very frequently.
- 8.93 The Working Group discussed that by moving customers to lower bands, this would result in other customers paying more charges as a result, but that this was by design rather than an unintended consequence of the proposed solution.

- 8.94 The Working Group noted the concerns around the unfair, preferential or discriminatory treatment of customers and noted that these concerns mirrored those considered under question 1 of consultation 2, articulated earlier in this change report and for which the Working Group had concluded that all the concerns should be fully articulated in this change report.
- 8.95 The Working Group discussed the concern that some customers could move bands very frequently and considered that this should be mitigated by aligning the reviews of HCULU sites with the price control period and by customers who remain eligible for HCULU status continuing to retain their HCULU status for subsequent price control periods.
- 8.96 The Working Group considered whether customers in scope of DCP 420, which, at the time of writing this change report, is in the consultation phase, could also benefit from the relief from TCR charges delivered under this CP. The Working Group agreed that if DCP 420 took forward a solution under which customers could feasibly qualify for relief from TCR charges under both proposals, it would be necessary to include some form of exclusion in the legal text.
- 8.97 The Working Group noted that DCP 420 would likely be sent to the Authority for a decision after this CP has been sent, and it would therefore be difficult to include such an exclusion in the legal text.
- 8.98 The Chair agreed that he would pick this up in the DCP 420 Working Group, should the need arise.

DCUSA Charging Objectives

Question 18 – Do you consider that the proposal better facilitates the DCUSA Charging Objectives? If so, please detail which of the Charging Objectives you believe are better facilitated and provide supporting reasons. If not, please provide supporting reasons.

- 8.99 The Working Group noted the majority of consultation responses did not consider that the proposal better facilitates the DCUSA Charging Objectives, highlighting the following reasons why they did not consider the CP better facilitates the objectives:
- the proposal treats customers on different principles to other customers under the TCR;
 - the proposal creates additional work and reduces efficiency in the implementation and administration of the DCUSA;
 - the proposal could be argued to violate the requirement that network charges be cost reflective;
 - the proposal creates a cross-subsidy that will see charges spread across other network users; and
 - the requirement is to band based on the capacity and not what a customer uses.
- 8.100 One consultation response highlighted a neutral impact on DCUSA Charging Objective 3, noting that that networks are built to cope with the high capacity that these sites sometimes need but that this is not time restricted, and usage could occur at peak times.
- 8.101 The Working Group noted that some consultation responses considered the proposal did better facilitates the DCUSA Charging Objectives, highlighting the following reasons why they did consider the CP better facilitates the objectives:
- it could be seen to better facilitate DCUSA Charging Objective 1; and

- it is unavoidable for those customers legitimately requiring a large capacity but not regularly using it.

Wider Industry Developments

Question 19 – Are you aware of any wider industry developments that may impact upon or be impacted by this CP?

- 8.102 The Working Group noted that industry responses had highlighted the DUoS SCR and the MHHS Programme, which the Working Group noted under responses to a previous question.
- 8.103 The Working Group noted, as per one of the responses, that the Authority had issued a call for input titled 'Distribution Use of System Charging – Managing the effects of surplus residual charges'. The Working Group discussed that this was limited in scope and was looking at how methodologies will result in final tariffs based on a negative residual.

Legal Text

Question 20 – Do you have any comments on the proposed legal text?

- 8.104 The Working Group discussed the feedback that the definition of 'High Capacity Usage, Low Utilisation' was not clear and that it would benefit from a clearer explanation of what is meant by utilisation and load factor.
- 8.105 The Working Group noted that load factor was not a defined term in the DCUSA but was included in the glossary of terms under schedule 16. The Working Group agreed to include this in the definition.
- 8.106 The Working Group noted that it was potentially not clear what capacity utilisation meant. The Working Group agreed to amend the definition to read 'the utilisation of its Maximum Import Capacity is greater than or equal to 90%'.
- 8.107 The Working Group noted the feedback that customers should not have to submit data that the DNO already holds. The Working Group agreed to update the legal text to remove this requirement.
- 8.108 The Working Group noted the feedback that the timeline for obligations needs to be clear in the legal text. The Working Group agreed that it should ensure that the legal text is clear on the timeline.
- 8.109 The Working Group noted the feedback that the transitional period was not yet reflected in the legal text.

General Comments on the CP

Question 21 – Do you have any other comments on this CP?

- 8.110 The Working Group noted the large number of comments provided under this question.
- 8.111 In the interests of clarity and avoiding duplication, where a concern has been raised that has already been covered under another question, previously in this change report, it has not been included under this question. However, all comments can be read in full in the attached non-confidential consolidated responses document, which can be found as attachment 6.
- 8.112 The Working Group noted the following comments:

- that the treatment of transmission connected customers would differ to distribution connected customers;
- that it is not in the remit of network charging to provide financial support to companies;
- that it creates an unjustified and arbitrary boundary for a HCULU site;
- that customers should have stayed within their agreed capacity during the period being assessed;
- that changes to the residual charging methodologies to support peaky customers could be picked up in the DUoS SCR;
- that the legal text around the customers justification for being a HCULU customer is open to interpretation;
- that financial support is more appropriately addressed by other agencies;
- that it is unfair to deviate from an agreed methodology for a subset of customers;
- that it adds unwarranted complexity in determining residual charges;
- that the TCR had been a long ongoing project, led and analysed in detail by the Authority;
- that the proposal goes against, or waters down, the principles of the TCR;
- that it leaves a risk of discrimination;
- that it leaves a risk of 'gaming' by unscrupulous actors; and
- that it adds an additional burden on DNOs which already perform a number of reviews.

8.113 The Working Group noted the comments and agreed that they should be fully articulated in this change report, for consideration by voting Parties and the Authority.

8.114 The Working Group discussed the feedback around the arbitrary boundary and that it had used analysis, performed on the data obtained from industry, to determine a threshold that provided the benefit to genuinely peaky customers whilst limiting the scope of the support to only those customers genuinely needing it.

8.115 The Working Group discussed that the impacts of the boundary proposed under the two-step process, for both those customers eligible for HCULU status and for all other customers, should be assessed. The Working Group analysed the data and determined the following impact on customers remaining in the band (not including the impacts of any retrospective rebates):

Band	Yearly Impact (£s & %)
LV Band 2	£4.68 (0.55%)
LV Band 3	£4.93 (0.37%)
LV Band 4	£10.03 (0.33%)
LV Sub Band 2	£7.01 (0.79%)
LV Sub Band 3	£11.17 (0.81%)
LV Sub Band 4	£10.48 (0.34%)

HV Band 2	£49.45 (0.67%)
HV Band 3	£60.51 (0.42%)
HV Band 4	£119.28 (0.35)

8.116 The Working Group has provided a more detailed explanation of the approach and the findings resulting from this analysis, which can be found in attachment 7.

8.117 The analysis is based on the average fixed daily charges for each band across all DNO areas, meaning the impacts will change depending on changes to the fixed daily charge each year.

8.118 The impacts of applying retrospective rebates to customers can be extrapolated from the table. For example, if all impacted customers were eligible for 12 months of retrospective re-banding and rebates, the impact would be double (i.e., the yearly impact from the table multiplied by two.)

8.119 The Working Group discussed that one consultation response stated the legal text around the customer justifying their reasons for being a HCULU customer was open to interpretation. The Working Group discussed that it had previously considered whether this was necessary, but that it had concluded it should be kept to:

- prompt the customer to consider whether they could change their behaviours and/or capacity; and
- ensure the DNOs are not seen to re-banding and rebating customers without just cause.

9. Consultation 2 Customer Responses

9.1 The Working Group again noted the high number of responses from customers on this CP, illustrating how important this CP is to some customers.

9.2 Whilst some of the responses to the consultation are again confidential, and therefore cannot be shared, the Working Group noted the following themes:

- that in the causes of impacted infrastructure related costs, taxpayers are paying higher levies as a result of the residual charges;
- that a reduction in band based on Load Factor, rather than MIC, could be considered;
- that some circumstances are unlikely to change between price control periods and that the eligibility status should therefore be retained;
- that industry already holds the data that is needed for the assessment of HCULU eligibility;
- that there were concerns around falling out of eligibility for short term periods (if reviews were more frequent);
- that customers did not support limiting applications to one each year or one every 12 months;
- that funds have been lost to residual charges that could have otherwise been used for investment (in relation to the potential transition period for retrospective rebates);

- that customers favour re-banding back to 1 April 2023 and rebates for detriment being made to then;
- that if customers can demonstrate their peaky capacity usage, they should not have to wait for sufficient data to perform the assessment;
- that where customers with insufficient data have to wait for up to 12 months for assessment of their eligibility, rebates should be backdated;
- that they believe these issues to be an unintended consequence of the TCR;
- that this CP will allow niche companies to continue to operate in the UK; and
- that the Working Group should consider any conflicts with on-site generation.

9.3 The Working Group discussed the suggestion to band based on Load Factor instead of MIC but considered that this would be a fundamental change to the TCR, which would be outside the scope of this CP, and that an entirely new methodology for calculating residual charges would be required.

9.4 The Working Group discussed that it had previously discussed on-site generation as a potential mitigation to requiring a high capacity, but that it had considered, at that time, that a high capacity may still be needed in case on-site generation was to fail (or fail to cover the energy requirements). The Working Group did not believe, during those discussions, that on-site generation had any impact on this CP.

10. Working Group Conclusions & Final Solution

10.1 The Working Group agreed, as suggested by the Chair, that the retrospective elements should be broken out into options for consideration firstly by voting DCUSA Parties, and subsequently by the Authority, in the form of 'alternatives', providing DCUSA Parties and the Authority with three proposals:

- including retrospectivity, subject to a sunset clause, with up to 12 months maximum rebate;
- including retrospectivity, subject to a sunset clause, with a maximum rebate back to 1 April 2023;
- including no retrospectivity.

10.2 For the ease of reading by voting Parties and the Authority, the common elements of all three proposals are listed first, with only the retrospective elements articulated separately.

Common Elements (all proposals)

10.3 The Working Group agreed the following common elements of all three proposals:

- customers will need to apply for HCULU status (it is not to be proactively assessed by DNOs);
- a two-step assessment will be used for all customers, based on:
 - their capacity utilisation being greater than or equal to 90%; and
 - their load factor being less than or equal to 10%;

- the above thresholds are a hard limit with no scope for discretion;
- customers will need to make a declaration in support of their application, stating that:
 - they wish to be considered as a HCULU customer;
 - they are unable to change their current usage patterns and the reasons for this; and
 - they have a MIC that is appropriate to their business needs;
- DNOs will assess eligibility based on the previous 12 calendar months of data;
- DNOs will have discretion to reassess a site's eligibility if significant changes are detected;
- customers who exceed their MIC will not be excluded from eligibility;
- eligible customers in bands 2, 3 or 4 will have their band reduced to the next lowest band and no lower than band 1;
- customers will be able to opt out at any time and be returned to their non-HCULU band;
- eligibility will be reviewed in the three months prior to the commencement of each price control period using the previous calendar years' data;
- customers who continue to be eligible will retain their HCULU status for the next price control period;
- customers who change their capacity whilst classed as HCULU will remain on their current band;
- sites may only submit one application in each charging year;
- existing sites lacking sufficient data need to wait until they have 12 months of energised data and will be re-banded effective from the start of the billing month after their application was submitted; and
- newly connected sites will need to wait until they have 12 months of energised data available before they can be assessed for HCULU eligibility. Once 12 months of energised data is available, the Final Demand Site will be assessed by the DNO/IDNO Party to first allocate it to a standard charging band, after which the DNO/IDNO Party shall assess the Final Demand Site's eligibility as a HCULU Site. If the first part of this assessment takes place before the site's 'Annual Allocation Review' would have taken place, then a further 'Annual Allocation Review' is not required for the site.

Original Proposal (retrospectivity with up to 12 months maximum rebate)

- 10.4 There will be a transitional period of 6 months from the date of implementation of this CP.
- 10.5 Customers with existing sites who successfully apply (i.e., apply and are assessed as eligible) for HCULU status will be eligible for retrospective re-banding for up to a maximum of 12 months and for a rebate of the difference between the charges.
- 10.6 Customers with newly connected sites who successfully apply (i.e., apply and are assessed as eligible) for HCULU status will be eligible for retrospective re-banding for up to a maximum of 12 months or to the first day of the month following the date of their application, whichever is later.

Alternative Proposal 1 (retrospectivity with a maximum rebate back to 1 April 2023)

- 10.7 There will be a transitional period of 6 months from the date of implementation of this CP (the same as the original proposal).
- 10.8 Customers with existing sites who successfully apply (i.e., apply and are assessed as eligible) for HCULU status will be eligible for retrospective re-banding to no earlier than 1 April 2023 and for a rebate of the difference between the charges (the same as the original proposal).
- 10.9 Customers will first be assessed based on the previous 12 calendar months of data, in line with the other options, and if eligible will then be assessed on the remaining period back to 1 April 2023 or the site connection date, whichever is later, on a rolling 12 monthly basis (i.e. the assessment window will move back by one month until the site is no longer eligible).
- 10.10 Customers with newly connected sites who successfully apply (i.e., apply and are assessed as eligible) for HCULU status will be eligible for retrospective re-banding for up to a maximum of 12 months or to the first day of the month following the date of their application, whichever is later.

Alternative Proposal 2 (no retrospectivity)

- 10.11 There will be no transitional period.
- 10.12 Customers who successfully apply (i.e., apply and are assessed as eligible) for HCULU status will be re-banded from the start of the next billing month.
- 10.13 Customers will not be eligible for any retrospective re-banding or rebates, whether they are newly connected sites or existing sites.

Summary of Solutions

	Original Proposal	Alternative Proposal 1	Alternative Proposal 2
Customer has to apply for HCULU status		Yes	
Two-step process		Yes	
Capacity utilisation $\geq 90\%$		Yes	
Load factor $\leq 10\%$		Yes	
Hard limits (no discretion on thresholds)		Yes	
Customer declaration required		Yes	
Initially assessed on most recent 12 months data to determine eligibility		Yes	
Customers exceeding their MIC remain eligible		Yes	
Band Reduced by 1 Band (and no lower than band 1)		Yes	
Customers can opt out		Yes	
DNO review eligibility at price control period		Yes	
Eligible customers retain status at price control period. Customers no longer eligible lose the status of HCULU.		Yes	
Customers changing capacity remain in HCULU band		Yes	

DNOs have discretion to reassess sites if a significant change in usage is detected	Yes		
Retrospective re-banding outside transitional period	No		
HCULU sites are not included in the annual allocation review	Yes		
One application per charging year	Yes		
Retrospective re-banding for transitional period*	Yes	Yes	No
Retrospective re-banding maximum time	12 Months	1 April 2023	Not Applicable
Rebates/charges for newly connected sites effective from the application date*	Yes	Yes	Yes

* Post implementation of this CP, there will be a six-month window during which existing customers can apply for HCULU status and, if eligible, would be subject to a rebate to 12 months or to 1 April 2023, under the original solution or alternative solution 1, depending on which solution is implemented. If alternative solution 2 is implemented, there would be no retrospective window.

* Any rebate/ charges will be effective from the next billing period following application date.

11. Relevant Objectives

11.1 For a CP to be approved it must be demonstrated that it better facilitates the DCUSA Objectives. There are five general objectives and six charging objectives. The Working Group agreed that this CP should be assessed against the charging objectives.

Original Proposal

11.2 The Proposer considers that the following charging objectives are better facilitated by this CP:

	DCUSA Charging Objectives	Identified impact
<input 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	None
<input checked="" 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)	Positive
<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	None
<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	None

<input type="checkbox"/>	5. That compliance by each DNO Party with the Charging Methodologies facilitates compliance with the EU Internal Market Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and	None
<input type="checkbox"/>	6. That compliance with the Charging Methodologies promotes efficiency in its own implementation and administration.	None

11.3 The Proposer believes that this CP will better facilitate DCUSA Charging Objective 2 as the existing scheme of tariffs might be seen to restrict the activities of Customers that would be eligible for HCULU status, such as drainage boards, as it imposes a disproportionately high tariff that makes their operations less economically viable. This then has a distorting effect on the supply market as potential Suppliers to that customer group are disadvantaged relative to those Suppliers that are focused on the supply of other customer groups.

Alternative Proposal 1

11.4 The Proposer believes the same DCUSA Charging Objectives are better facilitated as with the original proposal, above.

Alternative Proposal 2

11.5 The Proposer believes the same DCUSA Charging Objectives and General Objectives are better facilitated as with the original proposal, above.

12. Impacts & Other Considerations

Does this Change Proposal impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

12.1 This proposal does not impact any current SCR but does revisit the methodology introduced by the TCR.

Cross Code Impacts

BSC..... ☐ REC..... ☐ Distribution Code.. ☐
 CUSC..... ☐ SEC..... ☐ Grid Code..... ☐
 None..... ☒

12.2 The Working Group identified a potential impact to the CUSC if the discount approach was to be the final solution, however as the solution now being developed is to re-band customers, there is no direct CUSC impact. The Working Group noted, however, that there would be an impact to TNUoS charges, as re-banding customers results in lower DUoS and TNUoS charges for those customers, with the shortfall being recovered from other customers remaining in the band.

Consumer Impacts

- 12.3 The Working Group has noted that other network users will see increases in their charges as a result of this CP.

Environmental Impacts

- 12.4 In accordance with DCUSA Clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if this CP was implemented. The Working Group did not identify any such material impact on greenhouse gas emissions arising from the implementation of this CP.

Interactions With Other DCUSA Change Proposals

- 12.5 The Working Group identified, and noted through the consultation responses, that there may be interactions with DCPs 420 ([Provide targeted relief from residual charges for electric vehicle charging sites](#)), 433 ([Limitation for backdating of rebates/charges under Schedule 32](#)) and 439 ([Backdating Tariff Changes](#)).
- 12.6 The Working Group noted that, at the time of producing this change report, DCP 420 was still in development and DCP 439 was with the Authority for a decision. It was therefore not possible to draft legal text to mitigate these CPs. However, should the Authority approve DCP 439 it may be necessary for a consequential change proposal to be raised, either by a Party or by the DCUSA Secretariat via the DCMDG, or as directed by the Authority, as DCP 439 will impose significant limitations on how far back rebates and charges may be backdated for HCULU sites (applicable to the DCP 412 original proposed solution and alternative 1).
- 12.7 The Working Group noted that DCP 433 was approved by the Authority in November 2024 and implemented shortly thereafter. DCP 433 updated Schedule 32 of the DCUSA to ensure arrangements relating to backdating of rebates/charges for Residual charges, following an Annual Allocation Review of a site's Residual Charging Band (where applicable), are reflective of practical limitations within the current settlement arrangements.
- 12.8 The Working Group discussed that the legal text implemented by DCP 433 would only apply to the Annual Allocation Review and that it would not apply to sites reallocated under the exceptional circumstances, including sites applying for HCULU status. The Working Group sought advice from DCUSA's legal advisors, who confirmed that the limitations introduced by DCP 433 do not apply to HCULU sites.

Engagement with the Authority

- 12.9 This is a Part 1 Matter and meetings are conducted in open governance. The Authority has been actively engaged with the Working Group in its capacity as an observer.

13. Implementation

- 13.1 The Working Group noted that 10 working days implementation following Authority approval is acceptable based on the current proposed solutions (i.e., that customers must apply for HCULU status.)
- 13.2 The proposed implementation date is therefore 10 working days following Authority approval.

14. Legal Text

- 14.1 It is proposed to amend Sections 4, 6 and 8 of Schedule 32.
- 14.2 The legal text commentary has been split into three sections, one for each of the solutions brought forward (the proposed solution and the two alternative solutions). For simplicity, the sections for each alternative proposal state only the differences to the original proposal.

Original Proposal (retrospectivity with up to 12 months maximum rebate)

Section 4 (allocation of customers to charging bands by DNO/IDNO Parties)

14.3 The following paragraphs have been added or amended:

- paragraph 4.2A has been amended to exclude HCULU sites from the limitation introduced by DCP 410 ([fairer re-assessment of the allocation of Final Demand Sites prior to subsequent price control periods](#)), meaning that when a HCULU site is assessed for the next price control period it will be assessed on the full 24 months of available data;
- paragraph 4.3 has been amended to require DNOs to allocate HCULU sites one band lower than they otherwise would have been allocated during the assessment for the next price control period, but no lower than band 1;
- paragraph 4.4 has been amended to require that:
 - a site can only be classed as a HCULU Site at a Customer's or Registrant's request; and
 - that a site that becomes classed as a HCULU Site will be reassessed for eligibility by the DNO/IDNO in the three months prior to the commencement of each price control period using the previous calendar year's data; and
- paragraph 4.5 has been amended for clarity.

Section 6 (exceptional circumstances)

14.4 The following paragraphs have been added or amended:

- paragraph 6.1 has been amended to add a 'High Capacity Usage, Low Utilisation' Final Demand Site to the list of criteria where a Final Demand Site may be reallocated to a different charging band;
- paragraph 6.2 has been amended to add a requirement for customers applying for 'High Capacity Usage, Low Utilisation' status to submit a signed letter from a company director (or

equivalent) on company headed paper, to confirm they would like to be considered a 'High Capacity Usage, Low Utilisation' Final Demand Site, explain why they are a 'High Capacity Usage, Low Utilisation' Final Demand Site, and to confirm that the site's MIC is appropriate to their business needs;

- paragraph 6.3A has been added to specify that a site lacking 12 consecutive calendar months of energised data will be eligible to be re-banded as a HCULU site only once 12 consecutive calendar months of energised data is available and that sites that require an annual allocation review will first be allocated to a standard charging band;
- paragraph 6.3B has been added to specify that an eligible site will be subject to charges or to a rebate for the difference between the charges backdated to the first day of the month following the application date;
- paragraph 6.3C has been added to introduce a transitional period within the first six months following the implementation of this CP and to define that the maximum period a site can be retrospectively re-banded and rebated for is 12 months prior to the implementation date of this CP;
- paragraph 6.4 has been amended to add additional clarity to the re-banding period;
- paragraph 6.4B has been added to allow a Customer or Registered Supplier to request that a site that has been classed as a HCULU site be returned to its standard charging band;
- paragraph 6.4C has been added to allow the DNO/IDNO Party to re-assess the eligibility of a site at any time using the most recent 12 months data; and
- paragraph 6.4D has been added to limit the number of applications a site may make for HCULU stats to one application per charging year, regardless of whether the Customer or Registrant changes in that time.

Section 6 (annual allocation review of new Final Demand Sites including those allocated based on no recorded data)

14.5 Paragraph 6.5 has been amended to exclude a newly connected site which has been classed as a HCULU site from the annual allocation review.

Section 8 (definitions)

14.6 Paragraph 8.2 has been amended to add a definition for 'High Capacity Usage, Low Utilisation' site.

Alternative Proposal 1 (retrospectivity with a maximum rebate back to 1 April 2023)

Section 6 (exceptional circumstances)

14.7 Paragraph 6.3C has been added to introduce a transitional period within the first six months following the implementation of this CP and to define that the maximum period a site can be retrospectively re-banded and rebated for is either to 12 months prior to the implementation date of this CP or, if the data shows it would have been eligible for it, to no earlier than 1 April 2023. The legal text is drafted in such a way that it refers to the end of the assessment period being no earlier than 1 April 2024,

however this has the effect desired in that rebates may therefore be backdated to no earlier than 1 April 2023.

Alternative Proposal 2 (no retrospectivity)

Section 6 (exceptional circumstances)

- 14.8 Paragraph 6.3C mentioned in the proposed solution and in alternative solution 1 has been removed, as no retrospective re-banding is proposed by this alternative solution.
- 14.9 Paragraph 6.3B has been added to specify and that an eligible site will be re-banded effective from the start of the next billing period following determination.
- 14.10 Paragraph 6.4 has been amended to exclude eligible HCULU sites from receiving rebates back to the application date.

15. Code Specific Matters

Reference Documents

- 14.11 The background to the development of this CP was discussed during the following meetings of the Distribution Charging Methodologies Development Group (DCMDG):
- [DCMDG Meeting 53](#); and
 - [DCMDG Meeting 55](#).
- 14.12 During these meetings, the topic of TCR impacts on customer sites with low consumption and high-capacity ratios was raised, with at least one customer being concerned that their business may no longer be viable due to the added costs of the TCR in conjunction with then existing current market conditions.

16. Recommendations

- 15.1 The Panel approved this Change Report on 19 February 2025. 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 this CP.
- 15.2 The Panel has recommended that this report is issued for voting and DCUSA Parties should consider whether they wish to submit views regarding this CP.

17. Attachments

- Attachment 1 – DCP 412 Legal Text (Original Proposal)
- Attachment 2 – DCP 412 Legal Text (Alternative Proposal 1)
- Attachment 3 – DCP 412 Legal Text (Alternative Proposal 2)
- Attachment 4 – DCP 412 Voting Form
- Attachment 5 – DCP 412 Consultation 1 Non-Confidential Responses & Working Group Comments
- Attachment 6 – DCP 412 Consultation 2 Non-Confidential Responses & Working Group Comments
- Attachment 7 – DCP 412 Two-Step Process Impact Assessment
- Attachment 8 – Panel Decision Regarding Legal Advice (re EU Regulation 2019/943)
- Attachment 9 – DCP 412 Change Proposal Form