

## FGO

### DSC TERMS AND CONDITIONS AND UNC - APPROACH TO TERMINATION FOR DSC DEFAULT

#### 1 Previous papers

- 1.1 A paper 'DSC – Default' (**June Paper**) was tabled and discussed at the 0565 Work Group meeting on 1 June 2016. An update paper which covered default was tabled and discussed at the 0565 Work Group meeting on 20 June 2016.
- 1.2 The purpose of this paper is to (i) identify the proposed approach on termination for default under the DSC, (ii) identify the proposed drafting to be included in the DSC and any changes to the UNC and (iii) allow an opportunity for comments on the drafting to enable completion of the DSC text and changes to the UNC in this area.

#### 2 Approach in DSC

- 2.1 The latest version of the DSC Terms and Conditions (Version 2.0) is on the JO website (see Supporting Business Documentation on the Modification 0565 page).
- 2.2 The DSC will identify the possibility a customer could be in default of the DSC due to (i) a failure to provide credit cover or for non-payment of CDSP charges or (ii) for a material breach of a non-financial DSC obligation.
- 2.3 It is proposed that (i) the Credit Policy Document (which forms part of the DSC) will identify the circumstances constituting a financial event of default. It is anticipated before CDSP can declare a financial DSC default it will obtain the prior approval of the Credit Committee. For (ii) the DSC Terms and Conditions will identify the circumstances constituting a non-financial DSC default (i.e. a material breach incapable of remedy or persistent breach).
- 2.4 The proposed DSC approach is therefore;
  - (a) for the Credit Policy Document and the DSC Terms and Conditions to provide that where the circumstances set out above occur (and where capable of remedy are not remedied) a DSC default will occur;
  - (b) for the CDSP to give notice of the DSC default to (i) the Transporters in the case of a shipper customer default and (ii) the Authority in the case of a Transporter customer default;
  - (c) not to include provisions allowing for termination of a customer by CDSP; and
  - (d) for a customer to cease to be a DSC party in the event it ceases to be a UNC party. The UNC and the DSC are linked, UNC parties must enter into and comply with the DSC; there is therefore logic in having a simple termination process.
- 2.5 The rationale for not providing for customer termination of the CDSP is the same as for not providing for shipper termination of a transporter under UNC. Further, the Contract Management Arrangements provide customers with a means of influencing CDSP performance of the DSC (and the 'mutual organisation' model means customers ultimately have the ability to change CDSP's management).
- 2.6 The DSC will therefore state that:

- (a) a party will cease to be a DSC customer (and cease to be a party to the DSC) if and when it ceases to be party to the UNC;
  - (b) a party which ceases to be a DSC customer will remain liable for all amounts payable in respect of periods prior to the date of termination and for any antecedent breaches.
- 2.7 Where a Transporter is in default of the DSC different rules are needed (as the UNC does not provide for Transporter termination). As noted, the approach will be around notification of the default by the CDSP to other customers and to the Authority.
- 2.8 The approach to default will be without prejudice to other provisions in the DSC which allow (i) the CDSP to take other actions in the event of a pending default, e.g. the suspension of Individual Customer Services and (ii) voluntary discontinuance under the DSC (in parallel with voluntary discontinuance under the UNC).

### **3 Approach in UNC**

- 3.1 TPD Section V4 deals with termination under the UNC.
- 3.2 The proposed UNC drafting approach is simply to add a DSC default to the list of circumstances following which the relevant Transporter may give a termination notice, following which the defaulting customer ceases to be a UNC party – and therefore also ceases to be a DSC party. Where this happens the Transporter will be required to notify the CDSP.

### **4 Issues to note**

- 4.1 Under UNC where a default occurs the Transporter may give a termination notice.
- 4.2 It is proposed that the same approach apply in relation to the giving of termination notice under the UNC following a DSC default and that the Transporter should not be required to give a termination notice (e.g. in the manner National Grid NTS is required to in the event of non-payment of energy balancing charges under TPD Section X).
- 4.3 It is felt such an approach is appropriate; the CDSP is not a UNC party, the UNC is in large part a transporter-shipper document and it is appropriate that any decision to terminate the UNC should be a Transporter decision, and not one made by CDSP (and one it would not necessarily want to make). It is therefore possible that notwithstanding a DSC default the defaulting customer will remain (in the absence of a Transporter giving a UNC termination notice) a UNC party and a DSC party.
- 4.4 In this respect it is worth noting:
- (a) the expectation is credit issues will arise in parallel under the UNC and the DSC, and Transporters and shippers concerns will be focussed on UNC remedies not DSC remedies (and therefore in almost all cases be fully aligned);
  - (b) the exposure of DSC parties to a share of unpaid CDSP charges is materially smaller in scale to exposure to unpaid energy balancing charges under UNC; and
  - (c) a situation may exist where a shipper customer has credit issues under the DSC, but not under the UNC. In such a situation it may be appropriate for the Transporter to keep the Credit Committee informed of any decision not to issue a termination notice

under the UNC following a DSC default– and perhaps also the Authority in certain circumstances.

**5 Actions**

- 5.1 Workgroup to provide comments (if any) on drafting for DSC and proposed approach to changes to UNC.