

FGO

DSC – DEFAULT

1 Introduction

1.1 The DSC will need to identify:

- (a) what happens when a core customer is in default of DSC payment obligations; and
- (b) other events which give rise to a default under the DSC.

1.2 This paper therefore sets out for discussion:

- (a) what sanctions should be available to the CDSP in the event of non (or late) payment of DSC charges by a core customer;
- (b) what should happen in the event of the occurrence of another event of default.

2 Payment default

2.1 As the CDSP is a mutual organisation and will set its charges to recover all its costs; therefore when a core customer fails to pay DSC charges the CDSP will recover the unpaid charges from other core customers ¹(analogous to the approach to the recovery of unpaid energy balancing charges under UNC).

2.2 It is therefore appropriate, to protect core customers, that the CDSP should have remedies under the DSC to act as a disincentive to non (or late) payment of DSC charges and to provide an actual remedy in the case of a payment default. A core customer should not be able to view payment of DSC charges as of lesser priority to payment of UNC charges.

2.3 Remedies available to the CDSP could include: ²

- (a) notifying [all Customers] of the identity of the Customer in payment default;
- (b) accelerating the due date for payment of future invoices;
- (c) charging interest for late payment;
- (d) requesting further security under DSC;
- (e) realising security required under the DSC;
- (f) suspending DSC services; and
- (g) termination in the event of continued non-payment.

2.4 Remedies at paragraph 2.3(a) – (d) are largely self explanatory, suspending services is discussed in paragraph 3 and termination in paragraph 4.

¹ Details of allocation of bad debt to be developed in Charging Methodology workstream

² Alternatively a default could be notified to a credit committee for consideration, established under the DSC (like the EBCC). For discussion. Key is the consistent application of remedies.

3 Suspension

- 3.1 In relation to suspension, under the credit arrangements in UNC (Section TPD V3) Transporters can refuse applications for System Capacity, System Capacity Transfers and System Capacity Assignments and reject Supply Point Nominations and Supply Point Confirmations when a shipper's indebtedness exceeds its credit limit.
- 3.2 It is understood the UNC rules on suspension have been effective in managing payment issues under UNC and it would seem appropriate the CDSP should be able to suspend equivalent services as a means of mitigating any increase in its (and therefore other core customers) exposure in the event of non-payment of DSC charges. It is for discussion which services should be capable of being suspended, however:
- (a) suspending SPA services by rejecting Supply Point Nominations, Supply Point Confirmations and Capacity Revision Applications Capacity would seem appropriate – this being no more than a continuation of the existing UNC approach;
 - (b) suspending Individual Customer Services or Bespoke Services would seem logical;
 - (c) expanding the CDSP's suspension rights to other Direct and Agency Services does not seem appropriate, as this might prejudice core customers and raise compliance/regulatory issues.
- 3.3 Also for discussion is the process to be followed where a right of suspension arises. There are a number of options³:
- (a) CDSP suspending services without the need to notify other Customers, so the CDSP will suspend services immediately after the suspension right is triggered;
 - (b) CDSP only suspending services with the approval of Transporters. ⁴To be effective the suspension would probably need to apply to all networks, so this option could involve the CDSP telling Transporters the right has been triggered and of its intention to start suspending services from a given date, and CDSP proceeding with to do so in the absence of an objection from a Transporter;
 - (c) CDSP only suspending services after notifying the UNCC, or other relevant committee, and following the agreement of that committee, to suspend services.
- 3.4 It is possible a Transporter might be in breach of payment obligations. While accelerating payments dates, charging interest, requesting further security or enforcing security might be appropriate it would be complex for CDSP to suspend services to Transporters (beyond any Individual Customer Services or Bespoke Services) and inevitably suspension would prejudice other core customers. The position is therefore analogous to that applying under the network codes, where shippers do not have remedies of that kind against transporters. It is suggested the most effective sanction would be CDSP notifying Customers of the Transporters (or IGTs) non-payment and/or for the CDSP to notify the Authority. It is the Authority who holds the ultimate sanction of licence revocation and if this was ever a threat it might be expected to have the desired result.

³ In all cases need to consider notification to the relevant transporter

⁴ Or perhaps following escalation to a credit committee,

3.5 One of the DSC Service Documents might comprise CDSP's policy for customer credit risk management and debt enforcement in relation to the DSC. The mutual nature of the CDSP requires policy in this area to be transparent. Core customers will require the CDSP to act in a fair and non-discriminatory manner when applying the policy and sanctions under the DSC. It will be this policy document which will set out requirements:

- (a) for establishing Customers credit limits;
- (b) calculating a Customer's indebtedness at any point in time;
- (c) for providing surety or security by Customers; and
- (d) for CDSP taking steps to recover unpaid DSC charges (and its associated costs), for realising surety or security provided by a defaulting Customer or requesting further security.⁵

3.6 Therefore the DSC invoicing and payment terms and credit requirements will need to be developed in conjunction with development of the credit policy document.

4 Default and termination

4.1 The DSC should include a provision dealing with the consequences of customer default. Again as an incentive to performance under the DSC.

4.2 An obvious starting point would be UNC in identifying events which might give rise to a Customer default and therefore a CDSP right of termination. The DSC could provide for Customer default in the event of:

- (a) non-payment of DSC charges by the due date for payment, and continued non-payment following notification by the CDSP requiring payment of the outstanding DSC charges;
- (b) failure to provide surety or security when required;
- (c) material breach of the DSC (either being capable of remedy and not remedied, or not capable of remedy); and
- (d) insolvency type situations.

4.3 In terms of the approach to DSC termination the principles would be as follows:

- (a) the DSC will not contain provisions allowing for termination of a Customer by the CDSP;⁶
- (b) a party to the DSC will automatically cease to be a party to the DSC should it cease to be party under the UNC (in each case with effect from the same date);
- (c) the UNC would include, as an event of default by shipper, a default under the DSC (i.e. the occurrence of one of the events listed in paragraph 4.2).

⁵ And in relation to the establishment and role of a credit committee.

⁶ Pre-termination remedies would still apply, e.g. suspension of services.

4.4 The DSC will therefore state that:

- (a) a party will cease to be a DSC Customer (and cease to be party to the DSC) if, and only if, and at the same time that, it ceases to be a Party to the UNC (i.e. when it is no longer a party under any network code);
- (b) a party which ceases to be a DSC Customer will remain liable for amounts payable in respect of periods before the effective date of termination and for any antecedent breach (equivalent to the current requirement in TPD Section V4.2.5).

End