

Modification Proposal 0640S

Commentary on Legal Text

Section V 5.3.5 provides that “Confidentiality as between a Party or Parties and the CDSP is governed by the DSC and not the Code”. Accordingly, the CDSP’s entitlement to disclose data has not been added to V5.5.3 as a new exception to the Transporter’s general duty of confidentiality. Instead a new section V 5.18 has been inserted so (when the Modification Proposal takes effect) the disclosure becomes permissible under existing DSC rules.

V5.18.1 defines the information that may be disclosed (“Supply Point Premises Data”). The identity of LDZ operators has not been included in this data as it is not Protected Information. The Modification Proposal refers to a Smart Meter Technical Code as well as a meter mechanism code. As the Smart Meter Technical Code is not referred to at Annex M1 to Section M or any of the Annexes to Section V, it is assumed that for Smart Meters the two code are in fact the same.

V5.18.2 creates, for the purposes of the DSC (specifically condition 9.2(a) of the DSC Terms and Conditions which creates an exception to the CDSP’s duty of confidentiality in respect of information disclosed for the purposes of performing its obligations and exercising its rights under or in connection with the UNC), an entitlement for the CDSP to disclose “Supply Point Premises Data” to suppliers, where this is done pursuant to a Third Party Services agreement which complies with the DSC Third Party and Additional Services Policy, and which includes provisions restricting the circumstances in which the information can be requested and used and limiting onwards disclosure.

The DSC Third Party and Additional Services Policy is referenced because the DSC requires any Third Party Service agreement to be compliant with that policy. Reference is made to the CDSP being entitled to treat Users as having agreed to the disclosure of information pursuant to such agreement because paragraph 2.3.1(c) of the policy provides that the CDSP may only provide a Third Party Service if at the time the CDSP enters into the agreement the CDSP is satisfied that the provision of the Third Party Service will not involve the disclosure of Confidential Information without the consent of the relevant Customer (User). The entitlement to treat Users as having consented to disclosure is by virtue of GTD 1.7.2(d) a CDSP-Related Provision which the CDSP is entitled to rely on by virtue of Condition 3.5 of the DSC Terms and Conditions.

As well as providing that the information may be requested by the supplier in connection with a gas supply contract between it and the owner or occupier of premises, in line with the solution proposed in section 5 of the Modification Proposal, V5.18(2)(b) addresses the problem identified in section 3 of the Modification Proposal by permitting the disclosure of the information where the owner or occupier of the premises has authorised the supplier to obtain it for the purposes of offering terms of supply. The purpose of the Modification Proposal is to assist prospective suppliers of consumers who are seeking to switch, not just the suppliers of consumers who have already decided to do so.

GTC 2.9.2(b) states that a reference in the Code to a “supplier” (with a small s) is a reference to “a person who supplies to premises gas offtaken from the Total System”. Consequently it is not necessary to introduce, as suggested by the Modification Proposal, a new defined term for a supplier which is the prospective supplier of Supply Point Premises.

V5.18.3 imposes an obligation on the CDSP to report annually on those suppliers which are party to contracts with the CDSP for the provision of Supply Point Premises Data. This

reporting requirement is a Non-Service Function of the CDSP by virtue of GTD Section 1.7.1, which provides that such functions are those assigned to the CDSP in the Code which are not specified as CDSP Services in, or pursuant to, the CDSP Service Description. Condition 3.4 of the DSC Terms and Conditions requires the CDSP to perform the Non-Service Functions of the CDSP. As a result, the reporting obligations will become a binding obligation as between the CDSP and its customers under the DSC.

The relationship between the DSC and the UNC is complex. Parties to the UNC may wish to consider whether the creation of new rights for the CDSP (in this case the right to disclose data to suppliers) and the imposition of new obligations (in this case to report on the suppliers whom have contracted to receive the data) might be more appropriately be dealt with by modifying the DSC Terms and Conditions and the DSC Third Party and Additional Services Policy. It would be sensible to consider whether comparable CDSP obligations and entitlements, for example, at sections TPD V5.5.3(m), V5.11 and V5.15 to V5.17 and now 5.18, or elsewhere in the UNC, should be moved from the UNC to the DSC.