

Proposed variation:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP046 A and DCP046 B: Common Distribution Charging Methodologies Governance</b>		
Decision:	Reject – DCP046A Accept – DCP046B		
Target audience:	Parties to the DCUSA and other interested Parties		
Date of publication:	18 December 2009	Implementation Date:	1 January 2010

## Background to the proposed variation

As part of our work to introduce more cost reflective common charging arrangements, we have also, since last summer, been looking to introduce new governance arrangements<sup>1</sup>. Under the current arrangements only host Distribution Network Operators (DNOs) can raise change proposals to charging methodologies and there is no formal obligation on DNOs to consult with industry parties concerning changes. To oblige the DNOs to develop more accountable, transparent and accessible governance arrangements, in July 2009 and October 2009 we introduced new conditions to the distribution licence requiring the DNOs to implement new arrangements in conjunction with the implementation of the new Common Distribution Charging Methodology (CDCM)<sup>2</sup> and Extra High Voltage Distribution Charging Methodology (EDCM)<sup>3</sup>.

Under Standard Licence Conditions (SLC) 50 and 50A DNOs are obliged to develop and bring forward to the Authority for approval, new arrangements for handling modification proposals to the CDCM and EDCM. Part F of both conditions concerns the core features of the new arrangements and among other things includes the requirement that the arrangements must provide for the licensee to meet periodically to discuss any necessary or further development of the charging methodologies with other DNOs, other Authorised Electricity Operators, and any other persons whose interests are materially affected by the methodologies. The arrangements must also provide for a process by which any such party can raise a modification proposal to them. In October we also introduced SLC 22A. SLC 22A principally concerns the governance structure under which the arrangements for handling modification proposals should sit, and obliges licence holders to ensure that the CDCM and the EDCM are incorporated within the DCUSA from 1 April 2010 and 1 April 2011 respectively.

## The proposed variation

The proposed variation seeks to modify the DCUSA such that, in anticipation of the formal incorporation of the CDCM and the EDCM within the agreement, the DCUSA is capable of effectively handling modification proposals to the methodologies in a manner which is compatible with the requirements of SLC 50, SLC 50A and SLC 22A. The effect of the proposed variation would be to provide any DCUSA party and, with the written consent of the Authority, any person materially affected by the CDCM or the EDCM, with

<sup>1</sup>[http://www.ofgem.gov.uk/Networks/ElecDist/Policy/DistChrgs/Documents1/FINAL%20July%20consultation%20letter\\_22\\_07\\_08.pdf](http://www.ofgem.gov.uk/Networks/ElecDist/Policy/DistChrgs/Documents1/FINAL%20July%20consultation%20letter_22_07_08.pdf) : Delivering the Electricity Structure of Charges Project, 104/08, Ofgem, 22 July 2008.

<sup>2</sup> Under SLC 50 those licensees who are distribution services providers were obliged to submit the CDCM to the Authority for approval by 1 September 2009. Under the Common Methodology Group (CMG) the DNOs made their submission on 20 August 2009. Following consultation in October, on 20 November the Authority published a conditional approval of the CDCM effective from 31 December 2009. The CDCM is scheduled for implementation under SLC 13A on 1 April 2010.

<sup>3</sup> Under SLC 50A those licensees who are distribution services providers are obliged to submit an EDCM to the Authority for approval by 1 September 2010. Under SLC 50A DNOs can choose to develop and implement one of two methodologies at EHV level. Notwithstanding the Authority's decision to approve the methodology, the EDCM is scheduled for implementation under SLC 13B on 1 April 2011.

the ability to formally raise and have modification proposals to either methodology consulted on and referred to the Authority for decision. The proposed variation does not of itself seek to achieve the formal incorporation of the methodologies within the DCUSA. Following the Authority's decision to approve implementation of the CDCM from 1 April 2010 it will be necessary for a further proposed variation to be raised in the early part of 2010 to achieve formal incorporation of the CDCM by 1 April 2010. A further proposal will require to be raised later in 2010 to achieve formal incorporation of the EDCM should the Authority decide to approve implementation of that methodology.

The proposed variation includes among other consequential changes:

- the proposed insertion at Clause 1 of a definition of Charging Methodologies and Charging Objectives specific to the CDCM and EDCM;
- the proposed insertion at Clause 3.2 of a set of Charging Objectives specific to Charging Methodologies as set out in SLC 22A;
- the inclusion at Clause 10.2.4 of a clarification setting out that those persons or bodies that may from time to time be designated a DCUSA party in writing by the Authority may include, in respect of a Charging Methodology, any person whose interests are materially affected by that Charging Methodology;
- the inclusion at Clause 11.14.1, concerning the obligations on a DCUSA Working Group to consult interested third Parties on change proposals, a clarification that in respect of Charging Methodology proposals, third Parties shall include any person whose interests the Working Group identifies as being materially affected by a Charging Methodology;
- the inclusion at Clause 11.14.3, concerning the obligations on a DCUSA Working Group in evaluating, developing and refining a proposed variation, the requirement that in undertaking such evaluation, the Working Group shall have regard to the ability of the Authority to veto any Change Proposal that appears to the Authority to have as its purpose or effect the full or substantial substitution of one Charging Methodology for another; and
- the inclusion at Clause 11.14.4, concerning the obligations on a DCUSA Working Group to evaluate the likely impact of the proposed date for implementation of a variation, the requirement that in undertaking such evaluation, the Working Group shall have regard to the obligations of DNO Parties under the DCUSA, and under their Distribution Licences, regarding the frequency of changes to Use of System Charges, and regarding the notice to be given in advance of such changes.

The proposed variation has two alternatives: DCP046A and DCP046B. The difference between the alternatives relates solely to the Change Decision procedure proposed at Clause 13.10. DCP046A requires that the Authority's decision on a proposed variation is to veto or non-veto the Parties' recommendation on a proposal. Under DCP046B the Authority's decision applies to the proposal itself.

## **Recommendation**

In the final Change Declaration, dated 20 November 2009, the Parties recommended to the Authority that both DCP046A and DCP046B be rejected.

In the responses to the consultation on the proposal each of the respondents considered that both DCP046A and DCP046B better facilitated the achievement of the relevant DCUSA objectives. However where there is more than one alternative to a proposed variation, Parties can vote in favour of one alternative only. Because Parties were split between DCP046A and DCP046B, in respect of each Party Category that was eligible to vote on both alternatives, the sum of the Weighted Votes of the Groups in that Party Category which voted to accept the change solution was not more than 50 per cent in all Categories.

The implementation date of the proposed variation, 1 January or 10 working days following the Authority's consent, was supported by all DCUSA Parties who voted.

### **The Authority's decision**

The Authority has considered the issues raised by DCP046A and DCP046B, taking into account the responses to the Secretariat's<sup>4</sup> consultation, which are attached to the Change Declaration<sup>5</sup>, and the recommendations of the DCUSA Parties. The Authority has concluded that:

1. **implementation of proposed variation DCP046B will better facilitate the achievement of the Applicable DCUSA Objectives<sup>6</sup>; and**
2. **directing that proposed variation DCP046B be made is consistent with the Authority's principal objective and statutory duties<sup>7</sup>.**

### **Reasons for the Authority's decision**

Our July 2009 document, 'Delivering the electricity structure of charges project: decision on extra high voltage charging and governance arrangements' comprehensively explains our views on the need for more accountable, accessible and transparent governance arrangements for EHV and HV/LV distribution use of system charging methodologies. The document also explains the reasons for our decision to oblige the DNOs to incorporate the CDCM and EDCM within the DCUSA such that the new methodologies are subject to the change control procedures of that agreement. In our view, subjecting the common charging methodologies to the governance and change control mechanisms of the DCUSA will ensure that the methodologies are responsive to the needs of current and future network users and are capable of modification if appropriate from the time of their implementation.

---

<sup>4</sup> The role, functions, and responsibilities of the Secretariat are set out in Section 1B of the DCUSA.

<sup>5</sup> DCUSA change proposals, change reports and representations can be viewed on the DCUSA website at <http://dcusa.co.uk/Public/Default.aspx>.

<sup>6</sup> The Applicable DCUSA Objectives are these:

- (a) the development, maintenance and operation by the licensee of an efficient, co-ordinated, and economical Distribution System;
- (b) the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution, and purchase of electricity;
- (c) the efficient discharge by the licensee of the obligations imposed upon it by this licence; and
- (d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements.

<sup>7</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989, Gas Act 1986, Utilities Act 2000, Competition Act 1998, Enterprise Act 2002 and the Energy Act 2004 as well as arising from directly effective E.C legislation.

By proposing a number of relatively small changes to Section 1C - 'Change Control' of the DCUSA, the proposed variation would successfully customise the agreement such that it is fully able to deal with change proposals to the CDCM and EDCM following their incorporation. For this reason we consider that the proposed variation primarily facilitates achievement of relevant objective (c): the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences.

We set out our views on the extent to which the proposed variation meets each of the relevant objectives below. We also outline why in our view variation DCP046B better facilitates achievement of relevant objective (c) than DCP046A.

*(a) the development, maintenance and operation by the licensee of an efficient, co-ordinated, and economical Distribution System;*

In the responses to the Panel consultation on the proposed variation a number of Parties considered that the proposal (both variations) facilitated achievement of relevant objective (a) on the grounds that allowing DCUSA parties and designated parties to raise proposals could lead to charging methodology modifications which resulted in more economical network investment. We consider that the proposed variation may lead to such proposals being raised but we do not consider that it facilitates the efficient, coordinated and economic development of the Distribution System in and of itself as this proposal only seeks to ensure that the modification framework is fit for purpose.

*(b) the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution, and purchase of electricity;*

Some respondents to the Panel consultation considered that the proposal (both variations) better facilitated achievement of relevant objective (b) on the grounds that the greater accessibility of the new charging methodology governance arrangements would lead to competition issues being addressed in a more transparent manner. We consider that the ability of DCUSA parties and designated parties to raise proposals and have proposals consulted on may lead to proposals being raised which better facilitate competition but we do not consider that the proposed variation facilitates effective competition in and of itself as this proposal only seeks to ensure that the modification framework is fit for purpose.

*(c) the efficient discharge by the licensee of the obligations imposed upon it by this licence;*

Under Part F of SLC 50<sup>8</sup> and Part F of SLC 50A<sup>9</sup> DNOs are obliged to develop arrangements for handling modification proposals in relation to the CDCM and EDCM which include among other things: provision for the licensee to meet periodically with other DNOs, other industry parties and any other persons materially affected by the

---

<sup>8</sup> The full text of SLC 50 is available from the following location on Ofgem's website:  
<http://www.ofgem.gov.uk/Licensing/Work/Notices/ModNotice/Documents1/Modification%20Direction%20and%20Reasons%20for%20Modification2.pdf>

<sup>9</sup> The full text of SLC 50A and SLC 22A is available from the following location on Ofgem's  
<http://www.ofgem.gov.uk/Licensing/Work/Notices/ModNotice/Documents1/Implementation%20Notice%20CLM%20proposal%2091%2009.pdf>

methodologies for the purpose of discussing the methodologies' further development; provision for charging methodology modification proposals from DNOs, other industry parties and any other persons materially affected by the methodologies to be received and consulted on; and provision for a report on any such charging methodology modification proposal to be submitted to the Authority that sets out a timetable for implementing the modification if it were to be made.

Further, under SLC 22A, among other things, licensees are obliged to ensure at SLC 22A.11 that such modifications of the DCUSA as are required for the purpose of incorporation of the methodologies are made in sufficient time to ensure that the CDCM and the EDCM are incorporated into the DCUSA with full effect from their incorporation dates; at SLC 22A.13 that the arrangements for which the DCUSA makes provision under SLC 22 in relation to the governance, administration, and modification of the DCUSA are to apply equally to the CDCM and the EDCM; and at SLC22A.14 that the arrangements must ensure that every modification proposal raised under the DCUSA in relation to a relevant charging methodology will be assessed by reference to the Applicable Charging Methodology Objectives specified in condition 22A, and not the Applicable DCUSA Objectives specified in standard condition 22.

In our view the proposal to create a specific definition of Charging Methodologies within Clause 1 of the DCUSA and the specific reference of a set of Charging Methodology Objectives at Clause 3.2 would better facilitate the efficient discharge of the licence obligations contained in SLC 22A.11, SLC 22A.13 and SLC 22A.14. The changes seek to customise the DCUSA in order to make it capable of formally receiving modification proposals to the CDCM and the EDCM from the time of their formal incorporation, and to ensure that any such modification proposals are subject to the existing DCUSA change control procedure. In so doing, taken together with the changes proposed at Clause 10.2.4 and Clause 11.14.1 concerning parties who may raise proposals and be consulted upon concerning proposals, the proposed variation would also better facilitate the efficient discharge of the more general licence obligations imposed on DNOs concerning receiving, consulting and reporting on proposals from non-DNO parties described under Part F of SLC 50 and SLC 50A.

#### *Difference between proposed variation DCP046A and proposed variation DCP046B*

The difference between DCP046A and DCP046B relates solely to the proposed variation at Clause 13.10. Clause 13.10 relates to the Change Decision procedure applying to proposals after they are referred to the Authority for decision.

#### **DCP046A**

Under DCP046A Clause 13.10 specifies that (i) where the Parties are deemed to have recommended to the Authority that the proposal should be accepted, the proposal shall be accepted unless within 28 calendar days of receipt (or within 3 months from the date of the Authority's notice that it intends to consult) the Authority has directed that the proposal is not to be accepted, and that (ii) where the Parties are deemed to have recommended to the Authority that the proposal should be rejected, the proposal shall be rejected unless within 28 calendar days (or within 3 months from the date of the Authority's notice that it intends to consult) the Authority has directed that the proposal is to be accepted.

DCP046A Clause 13.10 provides that the Authority's non-veto (acquiescence) in respect of a charging methodology proposal constitutes giving or refusal of consent in respect of the

proposal which is in accordance with the Parties' recommendation. In our view requiring that the Authority's decision refer to the Parties' recommendation rather than the proposal implies a change to the DCUSA Part One Change decision procedure which was not anticipated or prescribed in the drafting of SLC 50, SLC 50A or SLC 22A. SLC 22A.13 states that all of the arrangements for which the DCUSA makes provision under standard condition 22 in relation to the governance, administration, and modification of the DCUSA are to apply equally to the Relevant Charging Methodology with effect from its incorporation date. In our view SLC 22A requires that the modification arrangements applying to the CDCM and EDCM following their incorporation within the DCUSA be as consistent with the existing DCUSA modification arrangements as possible.

We also consider that the Change decision procedure of DCP046A Clause 13.10 could be potentially confusing for parties unfamiliar with the DCUSA. Under DCP046A where the Parties' recommendation is to reject, the Authority would have to make a veto decision to see a proposal implemented. It is possible that the Authority could clarify the intended consequence of its veto in this circumstance, but this potential double negative approach does not appear to improve the transparency and accessibility of the code.

### **DCP046B**

Under DCP046B Clause 13.10 specifies that a change proposal shall be accepted, notwithstanding the Parties recommendation, unless within 28 calendar days (or within 3 months from the date of the Authority's notice that it intends to consult) the Authority has directed that the proposal is not to be accepted. This drafting means that the Authority's decision will refer directly to the change proposal in a manner consistent with existing DCUSA Part One Change decision procedure. We therefore consider that DCP046B facilitates the discharge of the obligations in SLC 22A that the existing governance, administration, and modification procedure of the DCUSA should apply equally to the CDCM and EDCM. In this regard we consider that DCP046B better facilitates achievement of the efficient discharge by the licensee of the obligations imposed upon it by the distribution licence than DCP046A.

In the responses to the consultation on the proposed variation a number of Parties considered that DCP046B could increase the risk that inappropriate proposals which had rightly been recommended for rejection by the Parties were implemented because the Authority had failed to veto them within 28 days. We recognise that this hypothetical risk applies more to DCP046B than DCP046A, but we note that the Authority currently manages this risk under the existing Charging Methodology modification procedure under SLC 13. Further it is our expressed intention under DCP046B that where we consider a proposal should be implemented, we will put our non-veto decision in writing. The risk that a proposed variation could be missed by the Authority and could be implemented by default seems relatively low, but we further note that an emergency proposal could be raised to reverse the scheduled implementation of an inappropriate proposal.

### *Appeals of the Authority's decisions under Section 173 of the Energy Act*

Section 173 of the Energy Act 2004 allows certain Authority decisions to be appealed to the Competition Commission (CC). Under the Electricity and Gas Appeals (Designation and Exclusion) Order 2009, the DCUSA is designated for the purposes of section 173, but the decision can only be appealed under this section if, among other things, the decision consists in the giving or refusal of a consent.

In developing the proposed variation, the DCP046 working group considered whether a non-veto decision from the Authority could be considered to be a giving of consent. They concluded that there was some uncertainty as to whether this would be the case and therefore some uncertainty as to whether such a decision would be appealable under the Energy Act in the event that it was counter to the Parties' recommendation on a given proposal.

The working group was satisfied that a veto decision from the Authority was clearly the refusal of a consent and that since under DCP046A a non-veto decision from the Authority would have the effect of endorsing the Parties' recommendation the importance of the appeals mechanism under this scenario would not be material. However, under DCP046B a non-veto from the Authority would have the effect of approving implementation of a proposal and therefore where the Parties had recommended the proposal be rejected the ability to appeal the decision would be material. A number of the Parties who voted in favour of DCP046A did so as a consequence of the perceived greater certainty of the appeals route under this option. They considered that the potential uncertainty of the appeals route under DCP046B meant that A relative to B better facilitated relevant objective (c) on the assumption that it was the Authority's intention in introducing SLC 22A that its decision to veto or non-veto should be appealable.

By introducing the obligation on licence holders under SLC 22A to ensure that the CDCM and the EDCM are incorporated within the DCUSA from 1 April 2010 and 1 April 2011 respectively, it was and remains the Authority's intention that its decisions concerning charging methodology proposals should be appealable to the CC, where appropriate, under Section 173 of the Energy Act. In our view the veto/non-veto decision making mechanism as set out in SLC 13 and anticipated by SLC 13A and SLC13B does have the effect of giving or refusing a consent and therefore is a decision. Further, and to provide additional clarity, it is our intention under DCP046B that where we consider a proposal should be implemented, we will put our non-veto decision in writing. Given these assurances we consider that DCP046B better facilitates the efficient discharge by the licensee of the obligations imposed upon it by the distribution licence as compared to DCP046A.

*(d) - the promotion of efficiency in the implementation and administration of the DCUSA arrangements.*

In casting their vote on the proposed variation some Parties commented that DCP046B may be detrimental to Relevant Objective (d) relative to DCP046A on the grounds that Clause 13.10 of DCP046B would render the Parties' recommendation less important and that this would discourage Parties from constructively engaging in Working Group processes. We do not consider that this argument is well founded. In reaching its decision on all Part One DCUSA matters the Authority is obliged to take account of and values the recommendation of the DCUSA Parties. This will remain the case irrespective of whether DCP046A or DCP046B is approved. Further, we note that the Parties' recommendation will have equal significance under both proposals with regard to the ability of Parties to appeals the Authority's decisions under Condition 173 of the Energy Act. Parties will continue to be able to appeal the Authority's decision where it differs from the recommendation of the Parties.

In our view the proposed variation introduces new powers and responsibilities to the DCUSA. We consider that the benefits of the proposal in terms of the improved accountability, accessibility and transparency of the modification arrangements applying

to the CDCM and EDCM will provide benefits which justify these increased obligations. Further, we note that the proposal makes the changes to the DCUSA necessary to prepare the agreement for handling change proposals to the CDCM and EDCM following their incorporation. Given that incorporation of the methodologies is required under licence, we consider that these changes facilitate the promotion of efficiency in the administration of the DCUSA arrangements.

### **Decision notice**

In accordance with Standard Condition 22 of the Distribution Licence, the Authority hereby directs that the proposed variation set out in DCP046B: 'Common Distribution Charging Methodologies Governance' be made.

**Rachel Fletcher**  
**Director, Distribution**

Signed on behalf of the Authority and authorised for that purpose.