

DCUSA CHANGE REPORT	
CHANGE PROPOSAL	DCP 033 – Connection Terms
DATE OF ISSUE	22 July 2010
ISSUED TO	DCUSA Contract Managers
PARTIES ENTITLED TO VOTE	DNO and IDNO Parties
RETURN DEADLINE (Voting End Date)	15 September 2010 – DCUSA@electralink.co.uk

1 PURPOSE

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA. The Change Report details DCP 033 – Connection Terms. 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.
- 1.2 Parties are invited to consider the proposed amendment attached as Appendix A and submit votes using the form attached as Appendix B to dcusa@electralink.co.uk by 15 September 2010.

2 SUMMARY

- 2.1 Under the auspices of the ENA, the DNOs have considered developing a common form of connection agreement that they could use in order that there would be consistency for customers with connections to different distributors. EDF Energy Networks suggested that a means to do this would be by updating the National Terms of Connection via a DCUSA proposal. The DNOs then worked together to draft a single set of connection terms incorporating the best practice of each and DCP 033 was raised by EDF Energy Networks to implement these as new standard terms. The terms first proposed under DCP 033 have subsequently been developed by the DCP 033 Working Group through consultation with all DCUSA Parties, Consumer Focus, other consumer representatives and impacted industry participants. The proposed implementation date is 04 November 2010 subject to Authority approval by 29 October 2010, or failing that, the first practicable date following Authority approval.

3 DCP 033 – CONNECTION TERMS

- 3.1 The DCUSA Panel considered DCP 033 at its meeting on 20 August 2008. The Panel determined that the CP was a non-urgent Part One change that should be progressed through the Definition Procedure to allow a Working Group to assess and develop the drafting.
- 3.2 DCP 033 seeks to amend the existing Connection Terms within Schedule 2B of the DCUSA. Schedule 2B sets out the content of the National Terms of Connection, which is then replicated on the website www.connectionterms.co.uk.
- 3.3 When a customer signs a contract for the supply or purchase of electricity, that contract will have a clause in it by which the customer also agrees to be bound by the National Terms of Connection (NTC), as stated on the website, between himself and the Distributor.
- 3.4 However, Distributors typically put site-specific bi-lateral connection agreements in place with larger customers which govern the ongoing use of the connection in replacement of the NTC. The original drafting of the connection agreements currently in use by DNOs was based on a standard proforma which was jointly developed and adopted by all DNOs. Over time the proforma has evolved and been developed individually by each DNO. However, the connection agreements used by most Distributors for large customers contain similar terms and conditions.
- 3.5 DCP 033 seeks to introduce those 'boilerplate' terms into the NTC so that the National Terms are better suited to each size of customer and to

unmetered customers and to give transparency to such larger customers of the generic connection terms that Distributors wish to enter into with them.

- 3.6 Under the current process large customers receive terms which run to 40 or 50 pages. By introducing these terms into the NTC there is the opportunity to reduce the administrative burden of managing different sets of terms and increased consistency and transparency for customers.

4 DCP 033 – WORKING GROUP

- 4.1 The DCUSA Panel established a Working Group to review DCP 033. Membership of the Working Group consisted of 8 of the 14 DNOs, 2 IDNO representatives, 1 supplier representative, industry experts representing ELEXON, DCUSA legal counsel and Ofgem¹.
- 4.2 The DCP 033 Working Group Terms of Reference tasked the group with considering the issues raised and considering whether the proposal identified better facilitates achievement of the applicable DCUSA Objectives. The Working Group was asked to assess the common set of terms developed by all DNOs under the remit of the Energy Networks Association (ENA) which had been based on current best practice.
- 4.3 The Working Group understood that the key principle of the CP was not to seek to introduce new terms but rather to consolidate and standardise the existing connection agreements. The Working Group considered that any substantive changes could be raised against the NTC once implemented in the DCUSA. This would ensure that the proposals would be assessed under a robust and transparent change mechanism and, subject to approval, be implemented individually.
- 4.4 The Working Group met on 15 occasions from September 2008 – June 2010 and carried out 3 consultations to deliver these requirements.

5 CONSULTATION WITH INTERESTED PARTIES

- 5.1 Three separate consultations have been carried out in relation to DCP 033. Responses to each consultation have been assessed and considered by the Working Group and have driven further drafting changes. Issues identified as a result of each consultation are outlined in section 5 of this document.
- 5.2 The first consultation was issued to DCUSA Contract Managers on the 30 March 2009. The purpose of this consultation was to consider the key principles and content of the proposed NTC. Consultation responses resulted in a number of changes to the drafting. A summary of the responses are attached under Appendix C.
- 5.3 A second consultation was issued to DCUSA Distributor Parties, Ofgem, Consumer Focus, ELEXON (UMS User Group), and other Interested Parties (e.g. the AMO) in September 2009. The purpose of this consultation was for a wider number of industry participants, such as Consumer Focus and other interested Parties, to consider the principles and content of the drafting which had been updated following the first consultation. A summary of the responses are attached under Appendix D.

¹ Ofgem was invited to participate in the Working Group at the request of the Panel due to the impact of the Change Proposal on customers.

- 5.4 The final consultation was issued to DCUSA Parties and consumers at the request of Ofgem and was published on the DCUSA website. The primary purpose of this consultation was to engage with large customers to gather their views on the proposed NTC, to seek confirmation that the proposed terms were fit for purpose and to ensure that the proposed drafting properly reflects Distributors' current terms. A summary of the responses are attached under Appendix E.
- 5.5 The final consultation included two comparison documents showing the proposed new terms for metered and unmetered customers alongside the existing terms of EDF Energy Networks and Western Power Distribution. These documents, developed by DCUSA's Legal Counsel sought to demonstrate that the proposed new terms were not materially different to those already in place. These comparison documents are within the papers in Appendix D.
- 5.6 The final consultation also sought views on the Working Group's position of maintaining the status quo as a baseline – i.e. not seeking to introduce new terms at this time – but asked Parties to indicate any future changes that Customers would like to see made to the terms once a baseline is established through this process.

6 DCP 033 KEY ISSUES

- 6.1 The following key issues have been identified and addressed through the assessment of the proposal:

Division of Sections 1, 2, 3 and 4

- 6.2 The drafting is divided into the following 4 sections. Section 1 applies to all users. Sections 2 - 4 each apply depending on the category of the user's connection:
- Section 1 - Introductory text which applies to each of the sections equally
 - Section 2 – Whole Current Metered (typically domestic properties and small industrial and commercial properties)
 - Section 3 – Current Transformers (C/T) (typically large industrial and commercial properties)
 - Section 4 – Unmetered (typically street lighting)
- 6.3 The Working Group considers that drafting the terms in this way will allow users to easily identify the section that applies to them based on physical characteristics rather than variable ones such as agreed capacity or domestic/non-domestic.

Inclusion of Unmetered Supply

- 6.4 In response to the initial consultation, the Electricity Networks Company questioned the appropriateness of including Unmetered Supply in the NTC. The Working Group concluded that as the current connection agreements include UMS, that the national terms could apply to UMS and in keeping with its intent not to substantively change the nature of the agreements,

UMS is within the scope of the terms and had been included in the original proposal for DCP 033.

Application of the NTC pursuant to section 21 of the Electricity Act 1989

- 6.5 In response to the first consultation, EDF Energy Networks suggested that the NTC should include clear reference that the terms were agreed pursuant to s21 of the Electricity Act and hence were statutory in nature. This was intended to overcome a failure of the current contractual terms to cover both owners and occupiers, particularly where one but not the other, or neither, is the contracted party via the supply contract (e.g. where facilities management companies are involved). In such cases there would be no terms between Parties who could impact each other. Although there was support for this among the Working Group, EDF Energy felt that the status quo of these terms being contractual was a better way forward for the group and subsequently suggested that this matter could be dealt with by attempting to amend the Energy Bill to clarify the legal position while retaining the ability to propose a subsequent modification to the NTC if such attempts fail. Therefore the NTC drafting for this change proposal does not include any reference to the terms being statutory. However the terms do seek to address the concern about owners and occupiers by making reference to them applying to other premises of the customer.

Impact on Suppliers

- 6.6 The Working Group considers that there will be no material impact on Suppliers as a result of this CP as the mechanism by which the NTC is referenced in supplier contracts is unaltered.

Impact on Consumers

- 6.7 The Working Group considers that the changes will have a positive impact in increased consistency and transparency for customers. At present all domestic or small electricity consumers have standard national terms of connection in place with Distributors. Larger consumers typically each have individual bi-lateral agreements in place or, where no bi-lateral terms have been agreed, the standard national connection terms apply by default but it is considered that the default terms are not well suited to these larger customers.
- 6.8 The Working group believes that bi-lateral connection agreements used by most Distributors for large customers contain effectively the same terms and conditions. DCP 033 therefore seeks to incorporate those into the standard NTC and the proposal does not seek to substantively alter the current drafting used for the bi-lateral agreements. It is considered that this change will give greater transparency to such customers of the generic connection terms that Distributors wish to enter into with them.
- 6.9 The proposal will not impact consumers with existing bi-lateral agreements which will remain in place. However for new consumers and those consumers using the default standard terms it will make them more relevant and easier to understand.
- 6.10 DCP 033 has been issued to Consumer Focus as part of the consultation process. Although Consumer Focus chose not to respond formally to the consultation it stated that it shares the view of the Working Group that

proposed changes will not be detrimental to customers and in fact will have a positive impact and result in increased consistency and transparency.

Notice of changes to the National Terms of Connection

- 6.11 Should the proposal be accepted, a notification that changes have been made to the NTC must be published in the national press and the new terms put onto the National Terms website. If Authority consent is received before 25 October 2010 there will be sufficient time to give the required notice and implement the change in the November release. If consent is granted after 25 October, DCP 033 will be implemented as soon as practicable considering the need to arrange such publication.

Application of English / Scottish Law

- 6.12 During the consultation process the Working Group received comments from both Scottish Power Distribution and SSE Distribution querying the application of Scottish Law under the proposed terms and the changes made to reflect these were commented on in a later consultation by the Electricity Network Company. The Working Group has amended the drafting to refer to the Distributor and location of the customers' connection to determine the applicable governing law.

Inclusion of Generation in UMS

- 6.13 A number of Parties questioned whether it is appropriate to include export generation in the unmetered supplies section of the NTC. The Working Group considers that there are circumstances in which physical export could occur at unmetered sites – e.g. solar powered road signals. Although the level is unlikely to impact Settlement (and as such is not recognised under the BSC) the Working Group considers that it is appropriate to recognise it in the NTC. However the drafting takes account of the BSC UMS procedures.

Interaction with BCAs – how the mechanism could work

- 6.14 Where companies already have BCAs with customers, those are not replaced by the NTC. Where companies wish to enter into new BCAs with customers they may do so. Such BCAs will then apply instead of the NTC. The Change Proposal includes a model form of BCA that will be held within the DCUSA for information only but which is optional for companies to use. The intent is that companies could use this form of BCA for site specific details and use it to reference a section of the NTC which will form the terms and conditions of the BCA, avoiding the need for large multi-page documents. Alternatively companies may develop their own form of BCAs, or use parts of the NTC but replace given clauses. The intent is to allow flexibility in the use of BCAs recognising that the nature of the connection may drive the nature of the BCA.

7 PROPOSED AMENDMENT AND LEGAL DRAFTING

- 7.1 The proposed legal drafting of DCP 033 has been drafted by Wragge and Co and is set out in Appendix A.

8 EVALUATION AGAINST THE DCUSA OBJECTIVES

- 8.1 The Working Group considers that DCP 033 impacts the following DCUSA objectives:
- Objective 1: The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System.
 - Objective 2: 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.
 - Objective 3: The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences.
- 8.2 The Working Group considers that Objective 1 will be better facilitated by ensuring that all customers will be provided with standard terms for their connection to any distribution network. As not all customers are currently bound by any terms due to the landlord/tenant scenario this will improve the current situation by attempting to put an agreement in place with both such that the rights and responsibilities of the distributor is clear.
- 8.3 The Working Group considers that Objective 2 will be better facilitated as the NTC will be both consistent and transparent across DNOs and IDNOs. The standard terms are likely to be more acceptable to Suppliers and therefore facilitate competition in supply. The expanded publication of extended standard NTC, covering all Customers connected to any Distribution Network, will provide a greater level of transparency/visibility of information in this area and therefore better facilitate competition and benefit customers.
- 8.4 The Working Group considers that Objective 3 will be better facilitated by ensuring consistency across DNOs and IDNOs reducing the likelihood of discrimination between customers of similar class. Distribution Licence condition 22, which created DCUSA, included a requirement that DCUSA should include terms where appropriate that relate to connection to the system. This CP seeks to introduce terms into the NTCs in order to develop that work.

9 ENGAGEMENT WITH THE AUTHORITY

- 9.1 Ofgem has been fully engaged throughout the development of DCP 033 as members of the Working Group and the DCUSA Panel.
- 9.2 After the Working Group's second consultation in October 2009, Ofgem wrote to DCUSA expressing concern that there had not been sufficient engagement with customers despite the consultation having been sent to Consumer Focus. Ofgem offered to provide contact details for consumer groups and representatives and suggested that that it would be useful to be able to clearly identify the changes to the existing terms proposed under DCP 033.
- 9.3 At its October meeting the DCUSA Panel discussed Ofgem's points and agreed that the Working Group should seek to address them through a third consultation.

- 9.4 Ofgem provided consumer contact details in December 2009 and the Working Group chose two existing DNO contracts to compare with the proposed terms, a task which it asked Wragge and Co to undertake on its behalf. The output of this exercise is attached as F.
- 9.5 The third consultation draft was discussed between the Working Group and Ofgem over a number of iterations during February and March 2010 until the Working Group felt it had addressed Ofgem's concerns. The consultation was issued to all DCUSA Parties, the contacts provided by Ofgem and, in order to reach wider customers than the list provided by Ofgem, the consultation was also published on the public pages of the DCUSA website.
- 9.6 Following the publication of the responses to the third consultation, Ofgem expressed concern to DCUSA that few consumers had responded. It has also sought clarification on how the CP will affect existing and future customers, considering that the comparison with two existing contracts carried out by Wragges was not sufficient.
- 9.7 The Working Group has confirmed that following implementation of this change all existing bi-lateral Connection Agreements will continue, even if the customer changes Supplier. All customers currently on the National Terms would have their terms changed automatically to these new ones once published. Once implemented, customers will be able to raise a modification to the NTC under the DCUSA Change Process².
- 9.8 Ofgem has stated that in order to determine on DCP 033 it must be reasonably satisfied that the proposed terms reflect all DNOs' existing terms and has indicated that it requires assurance from each DNO that it has reviewed the proposed terms and that they are not materially different to their existing agreements.
- 9.9 The Working Group considers that Distributors can provide this assurance as part of their vote on DCP 033 (see section 10).

10 ADDITIONAL INFORMATION REQUIRED FROM DNO PARTIES

- 10.1 In order to provide Ofgem with the information it requires to make a decision on DCP 033, Distributors are asked to compare Sections 3 and 4 of the proposed NTC with their current Connection Agreements. For each section of the NTC, Distributors are asked to indicate whether the proposed terms are materially different to, or have a detrimental impact on customers as compared to, their current terms and provide a reasoning by reference to relevant clauses in their own terms. Distributors are also asked to submit a copy of their current terms for both metered and unmetered customers, in order to assist in the comparison. All information will be distributed to Ofgem in order to assist in the determination of the CP but will not be published or circulated by DCUSA. The response template is attached as Appendix B.

11 PANEL RECOMMENDATION

- 11.1 The Panel approved the DCP 033 Change Report on 21 July 2010. In accordance with Clause 12.4 of the DCUSA the Panel has determined that DCP 033 should be issued to all Parties for voting for a period of 30 Working Days.

² Subject to Ofgem approval in accordance with Clause 10.2

11.2 The timetable for the progression of the Change Proposal is set out below:

ACTIVITY	DATE
Party Voting	22 July - 15 September 2010
Change Declaration	17 September 2010
Authority Consent	17 September - 29 October
Implementation	04 November 2010 (or as practicable thereafter.)

Appendices:

- A. DCP 033 - Legal Drafting
- B. DCP 033 - Voting Form
- C. DCP 033 – Consultation 1 Documents
- D. DCP 033 - Consultation 2 Documents
- E. DCP 033 - Consultation 3 Documents
- F. DCP 033 - Changes Against the Existing DCUSA Text Document.