

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP085 – Process for determining Urgent Status		
Decision:	The Authority ¹ directs that proposal DCP085 be made ²		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested Parties		
Date of publication:	20 June 2011	Implementation Date:	27 June 2011

Background to the modification proposal

DCUSA change proposals can be categorised as either standard or urgent. Urgent proposals may follow a shortened timetable for assessment and voting by DCUSA parties. Clause 10.4.8 of the DCUSA allows the proposer of a DCUSA change proposal to specify whether, in its view, its proposal ought to be treated as urgent and the reasons for such treatment. The criteria for urgent treatment are set out in Clause 10.7 of the DCUSA and the proposer can state its reasons for urgent treatment by referring to these urgency criteria, viz.:

- there is a very real likelihood of significant adverse commercial impact upon the Parties (or a class of Party) and/or electricity consumers if the change proposal is not dealt with urgently;
- the safety and security of the Distribution Network is likely to be adversely affected if the change proposal is not dealt with urgently; or
- the change proposal is linked to an imminent date-related event.

The DCUSA Panel oversees the DCUSA governance arrangements and has a duty under the DCUSA (Clause 5.3.4) to 'manage and coordinate the DCUSA modifications process'. Once a change proposal is submitted by a proposer as urgent to the next DCUSA Panel meeting, there is currently no means for the Panel to refuse urgent treatment or for it to assess whether the urgency criteria are met. The Panel is limited to refusal of a proposal on the grounds that either it is similar to another proposal which is still subject to Authority decision or which was rejected within two months of the date of the relevant Panel meeting, or if it is outside the scope of the DCUSA.

Ofgem has expressed the need for robust application of the urgency criteria to ensure that only those change proposals which cannot be reasonably treated as non urgent should be processed as urgent. However, in the case of the DCUSA, because the Panel cannot make its own assessment of a proposal against the urgency criteria, it has to accept the proposer's view. The Authority cannot make a determination on whether a change proposal is urgent or not based on the urgency criteria. It can influence the timetable for assessment and voting for an urgent proposal once that proposal is treated as urgent based on the proposer's view, the Panel has set out its timetable for assessment and voting for the proposal, and the Authority, either itself or on application from a DCUSA party, directs a different timetable.

The modification proposal

The proposer (E.ON UK) raised DCP085 in March 2011. The proposal seeks to amend the DCUSA to allow the Panel to determine whether a change proposal meets the urgency criteria and therefore should be progressed according to an urgent timetable agreed with the Authority. The proposal was assessed by a Working Group which agreed that the

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

Panel is best placed objectively to determine whether a proposal meets the urgency criteria in line with its duty to 'manage and co-ordinate the modification process'.

The Working Group also agreed that there are adequate safeguards for proposers if they disagree with the Panel's view on urgent status. Where a proposer disagrees with the Panel's timetable for progressing its proposal (which may flow from the Panel's determination on urgent status), it can appeal to the Authority on the proposed timetable and the Authority may direct a different timetable.

The Working Group agreed legal text changes to the DCUSA to give effect to the proposal. There was no consultation on the proposal as the Working Group (and the Panel) agreed that the proposed changes were relatively straightforward and could go straight to party vote.

DCUSA Parties' recommendation

The Change Declaration for DCP085 indicates that DNO, IDNO/OTSO, Supplier and DG parties were eligible to vote on DCP085. In each party category where votes were cast (no votes were cast in the DG party category), there was unanimous support for the proposal and for its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP085 is accepted. The outcome of the weighted vote is set out in the table below:

DCP085	WEIGHTED VOTING (%)							
	DNO		IDNO/OTSO		SUPPLIER		DG	
	Accept	Reject	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	100	0	100	0	100	0	n/a	n/a
IMPLEMENTATION DATE	100	0	100	0	100	0	n/a	n/a

The Authority's decision

The Authority has considered the issues raised by the proposal and the Change Declaration dated 13 May 2011. The Authority has considered and taken into account the vote of the DCUSA Parties on the proposal which is attached to the Change Declaration. The Authority has concluded that:

1. implementation of the change proposal DCP085 will better facilitate the achievement of the General DCUSA objectives; and
2. directing that the change is approved is consistent with the Authority's principal objective and statutory duties³.

Reasons for the Authority's decision

General objective 3.1.4 of DCUSA - the promotion of efficiency in the implementation and administration of the DCUSA and the arrangements under it

We agree with the Working Group and DCUSA Parties that the proposal better meets this objective. Under Clause 5.3.4 of the DCUSA, the DCUSA Panel is under a duty to manage and co-ordinate the DCUSA change process and we consider the proposal complements this area of responsibility. It also complements the existing powers of the Panel in relation to timetabling and urgency under Clause 11 of DCUSA and improves the overall efficiency of DCUSA administration.

³ The Authority's statutory duties are wider than matters that the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

We note that the modification provides no referral procedure to the Authority in the event that urgency is sought but not accepted by the Panel and the proposer (or another Panel member) has concerns⁴. We would ask the Panel to review this aspect in considering any future proposals that are raised in the context of considering the Authority's guidance on urgency criteria. We expect, however, that the Panel are well placed to reach a view on urgency given the duties of Panel members in Clause 6 of DCUSA – in particular that Panel members shall “act independently, not as a delegate, and without undue regard to the interests, of any Related Person” (Clause 6.16.1), and that Panel members shall also “act in a manner designed to facilitate the performance by the Panel of its duties” under DCUSA (Clause 6.16.3).

Ofgem guidance on code modification urgency criteria

As highlighted above, Ofgem has stressed the need for a robust application of the urgency criteria so that only those proposals that meet the criteria and cannot otherwise be treated as non urgent ought to follow an urgent timetable. We note that, under the DCUSA rules, the Authority is not able to determine whether a DCUSA change proposal should be treated as urgent but can, in the case of an urgent proposal, set a different timetable from that agreed by the Panel for the proposal's assessment either itself or on application by a DCUSA party.

Following consultation, Ofgem recently published an open letter containing updated guidance on 'Code Modification Urgency Criteria'⁵. We note the references to our recent consultation in the DCP085 Change Report and that there may need to be further changes to the DCUSA to reflect the updated guidance.

We agree that DCP085 intends that the Panel should provide its own view on whether the urgency criteria in Clause 10.7 are met. It does not seek to amend the existing urgency criteria in the DCUSA. It would be a matter for DCUSA parties whether to raise further appropriate changes to reflect our updated guidance in the DCUSA. In the meantime, we would encourage the DCUSA Panel to have regard to the updated guidance when providing its view on whether or not to grant urgent status to a DCUSA change proposal.

Decision notice

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP085: '*Process for determining Urgent Status*' be made.

Declan Tomany

Associate Partner Legal - Smarter Grids and Governance

Signed on behalf of the Authority and authorised for that purpose

⁴ We note paragraph 4.5 of the Change Report – we are not aware of a power that could be applied in the event that the proposer does not agree with the Panel's decision on urgency. Clause 11.11 of the DCUSA only gives the Authority the power to direct an alternative timetable for urgent change proposals and not a power to amend the Panel's categorisation.

⁵ The open letter is available at:

<http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/Code%20Modification%20Urgency%20Criteria%20-%20Final%20decision.pdf>.