

Modification proposal:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP263 – NTC DEH Gap</b>		
Decision:	The Authority <sup>1</sup> directs this modification <sup>2</sup> be made <sup>3</sup>		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties		
Date of publication:	25 January 2017	Implementation date:	23 February 2017

## Background

The National Terms of Connection (NTC) are standard terms and conditions for connection to electricity distribution systems contained in Schedule 2B to the DCUSA. These are the terms and conditions that the network operator requires a customer to accept in return for maintaining the connection of the premises to the network.<sup>4</sup> The NTC are intended to define the right to be connected and energised, the circumstances where de-energisation or disconnection may occur, as well as applying limitations of liability for both connectee and the Licensed Distribution Network Operators (LDNO).

The NTC does not currently refer specifically to licence exempt networks, also known as Distribution Exemption Holders<sup>5</sup> (DEHs), connected to a licensed distribution network. DEHs can be large networks, including, for example, ports and airports, or much smaller sites such as caravan parks and blocks of flats. Some DEHs may already have bilateral agreements in place, but others may not, which may be particularly true for smaller networks. In the absence of the NTC, these sites have no connection agreement or any of the associated protections.

DCP263 seeks to apply the NTC terms and conditions explicitly to DEHs where a bilateral agreement is not already in place. It builds on two previous DCUSA modification proposals, DCP033<sup>6</sup> and DCP079.<sup>7</sup> Prior to DCP033, the NTC only applied to domestic customers and other small metered connections through their supply contract.<sup>8</sup>

The combined impact of DCP033 and DCP079 was to make the NTC the standard terms of connection under section 21 of the Electricity Act 1989 (the Act)<sup>9</sup>. It applies to all metered and unmetered customers in the absence of a bilateral agreement with the licensed Distribution Network Operator (DNO). DCP263 also seeks to build on a previous proposal on this issue, DCP124.<sup>10</sup> DCP124 also sought to apply the NTC terms and conditions explicitly to DEHs where a bilateral agreement is not already in place. We decided to reject the modification; we were concerned that there had been insufficient engagement with DEHs on the issue, and that the language used in the modification report was overly complex and inaccessible.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> 'Change' and 'modification' are used interchangeably in this document.

<sup>3</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>4</sup> For further information on the NTC and to download a copy of it please see <http://www.connectionterms.org.uk/>

<sup>5</sup> Distribution exemption holder is defined under section 64 of the Electricity Act 1989 as "a person who (a) is distributing electricity for the purpose mentioned in 4(1)(bb) [of the Electricity Act 1989]; and (b) is authorised to do so by an exemption".

<sup>6</sup> <https://www.ofgem.gov.uk/ofgem-publications/62549/dcp033-d.pdf>

<sup>7</sup> <https://www.ofgem.gov.uk/ofgem-publications/62536/dcp079-d.pdf>

<sup>8</sup> When a customer signs a contract with a supplier they are also agreeing to the NTC. The supplier, therefore, acts as an agent to the distributor in relation to the customer.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1989/29/data.pdf>

<sup>10</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2013/11/dcp124\\_decision\\_15\\_november\\_2013.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2013/11/dcp124_decision_15_november_2013.pdf)

## The modification proposal

DCP263 was raised by UK Power Networks (UKPN) (the “proposer”). It seeks to place standard connection terms, as set out in the NTC, on DEHs who do not have a bilateral connection agreement in place with a DNO, whose agreement cannot be found or where the agreement has lapsed. The proposer believes DCUSA General Objective One<sup>11</sup> would be better facilitated by this modification.

The NTC currently contains four sections. Section one applies to all premises and the other three sections apply depending on the metering equipment that the customer has in place. Section two applies to domestic and small industrial and commercial properties.<sup>12</sup> Section three applies to large industrial and commercial properties.<sup>13</sup> Applicability of section two or three is established through the type of metering at the boundary between the DEH network and the licensee’s network, as the type of metering used should indicate the size of the network. Where there is no meter at this boundary, consumption on the premises is unmetered, as is the case with street lighting, and so section four applies.

At present the NTC does not refer specifically to DEHs. The proposer considers that the NTC may not apply to certain DEHs. Some DEHs, for instance, do not have a meter at the boundary with the DNO so it is not clear that either section two or three of the NTC can be applied. Equally, however, it may not be appropriate to classify these DEHs as unmetered sites, as some DEHs have metering equipment embedded in their network to calculate the volume of electricity consumed by the DEH’s customers. So under these circumstances, section four of the NTC can also not apply.

DCP263 seeks to introduce new drafting into the NTC that applies the terms to unmetered supply connections that would otherwise fall outside of the NTC. It does so by treating them as if they were either whole current or current transformer (C/T) metered. The exact section of the NTC that would apply would depend on what the most likely metering configuration would be, were they to be metered – section two if the premises would most likely be metered with whole current metering, or section three if the premises would most likely be metered with C/T metering.

## DCUSA Parties’ recommendation

Across each party category where votes were cast (no votes were cast in the DG or supplier party categories),<sup>14</sup> there was no majority (>50%) support for the proposal and for its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP263 is rejected. The outcome of the weighted vote is set out in the table below:

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<sup>11</sup> Applicable DCUSA Objective (a) - the development, maintenance and operation by the licensee off an efficient, co-ordinated, and economical Distribution System.

<sup>12</sup> For domestic and small industrial and commercial properties the volume of electricity consumed is small enough for it to be economical to meter the entire volume of electricity. This is because the size and cost of the meter is proportional to the volume of electricity consumed. The larger the volume of electricity consumed the larger the meter needs to be.

<sup>13</sup> For large industrial and commercial properties, to limit the size and cost of the meter, the properties use current transformers to measure a percentage of the electricity consumed. The meter reading is multiplied up to calculate the total volume of electricity consumed.

<sup>14</sup> There are currently no gas supplier parties.

DCP263	WEIGHTED VOTING (%)							
	DNO <sup>15</sup>		IDNO/OTSO <sup>16</sup>		SUPPLIER		DG <sup>17</sup>	
	Accept	Reject	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	100	0	0	100	n/a	n/a	n/a	n/a
IMPLEMENTATION DATE	100	0	0	100	n/a	n/a	n/a	n/a

### Our decision

We have considered the issues raised by the proposal and the Change Declaration and Change Report dated 13 December 2016. We have considered and taken into account the vote of the DCUSA Parties on the proposal which is attached to the Change Declaration. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the Applicable DCUSA objectives,<sup>18</sup> and
- directing that the modification is approved is consistent with our principal objective and statutory duties.<sup>19</sup>

### Reasons for our decision

We consider this modification proposal will better facilitate Applicable DCUSA Objective (a) and has a neutral impact on the other applicable objectives.

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

The proposer and other DNO respondents felt that this change would better facilitate General Objective One by reducing the administrative burden on DNOs of establishing separate bilateral agreements with each DEH. The respondents argue that this modification would avoid the need for bilateral agreements and would provide a robust, transparent and codified approach to managing connections. We agree that this benefits both DNOs and connectees.

Additionally, the Change Report notes that the terms also remove the possibility of unlimited liability for both DNO and connectee, which occur in the absence of any agreement. We agree that defining liabilities for both connectee and DNO should be a priority.

Although the weighted vote procedure resulted in a recommendation to reject this proposal, the sole IDNO respondent's vote to reject was based on a concern on whether s21 of the Act can be considered to provide licensed network operators with the ability to impose the NTC on licence exempt distribution system operators and whether all potential classes of licence exempt distribution systems are covered by s21 of the Act. The IDNO's response itself noted that should these concerns be addressed, then they would be supportive of the change.

<sup>15</sup> Distribution Network Operator.

<sup>16</sup> Independent Distribution Network Operator/Offshore Transmission System Operator.

<sup>17</sup> Distributed Generation.

<sup>18</sup> The Applicable DCUSA Objectives are set out in Standard Licence Condition 22.2 of the Electricity Distribution Licence.

<sup>19</sup> The Authority's statutory duties are wider than matters that the Parties must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

In our view s21 of the Act permits electricity distributors to impose reasonable additional terms on connectees. The phrasing of 'an electricity distributor **may** require a person to **accept...**' (to paraphrase) is equivalent to 'an electricity distributor **may impose...**'. As such, we feel that these concerns have no legal grounding.

In considering this proposal we have also taken into account the level of engagement that has informed its development. One of our concerns with the previous related modification proposal, DCP124, was over the level of engagement. Our consultation on DCP124 highlighted a number of issues from the DEH respondents; mostly that all respondents considered the documents too complex and legalistic, and generally not written in a way that made it easy to understand the impact on them. We considered overall that the main parties affected were not sufficiently involved in the development of the proposal and agreed with the DEH responses that the proposal was not easy for them to understand.

Our DCP124 decision recommended that DNOs consider how to engage effectively with the DEH community, including by using plain English to explain the proposal. DCP263 improves the language used in communicating the modification, as suggested in the DCP124 decision, including 'What, Why, How' and 'What does DCP263 mean for a DEH?' sections, as well as more explanation in plain English.

Despite this, there has still only been limited engagement. This remains a concern as some of the main parties affected by this proposal have not been as involved in its development as would be preferable. While the overarching questions on how to engage with so many DEHs persist, we believe that the risks that industry and DEHs are exposed to by not having terms in place, ie, unlimited liability, and administrative inefficiency, should be addressed and outweigh the fact that some DEHs may be unaware that these terms now apply.

Furthermore, there is an option for additional modifications, should the need be identified.

### **Decision notice**

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP263: NTC DEH Gap be made.

**James Veaney**

**Head of Electricity Connections and Constraint Management**

Signed on behalf of the Authority and authorised for that purpose