

Ofgem E-mail

From: Deirdre Bell [mailto:Deirdre.Bell@ofgem.gov.uk]
Sent: 21 July 2015 18:07
To: DCUSA
Subject: RE: For Review By the 20 July 2015: DCP 181 Change Report

Dear Claire,

Apologises for the delay in responding to you.

Having reviewed the draft change report a number of my original concerns are still outstanding:

- a. I still have concerns about whether a bilateral contract can be legally enforceable on a third party who was never party to the original contract.
- b. How will prospective owners/occupiers be aware of the bespoke connection terms prior to entering into an agreement to purchase/lease the property. This issue has been raised by us previously and by a number of respondents to the consultations, but has never been resolved. The work group have explored options that were ultimately deemed not to be suitable, but a workable solution is not clear in the report.

These are two important issues which I do not think are resolved under the current proposal. In my view without additional information on these points it would be difficult to evaluate the change report against the DCUSA objectives.

I think the worked examples are useful in providing justification of why DNOs require some type of mechanism to ensure that bespoke connection agreements endure. However, I would question the assumption made under each scenario that the new owner/occupier is not entitled to any MIC/MEC.

If you have any queries on the above please let me know.

Regards,

Deirdre

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Resulting Working Group Questions For the DCUSA Legal Advisor

1. Can terms contained in a bi-lateral contract be transferred/enforceable on a third party? Can you think of any publicly available examples of situations when such has occurred?
2. Would the proposal in DCP181, if approved by Ofgem, conflict with contract law?
3. Does contract law always apply given the NTC have been approved by Ofgem as being statutory in the absence of an agreement?
4. Could the NTC be varied to place an obligation on the connectee to advise any prospective buyer/new tenant if there is an existing bi-lateral or existing terms and to disclose them?
5. How could standard enquiries used on sales of premises (whether domestic or commercial) be extended to asking about connection agreements/terms? Is there a standard process among solicitors?
6. Under s16-s21 of the Electricity Act, can capacity agreed with (the first?) connectee transfer to a third party without any associated terms? Can a benefit be transferred in this way without associated burden?
7. Under s22 of the Electricity Act, does the vacation of premises by the connectee cause an agreement to fall away and so the entitlement to use of the connection terminates? Alternatively can capacity agreed with the first connectee transfer to a third party without any associated terms?
8. Does the Act oblige the DNO to maintain the connection (the assets) or also its ability to be used (the capacity)? If the latter what happens to associated agreements or terms under the Act?
9. How might customers vacating or entering premises be compelled to advise the DNO of this fact and in practice would it be effective/enforceable?
10. Are there any other factors the group needs to consider?