




DCUSA Consultation		At what stage is this document in the process?
<h1>DCP 251 & 252</h1> <p>DCP Title: Clarification and Extension of the Application of LDNO Tariffs Under The CDCM and Clarification and Extension of the Application of LDNO Tariffs Under the EDCM</p> <p>24 November 2016</p>		01 – Change Proposal
		02 – Consultation
		03 – Change Report
		04 – Change Declaration
<p>Purpose of Change Proposal:</p> <p>DCUSA Change Proposals 251 & 252 seek to:</p> <ol style="list-style-type: none"> 1. Correct drafting errors in the specification of the distribution systems that are eligible for LDNO tariffs under the CDCM and under the EDCM. 2. Ensure that the charging methodologies do not impose undue discrimination between licensed and licence-exempt distribution systems. <p>This document is a Consultation issued to DCUSA Parties and any other interested Parties in accordance with Clause 11.14 of the DCUSA seeking industry views on DCP's 251 & 252.</p>		
	<p>The Workgroup recommends that this Change Proposal should:</p> <ul style="list-style-type: none"> • proceed to Consultation 	
	<p>Parties are invited to consider the questions set in section 10 and submit comments using the form attached as Attachment 1 to dcusa@electralink.co.uk by 30 December 2016.</p> <p>The Working Group will consider the consultation responses and determine the appropriate next steps for the progression of the DCUSA Change Proposal.</p>	
	Impacted Parties: DNOs, IDNOs, other parties that are or would be eligible for LDNO tariffs	
	Impacted Clauses: Schedules 16, 17 and 18.	



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Timetable

The timetable for the progression of the Change Proposal (CP) is as follows:

Change Proposal timetable:

Activity	Date
Initial Assessment Report Approved by Panel	21 October 2015
First Consultation issued to Parties	6 May 2016
Second Consultation issued to Parties	24 November 2016
Change Report issued to Panel	April 2017
Change Report issued for Voting	May 2017
Party Voting Ends	May 2017
Change Declaration issued to Authority	June 2017
Authority Decision	August 2017

1. Summary

What

- 1.1 The Distribution Connection and Use of System Agreement (DCUSA) is a multi-party contract between electricity Distributors and electricity Suppliers and large Generators. Parties to the DCUSA can raise CPs to amend the Agreement with the consent of other Parties and (where applicable) the Authority.

Why

- 1.2 Currently, LDNO tariffs are only available to licensed distributors in respect of networks where they connect to a 'host' electricity distribution system. The LDNO tariffs are applied by the host licensee on a similar basis to how suppliers are charged i.e.:
- On a portfolio basis for Non-Half Hourly (NHH) and aggregated Half Hourly (HH) customers connected to LDNO owned distribution systems; and
 - On a site specific basis for other HH customers connected to LDNO owned distribution systems.
- 1.3 An issue was raised at the Distribution Charging Methodology Forum (DCMF) Methodology Issues Group (MIG) on LDNO tariffs to determine whether:
- The current applicability was set out clearly enough in respect of licenced Distribution Network Operators (DNOs) who operate networks outside their distribution services area; and
 - Separately, whether the LDNO tariffs should also apply to networks owned and operated under licence exemption.
- 1.4 The issue was developed after being initially discussed at the DCMF MIG in September 2014, before it was raised as a formal DCUSA change in October 2015.
- 1.5 The proposer of the original issue (raised as a Draft Change Proposal at the October DCMF MIG meeting) considered how the legal provisions are supposed to work in the case of unlicensed

distribution networks that opt for “full settlement” metering¹ and use the Metering Point Registration Service (MPRS) from a licensed distributor.

- 1.6 DCP 251 was raised alongside DCP 252 to consider potential updates to both the Common Distribution Charging Methodology (CDCM) and the EHV Distribution Charging Methodology (EDCM). Due to the similar nature of these changes, the DCUSA Panel agreed for both CPs to be considered by a single Working Group.
- 1.7 The proposed legal drafting has been provided as Attachments 2 (DCP251 legal text) and 3 (DCP252 legal text). Within these attachments, changes have been made to:
 - Address the drafting errors in the EDCM to ensure that a DNO operating outside of their distribution service area is treated in the same manner as IDNOs (specific only to DCP252); and
 - Broaden the scope of the applicability of the LDNO tariffs so that unlicensed distributors can qualify for such tariffs in certain circumstances (affects both DCP251 and DCP252).

2 Governance

Justification for Part 1 Matter

- 2.1 The DCUSA Panel approved the setting up of a joint DCP 251 & 252 Working Group to develop these changes. CPs 251 & 252 have been classed as a Part 1 matter by the Panel and therefore will go to the Authority for determination after the voting process has completed.
- 2.2 The justification for this classification is that any change to the DNO charging methodologies requires the Authority’s approval in accordance with the distribution licence.
- 2.3 The first consultation was issued in May 2016 and sought industry views on whether they agreed with adding a new definition of ‘Qualifying Network Operator’, to which all seven respondents agreed. In response to this and the rest of the consultation responses the Working Group have continued the development of the CPs and now seek industry views on:
 - whether ‘*undue discrimination*’ is taking place against unlicensed distributors where they are not currently able to receive the LDNO tariffs; and

¹ [Guidance on Third Party Access](#)

- whether you agree with the definition for ‘Qualifying Network Operator tariffs’.

2.4 The Working Group will use this feedback to further develop these changes in readiness for the Change Report stage.

3 Why Change?

Background of DCP’s 251 & 252

- 3.1 DCP 251 and DCP 252 were raised by The Electricity Network Company Limited so that the issues raised at the DCMF MIG could be considered under DCUSA’s formal governance arrangement as the originator of the MIG issue is not a DCUSA party so could not raise the DCUSA changes on its own behalf.
- 3.2 In line with the duties of the Working Group to evaluate, develop and refine the solution, the intent of the change was amended to not include the restoration of the 50 per cent LDNO discount on indirect costs which was removed by the approved legal text for DCP 185 in cases where the fixed adder is negative. These amendments have been reflected in DCP 252. This amendment was agreed with the Panel.

Applicability of the CDCM

- 3.3 LDNO tariffs are currently available to Independent Distribution Network Operators (IDNO) Parties and DNO Parties (where a DNO Party operates a network outside of its distribution service area). They are not available to networks that are not operated under an electricity distribution licence. The proposer believes that this results in undue discrimination if the networks and the way they are operated by a licensed operator and an operator that operates without a licence are equivalent. The intent of DCPs 251 and 252 is to allow the application of LDNO tariffs to be extended to networks operated without a licence, where they provide the same services as those provided by an IDNO in respect of end users connected to their networks.

Applicability of the EDCM

- 3.4 In addition to the applicability matters highlighted in 3.3 above the current drafting of the EDCM legal text wrongly limits the application of LDNO tariffs to “IDNO Parties”. This is viewed by the Working Group as an error in the drafting rather than a fundamental issue of applicability as, in practice, DNO companies are already operating outside of their distribution services area (mirroring IDNO activity) and it is understood current practice is to charge such DNOs on the same basis as LDNOs.

4 Code Specific Matters

Background to The Creation of The LDNO Tariffs

- 4.1 The common LDNO tariffs were established in 2010, following the introduction of the Common Distribution Charging Methodology (CDCM). Prior to this each DNO had their own approved methodology for charging IDNOs. These methodologies had been established and approved by Ofgem on an interim basis on the understanding that the introduction of the CDCM would ensure commonality across all DNOs.
- 4.2 The LDNO tariffs were developed and introduced in 2010 to recognise the particular features of IDNOs and out of area DNOs and their place in the market for competition of ownership of new networks: Those features were:
- IDNOs (or DNOs operating outside their distribution services area) provide, own and operate the “last mile” of network (i.e. the network between a DNO’s existing distribution system and end customers), and in doing so substitute the activity that the DNO would otherwise provide.
 - The Price Control Disaggregation Model (PCDM) allocates total DNO costs between the DNO’s existing network and the “last mile” network provided by the IDNO or DNO operating out of area. These costs are allocated using the host DNO’s total average costs to serve an equivalent network. Such cost being dependent on:
 - The amount of “last mile” network provided by the IDNO or DNO in substitution of the host DNO. The level of substitution is determined from the point (e.g. voltage level) at which the “last mile” network connects to the host DNO network and the network level (e.g. the voltage level) at which the “last mile” network connects to end customers.
 - The PCDM developed for IDNOs and DNOs operating out of area who are connecting to a host DNO’s distribution system apply to all such networks connected. The IDNO/DNO operating out of area cannot elect to choose to have some sites charged on LDNO tariffs and other sites charged on tariffs designed for end consumers.
 - This approach means that the IDNO/DNO operating out of area will typically receive the same margin for operating the network as the host DNO’s notional “equivalent” business does in operating the same “equivalent” network. This is because under IDNOs’/ DNOs’

licence conditions they are required, in respect of domestic customers, to replicate the host DNOs tariff structure and to charge no more than the host DNO would charge.

- Where the IDNO/DNO operating out of area procures services from the host DNO in respect of the last mile network it does so on separate contractual terms and charges; i.e. the cost of such services is not recovered through DUoS charges (for example emergency services).

4.3 The majority of the Working Group believes that, at the time of developing the LDNO tariffs under the CDCM, explicit consideration of the application of these tariffs to unlicensed networks did not occur.

5 Working Group Assessment

DCP's 251 & 252 Working Group Assessment

- 5.1 The DCUSA Panel has established a Working Group for DCP 251 and DCP 252, which consists of independent representatives from DNO and IDNO parties, an Ofgem observer and the raiser of the original DCMF MIG issue (a non DCUSA party). An open invitation was extended to all DCUSA Parties and to all other interested parties to participate in this Working Group and this invitation remains open for any interested parties.
- 5.2 Since the last consultation in May 2016 the Working Group have sought to clarify specific differences between unlicensed distributors and licensed distributors with a view to developing the criteria which would apply to unlicensed distributors seeking to be charged on the LDNO tariffs.
- 5.3 The Working Group's discussions have been centred around whether the inability for unlicensed distributors to receive LDNO tariffs is considered 'unduly discriminatory' or not as indicated within the wording used in the CP documentation. The Working Group have been considering the following points:
- Definition of '*Undue Discrimination*';
 - Network Structure; and
 - Provision of Services.

Definition of '*Undue Discrimination*'

- 5.4 The use of the term '*Undue Discrimination*' has been used in the CP documentation however the Working Group noted that this had not been defined. As this '*Undue Discrimination*' was at the core of the issue it was agreed that this should be made clear.

5.5 The Working Group reviewed several regulatory references to Discrimination and Undue Discrimination. The Ofcom code states:

Ofcom, Code on the Prevention of Undue Discrimination between Broadcast

Advertisers; (<http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/undue-discrimination.pdf>)

“5.2 Any consideration of whether or not a broadcaster that is licensed by Ofcom has engaged in undue discrimination will be a two-stage process. Firstly, Ofcom will assess whether or not the licensee has discriminated between advertisers. If it has, Ofcom will go on to consider whether such discrimination was undue.

5.3 In this context, discrimination means that the licensee does not reflect relevant differences between (or does not reflect relevant similarities in) the circumstances of advertisers in deciding whether or not to include advertisements in their licensed service and the terms on which a licensee agrees to broadcast the advertising in question. Discrimination can occur both where a licensee treats one third party advertiser in a different manner to another and where it offers more favourable terms to itself or an associated company.

5.4 Not all forms of different treatment will amount to discrimination since advertisers may not be in comparable positions. Ofcom will therefore need to consider on a case-by-case basis whether or not the licensee has, in fact, discriminated between advertisers.

5.5 However, it should be noted that the fact that a licensee has discriminated between advertisers does not of itself lead to a breach of the Rules. In order for a breach of the Rules to have occurred, any discrimination must be “undue”.....

5.8 Discrimination will not be undue where it can be objectively justified. There may be various reasons why terms and conditions and access to airtime may differ between advertisers. The examples below are a non-exhaustive list of examples of potential objective justifications. However, every complaint will be dealt with on a case-by-case basis, taking account of the individual circumstances of each case”.

5.6 On this basis the Working Group undertook work to define this term using existing Ofcom definitions as guidance. The Working Group noted that the existing Ofcom definitions indicated that ‘discrimination’ is deemed to be either due or undue based on whether or not the discrimination can be ‘objectively justified’. The Working Group agreed to use the Ofcom code when considering the Distribution Licence obligations covering Discrimination. The Distribution Licence states:

“Without prejudice to paragraph 19.1, and subject to standard condition 14 (Charges for Use of System and connection), the licensee must not make charges for providing Use of System to any person or class or classes of persons which differ from the charges for such provision to any other person or any other class or classes of persons, except insofar as such differences reasonably reflect differences in the costs associated with such provision”.

Network Structure

5.7 It was highlighted in the CP that due to the similar structures of unlicensed distributors and IDNO networks, unlicensed distributors should be eligible for LDNO tariffs. On this basis the Working Group compared the various setups of unlicensed distributors against the baseline of IDNO networks, including:

- Template 1 - IDNO site with Competition in Supply;
- Template 2a - Private Networks with Competition in Supply;
- Template 2b - Private Networks without Competition in Supply; and
- Template 3 - Building Network Operator (BNO) networks.

5.8 These network setup diagrams have been included as Attachment 4.

5.9 Analysis of these different structures allowed the Working Group to identify any specific differences between unlicensed distributor networks and IDNO networks. These differences were then used to ascertain the scope of any additional services that IDNO’s offer as part of their licence obligations when compared to unlicensed distributors who are not obligated to offer these services.

Differences between unlicensed distributor and IDNO network structures

Unlicensed Distributor	IDNO
Maintenance of the network	Maintenance of the network
Providing network assets	Providing network assets
Settlement processes on ‘bulk’ users at boundary	Settlement processes on multiple users rather than ‘bulk’
	Change of Supplier (CoS) processes
	Emergency services
	MPAN creation / provision

	Compliance with Licence Conditions and Industry Codes, and associated costs.
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- 5.10 The Working Group requests that the industry utilise these diagrams and tables when considering the consultation questions set out in Section 8 of this document.
- 5.11 Additionally, it was noted by the Working Group that Unmetered Supplies (UMS) could be included in some unlicensed distributor networks and it was questioned whether UMS fits into the scope of DCP 251 & 252. The Working Group seeks views from industry as to whether UMS arrangements should be considered when reviewing various network set-ups as part of this change.

Q1. Do the templates and diagrams provide you with sufficient information to understand the issue?

Q2. Should UMS arrangements be considered when reviewing various network set-ups as part of this change?

Provision of Services

- 5.12 The Working Group considered whether the additional services that IDNOs provide which unlicensed distributors do not is material when considered in relation to the reduced charges that they are entitled to as part of the LDNO tariffs, and thus the prescribed discrimination against unlicensed distributors would be considered 'objectively justified'.
- 5.13 Using the identified differences between unlicensed distributor and IDNO network structures the Working Group compiled a list of differences in the services provided:

Services provided by the unlicensed distributor	Services provided by the IDNO
Maintenance, operation and provision of physical assets	Provides maintenance, operation and provision of physical assets up to the boundary
Receives a 'bulk' Supply tariff where it is metered at the boundary (the end user customer charges are bundled)	Bills the Supplier
	Facilitates settlements (e.g. loss adjustment factors, line loss factor classes etc.)

5.14 The Working Group requests that the industry consider the differences in unlicensed distributor and IDNO provided services when considering the consultation questions set out in Section 8 of this document.

Q 3. Do you agree with the Working Group's comparison of the differences between DNOs, IDNOs and unlicensed distributors, as set out in the diagrams?

Are unlicensed distributors unduly discriminated against?

5.15 Members of the Working Group had differing opinions as to whether 'undue discrimination' is taking place in relation to unlicensed distributors being unable to qualify for LDNO tariffs. The Working Group discussed the matter at length with a number of key points being made:

- Some members of the Working Group believed that unlicensed distributors receive different services from the DNO party compared to IDNOs (for example, services relating to the BSC and the MRA; services relating to the provision of emergency cover). In instances where an unlicensed distributor contracts with other parties to offer these services and are not offered LDNO tariffs, this may be considered 'undue discrimination'. However, if the unlicensed distributor does not procure these services and therefore relies on the DNO party to provide them, 'undue discrimination' may not be occurring.
- If an unlicensed distributor chooses not to participate in the requirements stated in the Electricity Act (i.e. they are in breach of licence exemptions) then some members of the Working Group suggested that they should not be entitled to LDNO tariffs, however if a party is in breach of licence arrangements this may not be relevant when determining whether 'undue discrimination' is taking place.
- DNOs' use of system charging methodologies are licence obligations, not DCUSA contractual obligations; they apply to use of system services that are provided under DCUSA and to use of system services that are provided outside DCUSA. However other Working Group members disagreed, stating that where DNO use of system charging methodologies do not fall under DCUSA, DCUSA forms the vehicle for these obligations; and
- Some members of the Working Group were of the view that use of system arrangements should not be bundled with the provision of other services. For example, BSC services are not Use of System charges and are chargeable to the Supplier and not the network operator. If these services were not bundled, then unlicensed distributors and IDNOs would be comparable in function and should be entitled to the same LDNO tariffs.

Q4. Do you believe that unlicensed distributors are being unduly discriminated against?

Please provide your rationale.

Refinement of 'Qualified Network Operator' Definition

5.16 The majority of participants from the last consultation agreed with the inclusion of a new definition. The Working Group has reviewed the definition for QNO and proposed the following revised definition:

Qualifying Network Operator:

A Qualifying Network Operator (QNO) is

- a) *an IDNO Party, whose electricity distribution system is connected to the electricity distribution system of a DNO Party operating within its Distribution Services Area; and who for the purpose of conveying electricity to premises or distribution systems connected to its electricity distribution system, receives use of system from that DNO Party, or*
- b) *a DNO Party who, in operating part of its electricity distribution system outside its specified Distribution Services Area, has that part of its electricity distribution system connected to the electricity distribution system of another DNO Party operating within its Distribution Services Area; and who for the purpose of conveying electricity to premises or distribution systems connected to that part of its electricity distribution system receives use of system from that other DNO Party or*
- c) *any person who does not hold an electricity distribution licence, and:*
 - (i) *whose distribution system is connected to the electricity distribution system of a DNO Party operating within its Distribution Services Area for the purpose of conveying electricity to premises or distribution systems connected to its electricity distribution system, receives use of system from that DNO Party; and*
 - (ii) *where the premises connected to that distribution system (or to such other subordinate distribution system that may be connected to that distribution system) import or export electricity through a Metering Point and where a Distribution Business provides the relevant Data Services in respect of that Metering Point in order to facilitate competition in supply.*

Q5. Do you agree with the working group's view that the introduction of Qualifying Network Operator (QNO) definition and QNO tariff will alleviate any undue discrimination?

6 Relevant Objectives

Assessment against the DCUSA Objectives

- 6.1 The Working Group considers that the following DCUSA Objectives are better facilitated by DCP's 251 & 252. Additionally, in the first consultation in May 2016, four out of seven respondents agreed that the proposal, as outlined so far, better facilitates the DCUSA objectives detailed below.

Impact of the Change Proposal on the Relevant Objectives:	
Relevant Objective	Identified impact
Charging Objective One: That compliance by each DNO Party with the Charging Methodologies facilitates the discharge by the DNO Party of the obligations imposed on it under the Act and by its Distribution Licence.	Positive
Charging Objective Two: That compliance by each DNO Party with the Charging Methodologies facilitates competition in the generation and supply of electricity and will not restrict, distort, or prevent competition in the transmission or distribution of electricity	Positive

- 6.2 The details for the rationale for better facilitation of these DCUSA Objectives are:

Charging Objectives:

1. DCP 252 corrects errors in the methodology statement of the EDCM where there is no reference to DNOs operating out of area and therefore facilitates compliance.
2. DCPs 251 and 252 - Distortions to competition are reduced by removing undue discrimination between licensed distributors and distributors who do not hold a licence.

7 Impacts & Other Considerations

Does this Change Proposal impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

- 7.1 No, DCP 251 & 252 is not related to the SCR or other change proposals in other codes.

Consumer Impacts

- 7.2 The Working Group did not identify any impacts to the end user Consumers, however there are consequences for unlicensed distributors as these may fall into the definition of a QNO and may be eligible for LDNO Tariffs.

Environmental Impacts

- 7.3 In accordance with DCUSA Clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if DCP's 251 & 252 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this CP.

Engagement with the Authority

- 7.4 Ofgem has been fully engaged throughout the development of DCP's 251 & 252 as an observer of the Working Group.

8 Implementation

- 8.1 The proposed implementation date for DCP 251 and DCP 252 is yet to be determined but is expected to be six months following Authority Consent.

Q6. What lead time do parties require in order to implement this Change Proposal?

9 Legal Text

- 9.1 The legal text for DCP's 251 & 252 is provided as Attachments 2 and 3.

Q7. Do you have any comments on the legal drafting?

10 Consultation Questions

- 10.1 Responses, or any part thereof, can be provided in confidence. Parties are asked to clearly indicate any parts of a response that are to be treated confidentially.
- 10.2 The Working Group is seeking industry views on the following consultation questions:

Question Number	Question
1	Do the templates and diagrams provide you with sufficient information to understand the issue?
2	Should UMS arrangements be considered when reviewing various network set-ups as part of this change?

3	Do you agree with the Working Group's comparison of the differences between DNOs, IDNOs and unlicensed distributors, as set out in the diagrams?
4	Do you believe that unlicensed distributors are being unduly discriminated against please provide your rationale?
5	Do you agree with the Working Group's view that the introduction of a Qualifying Network Operator (QNO) definition and a QNO tariff will alleviate any undue discrimination?
6	What lead time do parties require in order to implement this Change Proposal?
7	Do you have any comments on the legal drafting?
8	Do you have any further comments?

10.3 Responses should be submitted using Attachment 1 to dcusa@electralink.co.uk no later than, 30 December 2016.

Attachments

- Attachment 1 – Response Form
- Attachment 2 – DCP 251 Legal Text
- Attachment 3 – DCP 252 Legal Text
- Attachment 4 – Network Setup Diagrams