

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP110 – Electricity and Gas (Internal Markets) Regulations 2011		
Decision:	The Authority ¹ directs that proposal DCP110 be made ²		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties		
Date of publication:	27 January 2012	Implementation Date:	To be determined by Electralink

Background to the modification proposal

The EU Third Package for Electricity and Gas Markets came into force in the UK on 10 November 2011 by amending domestic legislation. The changes were given effect by The Electricity and Gas (Internal Markets) Regulations 2011, SI 2704³, and changes have been made to electricity licences (transmission, distribution, supply and interconnector) and gas licences (transporter, supply and interconnector).

DCP110 intends to update the DCUSA to reflect the modifications that were made to the standard conditions of the electricity distribution licences.

The modification proposal

UK Power Networks raised DCP110 as an urgent modification in November 2011. Legal text was drafted by the proposer and reviewed by DCUSA legal counsel before submission to the DCUSA parties' vote. Further development by a Workgroup or wider consultation with Parties prior to the vote by DCUSA parties did not take place as the modification is required to comply with current legislation⁴.

DCP110 seeks to amend Clauses 1, 3, 9.4, 10.2, 10.4, 11.10-11.14, 11.23 and 11.29 of the DCUSA and to insert new clause 14.9. The changes are proposed in order to ensure that the DCUSA remains consistent with the distribution licence. The proposal provides for the insertion of a new DCUSA General Objective and DCUSA Charging Objective. It also provides the ability for the Authority to raise amendments to the DCUSA insofar as it reasonably considers necessary to comply with or implement the Regulation and/or any relevant legally binding decision of the European Commission and/or the Agency for Co-Operation of Energy Regulators. Further details on the changes are set out in the DCUSA Change Report and in the legal drafting accompanying the Change Report at Appendix A.

DCUSA Parties' recommendation

The Change Declaration for DCP110 indicates that DNO, IDNO/OTSO, Supplier and Distributed Generation (DG) parties were eligible to vote on DCP110. 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 the proposed implementation date. Implementation is proposed by way of an extraordinary release as soon as reasonably practical following Authority consent.

In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP110 is accepted. The outcome of the weighted vote is set out in the table below:

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.

³ Schedule 8 Part 3 http://www.legislation.gov.uk/ukxi/2011/2704/pdfs/ukxi_20112704_en.pdf

⁴ In accordance with DCUSA Clause 11.6.1.

DCP110	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 this proposal and the Change Declaration dated 20 December 2011. The Authority has considered and taken into account the vote of the DCUSA Parties on the proposal which is set out in the Change Declaration. The Authority has concluded that:

1. implementation of the change proposal DCP110 will better facilitate the achievement of the DCUSA General Objectives⁵; and
2. directing that the change is approved is consistent with the Authority's principal objective and statutory duties⁶.

Reasons for the Authority's decision

We consider that the proposal better meets the following DCUSA General Objective:

DCUSA General Objective 3.1.3 'the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences'

We consider that the proposal better facilitates this objective by achieving closer alignment of the provisions of the DCUSA with those of the distribution licence, following the changes made by The Electricity and Gas (Internal Markets) Regulations 2011. We agree that this modification to the DCUSA is necessary in order that the DCUSA reflects the relevant licence changes made by the Regulations, and that the implementation of consistency between the licence and the DCUSA is an efficient discharge of licensees' obligations. However, it should be noted that we consider there to be some deficiencies in the legal text for this modification insofar as it does not fully reflect all of the relevant conditions of the distribution licence as implemented by the Third Package. In particular, in accordance with SLC22.5(e)(i)⁷, we consider that the legal text does not reflect that the Panel are obliged to accept a change proposal made pursuant to SLC22.5(a) and SLC22.5(f)(i) respectively. Further, that the drafting does not reflect the obligation on the Panel to "comply" with any direction issued by the Authority in respect of the assessment timetable pursuant to SLC22.5(f), whereas presently DCUSA clause 11.13 provides only for the use of "best endeavours" to meet such a timetable. As such, a further housekeeping change would be required in order to fully align the DCUSA's provisions with those of the distribution licence.

Decision notice

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP110: '*Electricity and Gas (Internal Markets) Regulations 2011*' be made.

⁵ The DCUSA General Objectives (Applicable DCUSA Objectives) are set out in Standard Licence Condition 22.2 of the Electricity Distribution Licence and are also set out in Clause 3.1 of the DCUSA.

⁶ 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.

⁷ Distribution licence standard conditions http://epr.ofgem.gov.uk/document_fetch.php?documentid=15992

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Signed on behalf of the Authority and authorised for that purpose