

**DCUSA Change Proposal 46 – CDCM Governance**

**DRAFTING WHEREBY THE AUTHORITY VETO APPLIES TO THE  
RECOMMENDATION OF THE PARTIES**

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**Clause 1**

**Charging Methodologies**

means each of the methodologies for determining the Use of System Charges of the DNO Parties that are to be recovered pursuant to Section 2A, Section 2B, and the Relevant Charging Statements, as set out:

(a) with effect from 1 April 2010, in Schedule 16 (Common Distribution Charging Methodology) in respect of all of the DNO Parties; and

(b) with effect from 1 April 2011:

(i) in Schedule 17 (EHV Distribution Charging Methodology A) in respect of those DNO Parties that are named in that schedule; and

(ii) in Schedule 18 (EHV Distribution Charging Methodology B) in respect of those DNO Parties that are named in that schedule.

**Charging Objectives**

has the meaning given to that term in Clause 3.2.

**DCUSA Objectives**

means, in respect of the Charging Methodologies only, the Charging Objectives and, in all other cases, the General Objectives~~has the meaning given to that term in Clause 3.1.~~

**General Objectives**

has the meaning given to that term in Clause 3.1.

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**Clause 3**

3.1 The objectives of this Agreement (such objectives being the **GeneralDCUSA Objectives**), except in respect of the Charging Methodologies, shall be:

- 3.1.1 the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System;
- 3.1.2 the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity;
- 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; and
- 3.1.4 the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it.

3.2 The objectives of this Agreement in respect of the Charging Methodologies only (such objectives being the **Charging Objectives**) shall be:

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- 3.2.1 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;
- 3.2.2 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 or in participation in the operation of an Interconnector (as defined in the Distribution Licences);
- 3.2.3 that compliance by each DNO Party with the Charging Methodologies results in charges which, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the DNO Party in its Distribution Business; and

3.2.4 that, so far as is consistent with Clauses 3.2.1 to 3.2.3, the Charging Methodologies, so far as is reasonably practicable, properly take account of developments in each DNO Party's Distribution Business.

3.3 For the purposes of this Agreement, each of the Charging Methodologies achieves the Charging Objectives if it achieves them in the round, taking each Charging Objective with every other Charging Objective, and having due regard to any particular implications for the determination of the Use of System Charges of the DNO Parties (or of any DNO Party) under any other Charging Methodology.

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#### **Clause 9.5.5**

9.5.5 Schedule 2A (Mandatory Terms for Contracts), Schedule 2B (National Terms of Connection), Paragraph 6.1 of Schedule 5 (Disputes Under Approval and Permission Procedures), ~~and~~ Paragraph 13 of Schedule 8 (Rota Load Block Alpha Identifiers), Schedule 16 (Common Distribution Charging Methodology), Schedule 17 (EHV Distribution Charging Methodology A), and Schedule 18 (EHV Distribution Charging Methodology B); and

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#### **Clause 10.2.4**

10.2.4 any person or body that may from time to time be designated in writing by the Authority for the purpose of this Clause 10.2 (which may include, in respect of a Charging Methodology, any person whose interests are materially affected by that Charging Methodology).

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#### **Clause 10.14**

10.14 The Panel may choose to refuse the referral of a Change Proposal by the Secretariat if in its opinion the content of the proposed variation of the Agreement is outside the scope of the Agreement as set out at Condition 22 (as supplemented by Condition 22A) of the Distribution Licences.

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**Clause 11.14.1**

11.14.1 consulting with the Parties, and (where appropriate) with any interested third parties, on the proposal, which third parties shall include, in respect of proposals to vary the Charging Methodologies, any person whose interests the Working Group identifies as being materially affected by a Charging Methodology (which consultation shall, where appropriate, be by way of consultation with bodies who represent the interests of such third parties); and

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**Clause 11.14.3**

11.14.3 evaluating, developing and refining the proposed variation to the Agreement (and, in undertaking such evaluation in respect of a Change Proposal to vary one or more of the Charging Methodologies, the Working Group shall have regard to the ability of the Authority to veto any Change Proposal that appears to the Authority to have as its purpose or effect the full or substantial substitution of one Charging Methodology for another); and

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**Clause 13 – The Change Decision**

- 13.1 The purpose of this Clause 13 is to determine whether or not a Change Proposal is to be accepted and the proposed variation to this Agreement made accordingly. The process shall be applied independently to the vote concerning the proposed variation and to the vote concerning the proposed implementation date, to determine in each case whether the proposal is accepted or rejected.
- 13.2 In the case of a Change Proposal that relates to a Part 1 Matter: ~~13.2.1 that proposal shall not be accepted unless, in accordance with the provisions of this Clause 13, the Authority determines that it shall be so accepted; and 13.2.2~~ a vote by the Parties to accept or reject that proposal shall have the status of a recommendation to the Authority to determine that the proposal is to be accepted or rejected, and shall not by

itself have the effect of an acceptance or rejection of the proposal.

- 13.3 In the case of a Change Proposal which relates to a Part 2 Matter, a vote which meets the criteria set out in this Clause 13 shall be effective to determine the acceptance or the rejection of the proposal.

#### **Declaration by the Secretariat**

- 13.4 The Secretariat shall be responsible, in respect of each Change Proposal, for:

13.4.1 monitoring the votes which are received and collated in accordance with Clause 12.4;

13.4.2 calculating whether the votes, having regard to the Weighted Vote allocated to each Group, are sufficient to meet the thresholds set out in Clauses 13.5 and 13.6;

13.4.3 having made those calculations, declaring whether:

(A) in the case of a Change Proposal that relates to a Part 1 Matter, the Parties are deemed to have recommended to the Authority that the proposal should be accepted or rejected; and

(B) in the case of a Change Proposal that relates to a Part 2 Matter, the proposal is accepted or rejected; and

13.4.4 publishing, on the Website, which Groups voted and how each such Group voted.

#### **Part 1 Matters**

- 13.5 Where a Change Proposal relates to a Part 1 Matter, the Parties shall:

13.5.1 be deemed to recommend to the Authority that the proposal should be accepted where, in respect of each Party Category that was eligible to vote, the sum of the Weighted Votes of the Groups in that Party Category which voted to accept the proposal is more than 50%; and

13.5.2 in all other cases, be deemed to recommend to the Authority that the proposal

should be rejected.

## **Part 2 Matters**

13.6 Where a Change Proposal relates to a Part 2 Matter, that proposal shall be accepted where, in respect of each Party Category that was eligible to vote:

13.6.1 the number of Groups in that Party Category which voted to accept the proposal is greater than 65% of the total number of Groups in that Party Category which voted; and

13.6.2 the sum of the Weighted Votes of those Groups in that Party Category which voted to accept the proposal is greater than 65%.

13.7 In all other cases a Change Proposal which relates to a Part 2 Matter shall be rejected.

## **Notice by the Secretariat**

13.8 The Secretariat shall, as soon as is reasonably practicable after making a declaration under Clause 13.4.3, give notice of that declaration to:

13.8.1 each Party;

13.8.2 the National Consumer Council;

13.8.3 the GB System Operator;

13.8.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4; and

13.8.5 the Authority,

and shall ensure that the Change Register is updated so as to indicate the declaration made in relation to the Change Proposal.

## **The Change Decision – Part 1 Matters**

13.9 Where the Authority receives notice from the Secretariat of a declaration made under Clause 13.4.3 in respect of a Change Proposal relating to a Part 1 Matter, the Authority shall (subject to Clause 13.10) determine whether that proposal shall be

accepted or rejected having regard to:

13.9.1 its principal objective and statutory duties under sections 3A to 3D of the Act;  
and

13.9.2 whether in its opinion the proposed variation, if it were made, would better facilitate the achievement of the DCUSA Objectives than if that variation were not made.

13.10 In respect of a Change Proposal to vary one or more of the Charging Methodologies, where:

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13.10.1 the Parties are deemed to have recommended to the Authority that the proposal should be accepted, the Change Proposal shall be accepted for the purposes of this Clause 13 unless, within 28 days of receiving notice from the Secretariat under Clause 13.8, and having had regard to the matters set out at Clauses 13.9.1 and 13.9.2, the Authority has either:

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(A) directed the DNO Parties that the Change Proposal is not to be accepted; or

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(B) notified the DNO Parties that the Authority intends to consult in relation to the proposal, and then within three months of giving that notification directed the DNO Parties that the Change proposal is not to be accepted,

in which case the Change Proposal will be rejected for the purposes of this Clause 13; or

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13.10.2 the Parties are deemed to have recommended to the Authority that the proposal should be rejected, the Change Proposal shall be rejected for the purposes of this Clause 13 unless, within 28 days of receiving notice from the Secretariat under Clause 13.8, and having had regard to the matters set out at Clauses 13.9.1 and 13.9.2, the Authority has either:

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(A) directed the DNO Parties that the Change Proposal is to be accepted; or

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(B) notified the DNO Parties that the Authority intends to consult in

relation to the proposal, and then within three months of giving that notification directed the DNO Parties that the Change proposal is to be accepted,

in which case the Change Proposal will be accepted for the purposes of this Clause 13.

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~~13.10~~13.11 In making a determination under Clause 13.9 or determining whether to give a direction under Clause 13.10, the Authority:

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~~13.10.1~~13.11.1 may follow such procedure as it considers appropriate;

~~13.10.2~~13.11.2 may have regard to such matters, and to any representations by such Parties, as it considers appropriate; and

~~13.10.3~~13.11.3 shall in any event have regard to the recommendation made by the Parties by virtue of the Voting Procedure.

~~13.11~~13.12 Where the Authority is to make a determination under Clause 13.9 or 13.10, the Secretariat shall provide the Authority with a copy of the relevant Change Report (with the notice referred to in Clause 13.8 attached) and shall, at the Authority's request, provide any other existing documents or information in respect of the Change Proposal in question.

13.13 Where the Authority, acting in accordance with Clauses 13.9 and 13.10~~1~~, determines that a Change Proposal shall be accepted or rejected, it shall direct the DNO Parties and IDNO Parties accordingly and that proposal shall be so accepted or rejected for the purposes of this Clause 13.

13.14 Any direction as referred to in Clause 13.13, and any direction or notification as referred to in Clause 13.10,~~Those Parties agree that such direction~~ will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat). Where any such direction or notification is, nevertheless, communicated to the DNO Parties and IDNO Parties (in the case of Clause 13.13) or the DNO Parties (in the case of Clause 13.10), those Parties shall, as soon as practicable following receipt of such direction or notification, forward a copy ~~of the determination contained therein~~ to the Panel (care of the Secretariat). ~~The DNO Parties and IDNO Parties agree that the receipt by the Panel of any one such copy~~



~~shall be an instruction on behalf of all DNO Parties and IDNO Parties to amend the DCUSA in accordance with the determination.~~

~~13.13~~13.15 The Secretariat shall, as soon as is reasonably practicable after the receipt, pursuant to Clause 13.14, by the Panel of a determination by the Authority as referred to in Clause 13.13 (or, where Clause 13.10 applies, of a direction as referred to in Clause 13.10 or after the expiry of the relevant period referred to in Clause 13.10), notify the following persons whether the Change Proposal has been accepted or rejected ~~give notice of that determination to:~~

~~13.13.1~~13.15.1 each Party;

~~13.13.2~~13.15.2 the National Consumer Council;

~~13.13.3~~13.15.3 the GB System Operator; and

~~13.13.4~~13.15.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4,

and shall ensure that the Change Register is updated so as to indicate the determination made in relation to the Change Proposal.

~~13.14~~13.16 Where any Change Proposal that relates to a Part 1 Matter is accepted by virtue of Clause 13.10 or 13.12~~3~~, the Panel shall ensure that the proposal is subject to Implementation in accordance with Clause 14.

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### The Change Decision – Part 2 Matters

~~13.15~~13.17 The Panel shall, in the case of any Change Proposal that relates to a Part 2 Matter and that is accepted in accordance with Clause 13.6, ensure that the proposal is subject to Implementation in accordance with Clause 14.

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### Appeal of Part 2 Decisions

~~13.16~~13.18 Any Party which is aggrieved by the acceptance or rejection of a Change Proposal by virtue of Clause 13.6 or Clause 13.7 may ask the Authority to determine that the proposal relates not to a Part 2 Matter but to a Part 1 Matter.

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~~13.17~~13.19 Such a request may only be made within 10 Working Days after the Secretariat

notifies the aggrieved Party of the acceptance or rejection of the proposal in accordance with Clause 13.8.

~~13.18.1~~13.20 Such a request must:

~~13.18.1~~13.20.1 be made in writing;

~~13.18.2~~13.20.2 state why the Party believes (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter; and

~~13.18.3~~13.20.3 be copied to the Secretariat and to the Panel.

~~13.19~~13.21 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter:

~~13.19.1~~13.21.1 the acceptance or rejection of the proposal by virtue of Clause 13.6 shall be deemed to have no effect;

~~13.19.2~~13.21.2 on being notified of the determination by the Authority, the Secretariat shall treat the proposal as relating to a Part 1 Matter for the purposes of Clause 13.5 and shall make a declaration under that Clause as if no declaration had previously been made; and

~~13.19.3~~13.21.3 the Change Proposal shall be subject to the process set out at Clauses 13.9 to 13.16 (inclusive)~~Authority shall determine whether the proposal shall be accepted or rejected in accordance with Clauses 13.9 and 13.10.~~

~~13.20~~13.22 If the Authority, within 15 Working Days of receiving a request under Clause 13.18~~9~~ (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal does not relate to a Part 1 Matter, the acceptance or rejection of the proposal by virtue of Clause 13.6 or Clause 13.7 shall continue to have effect.

**Wragge & Co LLP  
23 September 2009**

W&Co 23 September 2009