

Proposed variation:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP040: Part 2a Change to clarify number and timing of changes to charges to Suppliers</b>		
Decision:	The Authority <sup>1</sup> directs that this variation be made		
Target audience:	Parties to the DCUSA and other interested parties		
Date of publication:	22 May 2009	Implementation Date:	25 June 2009

## Background to the proposed variation

Section 2A of the DCUSA sets out the contractual arrangements between licensed distributors (DNOs and IDNOs) and suppliers or distributed generators (DG)(where acceded) for the provision of connection and use of system services. Clause 19 of Section 2A describes the circumstances under which distributors may levy and vary charges for the different services offered in accordance with the DCUSA.

Clause 19.1 relates to the circumstances in which a Company<sup>2</sup> should use its reasonable endeavours when varying its charges. There are concerns that the current drafting of clause 19.1 is ambiguous. In particular, it is not clear to what extent the Company should use its reasonable endeavours to vary such charges no more than twice a year and/or that those changes should only take effect on 1 April or 1 October.

A similar matter was addressed through DCP039 in relation to Section 2B. Section 2B contains very similar content to Section 2A but relates to the contractual arrangements between licensed distributors. In particular where one distributor is connected to another's distribution system and receives connection and use of system services.

On 11 March 2009, the Authority approved the implementation of DCP039, 'Part 2B - Change to notice period provisions for changes to charges to IDNOs'<sup>3</sup> which, amongst other things, made a change to Section 2B clause 43 in order to clarify the circumstances in which a Company should use its reasonable endeavours when varying its charges in accordance with Section 2B only. This was because it was considered that the relevant terms in clause 43 were ambiguous.

## The proposed variation

DCP040 applies to Section 2A of DCUSA and would make a similar change as DCP039 made to Section 2B in order to clarify the circumstances in which the Company should use its reasonable endeavours when varying its charges in accordance with Section 2A only. In particular, the proposal intends to amend clause 19.1 so that it is clear that whilst the Company should use its reasonable endeavours not to, it may make changes to its charges more than twice a year and that any change to its charges may be introduced on a day other than 1 April or 1 October.

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> In both Section 2A and 2B a reference to a Company is to a Party that provides connection and use of system services in accordance with the DCUSA. Conversely, a reference to a User is to a Party that receives such services.

<sup>3</sup> DCP039 was implemented on 16 March 2009 and our decision letter can be found at <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=30&refer=Licensing/ElecCodes/DCUSA/Changes>.

The proposer of this change considered that the proposal will facilitate Applicable DCUSA Objectives<sup>4</sup> (b) and (c)<sup>5</sup>.

## **Recommendation**

In the proposal's final Change Declaration, dated 16 April 2009, the DCUSA Parties recommended to the Authority that DCP040 be implemented, having voted by a majority in favour. The Parties also recommended unanimously that the change proposal should be implemented as part of the scheduled June 2009 DCUSA release.

## **The Authority's decision**

The Authority has considered the issues raised by DCP040, taking into account the responses to the Secretariat's<sup>6</sup> consultation, which are attached to the Change Declaration<sup>7</sup>, and the recommendations of the DCUSA Parties. The Authority has concluded that:

1. implementation of the proposed variation will better facilitate the achievement of the Applicable DCUSA Objectives<sup>8</sup>; and
2. directing that the proposed variation be made is consistent with the Authority's principal objective and statutory duties<sup>9</sup>.

## **Reasons for the Authority's decision**

We consider that DCP040 will clarify a perceived ambiguity in the interpretation of clause 19.1 and would also be consistent, in part, with DCP039<sup>10</sup>, which we approved on 11 March 2009. In particular, the proposed legal drafting makes clear that the Company may vary its charges at any time, although it would use reasonable endeavours to vary them no more than twice per year and for such charge variations to take effect from 1 April or 1 October only.

We do not anticipate that making changes more than twice a year or on a day other than 1 April or 1 October would be a frequent occurrence and note that the parties will remain bound to use reasonable endeavours not to.

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<sup>4</sup> As set out in standard condition 22.2 of the Electricity Distribution Licence, see: [http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=14124](http://epr.ofgem.gov.uk/document_fetch.php?documentid=14124).

<sup>5</sup> For more information relating to the proposers justification please see the original change proposal and change report, which can be found at <http://www.dcusa.co.uk>.

<sup>6</sup> The role, functions, and responsibilities of the Secretariat are set out in Section 1B of the DCUSA.

<sup>7</sup> DCUSA change proposals, change reports and representations can be viewed on the DCUSA website at <http://dcusa.co.uk/Public/Default.aspx>.

<sup>8</sup> The Applicable DCUSA Objectives are these:

- (a) the development, maintenance and operation by the licensee of an efficient, co-ordinated, and economical Distribution System;
- (b) 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;
- (c) the efficient discharge by the licensee of the obligations imposed upon it by this licence; and
- (d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements.

<sup>9</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989, Gas Act 1986, Utilities Act 2000, Competition Act 1998, Enterprise Act 2002 and the Energy Act 2004 as well as arising from directly effective E.C legislation.

<sup>10</sup> As mentioned above, DCP039 made two changes to clause 43. DCP040 is only consistent with the first of DCP039's changes.

In considering DCP040, we noted the original rationale for the arrangements for varying charges in clause 19.1, which were set in their current form as a consequence of the implementation of DCP001A 'Proposed move to annual amendment of DUoS charges'<sup>11</sup>. We consider that DCP040 simply clarifies the DCUSA and therefore maintains the intent of DCP001A.

Having reviewed the proposal against the relevant objectives of the DCUSA, we consider that it will better facilitate achievement of Applicable DCUSA objective (d). We set out our rationale in more detail below.

*Objective (d) - the promotion of efficiency in the implementation and administration of the DCUSA arrangements.*

The efficiency of the implementation and administration of the DCUSA arrangements is dependent on them being clear, transparent and consistent. This is so that parties are able to readily and accurately interpret the arrangements and act upon them as is necessary or appropriate.

Whilst one party did not support the proposed change, because they considered that the intent of clause 19.1 was already clear, we consider that it may currently be interpreted in more than one way and DCP040 will therefore clarify any perceived ambiguity.

We consider that the proposal will have a neutral effect on the facilitation of the other Applicable DCUSA objectives. This is because the proposal simply clarifies the arrangements and would not introduce a substantive change in policy or to the original intent of clause 19. By not making a substantive change, the proposal does not improve or worsen the facilitation of the other objectives.

### **Decision notice**

In accordance with Standard Condition 22 of the Distribution Licence, the Authority hereby directs that the proposed variation set out in DCP040: '*Part 2a Change to clarify number and timing of changes to charges to Suppliers*' be made.

**Rachel Fletcher**  
**Director, Distribution**

Signed on behalf of the Authority and authorised for that purpose.

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<sup>11</sup> Please see our decision letter at <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=2&refer=Licensing/ElecCodes/DCUSA/Changes>.