

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP033: Connection Terms		
Decision:	The Authority ¹ directs that this variation should be made.		
Target audience:	Parties to the DCUSA and other interested parties		
Date of publication:	22 October 2010	Implementation Date:	4 November 2010

Background to the proposed variation

The National Terms of Connection (NTC) are set out in Schedule 2B to the Distribution Connection and Use of System Agreement (DCUSA). The NTC are a standard set of terms and conditions for connection to electricity distribution systems and are to be included in all connection contracts between distributors and energy customers².

The original electricity distribution licence condition³ that required the establishment of the DCUSA included an obligation on distributors to create terms for the connection to the distribution system. At the time it was envisaged that these terms would be applicable to all classes of distribution network customers. The current NTC, while applicable to all classes of customer when a connection agreement is concluded through a supplier acting as agent of the distributor⁴, are only suitable to cover the requirements of domestic and other small metered connections⁵. Therefore, in practice, when larger and unmetered customers connect to a distribution network the current NTC are supplemented or replaced by alternative bilateral connection terms negotiated between the customer and the relevant distributor⁶.

When the DCUSA was designated in 2006 we outlined a number of areas where further work was required on the agreement to bring it into line with the original intent behind it. Extending the NTC to provide suitable terms for all classes of customer was one of these areas. The variation to DCUSA proposed by DCP033 is intended to do this.

In August 2008, under the auspices of the Energy Networks Association (ENA), the Distribution Network Operators (DNOs) began to consider extending the NTC so that they would be appropriate for all classes of customers. This work resulted in the change proposal DCP033 being raised by EDF Energy. The change proposal has been consulted on three times on behalf of DCUSA before being presented to us.

The change report was sent to us on 17 September. A set of each of the DNOs' standard current standard terms and conditions⁷ for connection of large and unmetered connections were sent with the report, as well as an assessment of the extent to which

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 In some cases a connection agreement is concluded directly between the distributor and a customer. However in the majority of cases, especially where energy is for domestic use, the connection agreement is concluded through an electricity supplier, acting as agent for the distributor.

³ Standard licence condition 9B

⁴ See Clause 17.3, DCUSA.

⁵ The current terms consist of section 1 (Clauses A and B) which introduces the NTC and section 2 (Clauses 1 to 15) which sets out terms and conditions of connection. The second section is fairly short and the terms and conditions contained therein are only suitable for domestic and other small customers.

⁶ Originally these bilateral terms were based on an agreed proforma jointly developed by the distributors. Over time they have evolved and have been developed separately by individual distributors. Each distributor has its own standard terms for large and unmetered connections and these are subject to variation depending on the circumstances of individual customers.

⁷ The terms on which each DNO currently bases its bilateral connection agreements.

the DNOs' existing standard connection terms differed from the extended NTC proposed under DCP033.

The proposed variation

The proposal is to extend the NTC so they will be appropriate for all classes of customers. The proposal does this by drawing on the current individual standard terms of connection of each DNO to create a common set of standard terms. The new set of standard terms is intended to reflect the status quo and provide a baseline in the NTC which can be further developed if necessary through the DCUSA open governance process.

The proposal introduces two additional sections, sections 3 and 4, into the NTC and also makes some changes to the current section 2. The revised section 2 is intended to be streamlined version of the current section 2. It is clarified within the revised NTC that section 2 is to be applied to domestic and other small customers only⁸. The new sections 3 and 4 introduce additional connection terms which would apply to large metered customers (including generators) and unmetered customers, respectively.

Where customers have in place connections that are subject to current NTC, the impact of the DCP033 would be to effectively replace the existing terms of those connections with the updated NTC⁹. Where customers currently have individually negotiated bilateral connection agreements in place, these will be unaffected by the proposal. Under DCP033, distributors will remain able to negotiate non-standard connection terms to as an alternative to, or to supplement, the NTC¹⁰.

The proposal is justified on the basis that it will provide a more standardised and transparent way of agreeing connection terms that is subject to an open governance process. The change report notes that the proposal will better facilitate DCUSA objectives (a), (b) and (c).

Recommendation

In accordance with clause 12.4 of the DCUSA the proposal was put only to DNOs and IDNO parties for vote. Twelve out of fourteen (86%) of the DNO/IDNO Parties voted to recommend to the Authority that DCP033 be implemented; and both voting IDNO parties voted in favour of DCP033. Two of the eligible DNO parties voted against implementing the proposal.

The Authority's decision

The Authority has considered the issues raised by DCP033. The Authority has concluded that:

⁸ The section of the proposed revised NTC that applies to a given connection depends in on metering of that connection. Section 2 applies to 'whole current metered' connections – usually domestic and other small customers. Section 3 applies to 'C/T metered' connections – usually large industrial or commercial customers. Section 4 applies to unmetered connections.

⁹ In practice, it would only be domestic and other small customers whose existing connection terms would automatically change under DCP033 as the overwhelming majority of existing large customers are connected pursuant to alternative, bilaterally agreed terms.

¹⁰ See Clauses 11 and 12, Section 2; Clause 22.2, Section 3; Clause 23.2, Section 4 of revised NTC proposed under DCP033.

1. Implementation of the proposed variation will better facilitate the achievement of the Applicable DCUSA Objectives¹¹; and
2. Directing that the proposed variation be made is consistent with the Authority's principal objective and statutory duties¹².

Reasons for the Authority's decision

In coming to a decision the Authority has evaluated the proposal against the DCUSA objectives and our wider statutory duties. We note the proposal received a large majority of support from the DCUSA parties. We have reviewed the responses to the various consultations and consider them broadly supportive of the proposal, albeit to varying degrees.

We considered in detail one DNO party's concern that the proposal would limit its ability to manage its network effectively. However, it is our view that its concerns are unfounded, for reasons which we set out in more detail below.

DCUSA objective (a) – The development, maintenance and operation by the DNO parties and the IDNO parties of an efficient, co-ordinated and economical distribution system

The change report notes that the proposal will better meet this objective because it will ensure that all customers have in place standard terms for connection to the distribution network. The new terms would clarify that they are applicable to both the owners and occupiers of premises by inserting new wording to this effect in the NTC.

We agree that this clarification would improve the management of the distribution system because where there is a change in the occupier, but not the owner, of premises there will automatically be a contract in place between the new occupier and the relevant distributor. This will minimise the risk that no formal contract between these parties is in place.

One DNO party commented that the proposal would damage its ability to manage its network effectively, especially its ability to manage the connection of generators to its network. The DNO considered (1) that the proposed NTC are not appropriate for **all** connections, such that it would remain necessary for DNOs to seek alternative bilateral connection terms in certain circumstances, but that (2) the revised NTC would limit DNOs' ability to negotiate alternative connection terms with their customers.

After careful consideration, we do not agree with this argument. We do not consider that the proposal would not affect any DNO party's ability to offer alternative connection terms to those set out in the revised NTC. Under clause 17.10 of the DCUSA, and in accordance with Section 16A of the Electricity Act, a distributor is able to offer customers whatever connection terms that it considers reasonable. If there is a dispute over the reasonableness of these terms, this can be brought before the Authority for determination. This position is unaltered by the proposal.

On balance, we agree that the proposal better facilitates objective (a).

¹¹ As set out in The Distribution Connection and Use of Systems Agreement S3 (3.1), see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=12773

¹²The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

DCUSA objective (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

The change report suggests that this objective is better facilitated by the proposal as the NTC will be both consistent and transparent across DNOs and IDNOs. It also notes that the publication of the extended NTC, covering all customers connected to any distribution network, will provide a greater level of transparency and visibility of information in this area and, therefore, better facilitate competition and benefit customers.

We agree that the publication of the expanded NTC will mean that the “baseline” terms and conditions for connection to distribution networks are more visible and transparent across distributors. We consider that this proposal would mean that customers have more information about the requirements for connection to a distribution network and will therefore be able to make better, more informed decisions that should lead to better outcomes for them.

In the context of this objective, which requires that competition is better facilitated or promoted in one of the named activities, we consider that benefits for competition in generation are most likely. Generators, as customers who connect to the distribution networks, will be able to benefit from the improvement in visibility and transparency in network connection brought about by the revised NTC.

Given the above, we agree that the proposal will better facilitate objective (b).

DCUSA objective (c) – the efficient discharge by DNO parties and IDNO parties obligations imposed on them in their distribution licences

The change report states that this objective is better facilitated by ensuring consistency across DNOs and IDNOs, reducing the likelihood of discrimination between customers of a similar class.

We agree that this proposal would reduce the probability of discrimination with regard to the terms of connection to the distribution system. The proposal would mean that customers are more informed of what constitutes a reasonable set of terms and conditions for connection to an energy distribution network, and also informed of the terms that are being offered to other customers. Each customer would, therefore, be in a better position to police for themselves whether they were the subject of discrimination.

Given this and the obligations of distributors to avoid discrimination in the provision of use of system under SLC 19.1 of the distribution licence, we agree that the proposal will better facilitate objective (c).

DCUSA objective (d) – the promotion of efficiency in the implementation and administration of this agreement.

The report is silent on the impact of the proposal on this objective. However we consider that there will be improvements in the efficiency of negotiating connection contracts in accordance with the DCUSA. The publication of the NTC would ensure that customers are made aware of a reasonable “baseline” of standard connection terms, which is likely to improve the efficiency of any subsequent negotiations of alternative bilateral connection terms between distributors and customers.

We therefore consider that the proposal better facilitates objective (d).

Decision notice

In accordance with Standard Condition 9B of the Distribution Licence, the Authority hereby directs that the proposed variation set out in DCP033: '*Connection Terms*' is made.

Rachel Fletcher

Partner, Distribution

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