

DCUSA CONSULTATION DOCUMENT	
CHANGE PROPOSAL	Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor
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ISSUED TO	DCUSA Contract Managers Energywatch BSCCo MRASCo National Grid Ofgem
RETURN DEADLINE	14 January 2008 – DCUSA@electralink.co.uk

1 BACKGROUND

- 1.1 Schedule 12 of the DCUSA sets out the possible areas of future development for consideration by the DCUSA Panel. Inclusion of any of the areas listed in Schedule 12 is subject to the DCUSA change control procedure.
- 1.2 In January 2007 the DCUSA Panel agreed to take forward 'the development of rights and obligations between each DNO Party or IDNO Party and each other DNO Party or IDNO Party, after considering a paper submitted by The Electricity Network Company (ENC). The preferred approach was to establish a project group to draft Section 2B of the DCUSA and to develop a model form of bilateral connection agreement.
- 1.3 The DCUSA Panel established a Section 2B Project Group to consider the drafting content of Section 2B of DCUSA. An invitation to participate in the group was issued to all Contract Managers on 22 January with the first meeting taking place on the 7 February. Membership of the group comprised of representatives from DNO and IDNO parties, and Ofgem, with a Supplier representative chairing the group. In carrying out the development of Section 2B, Wragge and Co provided support on the legal drafting.
- 1.4 Following the conclusion of the initial draft the DCUSA Panel consulted with impacted Parties on the proposed drafting. This was carried out to aid the change process by bringing notice of the initial drafting giving Parties early sight of the work and the opportunity to comment prior to a formal Change Proposal being submitted. This consultation was sent out to Parties on 28 August 2007 with a closing date of the 15 October 2007. Responses received from Party members to the consultation are available from the DCUSA website.
- 1.5 The responses from Parties were reviewed by the Project Group and a revised drafting prepared by Wragge and Co. To bring Section 2B into the formal change process ENC agreed to submit a Change Proposal. At the time of Project Working Group was unable to reach agreement on a single drafting that would go forward for a change. Therefore, the Project Group included two options for the drafting of Clause 52.9 within the Change Proposal.

2 DCP 012 - INTRODUCTION OF CONTRACTUAL ARRANGEMENTS FOR THE PROVISION OF USE OF SYSTEM BETWEEN ONE DISTRIBUTOR AND ANOTHER DISTRIBUTOR

- 2.1 DCP 012 was raised by ENC on 26 November 2007. This Change Proposal brings the development of the Project Group into the formal DCUSA change process. The Change Proposal was considered by the DCUSA Panel at its meeting on 29 November 2007. The Panel determined that the CP was a non-urgent Part One change that should be progressed through the Definition Procedure.
- 2.2 The DCUSA Panel established Working Group DCP 012 to consider the Change Proposal. The Working Group met on 06 November 2007 to consider DCP 012, evaluate it against the applicable DCUSA Objectives

and address one outstanding issue highlighted by the Section 2B Project Group.¹

- 2.3 The CP seeks to introduce a Section 2B of the DCUSA to cover distributor to distributor contractual relationships where one licensed electricity distributor connects to the distribution system of another licensed electricity distributor.

3 WORKING GROUP CONSIDERATIONS

- 3.1 At its meeting on 06 December the Working Group considered the following areas:

- Evaluation of DCP 012 against the DCUSA objectives
- Options for Clause 52.9
- Revisions to the drafting following the August Consultation

- 3.2 The Working Group considered DCP 012 against the DCUSA objectives and concluded that the proposed variation better facilitates the following objectives in section 3.1 of the DCUSA:

- "3.1.1 the development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks";
- "3.1.2 the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity"; and
- "3.1.3 the efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences".

- 3.3 The Working Group agreed that DCP 012 will create a single framework agreement for the terms of connection and use of system where one distributor connects to the distribution system of another distributor. The framework places the terms for use of system and connection in the public domain increasing the transparency of the processes to industry participants and allowing distributors to operate more efficiently to discharge their licence obligations. The Working Group agreed that the DCUSA governance framework provides a robust platform for the debate of change and the opportunity for making collective changes to collective issues. The Working Group considered that this will allow the agreements to be developed and that change can be more easily negotiated and allowing increasing efficiency within the process. The working group agreed to seek the views from the wider community as part of this consultation.

- 3.4 The only area where the Project Group was unable to reach a compromise prior to submission of the Change Proposal was on the drafting of Clause

¹ The papers and minutes of all Working group meetings are available on the DCUSA Website – www.dcusa.co.uk

52.9. As such the Change Proposal contained two options for this Clause. Subsequent to the Change Proposal being submitted for consultation a compromise drafting was reached by the Working Group. ENC has agreed that this compromised change be taken forward on the basis that a party can raise a separate change proposal to address their specific concerns with the drafting post go live (should the change proposal proceed).

- 3.5 Similarly, The Working Group acknowledges that there are some areas of the proposed drafting of Section 2B with which individual Parties may not agree. The Working Group is of the view that the best way to address these issues is through the raising of specific Change Requests if and when the Section 2B is approved and implemented. To do otherwise could significantly delay and put at risk implementation of the Change Proposal.

4 DEVELOPMENTS SINCE LAST CONSULTATION

- 4.1 There are a number of drafting corrections to the original document sent out for consultation in August 2007. The key revisions to Section 2B following the August Consultation are as follows:
- 4.1.1 Clause 36.6 - Disputes provisions – revised to include the option to by pass arbitration and go to legal review / the Authority. This was incorporated because the distributor to distributor is a relationship between two potential competing parties. It was therefore felt that arbitration may not always be the appropriate route.
- 4.1.2 Clause 38 – Bilateral Connection Agreements (BCAs) – The revised drafting makes provision for pre-existing connections and introduces the requirement to make sure there is some kind of agreement (BCA) in place for all existing connections. The approach mirrors similar arrangements in supply 'deemed contracts'.
- 4.1.3 Clause 38.7 – A breach of a BCA is now not a breach of the DCUSA. This change was made in light of consultation responses. Under section 16 of the Act Parties have an obligation to provide a connection. It was considered that granting the right to refuse to provide a connection to one network because of a breach by a Party in respect of a connection to another network was in conflict with this obligation.
- 4.1.4 Clause 39.1 - This Clause has been revised after comments received in consultation to refer to the User's rights for connection and energisation. The right to remain connected and energised is covered implicitly (e.g. the Company is only entitled to de-energise under prescribed circumstances covered under Clause 41).
- 4.1.5 Clause 39.8 – Added after comments received in consultation as a generic statement. Specific details may be held within the schedules of the BCA where appropriate.
- 4.1.6 Clause 39.9 – Terminology change, 'breach' to 'exceed' as a result of consultation. This has been done to avoid confusion with the term Breach when used in context of a breach of the agreement.
- 4.1.7 Clause 39.16 - Added after comments received in consultation.

- 4.1.8 Clause 41 - The Clause was amended to add clarity to the process to be followed: Clause 41.2 defines the process; Clause 41.3 covers who will pay for it.
- 4.1.9 Clause 42 – Amended to facilitate 'Alternative Solutions' to boundary metering. It is deliberately designed to recognise the concept in the DCUSA but does not prescribe what it is. A Working Group under the Electricity Networks Association is currently considering what such an Alternative Solution may comprise. If and when such a solution is developed this could be incorporated into the DCUSA through the Change Process or accommodated under other industry agreements.
- 4.1.10 Clause 42.7 – Interconnection and Generation - Added after comments received in consultation. The revised drafting places obligations on Parties in respect of interconnection and generation.
- 4.1.11 Clause 42.8.2 – drafting revised to improve clarity of obligations of respective Parties in relation to generation.
- 4.1.12 Clause 44.1 – Amended to provide clarity between treatment of Use of System Charges and Transactional Charges.
- 4.1.13 Clause 48 – Amended for clarity and completeness. The terms 'Distributor A' and 'Distributor B' have been used rather than upstream distributor and downstream distributor because in some circumstances it may be difficult to decide who is upstream and who is downstream.
- 4.1.14 Clause 49 – Group view that the Clause covers off the relevant part of licence condition 20.
- 4.1.15 Clause 49.11 – Added to include provisions for transfer of information.
- 4.1.16 Schedule 13 - removed as consequence of consultation comments.
- 4.1.17 BCA Clause 3.2.2 – Addition of square brackets to allow for an indemnity should the land rights still be outstanding at the time of the BCA being negotiated.
- 4.1.18 BCA 9.1 – different views on level of liability limits. The drafting now allows for an alternative to the existing DCUSA liability specific to each BCA.
- 4.1.19 BCA 9.2.5 and 9.2.6 – Added for completeness to cover missed cross references
- 4.2 Consequential revisions to DCUSA following August Consultation:
- 4.2.1 Definitions – No longer amending Party Details section following consultation comments. No change to existing DCUSA drafting.
- 4.2.2 Clause 9.5 – Definition of Part 1 / Part 2 matters for Section 2B have been added based on consultation responses.
- 4.2.3 Clause 29.8 – Housekeeping change added for consistency between Section 2A and Section 2B

- 4.2.4 Clause 30.9 – To reflect DCP 006 changes now implemented with DCUSA v1.2a.
- 4.2.5 Clause 36.1 – amended to reflect change to BCA Clause 9.1.
- 4.2.6 Schedule 1, Paragraph 2.4 – Last sentence is an addition to the current DCUSA to cover IDNO Parties credit rating.
- 4.2.7 Schedule 4, Paragraph 1.8c and 1.11 c – clarifying position for arbitration / escalation process.

5 WORKING GROUP CONCLUSIONS

- 5.1 The Working Group was supportive of the principle of DCP 012 (subject to legal review) and apart from the compromise reached on Clause 52.9 which was accepted by the Change Proposer no alternative variation was put forward by the group.
- 5.2 The Working Group agreed that DNOs, IDNOs and Suppliers should be eligible to vote on the Change Proposal. It agreed that the proposed implementation date of the 31 March 2008 was achievable and in accordance with Clause 11.17 the Working Group agreed that DCP 012 should be put forward for consultation.

6 CONSULTATION

- 6.1 In accordance with the DCUSA, any Change Proposal progressed through the Definition Process may be issued to DCUSA Parties as part of a consultation exercise. The Working Group recommended that DCP 012 is put forward for consultation.
- 6.2 Parties are asked to review the proposed Change Proposal and provide feedback, paying particular attention to the following:
 - Whether you believe that the proposed variation better facilitates the DCUSA Objectives and if so your reasoning against each objective;
 - Identify any other relevant, suitable alternative solutions for consideration by the Working Group that would better facilitate the DCUSA Objectives and your reasoning for such an alternative solution measured against the DCUSA Objectives;
 - Whether you expect to incur any costs to support the Change Proposal;
 - Whether you support the proposed implementation date of the Change Proposal;
 - Note that comments will inform the Working Group and Panel's decision about which alternate(s) to put forward for voting.
- 6.3 In addition, Parties are asked to consider the following specific questions:
 - Part 1 / Part 2 Matters. Do you agree with the proposed assignment of Clauses as Part 1 or Part 2 matters?

- Transition – The Schedule 2B drafting has excluded transitional arrangements for migrating from existing connection and use of system agreements to Section 2B of the DCUSA and BCAs.
 - If the change proposal is implemented do you intend to migrate existing agreements to the DCUSA?
 - If yes, in what time period?
 - If not, why not?
 - Do you have any comments on the other drafting changes made since Consultation?
 - Are there any other comments you wish to make?
- 6.4 Your response, or any part thereof, can be provided in confidence. Please clearly indicate which parts of your response are to be treated confidentially.
- 6.5 You are asked to provide as much relevant detail in your response as possible to enable the working group and the DCUSA Panel to understand your comments and the reasons behind them. A response form has been included in Appendix D for your convenience.

7 NEXT STEPS

- 7.1 Following the end of the consultation period the Working Group will consider all responses and present a final report to the DCUSA Panel. The DCUSA Panel will determine which variation(s) will be put forward to the vote.

8 TIMESCALES

- 8.1 The Working Group has determined that the consultation period should be 10 Working Days. Parties are invited to submit responses to DCUSA@electralink.co.uk no later than 14 January 2007.
- 8.2 If you have any questions about this paper or the DCUSA Change Process please contact the DCUSA Help Desk by email to DCUSA@electralink.co.uk or telephone 020 7462 8717.

9 APPENDICES

- Appendix A – DCP 012
- Appendix B – Section 2B Drafting
- Appendix C – Consequential DCUSA Changes
- Appendix D – Consultation Response Form