

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP016: "More Open Website"		
Decision:	The Authority ¹ directs that this variation be made ²		
Target audience:	Parties to the DCUSA and other interested parties		
Date of publication:	21 October 2008	Implementation Date:	November 2008 scheduled release

Background

Under Standard Licence Condition (SLC) 22 of the electricity distribution licence it is a requirement for information about the operation of any of the DCUSA arrangements to be supplied on request to the Authority or to be published by the DCUSA Panel having particular regard to the provisions of section 105 of the Utilities Act 2000 (s105).

Currently the DCUSA website requires a username and password in order for certain parties to access information such as panel meeting papers, change proposals, etc. Access is available only to DCUSA panel members, DCUSA parties, the Panel Secretary, the Authority, the NCC, MRASCo, the GB System Operator, BSCCo and DCUSA Limited agents. This has been criticised for lacking in transparency and openness.

The DCUSA panel has been seeking ways to make the website more accessible to other interested parties. However, the panel were concerned that the information in panel meeting papers and change proposals might be considered relevant to s105.

DCP016 – the proposed variation

DCP016 seeks to gain consent from parties to enable others to access more information on DCUSA including information about Change Proposals and Panel Meetings. This will be done by introducing the definition of '*Interested Industry Participants*' (IIPs) and allowing them access to more areas of the website via a password. There will be 3 tiers of access:

- Part 1 The public facing website which gives the code, the change register, the calendar of events and contact details of contract managers and users;
- Part 2 The 1st stage password controlled part which gives meeting papers;
- Part 3 The 2nd stage password controlled part which is confidential to Parties or board members as appropriate and concerns finance and governance of DCUSA Ltd.

In order for an IIP to gain access to Part 2 of the website they would need to be 'sponsored' by a DCUSA Party. They would apply for IIP status through the DCUSA website by filling out an application form and stating the name of their sponsor. The panel will consider the application and verify with the sponsor that they have agreed to be the applicant's sponsor. The panel can remove a person's website access at any time.

During consultation on this proposal a concern was raised by a party who felt that there was a risk that commercially sensitive information could be misused by IIPs. They were also concerned that there seemed to be no process for how information already on the website might be treated. They wanted to know whether there would be a chance for information already available on the website to be classified as confidential and therefore placed into Part 3 of the website.

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.

The proposer notes concerns that commercially sensitive information might become accessible to 3rd parties as a result of this variation to DCUSA. However, the proposer considers these concerns will be alleviated by having this information placed in Part 3 of the website which will not be accessible to IIPs. The proposer notes that if a Party feels that information likely to go on the website is confidential, they must clearly state that it is confidential otherwise it will be assumed that the information can go on Part 2 of the website. Also, a user can request the panel remove another person's access to Part 2 of the website, if they feel that that person has used their details inappropriately. If a party feels that there is information already on the website that they would like to be considered confidential they should notify Electralink (the administrative body for DCUSA) who will make sure that it is placed in Part 3 of the website or removed completely.

There are currently procedures in place for non-IIPs, outside of the DCUSA itself, to verify if website access is still required; these would be extended to also cater for IIPs.

The processes introduced by this variation would be similar to those used by the MRA who also have a sponsoring mechanism for IIPs. However, the IIPs under the MRA are required to sign a confidentiality agreement.

Recommendation to Ofgem

The recommendation of DCUSA Parties was for the proposed variation to be accepted. Of the Party Classes which voted (DNO and Supplier) a majority of participants were in favour of implementation.

The November 2008 scheduled DCUSA release was proposed as the implementation date, for which there was unanimous support.

The Authority's decision

In reaching its decision the Authority has considered the issues raised by DCP016, the final Change Report (CR) dated 15 September 2008, the recommendations made by Parties to the DCUSA following its vote and responses to consultation.

The Authority has concluded that:

1. implementation of the proposed variation will better facilitate the achievement of the Applicable DCUSA Objectives³;
2. directing that the proposed variation be made is consistent with the Authority's principal objective and statutory duties⁴.

Reasons for the Authority's decision

Whilst the proposer did not consider that the relevant objectives would be facilitated by the proposed variation, they did feel that the variation was within the scope of the DCUSA and would have a neutral effect on parties. Ofgem does consider that DCP016 will better facilitate the achievement of the DCUSA objectives and is consistent with our wider statutory duties, particularly our Better Regulation⁵ duties.

³ As set out in the Distribution Licence Standard Condition 22, see:

http://epr.ofgem.gov.uk/document_fetch.php?documentid=13701

⁴The Authority's statutory duties are largely provided for in legislation, principally the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising under European Community legislation. The Authority's duties are wider than the matters which the Panel must take into consideration.

⁵ The Principles of Better Regulation are proportionality, accountability, consistency, transparency and targeting. They can be found in "Better regulation - from design to delivery: Annual Report 2005", see: <http://www.brc.gov.uk/upload/assets/www.brc.gov.uk/designdelivery.pdf>

Objective c) – the efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences;

DCP016 would help facilitate this objective as it will enable Parties to comply with their obligations under SLC 22 of the distribution licence in relation to the publication of information about the operation of any of the DCUSA arrangements.

Objective d) – the promotion of efficiency in the implementation and administration of the DCUSA arrangements.

We consider that objective d) is better facilitated by giving IIPs direct access to the website and information on DCUSA. We consider this is more efficient than the current arrangements as it allows IIPs to have immediate access to the information they need rather than having to request it from parties or Electralink who would then have to administer the request.

Also, we consider that DCP016 will increase the transparency and openness of DCUSA which is in line with our Better Regulation principles. With our current review of code governance underway we feel that any modification that improves the transparency and openness of a code is a positive step and in line with the objectives of the review.

We recognise the attempt to make the DCUSA more accessible whilst maintaining confidentiality for commercially sensitive information, though we note that other industry codes such as the BSC and UNC publish information on panel meetings and variation proposals on their websites without need of a sponsor, or username and password. We are not convinced by the reasons given as to why Part 2 of the DCUSA website could not also be in the public domain without the administrative burden of obtaining a sponsor.

Whilst it is appropriate that bodies such as the DCUSA Panel have regard to s105, we do not consider that information relating to change proposals is necessarily of a sensitive nature or that s105 is of itself justification to withhold disclosure. The information relating to change proposals has been freely and knowingly provided by parties for the express purpose of publication and/or consultation. We therefore consider that as the norm, change proposal documentation including meeting papers should be available via the open access part of the website. Whilst we do acknowledge that there may be instances where restrictions to access may be appropriate, this will be for documents which are genuinely considered to be of a sensitive nature where consent has not been obtained, rather than simply where the documents relate to the affairs of a business.

We also disagree with the argument that non-parties might try to gain financially through the misuse of the information as we are not aware of such misuse having occurred with the other codes. We recognise the efforts made with this variation but feel that much depends upon its application by the DCUSA Panel and their adherence to the principle of transparency.

Decision notice

In accordance with Standard Condition 22 of the Distribution Licence, the Authority hereby directs that the proposed variation set out in the proposed variation of DCP016: "*More Open Website*" be made, and that it shall be implemented in November 2008 scheduled DCUSA release.



Mark Feather

Director, Industry Codes and Licensing Signed on behalf of the Authority and authorised for that purpose.