

DCUSA CHANGE REPORT	
CHANGE PROPOSAL	DCP 012 - Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor
ALTERNATIVE VARIATION	DCP 012A - Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor
DATE OF ISSUE	24 January 2008
ISSUED TO	DCUSA Contract Managers Ofgem
PARTIES ENTITLED TO VOTE	All Supplier, DNO and IDNO Parties
RETURN DEADLINE (Voting End Date)	12 February 2008 – DCUSA@electralink.co.uk

1 PURPOSE

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA. The Change Report details DCP 012 - *Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor*. The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process are set out in this document. The content of this Change Report was approved by the Panel on 24 January 2008.
- 1.2 Parties are invited to consider the proposed amendments attached as Appendix F and Appendix G and submit votes using the form attached as Appendix I to dcusa@electralink.co.uk by 12 February 2008.

2 BACKGROUND

- 2.1 Schedule 12 of the DCUSA sets out the areas of possible 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. 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).
- 2.2 The DCUSA Panel established the Section 2B Project Group to draft Section 2B of the DCUSA and to develop a model form of bilateral connection agreement. An invitation to participate in the group was issued to all Contract Managers on 22 January 2007 with the first meeting taking place on the 7 February 2007. 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.

- 2.3 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.
- 2.4 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 DCUSA change process ENC agreed to submit a Change Proposal. At the time the Project Working Group was unable to reach agreement on a single drafting that would go forward for a change. Therefore, the Change Proposal included two options for the drafting of Clause 52.9 within the Change Proposal, DCP 012.

3 SUMMARY OF DCP 012

Raising Party	The Electricity Network Company
CP Status	Standard (non urgent)
Change Synopsis	It is proposed to change DCUSA so that, in addition to covering distributor to supplier contractual arrangements for use of licensed electricity distribution systems, it covers distributor to distributor arrangements where one licensed electricity distributor uses the distribution system of another licensed electricity distributor
Parties Impacted	DNOs, IDNOs and Suppliers
Part 1 / Part 2	Part 1
Authority Consent	Required
Proposed Implementation	The latter of 01 April 2008 or 10 WD following Authority Consent ¹

¹ If approved, DCP 012 will be implemented in an extraordinary release outside the standard timetable.

- 3.1 DCP 012 was raised by ENC on 26 November 2007 to bring 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 and established Working Group DCP 012 to consider the Change Proposal. The Working Group met on 06 November 2007 and 17 January 2007 to consider DCP 012, evaluate it against the applicable DCUSA Objectives, consult on the proposal and to seek to address the one outstanding issue highlighted by the Section 2B Project Group – the drafting of Clause 52.9 – Modifications Proposed by the Company.

4 DCP 012 WORKING GROUP

- 4.1 The Working Group met 2 times to assess and develop the CP. The minutes of the meetings are attached as Appendices A and B.
- 4.2 At the first meeting on 12 November 2007 the Working Group approved its Terms of Reference (Appendix C) and 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
 - Drafting of the Consultation Document
- 4.3 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.
- 4.4 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 a consultation exercise.
- 4.5 The Working Group recognised that work is being undertaken to develop a solution that avoided the need for metering at a distributor to distributor boundary. Therefore, the agreement was drafted to facilitate alternative solutions to metering without prescribing what that solution would be. The Working Group agreed that the details of such solution would have to be agreed between the relevant Parties. In the future a Party could submit a change proposal to incorporate the detailed requirements for an alternative solution within DCUSA.

- 4.6 The Working Group noted that the only area where the Project Group had been unable to reach agreement prior to submission of the Change Proposal was on the drafting of Clause 52.9 and as such the Change Proposal contained two options for this Clause. Subsequent to the submission of the Change Proposal for consultation the Working Group proposed a redraft as a compromise of the two options. The change proposer agreed that the revised drafting could be taken forward as an amendment to the drafting proposed in the Change Proposal. In accordance with Clause 11.17 of the DCUSA the Working Group agreed that DCP 012 should be put forward for consultation on that basis.
- 4.7 The DCP 012 Consultation was issued to all DCUSA Contract Managers on 24 December for a period of 12 Working Days. 9 responses were received by the closing date of 14 January. The consultation responses are attached as Appendix D.
- 4.8 The Working Group met for the second time on 17 January 2008 and considered the following areas:
- DCP 012 Consultation Responses
 - DCP 012 Drafting Amendments
 - Proposed Variation to Clause 52.9
 - Drafting of the Change Report
- 4.9 The Working Group noted that 100% of the 9 responding Parties or groups of Parties had indicated that DCP 012 better facilitated one or more of the DCUSA objectives and that the results were broken down as follows:

Objective	Respondents supporting the Objective ²
3.1.1 - The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks	100%
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	78%
3.1.3 - The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences	89%

² The percentage of respondents who indicated that DCP 012 would better facilitate the DCUSA objective than the current drafting.

3.1.4 - The promotion of efficiency in the implementation and administration of this Agreement	22%
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4.10 The Working Group reviewed each of the responses to the consultation and addressed each of the comments made. The decisions taken by the group are detailed in the minutes of the meeting (Appendix B).

5 WORKING GROUP CONSIDERATIONS – AREAS OF CONSENSUS

5.1 DCUSA Objectives: The Working Group considered DCP 012 against the DCUSA objectives and agreed, in accordance with the consultation responses, that the proposed variation better facilitates the following objectives in section 3.1 of the DCUSA than the current drafting:

- “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”.

5.2 Objective 3.1.1- Parties agreed that DCP 012 better facilitates Objective 3.1.1 through the creation of a multilateral agreement for the payment of UoS. Members agreed that the common industry agreement and the standardising of the bulk of the contractual arrangements and procedures between Parties will support the development, maintenance and operation by both DNO and IDNO Parties of their networks.

5.3 Objective 3.1.2 - Parties agreed that the proposal better facilitates further competition in distribution by establishing a transparent, contractual framework covering inter-distributor relationships. The proposed framework was considered by the group to be easier to manage than the current high volumes of bi-lateral agreements thus reducing the contractual administration for Parties. Parties agreed that the creation a common industry agreement that offers an efficient and economic process for managing the contractual relationships between distributors for use of system will better facilitate competition in Distribution.

5.4 Objective 3.1.3: Parties agreed that moving away from multiple bilateral agreement to a single multi-Party mechanism will support the efficient discharge by the IDNO’s and DNO’s Parties of obligations imposed upon them in their Distribution Licences by improving transparency and allowing efficient monitoring of licence obligations. Parties agreed that placing 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 administer them more efficiently will aid the efficient discharge by the DNO Parties and IDNO Parties of their licence obligations.

- 5.5 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.
- 5.6 Costs: Members agreed that the introduction of Section 2B would not itself introduce costs although some Parties may incur some costs associated with the migration from CUOSAs to BCAs. However, the Working Group agreed that such costs would be outweighed by the costs of maintaining CUOSAs in the long term. Members agreed that Parties' views on the transition process indicated that the costs of migration were not prohibitive and members agreed that the short term costs of implementing the change would be outweighed by the long term benefits.
- 5.7 Transition: The Working Group noted that 100% of respondents to the consultation had indicated that they would migrate existing agreements to the DCUSA but that the timescales for completing the exercise varied and respondents had indicated that the process should be agreed on a bilateral basis between Parties. The Working Group noted that the DCUSA could not mandate migration or termination, or specify a timetable for doing so, in respect of agreements that are outside the governance of DCUSA. However, if Ofgem determines that this change should be made it may wish to comment on this area in its determination letter.
- 5.8 Implementation Date: The Working Group noted that 100% of responding Party groups supported an implementation date outside the standard release calendar. The Working Group concluded that it would be pragmatic to implement the approved change on 01 April 2008, or if Ofgem does not publish its decision by 28 March 2008, then implementation should be 10 Working Days after the publication of Ofgem's decision (and where the decision by Ofgem is that the change should be made).
- 5.9 Drafting: The Working Group agreed that it was satisfied with all of the drafting in Section 2B, the BCA and the consequential changes with the exception of Clause 52.9 (see section 6 below). The Working Group agreed minor amendments to the following Clauses in accordance with consultation responses: Clauses 39.5, 39.15, 39.6, 41.1, 41.2, 41.18, 41.19, 42.3, 42.7, 42.8, 52.9, and 1.7 (consequential changes). The detail of each amendment is shown in the legal drafting as Appendix E.

6 WORKING GROUP CONSIDERATIONS – AREAS OF DISAGREEMENT

- 6.1 Drafting - Clause 52.9: The drafting for Clause 52.9 is the only outstanding area of disagreement within the Working Group. The drafting of the Clause is the only difference between DCP 012 and the variation DCP 012A.
- 6.2 Section 52 sets out the process and obligations on the Company and the User where a Modification is required to either the Company's or the User's distribution system. Clause 52.9 specifies the obligations of the Company to compensate the User where, as a direct consequence of the Company's Modification, the User is required to undertake Modification works to its distribution system.

- 6.3 The drafting set out in DCP 012 represents a compromise position reached by the Working Group at its meeting on 06 December 2007. At the meeting Working Group members agreed that ideally a single variation would be presented for to Parties for voting and therefore sought to develop drafting to accommodate a single solution. The group noted that at its meeting on 09 November the Section 2B Project Group had reached a compromise position but that at the meeting on 19 November members' views became disparate and two options had been drafted. Option 1 stated that the Company would have no obligation to compensate the user for any costs or expense resulting from modifications it made. Option 2 stated that the Company would be liable to compensate the User for any modifications which alter the technical characteristics its Connection Point.
- 6.4 The Working Group considered that Option 2 of the drafting for Clause 52.9 better facilitated was Objective 3.1.1³ by putting the onus on DNOs to be clear when raising modifications that the costs are efficient and economical to the 'total system'. Members considered that if the Company bringing forth the modification was liable to pay the costs it would be more likely to be focused on raising the change in an efficient manner. The Working Group noted that the drafting represented a change to the existing position, however it was suggested that the current structure is not suitable for the current framework of DNO – IDNO relationships.
- 6.5 The Working Group noted that Option 1 appears in all DNO agreements at present but that any modifications are negotiated between Parties. The Working Group considered that it could develop a third option of a compromise position where by the Company would be liable to pay costs for any modification that was not the result of a legislative or enforced change. Members noted that IDNOs could better manage the risks to their business if Companies were obliged to pay the costs for modifications but accepting that legislative changes were likely to apply equally to all Distributors. The Working Group agreed to put forward this compromise position in the consultation document, and following the review of responses, in the final version of DCP 012.
- 6.6 The drafting for Clause 52.9 is set out in DCP 012 is as follows:

Where a Modification by the Company alters the technical characteristics of the Connection Point (as set out in the relevant Bilateral Connection Agreement), but not otherwise, the Company shall compensate the User for the reasonable cost and expense of any modification required to be made by the User as a result of such Modification; provided that the Company shall not be obliged to compensate the User where such Modification is required as a consequence of any Relevant Instrument, legislative requirement or Directive. Any dispute as to whether the Company is obliged to compensate the User or as to the amount of any such compensation may be referred to arbitration in accordance with the provisions of Clause 58.

³ The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-coordinated, and economical Distribution Networks

- 6.7 Following the consultation, the Working Group noted that one Party (EDF Energy Networks) had submitted an alternative solution for the drafting of Clause 52.9, recommending the drafting is revised. The proposed drafting for the alternative DCP 012A is as follows:

The Company shall have no obligation to compensate the User for the cost and expense of any modification required to be made by the User as a result of any Modification by the Company unless it has recovered an equivalent amount from a third party."

- 6.8 The Working Group asked that the Party provide a detailed rationale for the proposed variation which is set out below.
- 6.9 "EDF Energy is proposing this alternate to the Working Group drafting, for this clause only, for the following reasons:
- 6.9.1 We believe that no payment should be made by the Company to the User as a result of a modification by the Company unless it is the result of a third-party connection and the company can recover the costs from that third party as part of the connection charge.
- 6.9.2 The industry norm, which has been in place since privatisation, is that the owner of the asset pays for the costs of any works required on his assets, as seen in CUSC, existing bilateral connection agreements (with customers, generators, private networks etc.) and existing connection agreements with licensed inset networks (see Appendix H). Network Operators do not bear any costs. However, we believe that where any consequential costs have been recovered from a third party it is pragmatic to pass those on (the final outcome being similar to CUSC).
- 6.9.3 Network operators, such as the Grid or a DNO, have public responsibilities such as the section 9 duty to develop and maintain efficient, co-ordinated, and economical systems. If they had to worry about the prospect of being charged the costs of a third-party modification that was a knock-on consequence of one of their own modifications, they might be deterred from a proper and unfettered discharge of those legal duties.
- 6.9.4 It is not the norm in electricity that the providing network operator should bear the cost of a modification's impact on others and this helps to keep the providing network operator's costs and hence prices down. To open that to debate may be to open it up to all other connectees and expose network operators to increased cost.
- 6.9.5 To this point in the industry's development no liability for customer costs arising from network modification has been accepted and there exists no basis currently to ascertain the magnitude of exposure to such liability.
- 6.9.6 Objective one of DCUSA, regarding efficient co-ordinated and economic networks is therefore not met by the working group's drafting of this clause.
- 6.9.7 We believe that the objective of this work under DCUSA should be to rationalise the volume of agreements between distributors with little change to the base content of those agreements, and certainly no change to fundamental industry-wide principles. This is how the supplier

agreements were brought into section 2A of DCUSA and it should be how these agreements are brought in to section 2B.

- 6.9.8 The impact of the working group's drafting, on distributors, has far reaching consequences for other connections. We are not saying that a debate on this matter should not happen but we believe that it is a much wider debate that should consider the subject matter in relation to the whole industry and understand the full impacts of such a change.
- 6.9.9 We do not believe it is the place for the DCUSA Working Group to propose changes to established modification liabilities given that it is not within the Working Group's role or power to consult more widely than the DCUSA Parties. A regulatory case and impact assessment has not been made to assess and justify the limiting of such a change in modification liability solely to connected licensed distributors, rather than all types of connected customer who might equally be affected.
- 6.9.10 It is equally the case that some DCUSA voting Parties, specifically Suppliers, are not exposed to the outcome of which party bears the cost of modifications, which is the subject of this issue, and yet will be asked to vote upon deviating from the status quo. Conversely other Parties such as end demand customers, generators, private networks or offshore transmission Parties are not currently voting Parties to DCUSA but have an interest in this specific principle of modification liability under debate. DNOs also have an interest in Modifications under CUSC, the result of which they currently bear their own costs and that is not subject to this narrow debate.
- 6.9.11 Without assurance that such a proposed change on modification liabilities would categorically not be extended to all other type of connected customer, given the clear economic precedent that would be set, there exists considerable regulatory uncertainty.
- 6.9.12 Our view is that the status quo should be maintained on this matter so that new BCAs under DCUSA are on the same terms as existing ones, and all other existing connection agreements, such that DCUSA section 2B may be implemented in the short term and that debate given fuller attention.
- 6.9.13 Our preference is that this specific matter be provided sufficient time, which the current DCUSA working group implementation timeplan does not provide, and sufficient audience, which the DCUSA working group cannot gain, so as to achieve, if so desired, a properly considered change in modification liabilities across the entire industry."

7 WORKING GROUP CONCLUSIONS

- 7.1 With the exception of EDF Energy, Working Group members agreed that the original version of DCP 012 as issued for consultation on 24 December 2007 (including the minor amendments set out in 5.9 above and as drafted in Appendix E) should be put forward in the recommendation to the Panel. The group considered that the CP delivers a consensus position and that the majority of impacted Parties had been fully involved in the process and indicated support for the CP via the consultation.

- 7.2 The Working Group assessed the proposed variation DCP 012A against DCP 012 and the majority of members agreed that DCP 012 better facilitated the DCUSA Objectives than the proposed variation DCP 012A. In relation to Objective 3.1.1, members noted that the Company would be more likely to consider the impact that modifications to its network may have on any connected networks, encouraging the implementation of a total least-cost solution. This would better protect consumers and discourage Modifications, which although having a least cost solution in respect of the Company's distribution system, could impose high cost modifications on downstream licensed networks. This could be the case where a Modification changed the voltage or impedance characteristics at a connection boundary.
- 7.3 Members noted that in accordance with Clause 11.18 any member of the Working Group may put forward an alternative variation for consideration if it believes the Working Group drafting to be insufficient. The group noted that EDF Energy Networks would put forward the alternative set out in section 6 above. The group recognised its decision and agreed that the variation would be included in the final recommendation to the Panel.

8 PROPOSED AMENDMENTS AND LEGAL DRAFTING

- 8.1 The proposed amendment to the DCUSA in support of DCP 012 has been drafted by Wragge and Co. Working Group members agreed that a fully changed marked copy of the entire DCUSA, incorporating Section 2B and the consequential changes should be issued to Parties with the Change Report. The proposed amendment is attached as Appendix F. There are 3 DCUSA outstanding CPs (DCP 009, DCP 013 and DCP 014) currently going through the Assessment Process that are targeting the February Release. Further amendments may be introduced as a consequence of those CPs but the change marked DCUSA set out as Appendix F is against the existing baseline, v1.2a.
- 8.2 The proposed drafting for Clause 52.9 under both DCP 012 and DCP 012A is set out in Appendix G.

9 DCUSA PANEL RECOMMENDATION

- 9.1 The DCUSA Panel met by teleconference on 24 January 2008 to consider the Change Report. The Panel approved the content of the Change Report and agreed that the report should be issued to all DCUSA Parties for a voting period of 12 Working Days. The Panel agreed that the proposed implementation date of the latter of 01 April 2008 or 10 Working Days after Authority Consent was appropriate.
- 9.2 The Panel directed that DCUSA Parties be asked to vote on the following three separate questions in relation to DCP 012:
- Do you support the principle of the introduction of Section 2B?
 - Do you support the drafting set out in DCP 012 or DCP 012A?
 - Do you support the proposed implementation date of 'the latter of 01 April 2008 or 10 Working Days after Authority Consent'?

- 9.3 The Panel noted that DCP 012 represented a significant development in the drafting of the DCUSA. In order to assist Ofgem's decision making process, The Panel recommended that Parties provide supporting information when submitting their votes.

10 TIMETABLE

10.1 In accordance with Clause 12.4 of the DCUSA the Panel has determined a 12 Working Day voting period.

10.2 The timetable for the progression of the Change Proposal is set out below:

Date	Activity	Purpose	Responsibility
24 January	Change Report Issued	Change Report issued to all Parties for 12 WD	Secretariat
12 February	Voting End Date	Last date for submission of votes	Parties
13 February	Change Declaration	Outcome of voting published to Parties and Authority	Secretariat
19 March	Authority Determination	Authority to accept / reject CP following recommendation from Parties	Ofgem
01 April	DCUSA Release	DCUSA updated to reflect CP drafting (if approved by Authority)	Secretariat

Appendices:

- A. DCP 012 Working Group Meeting Minutes
- B. DCP 012 Working Group Meeting Minutes
- C. DCP 012 Working Group Terms of Reference
- D. DCP 012 Consultation Responses
- E. DCP 012 Legal Drafting, Amendments following Consultation
- F. DCP 012 Legal Drafting – DCUSA Document
- G. DCP 012 and DCP 012 A Legal Drafting – Clause 52.9
- H. DCP 012A – Supporting Appendix
- I. DCP 012 - Voting Form