

**DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF  
A DISPUTE UNDER STANDARD LICENCE CONDITION 7 OF THE  
ELECTRICITY DISTRIBUTION LICENCE - The charges for the provision of  
three points of connection between a Customer and the distributor's  
electricity distribution system.**

**1. INTRODUCTION**

- 1.1. We, the Gas and Electricity Markets Authority<sup>1</sup> ("the Authority") were asked by [REDACTED] ("the Agent"<sup>2</sup>), representing [REDACTED] ("the Customer"), to determine a dispute between the Customer and Southern Electric Power Distribution Plc ("the Company"). The dispute concerns the Distribution Use of System (DUoS) and distribution losses charges based on an assigned Line Loss Factor Class (LLFC) at three of [REDACTED] electricity connections at [REDACTED]  
[REDACTED] ("the Premises").
- 1.2. The dispute has been referred to us for determination under Standard Licence Condition (SLC) 7 of Electricity Distribution Licence ("the Licence"). We are required to determine such disputes once a customer or relevant party asks us to do so.
- 1.3. Copies of the submissions given to us by the Customers and the Company, in relation to this dispute, are attached as Appendices 1 and 2 (respectively). The responses to the parties' submissions and further comments are also contained in these appendices.

**2. LICENCE OBLIGATIONS**

- 2.1. SLC 13 of the Licence requires that electricity distributors have a Common Distribution Charging Methodology ('the CDCM') for determining use of

---

<sup>1</sup> In this document the terms the "Authority", "we", "us" and "our" are used interchangeably.

<sup>2</sup> On 24 February we received a letter of authority from the Customers stating that the Agent had been authorised to progress the request for determination on their behalf.

system charges. The CDCM must meet the relevant objectives set out in the Licence and obtain our approval. We have approved the current version of the CDCM. SLC 13A requires that the licensee must take all steps within its power to ensure that the CDCM in force under the Licence achieves the relevant objectives. One of the objectives set out in the Licence is that:

*"compliance with the CDCM results in charges that, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the licensee in its Distribution Business."*<sup>3</sup>

- 2.2. SLC 14 requires a charging statement to be prepared and made available in a form approved by us that sets out the basis on which charges will be made for use of the system ("the Use of System Charging Statement"). The Use of System Charging Statement is to be prepared in accordance with the CDCM. The Licensee must ensure that, except with our consent, every arrangement entered into by the licensee for the purposes of providing customers with use of the system complies with the licensee's Use of System Charging Statement in force at the time.
- 2.3. SLC 7 allows us to determine disputes between the Licensee and another party on whether the Licensee's use of system charges complied with the relevant charging methodology or charging statement.

### 3. **FACTS OF THE CASE**

- 3.1. We consider the following to be the facts of the case. We have based the facts on our assessment of the information submitted to us by both parties for this determination.
- 3.2. The Distribution Connection and Use of System Agreement (DCUSA) is a multi-party contract between licensed electricity distributors, suppliers and generators in Great Britain. Schedule 16 of DCUSA contains the CDCM which gives the common methodology for calculating the use of system charges by

---

<sup>3</sup> Paragraph 13A.10(c) of the Standard Conditions of the Electricity Distribution Licence.

each electricity Distribution Network Operator (DNO) Party. Each DNO produces its own use of system charging statement which sets out the DUoS charges and the reasons behind them.

- 3.3. If an electricity supply is connected to the distribution network at a voltage level lower than 1 kV it attracts the Low Voltage Network (LVN) DUoS tariff. In April 2010 a new LV substation (LVS) tariff was introduced for electricity supplies connected at a voltage level lower than 1 kV and with the supplier's metering current transformer (CT) based at a substation. The LVS tariff is lower than the LVN tariff because the supply uses less of the electricity distribution network and the associated electricity losses are lower.
- 3.4. The Customer has three sites at which its electricity supply connections, which pre-date April 2010, have their supplier's metering CT adjacent to the substation transformer chamber.
- 3.5. We approved a modification to the CDCM under the DCUSA Change Proposal (DCP) 174 in December 2013.<sup>4</sup> DCP 174 amended the legal text in schedule 16, paragraph 141 of DCUSA, which related to the definition and application of the LVS tariff.
- 3.6. Table 1 illustrates the changes made by DCP 174 to the legal text regarding the definition and application of the LVS tariff.

**Table 1 Changes implemented through DCP 174 to the legal text in schedule 16, paragraph 141 of DCUSA**

<b>Extract from Schedule 16, paragraph 141 DCUSA version 5.12</b>	<b>Extract from Schedule 16, paragraph 141 DCUSA version 5.13 (effective from 31 December 2013)</b>
Note 3: LV Sub applies to customers connected to the DNO Party's network at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current	Note 3: LV Sub applies to customers connected to the DNO Party's network at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current transformer

<sup>4</sup> <https://www.ofgem.gov.uk/publications-and-updates/distribution-connection-and-use-system-agreement-dcusa-dcp174-qualification-and-application-lv-sub-station-tariffs>

transformer used for the customer's settlement metering is located at the substation.

Note 5: Note 3 above for LV substation tariffs will be applied for new customers from 1 April 2010. Where a customer is already registered on an LV substation tariff they will remain so.

(CT) used for the customer's settlement metering is located at the substation.

For these purposes, 'at the substation' means:

a) an HV/LV substation with the metering CT in the same chamber as the substation transformer; or

b) an HV/LV substation with the metering CT in a chamber immediately adjacent to the substation transformer chamber.

Note 5: Note 3 above for LV substation tariffs will be applied if a customer or its supplier provides evidence demonstrating to the DNO Party's reasonable satisfaction, that the requirements of note 3 are met.

To determine whether such evidence is sufficient, the DNO Party will investigate and reach a decision based on the evidence supplied and any additional information that is available to it. Administration charges (to cover reasonable costs) may apply if a technical assessment or site visit is required. Where a DNO Party agrees that a customer should be moved to the LV substation tariff, the new tariff will be applied in the next calendar month following the DNO Party's decision.

Where a customer is already registered on an LV substation tariff they will remain so.

- 3.7. On 15 October 2014 the Customer's agent first requested that the Company move the Customer's three meter point administration numbers (MPANs) from the LVN tariff to the LVS tariff.
- 3.8. The Company reviewed the Customer's evidence and the current CDCM set out in the DCUSA. On 16 December 2014 it decided to move one of the three MPANs to the LVS tariff with effect from 1 October 2014. On 12 May 2015 it confirmed it would move the other two MPANs to the LVS tariff with effect from 1 October 2014.

- 3.9. Following the first tariff changes the Agent requested that the Company refund the Customer the difference of what it would have paid if it had been assigned to the LVS tariff from 1 April 2010.
- 3.10. On 6 January 2015, the Company informed the Agent that it would not give the requested refund. The Agent sent the Company two escalation letters on 5 March 2015 and 16 April 2015 requesting that it review the decision.
- 3.11. In response to both escalation letters the Company pointed to arrangements in the CDCM (schedule 16, paragraph 141, note 5) which it reasoned only required it to apply the LVS tariff from the next calendar month following its decision to change the tariff.
- 3.12. On 28 May 2015 the Agent referred the dispute to us for determination.
- 3.13. Both the Customer and the Company have made submissions to us on this determination and we include these in Appendices 1 and 2, respectively.

#### **4. POINTS OF DISPUTE**

- 4.1. We consider that we have been asked to determine whether, in refusing to backdate the Customer's revised charges to 1 April 2010, the Company has complied with its charging statement and methodology.
- 4.2. We have drawn the points of dispute below from both parties' statements of facts and their comments on each other's submissions.

#### **Who is responsible for identifying if an LVS tariff applies for a customer?**

- 4.3. The Company considers that the current arrangement in the CDCM for the allocation of LVS tariffs puts the onus on the customer to demonstrate that its supply is eligible for the LVS tariff.<sup>5</sup>
- 4.4. The Company points to an extract from schedule 16, paragraph 141 Note 5 of DCUSA since 31 December 2013 which states that:

---

<sup>5</sup> Schedule 16, Paragraph 141, Note 5 of DCUSA version 5.13

*"Note 3 above for LV substation tariffs will be applied if a customer or its supplier provides evidence demonstrating to the DNO Party's reasonable satisfaction, that the requirements of note 3 are met. To determine whether such evidence is sufficient, the DNO Party will investigate and reach a decision based on the evidence supplied and any additional information that is available to it."*

- 4.5. The Company states that these arrangements were put in place as it was considered impractical, when developing the CDCM, for those DNOs that did not have an existing LVS tariff to assess whether or not all their non-domestic LVN connections were eligible for the LVS tariff.
- 4.6. The Agent disagrees with the Company's interpretation of the note and does not think it relinquishes the Company from its responsibility to identify existing customers who fall under the LVS tariff.
- 4.7. The Agent believes the onus is on the DNO to apply the correct DUoS tariff and related charges. It considers that this must be true given that it has no contractual agreement with the DNO, nor is the Customer party to the DCUSA with industry knowledge of the CDCM. It does not agree that 'impracticality' is a valid justification for incorrect charges to be applied, particularly if it has a significant financial impact on the Customer.
- 4.8. The Agent is not aware of any documents that state explicitly that the application of correct charges is the responsibility of customers. The Customer is not aware of any efforts made by DNOs including the Company to advise customers of this responsibility.

**When did the three ■ connections qualify for the LVS tariff?**

- 4.9. The Company considers that schedule 16, paragraph 141 note 5 of DCUSA (effective from 31 December 2013) only requires it to apply the tariff one calendar month following its decision to move the customer to an LVS tariff.<sup>6</sup>

---

<sup>6</sup> Schedule 16, Paragraph 141, Note 5 of DCUSA version 5.13

- 4.10. The Company approved the LVS tariff application for the customer's three supply sites and applied this lower tariff from the month of the Agent's application to change to LVS tariff (October 2014).
- 4.11. The Company also states that prior to the changes implemented on 31 December 2013 by DCP 174, it had understood that the sites would not have qualified for the LVS tariff:<sup>7</sup> first because it understood the tariff only to apply to new customers from 1 April 2010; and secondly because the Customer's metering equipment were not "at the substation" as it interpreted this term prior to implementation of DCP 174.<sup>8</sup>
- 4.12. The Agent disputes the Company's understanding of the pre-December 2013 definition of the LVS tariff. It considers that a wider definition of "at the substation" was allowed and that the purpose of the changes implemented by DCP 174 was to add specific caveats to narrow down the definition of the phrase "at the substation".
- 4.13. The Agent therefore considers that all three of the Customer sites qualified for the LVS tariff since its introduction in April 2010.

#### **Should payments be backdated?**

- 4.14. The Company argues the current arrangements in DCUSA under schedule 16, paragraph 141 note 5 only require it to apply the tariff in the next calendar month once it agrees the tariff is applicable. It is therefore not obliged to backdate payments to the Customer.
- 4.15. The Agent does not agree that the provision to apply the LVS tariff in the next calendar month excludes the Company from also backdating payments. The Agent considers that no specific arrangements were put in place by DCP 174 regarding the backdating of payments.
- 4.16. The Agent refers to DCP 173, which was a DCUSA change proposal put forward to establish the time period for applying retrospective changes of

---

<sup>7</sup> Schedule 16, Paragraph 141, Note 3 of DCUSA version 5.13

<sup>8</sup> Schedule 16, Paragraph 141, Note 3 and 5 of DCUSA version 5.12

tariffs. The Agent argues that as the modification was in discussion at the time of DCP 174, no provision was put in place regarding backdating the LVS tariff. This was in order to avoid conflicts with any measure implemented by DCP 173.

4.17. DCP 173 was withdrawn on the basis that the default position of DCUSA was that the Limitations Act 1980 applied and so no change to DCUSA was required. Following this, in April 2015 DNOs updated their use of system charging statements clarifying that incorrectly allocated charges would be backdated in line with the statute of limitations.

4.18. The Agent considers that the Customer was assigned to an incorrect tariff from 1 April 2010. As such the Customer should be refunded the difference between the two tariffs from 1 April 2010. The Agent points to paragraph 2.59 in the Company's charging statement from the section titled "Incorrectly allocated charges":

*"Where we agree that an MPAN/MSID<sup>9</sup> has been assigned to the wrong voltage level then we will correct it by allocating the correct set of charges for that voltage level. Any adjustment for incorrectly applied charges will be as follows:*

- any credit or additional charge will be issued to the Suppliers who were effective during the period of the change; and*
- any correction will be applied from the date of the request back to either the date of the incorrect allocation or up to the maximum period specified by the Limitation Act (1980) which covers a six year period, whichever is the shorter."*

4.19. The Company does not agree that the application of the LVN or LVS tariff for the Customer's three supply sites is covered by the "Incorrectly Allocated Charges" area of the DUoS statement.

4.20. The Company argues that this provision only applies to situations where a customer has been assigned to the wrong "voltage level". It points out that in this case the voltage levels under the LVN and LVS tariffs are exactly the

---

<sup>9</sup> Metering System Identifier (MSID)



same: the differentiating factor was whether or not the connection was "at the sub-station".

- 4.21. The Agent does not agree with the Company's interpretation of "voltage levels" as being exclusively distinct levels of physical voltage of the supply. The Agent considers the LVS tariff to be a different voltage level to the LVN tariff, as the LV Substation represents a transformation between two voltages.
- 4.22. The Agent points to the DCUSA document and the Company's charging statement as supporting the definition that voltage levels can represent transformation between two voltages. The Agent considers that "voltage level" is also used synonymously with "network level" in these documents, which are used to allocate charges and categorise customers.
- 4.23. The Agent also refers to paragraph 2.57 in the Company's charging statement (April 2015) which requires an application for what is believed to be an incorrectly allocated charge to be supported by *"information, including, where appropriate photographs of metering positions or system diagrams"*.
- 4.24. The Agent argues that if assigning an incorrect voltage level was only relevant to the physical voltage of supply (eg Extra High Voltage, High Voltage or Low Voltage) then there would be no requirement to supply evidence of metering positions or system diagrams.
- 4.25. The Agent also considers that the Company's position of not backdating the LVS tariff does not reflect the costs incurred by the Company as required by DCUSA Charging Objective 3.2.3.<sup>10</sup>

---

<sup>10</sup> The DCUSA Charging Objectives (Relevant Objectives) are set out in Standard Licence Condition 22A Part B of the Electricity Distribution Licence and are also set out in Clause 3.2 of the DCUSA

## **5. CONSIDERATION OF EVIDENCE**

- 5.1. We have carefully considered the submissions and supporting evidence from both parties, as set out in Appendices 1 and 2 and summarised in this determination.

### **Who is responsible for identifying if an LVS tariff applies for a customer?**

- 5.2. The Company considers that schedule 16, paragraph 141 note 5 of DCUSA assigns responsibility to the Customer or supplier to demonstrate that it is eligible for the LVS tariff. The Agent considers that the responsibility for assigning the correct tariff lies solely with the DNOs.
- 5.3. We consider that in general it is the responsibility of the Company to correctly allocate charges to both new and current customers. This obligation is reflected in the DNOs' Licence condition SLC 13A that requires them to ensure that the CDCM results in charges that reflect costs incurred.<sup>11</sup> This is also demonstrated in the Company's charging statement, paragraph 2.54 in the section titled "Incorrectly allocated charges":

*"It is our responsibility to apply the correct charges to each MPAN/MSID. The allocation of charges is based on the voltage of connection and metering information. We are responsible for deciding the voltage of connection while the Supplier determines and provides the metering information."*

- 5.4. However, schedule 16, paragraph 141 note 5 of DCUSA sets out a specific process for identifying whether a customer should be transferred to the LVS tariff following implementation of DCP 174. This provision places the responsibility for requesting a move to the LVS tariff on to the customer or its supplier.
- 5.5. Although this process does not prevent a DNO from proactively identifying if a current customer should be assigned to an LVS tariff (and we would

---

<sup>11</sup> Paragraph 13A.10(c) of the Standard Conditions of the Electricity Distribution Licence.

expecta prudent operator to take reasonable steps to do so), a failure to do so does not constitute non-compliance with its Charging Statement.

**When did the three connections qualify for the LVS tariff?**

- 5.6. The LVS tariff was introduced in April 2010 for new customers connecting "at the substation" to reflect the correct cost of the customer using the system and avoid it paying for distribution assets that it does not use further down the distribution network. The implementation of DCP 174 in December 2013, dealt with an ambiguity in the definition of customers who qualify for the LVS tariff and allowed the LVS tariff to be applied to all customers who meet the definition for the LVS tariff regardless of their date of connection.<sup>12</sup>
- 5.7. The Company does not consider that the Customer was eligible for the LVS tariff prior to the implementation of DCP 174. This is because the supply connections predated 1 April 2010 and the metering current transformers were not located "at the substation" according to its interpretation prior to December 2013.
- 5.8. The Agent considers the criteria for the LVS tariff prior to DCP 174 to have allowed for a wider scope of supply sites.
- 5.9. We consider that the intent of the modification in DCP 174 was to ensure there was consistency between DNOs as to who qualified for the LVS tariff. We believed it important to remove the different approaches that had existed as a result of the lack of clarity in the wording. There was also a change to the application of the LVS tariff by making it applicable to all customers who meet the definition of LVS regardless of their date of connection.
- 5.10. As the LVS tariff definition required clarification, the Company's interpretation of the LVS tariff criteria prior to the DCP 174 modification does not constitute non-compliance with the CDCM. It was only with the

---

<sup>12</sup> <https://www.ofgem.gov.uk/publications-and-updates/distribution-connection-and-use-system-agreement-dcusa-dcp174-qualification-and-application-lv-sub-station-tariffs>

implementation of DCP 174 that customers whose connection pre-dated 1 April 2010 were eligible for the LVS tariff.

**Should payments be backdated?**

- 5.11. The Company recognises DCUSA schedule 16, paragraph 141 note 5 as the specific arrangement for assigning existing customers to the LVS tariff. It has interpreted it as only requiring the LVS tariff to apply on a forward-looking basis once it has decided that eligibility requirements are met. The Agent disagrees with this interpretation.
- 5.12. The Company's charging statement allows for the backdating of any credit in respect of incorrect DUoS charges if it agrees that an MPAN/MSID has been assigned to the wrong voltage level. The Company claims that in applying the LVN tariff instead of the LVS tariff, it has not assigned the wrong voltage level. The Company does not consider the statement in the "Incorrectly allocated charges" section of its charging statement to apply for a customer moving from an LVN tariff to a LVS tariff.
- 5.13. The Agent believes that the LVS tariff constitutes a different voltage level to an LVN tariff and that by being placed on an LVN tariff it was subject to an 'incorrectly allocated charge'.
- 5.14. We note that Paragraph 2.54 of the Company's charging statement establishes that it is the Company's responsibility to apply the correct charges to each MPAN/MSID based on the voltage of connection and metering information which is provided by the supplier.
- 5.15. Paragraph 2.55 of the Company's charging statement gives further detail on how the voltage of the connection is to be assigned and states that location of the metering equipment is relevant.

*"Generally, the voltage of connection is determined by where the metering is located and where responsibility for the electrical equipment transfers from us to the connected customer."*

- 5.16. When evidencing incorrect charges, the Company's charging statement, paragraph 2.57, requires, where appropriate, photographs of the metering position. This further confirms the Company's requirement to account for the position of the metering equipment when allocating the correct charges.
- 5.17. There is strength therefore in the argument that the location of the meter can be as relevant as voltage level in determining the correct charge. The Company's narrow interpretation of paragraph 2.59 of its charging statement (that it is required only to backdate payments where it finds an incorrect voltage level has been applied, based on the distinct physical supply level), is therefore inconsistent with other sections of its own charging statement.
- 5.18. However, DCP 174 introduced a specific section into the CDCM (DCUSA schedule 16, paragraph 141 note 5) specifying who is eligible to receive the LVS tariff and the process that the DNO is required to follow to transfer eligible customers. We have found that the Company has complied with this section of its Charging Statement and therefore cannot be held to have applied incorrect charges prior to the Customer's request to transfer tariffs. As a result, there is no requirement on the Company to backdate payments to the Customer based on the 'incorrectly allocated charge' section of its charging statement.
- 5.19. Although we have found that in this instance it is not obliged to do so, this does not preclude a DNO from choosing to backdate payments to a customer to the time when it was eligible for the LVS tariff.

## **6. CONCLUSIONS**

- 6.1. The Company has a responsibility to make sure its customers are on the right tariff and that this tariff should apply from the moment that customers become eligible. An eligibility criterion that expects customers, who do not have intimate knowledge of the CDCM, to identify for themselves which tariff they should be on (and then await the DNO's agreement of this) is far from ideal.

- 6.2. We consider therefore that in this case it is entirely reasonable for the Customer to expect the Company to backdate the LVS tariff and we would encourage it to do so. However, our remit for this determination is given in SLC 7. This limits us to deciding whether the Company has correctly applied its Charging Statement and Methodology as stated.
- 6.3. The LVS tariff was introduced into the CDCM on 1 April 2010 for new customers. The Customer's connections pre-date 1 April 2010. From 31 December 2013 we implemented a modification to the CDCM to clarify who was eligible to receive the LVS tariff and allow the tariff to be applied regardless of their date of connection. We therefore consider that the Company's interpretation, prior to the DCP 174 changes, applies to how it allocated charges until the modification was implemented.
- 6.4. It is the responsibility of the DNO to reflect the costs incurred in supplying customers with electricity in its charges. This is set out in its Charging Statement and Licence. However, the provision in Schedule 16, paragraph 141 note 5 of DCUSA specifically exempts DNOs from this responsibility in respect of moving customers who were previously allocated to the LVN tariff but, as a result of DCP 174, are now eligible for the LVS tariff. In those circumstances, the note specifies that the LVS tariff applies from one month after a customer requests to move to this tariff.
- 6.5. The Customer requested a move to this tariff in October 2014. The Company has followed the process for moving customers to the LVS tariff as required by the CDCM and applied the tariff from October 2014. It is therefore under no obligation under its charging statement section "Incorrectly allocated charges", to backdate payments beyond this point.
- 6.6. We note that the process given in the CDCM allowing for the LVS tariff to be applied only on a forward looking basis once evidence has been provided, does not preclude a DNO from choosing to backdate payments to a customer to the time when it was eligible for the LVS tariff. We expect network operators to act fairly towards their customers and note that other DNOs have backdated payments for the LVS tariff.

## **7. DETERMINATION**

- 7.1. The Authority finds that the Company has complied with its Use of System Charging Statement and the CDCM in determining its use of system charges to the Customer.
- 7.2. This document constitutes a notice stating reasons for our decision for the purpose of section 49A of the Act.

## **8. FURTHER OBSERVATIONS**

- 8.1. In determining this dispute we assessed whether or not the Company has correctly applied its Charging Statement and Methodology as stated. Although we have determined that, in this instance, the Company has complied with its charging statement and the CDCM, this matter has revealed a number of issues that we wish to see addressed.
- 8.2. The DNO has an obligation to assign the correct charge to a customer and its charges should reflect the costs incurred.
- 8.3. Schedule 16, paragraph 141 note 5 of DCUSA allows the Company to only apply the LVS tariff in the month following its decision on the customer's eligibility.
- 8.4. In our decision to approve DCP 174 we had not envisaged that DNOs could use this provision to delay the application of the LVS tariff to customers who in principle should be reallocated to it. This arrangement means that the timing to move an eligible customer to an LVS tariff could be dependent on the promptness of the DNO's decision.
- 8.5. We do not think that this is acceptable to customers and we expect a DCUSA Party (in particular the Company) to raise a modification to note 5 and any other modification necessary to ensure the CDCM reflects better the responsibility of the DNO to identify correctly a customer's tariff and to allow for charges to apply from the time the Customer should be entitled to receive this tariff.

- 8.6. DNOs must correctly assign charges to new connectees in any event and should take pro-active steps to ensure that other customers in a similar situation to the Customer are placed on the correct tariff. And we would expect those DNOs who have backdated payments to continue to do so.
- 8.7. Paragraph 2.59 of the Company's charging statement only requires it to backdate charges if a wrong voltage level has been assigned to the customer's connection. We agree that the voltage level is relevant to determining the correct charge as generally costs imposed on the network change depending on the voltage of connection.
- 8.8. It is also clear that there can be occasions where the location of the meter is also an equally relevant factor in determining the correct charge.
- 8.9. Because we have determined that in this instance the DNO had applied the correct charge we were not required to determine what constitutes a "voltage level". However, we do not consider the Company's interpretation, nor the wording in its Charging Statement, only to allow refunds for incorrect charges at the wrong voltage level (based on the physical level of supply) to be consistent with the full scope of its responsibility to allocate correct charges.
- 8.10. The Company should therefore amend its Charging Statement to ensure that, going forward, charges can be backdated if incorrectly applied based upon the location of the meter, or indeed any other relevant factor used to determine a customer's charge.



**James Veaney**

**Head of Electricity Connections and Constraint Management  
Energy Systems**

Signed on behalf of the Authority and authorised for that purpose

**18 April 2016**

16 of 44



## **APPENDIX ONE –Customer's evidence (non-confidential)**

### **Statement of facts**

#### **Question 1**

Please explain exactly what is in dispute in this case, attaching any relevant paperwork to back up your argument.

Since 1st April 2010, SSEPD (Scottish and Southern Energy Power Distribution) have applied the wrong voltage level at 3 supplies owned by [REDACTED] (SSEPD applied LV Network instead of LV Substation). The sites in question are:

<b>Site Address</b>	<b>MPAN</b>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

I have attached network diagrams for these sites to demonstrate that the meter is at the substation in each case and as such the LV Substation voltage level applies. (attachment 1)

The result of the incorrect voltage level is that SSEPD have charged incorrect DUoS charges to the client's supplier, and the client has been overcharged, as LV Network DUoS charges are considerably more expensive than LV Substation DUoS charges. Our calculations are summarised below and attached, based on cost and consumption data from [REDACTED] supplier [REDACTED]. (attachment 2)

<b>MPAN</b>	<b>DUoS Overcharge</b>
[REDACTED]	[REDACTED]

The incorrect voltage level has also led to the wrong LLFC (Line Loss Factor Code) being applied, which has also led to the client paying distribution losses based on LV Network levels rather than LV Substation levels, another significant additional cost. Our calculations are summarised below and attached based on cost and consumption data from [REDACTED] supplier [REDACTED] (attachment 3) although we acknowledge that these overcharged costs were not ultimately paid to SSEPD.

<b>MPAN</b>	<b>Losses Overcharge</b>
[REDACTED]	[REDACTED]

On [REDACTED] behalf, [REDACTED] have highlighted the incorrect voltage level to SSEPD, and they have since confirmed that the wrong voltage level was indeed applied - SSEPD have corrected this on an ongoing basis and the correct DUoS tariffs / loss factors have since been applied. I have attached the e-mail chain

where these queries were submitted to SSEPD, and SSEPD confirmed the correction (attachment 4). Please note that there was other e-mail correspondence between [REDACTED] and SSEPD relating to this issue, however it was all in relation to arranging site access so an SSEPD engineer could check the location of SSEPD's metering CTs and confirm that the LV Substation classification was correct.

As is evident within the e-mail chain, SSEPD have refused to backdate the difference in DUoS tariffs relating to the voltage level, stating:

*"we cannot backdate the tariff to 2010 as the definition of the LV Substation Tariff was changed earlier this year. With all substation tariff queries we backdate the tariff to the first day of the month that the query was first sent to us."*

Per general industry consensus (derived from documented discussion in DCUSA workgroups for DCP 173 and DCP 174 including consultations run by Electralink) it is clear that the Limitation Act 1980 applies to the DCUSA for the purposes of correcting incorrect DUoS Tariffs, and therefore SSEPD are required to apply the correct charges retrospectively a maximum of 6 years (5 years in Scotland although the supplies in question are in England), in this case it would be from 1st April 2010 when the LV Substation Tariff was first introduced.

Documentation from these workgroups and consultations, within which SSEPD actively participated, are attached as follows:

- DCP 173 consultation document, 7<sup>th</sup> March 2014 (attachment 5)  
*"Following legal advice it has been confirmed that should a defined notice period NOT exist within DCUSA then the Statute of Limitations would apply."* (Page 5, 6.1, point 4)
- DCP 173 Meeting 4 Minutes, 13th January 2014 (attachment 6)  
Meeting 4, 13th January 2014  
*"5.6 GW [...] noted that for the Statute of Limitations period option there wouldn't need to be anything written as that is a default point."* (GW = Gus Wood, DCUSA Legal Advisor)
- DCP 173 Meeting 5 Minutes, 14th May 2014 (attachment 7)  
*"5.3 It was also agreed that if Option 1 were to go forward there would not be a change required to the DCUSA."*

The culmination of DCP 173 was that the workgroup collectively agreed to add wording to their LC14 statements clarifying that incorrectly allocated DUoS costs would be amended in line with the statute of limitations. This came into place on the April 2015 statements, and can be seen in SSEPD's latest charging statement, pages 11 and 12 (attachment 8).

After the refusal to backdate the DUoS tariffs from SSEPD, this has been escalated by [REDACTED] with [REDACTED] SSEPD who has formally responded on two occasions making the position clear that SSEPD do not believe there is a requirement to apply the correct charges retrospectively. The escalation letters dated 5<sup>th</sup> March 2015 (attachment 9) and 16<sup>th</sup> April 2015 (attachment 10) and the responses dated 26<sup>th</sup> March 2015 (attachment 11) and 23<sup>rd</sup> April 2015 (attachment 12).

## Question 2

Please explain how you have escalated your complaint with the Company. Please provide your complaint ID (if you have one) and details of any correspondence attaching any relevant documentation.

Complaint ID No reference provided

Contact [REDACTED]

Details of dispute escalation *N.B. whilst all 3 sites were submitted for review by SSEPD at the same time, MPAN [REDACTED] was confirmed as LV Substation on 16<sup>th</sup> December 2014 and MPANs [REDACTED] and MPAN [REDACTED] were confirmed as LV Substation on 12<sup>th</sup> May 2015. Escalation took place in March and April 2015, as such all escalation has related to MPAN [REDACTED] only, with no separate escalation relating to the other MPANs, on the basis that the issue with these MPANs is identical, and as such the client presumed the exact same principal would be applied by SSEPD and these claims would be rejected.*

An escalation letter was sent from [REDACTED] dated 5<sup>th</sup> March 2015 (attachment 9) asking SSEPD to review the case and making [REDACTED] position clear that they believe the LV Substation tariff should have been backdated to 1<sup>st</sup> April 2010 and that doing this would be in accordance with the DCUSA.

A response was received from SSEPD dated 26<sup>th</sup> March 2015 (attachment 11). This letter cited a specific section in the DCUSA (Schedule 16, Paragraph 141, Note 5) and gave a view that this section does not direct a DNO to backdate the application of the LV Substation tariff. SSEPD's letter also stated that they did not believe that any of the supporting documentation provided as part of [REDACTED] initial escalation was relevant to the backdating of the LV Substation tariff although nothing within this documentation was specifically addressed.

A further escalation letter was sent from [REDACTED] dated 16<sup>th</sup> April 2015 (attachment 10). In this letter, [REDACTED] cited discussions in the DCP 173 workgroups (attachments 5, 6 and 7) within which it was shown to be common industry understanding that the default position of the DCUSA is that the Statute of Limitations applies to the backdating of DUoS tariffs.

A further response was received from SSEPD dated 23<sup>rd</sup> April 2015 (attachment 12) again citing a specific section in the DCUSA (Schedule 16, Paragraph 141, Note 5) and stating that SSEPD believe that backdating is not applicable.

### Question 3

Please provide any details of the LLFC tariff and the DUoS charge provided to you by the Company, attaching any relevant documentation.

Limited information has been provided by SSEPD in relation to the tariff and the DUoS charge however what has been received is detailed below:

1. Confirmation that the MPANs in question were initially classified as LV Network voltage level by SSEPD, and had an LV Network LLFC applied, the correspondence also includes similar confirmations for other [REDACTED] sites (attachment 13).

2. Network diagrams obtained from SSEPD's mapping services website (attachment 1).
3. Confirmation that the MPANs in question should be classified as LV Substation voltage level with appropriate DUoS tariffs applied (attachment 4)

Any further information used by ■■■ to calculate the DUoS charges associated with the incorrect DUoS tariffs being applied is derived from SSEPD's charging statements, which are publically available and downloadable from their website: [https://www.ssepd.co.uk/Library/ChargingStatements/SEP/](https://www.ssepd.co.uk/Library/ChargingStatements/SEP/SEP/)

#### Question 4

If you provided the Company with justification as to why you consider it appropriate to backdate the change in the LLFC tariff, please provide us with this information and attach any relevant correspondence.

During the period 2013-14, extensive industry discussions occurred around the subject matter of incorrect LLFCs/voltage levels/DUoS tariffs, within which SSEPD actively participated.

The discussions took place initially in the MIG and DCMF, following this a change proposal was put forward (DCP 173) which proposed to establish a standard backdate period for incorrect LLFCs/voltage levels/DUoS tariffs.

During these discussions there was a clear understanding that the default position of the DCUSA was that the Limitations Act 1980 applies. Ultimately DCP 173 was drawn to a close on this basis.

Documentation from these workgroups and consultations was provided to SSEPD in ■■■'s second escalation letter dated 16<sup>th</sup> April 2015 as follows:

- DCP 173 consultation document, 7<sup>th</sup> March 2014 (attachment 5)  
*"Following legal advice it has been confirmed that should a defined notice period NOT exist within DCUSA then the Statute of Limitations would apply." (Page 5, 6.1, point 4)*
- DCP 173 Meeting 4 Minutes, 13th January 2014 (attachment 6)  
Meeting 4, 13th January 2014  
*"5.6 ■■■ [...] noted that for the Statute of Limitations period option there wouldn't need to be anything written as that is a default point." (■■■ DCUSA Legal Advisor)*
- DCP 173 Meeting 5 Minutes, 14th May 2014 (attachment 7)  
*"5.3 It was also agreed that if Option 1 were to go forward there would not be a change required to the DCUSA."*

#### Question 5

If the Company has provided you with justification for not accepting the request to backdate the change in the LLFC tariff, please provide us with this information and attach any relevant correspondence.

The only justification provided by SSEPD in their escalation letter responses dated 26<sup>th</sup> March 2015 (attachment 11) and 23<sup>rd</sup> April 2015 (attachment 12) was a specific section in the DCUSA (Schedule 16, Paragraph 141, Note 5):

- "Where a DNO party agrees that a customer should be moved to the LV substation tariff, the new tariff will be applied in the next calendar month following the DNO Party's decision."

#### Question 6

Please include any other facts relevant to the case, for example whether the Company has offered any compensation, etc. and attach any relevant correspondence.

#### **i.) Latest SSEPD charging statement**

In the period since the receipt of the last response from SSEPD, and since [REDACTED] initial request to Ofgem to determine on this issue, [REDACTED] has become aware of a change to SSEPD's LC14 1<sup>st</sup> April 2015 Use of System Charging statement (attachment 8), which was approved by the Gas and Electricity Markets Authority on 30<sup>th</sup> January 2015 and made available on SSEPD's website on 3<sup>rd</sup> July 2015:

<https://www.ssepd.co.uk/Library/ChargingStatements/SEPD/>

This charging statement clearly sets out a methodology for dealing with incorrect voltage levels/LLFCs / DUoS tariffs, and that when the wrong DUoS tariff has been applied the change will be backdated. This text can be seen in pages 11 and 12 (attachment 8):

*"Where we agree that an MPAN/MSID has been assigned to the wrong voltage level then we will correct it by allocating the correct set of charges for that voltage level. Any adjustment for incorrectly applied charges will be as follows:*

- any credit or additional charge will be issued to the Suppliers who were effective during the period of the change;*
- the correction will be applied from the date of the request back to either the date of the incorrect allocation or up to the maximum period specified by the Limitation Act 1980 which covers a six year period, whichever is the shorter."*

This text clearly contradicts the arguments made by SSEPD in their responses to [REDACTED].

#### **ii.) [REDACTED] experience with other DNOs**

[REDACTED] feel it is important to note that 2 of the sites in question (MPANs [REDACTED] and [REDACTED]) are connected to an SSEPD embedded network where the host DNO is Northern Powergrid.

[REDACTED] has a number of sites in this region connected to Northern Powergrid's North East network, and several have been discovered to have had the incorrect voltage level/LLFC/DUoS tariffs applied. In each case Northern Powergrid have corrected the charges and provided refunds back to 1<sup>st</sup> April 2010 for the overcharged DUoS.

[REDACTED] have had identical experiences in the past 12 months with other DNOs UK Power Networks, Scottish Power Distribution and Western Power Distribution.

### **iii. SSEPD participation in DCP 173 consultations**

As has been mentioned previously in this document, SSEPD were active participants in the workgroups for DCP 173, this involved responding to 2 consultations that were issued in relation to the proposed change (see attachments 14 and 15).

None of SSEPD's responses to these consultations align with the supposed company position that incorrect voltage level/LLFC/DUoS tariffs should not be backdated.

Of particular note is SSEPD's response to Question Four as shown in the consultation responses published 30<sup>th</sup> April 2014 (see page 22, attachment 15):

*"Question Four - Following legal advice it has been confirmed that should a defined notice period NOT exist within DCUSA then the Statue of Limitations would apply. Considering this, do you believe that a change to DCUSA is necessary should option 1 be the preferred option?"*

*[...]*

*SSEPD Response - If Option1 is adopted then specific reference in DCUSA would aid transparency and consistency of application."*

This response appears to acknowledge that SSEPD understands that Option 1 (that voltage level/LLFC/DUoS Tariff changes should be backdated in line with the Limitation Act 1980) is indeed the default position of the DCUSA as it stood at the time. The response makes no reference to SSEPD's alternative interpretation of the DCUSA (that there is no requirement to backdate voltage level/LLFC/DUoS Tariff changes) that SSEPD have since presented to ■ during this dispute.

#### **Attachments:**

1. Network Diagrams
2. DUoS Overcharge Calculations
3. Losses Overcharge Calculations
4. E-mail Chains for Query Submission
5. DCP 173 consultation documentation, 7th March 2014
6. DCP 173 Meeting 4 Minutes, 13th January 2014
7. DCP 173 Meeting 5 Minutes, 14th May 2014
8. SSEPD April 2015 LC14 Statement<sup>13</sup>
9. Escalation letter dated 5th March 2015
10. Escalation letter dated 16th April 2015
11. Escalation letter response dated 26th March 2015
12. Escalation letter response dated 23rd April 2015
13. E-mail confirming LV Network supplies dated 27th July 2014
14. DCP 173 consultation responses dated 3rd September 2013
15. DCP 173 consultation responses dated 30th April 2014

---

<sup>13</sup> <https://www.ssepd.co.uk/Library/ChargingStatements/SEP/>

## **Comments on Company's statement of facts**

*Please note that the numbering applied in this document has been added purely to aid with internal referencing within this document and does not relate to any numbering used in any other document.*

### **SEPD Evidence 1:**

*"The LVS tariff was incorporated into the DCUSA as part of the contractual implementation of the CDCM. The LVS tariff is designed to recognise that a site that is located and metered at a DNO HV/LV substation makes less use of the LV system than a typical LV network connection. As such, the DUoS charges and distribution losses are somewhat lower."*

### **Comments 1:**

■ agrees with this statement. Throughout the period in question (1<sup>st</sup> April 2010 onwards) and at the sites in question, the metering has been consistently located at a DNO HV/LV substation and as such these sites have made less use of the LV system than a typical LV network connection.

■ understands that the LV Substation tariff exists to ensure that the costs paid by the customer are reflective of the costs of operating the network, in line with DCUSA Charging Objective 3.2.3.

The sites highlighted by ■ are all metered at a DNO HV/LV substation and as such make minimal use of the LV system. As such, it was not appropriate for these sites to have been set up by SEPD as LV Network connections during this period and we would assert that the LV Network voltage level/LLFC/DUoS tariff applied was incorrect and the LV Substation voltage level/LLFC/DUoS tariff should have been applied.

### **SEPD Evidence 2:**

*"In developing the CDCM, it was considered impractical for those DNOs that did not have an existing LVS tariff (SEPD being one of them) to assess every non-domestic LV connection in order to categorise them as either LVN or LVS tariff customers."*

### **Comments 2:**

■ believe that it is an ordinary person's understanding that it is the responsibility of the DNO to apply correct charges that are representative of the actual distribution network at a site. Furthermore, as the owner of the network the DNO is the only party with the data to correctly classify their own supplies. We do not believe that 'impracticality' is a valid justification for incorrect charges to be applied, particularly when they can have such a significant financial impact on the end user.

We have reviewed SEPD's charging statements for the period 2010 – present and we have also reviewed the relevant parts of the DCUSA agreement. We have not identified anything within any of these documents that states explicitly that the application of correct charges is the responsibility of the customer.

When the CDCM was 'developed' and when it came into effect ■ are not aware of any efforts made by DNOs including SEPD to advise ■ or any other customer that applying the correct charges was deemed 'impractical' and that the DNOs were not

going to assess their customers and categorise them under the appropriate voltage level.

If this was the agreed industry approach, as SEPD have implied, we believe that a communication of this sort would have been necessary, given that the onus would be placed on customers to dictate their own charging structures where it never had been before, and given the potential financial impact of the incorrect charges being applied.

■ believes that common industry understanding and practice is that it is the DNO's responsibility to apply the correct DUoS charges. ■ has a number of sites outside of the SEPD region that have been set up on an LV Substation tariff proactively by the DNO, with no expectation of customer involvement, which further supports this understanding. Until we started to work with an adviser (■) our assumption, which we believe is likely to be the assumption of most customers, was that the application of the correct charges at our sites was the DNO's responsibility and that when the CDCM came into effect the DNO would migrate ■ onto the correct charges.

### **SEPD Evidence 3:**

*"Instead, it was decided that the LVN tariff would apply on an ongoing basis unless a customer, their adviser or a supplier identified the connection as meeting the LVS tariff criteria."*

### **■ Comments 3:**

This is a tacit assumption by SEPD. We have reviewed SEPD's charging statements for the period 2010 – present and we have also reviewed the DCUSA. We have not identified anything within any of these documents that states that the LVN tariff should apply unless the customer, their adviser or a supplier takes action.

Whilst DCP 174 expanded Note 3 of the DCUSA states the following, as quoted by SEPD in their evidence:

*"Note 3 above for LV substation tariffs will be applied if a customer or its supplier provides evidence demonstrating to the DNO Party's reasonable satisfaction, that the requirements of note 3 are met. "*

■ interpret this statement as providing a formal appeal process for specific cases where the customer or supplier believes an incorrect tariff has been applied. We do not believe it is reasonable to interpret this text as relinquishing the DNO of any responsibility to apply the correct tariff as it does not specifically state this.

We believe that an ordinary person would share this interpretation, which we believe is fully supported by the 'Incorrectly Allocated Charges' section of SEPD's charging statement (pages 11 and 12 of attachment 1.8 as provided in our evidence):

*"Where we agree that an MPAN/MSID has been assigned to the wrong voltage level then we will correct it by allocating the correct set of charges for that voltage level. Any adjustment for incorrectly applied charges will be as follows:*

- any credit or additional charge will be issued to the Suppliers who were effective during the period of the change;*
- the correction will be applied from the date of the request back to either the date of the incorrect allocation or up to the maximum period specified by the*



*Prescription and Limitation (Scotland) Act 1973 which covers a five year period, whichever is the shorter."*

#### **SEPD Evidence 4:**

"In all instances where we find the customer eligible for the LVS tariff, we backdate the LVS tariff to the month in which they applied. This goes further than the requirements of the DCUSA, but is in the customer's favour and ensures any benefits are not delayed as a result of the time taken for us to make a decision."

#### **Comments 4:**

disputes SEPD's statement that their actions go "further than the DCUSA". The DCUSA applies no limitation to the backdating of incorrect charges; as such the statute of limitations applies.

This was the basis of the DCP 173 workgroups, which SEPD actively participated in. Documentation from these workgroups and consultations was provided to SEPD in 's second escalation letter dated 16th April 2015 as follows:

- DCP 173 consultation document, 7th March 2014 (attachment 1.5 from 's original evidence submission)  
"Following legal advice it has been confirmed that should a defined notice period NOT exist within DCUSA then the Statute of Limitations would apply."  
(Page 5, 6.1, point 4)
- DCP 173 Meeting 4 Minutes, 13th January 2014 (attachment 1.6 attachment 1.5 from 's original evidence submission) Meeting 4, 13th January 2014  
"5.6 [...] noted that for the Statute of Limitations period option there wouldn't need to be anything written as that is a default point." ( DCUSA Legal Advisor)
- DCP 173 Meeting 5 Minutes, 14th May 2014 (attachment 1.7 attachment 1.5 from 's original evidence submission)  
"5.3 It was also agreed that if Option 1 were to go forward the there would not be a change required to the DCUSA."

#### **SEPD Evidence 5:**

*"The arrangements set out in Note 5 are unique to the LVS tariff and intentionally set changes to this tariff apart from all other situations. This DCUSA text is clearly based on the principle that connections which may qualify for LVS can, quite properly, have an LVN tariff applied on a continuing basis, unless the customer or their electricity supplier demonstrates (and the DNO agrees) that the LVS tariff criteria are met. The two tariffs purposely co-exist alongside each other. In such circumstances, backdating is not applicable."*

#### **Comments 5:**

##### Logical Fallacy in Argument

disputes SEPD's claim that the DCUSA states that LVS sites can "properly have an LVN tariff applied" unless the customer or supplier intervenes, there is no text within the DCUSA that explicitly states this. Neither is there any text in the DCUSA that explicitly states "backdating is not applicable".

believes that SEPD's arguments are invalid as they are based on logical fallacies. This is illustrated below:

*SEPD argument that LVS sites can "properly have an LVN tariff applied" unless the customer or supplier intervenes:*

- 1) A = the LVS tariff can be implemented by request of the supplier or customer.  
OR  
B = the LVS tariff should be implemented by the DNO.
- 2) The DCUSA states A is true.
- 3) Therefore B is false per SEPD... this is a logical fallacy, A and B are not mutually exclusive, just because A is true does not mean that B is false.

*SEPD argument that "backdating is not applicable":*

- 1) A = the LVS tariff will be applied from the next calendar month.  
OR  
B = the LVS tariff should be backdated in line with the Statute of Limitations.
- 2) The DCUSA states A is true.
- 3) Therefore B is false per SEPD... this is a logical fallacy, A and B are not mutually exclusive, just because A is true does not mean that B is false.

#### Cost Reflectivity

■ would also like to draw attention to DCUSA Charging Objective 3.2.3 - "that compliance by each DNO Party with the Charging Methodologies results in charges which, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the DNO Party in its Distribution Business."

■ does not believe that SEPD's claim that LVS sites can "properly have an LVN tariff applied" aligns with DCUSA Charging Objective 3.2.3.

Within the CDCM model, the LVN tariff includes an allocation of cost for LV Circuits. LVS sites are connected at the HV/LV voltage level and as such costs incurred for LV Circuits are not applicable to the delivery of electricity.

Applying the LVN tariff, which includes an allocation for the cost of LV Circuits, **would not be cost reflective** for an LVS customer that does not use these circuits.

SEPD's argument can therefore only be reached by presupposing that the DCUSA contradicts its own charging objectives.

#### Layout of Charging Statements

■ would argue that to an ordinary person viewing SEPD's charging statements, the LV Substation tariff appears to be the same as any other tariff and there is nothing to indicate that it should be "[set] apart from all other situations" as SEPD have stated.

The below extracts from the April 2015 charging statement shows that the LV Substation tariff is listed alongside LV Network and HV Network, we believe that this further supports the argument that the LV Substation tariff should be treated in the same manner as these tariffs:

Page 34:

LV Network Domestic	456	0	13.904	1.821	0.207	3.22				
LV Network Non-Domestic Non-CT	457	0	10.221	1.230	0.134	5.04				
LV HH Metered	453, 470	0	8.881	0.914	0.088	10.29	2.89	0.287	2.89	
LV Sub HH Metered	455	0	6.315	0.420	0.021	4.05	4.68	0.188	4.68	
HV HH Metered	476, 658	0	5.901	0.330	0.012	98.75	5.45	0.149	5.45	

Page 59:

Generic demand and generation LLFs					
Metered voltage, respective periods and associated LLFCs					
Metered voltage	Period 1	Period 2	Period 3	Period 4	Associated LLFC
Low Voltage Network	1.087	1.081	1.074	1.070	100 - 131, 133 - 136, 138 - 145, 150 - 157, 160 - 164, 400 - 401, 453, 456, 457, 470, 473 - 475, 478, 500 - 503, 520 / 001 - 002, 477, 909, 931, 993
Low Voltage Substation	1.050	1.049	1.047	1.049	405, 455 / 003 - 004, 932
High Voltage Network	1.034	1.032	1.027	1.025	476, 605 - 606, 658 / 005 - 006, 478, 910
High Voltage Substation	1.022	1.021	1.019	1.018	700 - 719, 729 - 732 / 733 - 749
33kV Generic	1.017	1.016	1.014	1.013	897 / 933
132/33kV Generic	1.009	1.009	1.008	1.008	898 / 934
132kV Generic	1.005	1.005	1.004	1.004	899 / 935

#### SEPD Evidence 6:

*"In line with the above, the onus is on the customer to demonstrate that he is eligible for the LVS tariff. The fact that the customer was on the LVN tariff up until the point at which he provided such justification did not result in incorrect charges being applied."*

#### Comments 6:

SEPD's argument is predicated on the idea that the onus is on the customer to provide evidence that the LVS tariff should be applied. ■ believe that this is presupposition and there is no statement in the DCUSA or in any other document to state that the onus is on the customer. In fact ■ believes the onus is on the DNO to apply the correct DUoS tariff and related charges. See ■ Comments 2.

■ would like to highlight the fact that the end user is not technically the DNO's contracting party for the purposes of DUoS charging, which is dictated by the DCUSA between the DNO and the supplier. No commercial agreement exists placing any onus or responsibility on ■ to advise the DNO on the correct charges that should be applied.

Furthermore ■ does not believe it is reasonable for a DNO to expect a customer to have knowledge of an agreement that they are not party to (the DCUSA) and the complex industry rules within it.

■ did not have this knowledge until we appointed an external advisor in 2014 and we believe it is unlikely that a normal customer will have this knowledge. As such we do not believe it is either reasonable that the customer should hold the

responsibility to advise the DNO on the correct charges that they should apply based on the configuration of the DNO's own network assets at the customer's sites.

#### **SEPD Evidence 7:**

"Instead, his successful application simply meant that he was able to migrate across to the LVS tariff and recognise the associated benefits from that point onwards of being located close to the substation. There is nothing to suggest that the LVS tariff should be backdated beyond the customer's application or that the customer should be eligible for any recompense as a result of any difference in costs between the two tariffs prior to him providing the requisite information for us to make our decision that the sites are eligible for the LVS tariff."

#### **Comments 7:**

dispute the statement "there is nothing to suggest that the LVS tariff should be backdated beyond the customer's application" on the basis of:

- The DCUSA includes no specified limitation on backdating tariffs, and therefore the statute of limitations applies with regard to backdating incorrect DUoS tariffs (6 years in England and Wales, 5 years in Scotland), see Comments 4.
- SEPD's own charging statement includes a detailed process for backdating incorrect tariffs in line with the statute of limitations, see comments 3.
- It is standard industry practice to backdate the LVS tariff in line with the statute of limitations and this is adhered to by every other DNO.

#### **SEPD Evidence 8:**

*"We have enclosed the following documentation which is relevant to the case (and which has not previously been referenced by the Customer)*

*a. Extract from DCUSA version 5.13 (effective from 31 December 2013) Schedule 16, paragraph 141, which in Note 3 details the revised qualification criteria for the LVS tariff, which has applied from 31 December 2013 to the date of this submission and which in Note 5 specifies how potential changes to this tariff must be processed."*

#### **Comments 8:**

assumes that SEPD are highlighting this attachment due to the text, which was added as a result of DCP 174, containing no specific reference to the backdating of the LVS tariff.

understands from (who were active participants in the DCP 173 and DCP 174) that the reason for this is that when DCP 174 (relating to the definition of the LVS tariff) was being implemented, DCP 173 (relating to the backdating of DUoS tariffs) was still in discussion.

The DCP 174 workgroup was not certain on the outcome of DCP 173 (which could have potentially resulted in the implementation of a 14 month limitation to DUoS tariff backdating) and as such avoided adding any specific reference to backdating within the DCP 174 text to avoid creating contradictions in the future.

The end result of DCP 173 was that it was rejected and the 'Incorrectly Allocated Charges' section was added into the DNO charging statements, clarifying the

existing position that the statute of limitations applies to the backdating of DUoS tariffs.

#### **SEPD Evidence 9:**

*"Prior to this, we applied the LVS tariff to customers whose metering was located within the substation. As such, prior to December 2013, the customer would not have been eligible for our LVS tariff as, for the relevant connections, the metering CTs are not located within the substation."*

#### **Comments 9:**

SEPD are claiming that prior to December 2013, the LVS tariff would not have applied to the sites in question as the definition of the LVS tariff was amended during this period.

disputes this on the basis that the pre December 2013 definition of the LVS tariff was in fact wider than the clarified post December 2013 definition, which added some specific caveats to narrow down the definition of the phrase "at the substation".

It therefore follows that any sites qualifying under the narrowed-down post December 2013 definition will therefore also qualify under the pre December 2013 definition.

The definitions are compared below (differences are highlighted in yellow):

<b>Pre December 2013 definition (taken from the DCUSA v5.12)</b>	<b>Post December 2013 definition (taken from the DCUSA v7.3)</b>
LV Sub applies to customers connected to the DNO Party's network at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current transformer used for the customer's settlement metering is located at the substation.	<p>LV Sub applies to customers connected to the DNO Party's network at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current transformer (CT) used for the customer's settlement metering is located at the substation.</p> <p>For these purposes, 'at the substation' means:</p> <ul style="list-style-type: none"> <li>a) an HV/LV substation with the metering CT in the same chamber as the substation transformer; or</li> <li>b) an HV/LV substation with the metering CT in a chamber immediately adjacent to the substation transformer chamber.</li> </ul>

Throughout the period 2010 – present, the definition of 'LV Sub' contained within SEPD's charging statement has remained unchanged:

*"LV Sub applies to Customers connected to the licensee's distribution system at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current transformer used for the Customer's settlement metering is located at the substation."*

As such we believe it is reasonable to conclude that as the sites in question (MPANs [REDACTED], [REDACTED] and [REDACTED]) have been categorised as LV Substation under the post December 2013 definition, they should also have been categorised under the pre December 2013 definition, and the LV Substation DUoS tariff should have been charged with effect from 1<sup>st</sup> April 2010 onwards when the LV Substation voltage level categorisation and DUoS tariff was first introduced.

#### **SEPD Evidence 10:**

"i. Latest SEPD charging statement: The section quoted refers to our position regarding backdating of charges when an incorrect charge has been applied i.e. "where we agree that an MPAN/MSID has been assigned to the wrong voltage level...". In this case, the alternative tariffs are at exactly the same voltage level, so this section is not relevant to this matter and this underlines the intentionally different arrangements which apply to LVS in comparison to other changes of tariff, etc. We are therefore acting consistently with our charging statement."

#### **Comments 10:**

[REDACTED] disputes SEPD's interpretation of the term "voltage level", and their assertion that "Low Voltage Substation" is not a distinct "voltage level". This contradicts the interpretation of the term "voltage level" contained within the DCUSA and the CDCM.

#### Definitions in the DCUSA and CDCM

In the DCUSA and CDCM "voltage level" is synonymous with "network level" and is used to describe the various levels of the network that are used to allocate charges and categorise customers. Some voltage levels represent transformation between two voltages, for example HV/LV (LV substation) and EHV/HV (HV Substation).

The network levels in the CDCM are as follows, these are taken from SEPD's current CDCM model (downloadable from their website, <https://www.SEPD.co.uk/WorkArea/DownloadAsset.aspx?id=2650>) as you can see it includes several levels which represent transformation between two voltages rather than the physical voltage of a supply, these have been highlighted in yellow:

##### **GSPs**

##### **132kV**

##### **132kV/EHV**

##### **EHV**

##### **EHV/HV**

##### **HV**

##### **HV/LV**

##### **LV circuits**

This definition of "voltage level" as being synonymous with "network level" is supported throughout the DCUSA. Some examples from the current DCUSA document (v7.3) that support this definition of "voltage level" are below (emphasis added):

Page 547: "The DNO Party calculates the net capital expenditure split by LV, LV/HV, HV, and EHV and 132kV (which includes EHV/HV). For each of these four segments, the relevant net capital expenditure is calculated by adding up expenditure on total condition based replacement (proactive and reactive replacement), connections spend minus customer contributions (directs) for connections at that **voltage level**, general reinforcement capital expenditure at that **voltage level**, and fault reinforcement capital expenditure at that **voltage level**. The net capital expenditure at the EHV and 132 kV network level is adjusted by multiplying it by the EHV Reduction Ratio (see Glossary)."

Pages 645-646 (there is a similar section Pages 773-774): "For each node, the £/annum 'usage' of Branches (calculated in Step 4) of the same voltage level, by the demand at the node, are summated to create a total £/annum for each voltage level for the nodal demand. The considered **voltage levels** correspond to those used in the CDCM and include **voltage levels** that represent transformation between two voltages. These voltage levels are '132kV', '132kV/EHV', 'EHV', 'EHV/HV' and '132kV/HV'."

This quote in particular clearly supports ■'s view that the "voltage levels [...] used in the CDCM" can include "voltage levels that represent transformation between two voltages". HV/LV (LV Substation) is a "voltage level" that represents transformation between two voltages.

There are also multiple instances in the DCUSA where "voltage levels" are referred to in relation to the grouping of NUFs (Network Use Factors). See the following pages:

- Page 601
- Page 611
- Page 646
- Page 730
- Page 740
- Page 774

The "voltage levels" that are used to split NUFs for the CDCM are as follows, the levels which represent transformation between two voltages are again highlighted in yellow:

**GSPs**

**132kV**

**132kV/EHV**

**EHV**

**EHV/HV**

**HV**

**HV/LV**

**LV circuits**

The "voltage levels" that are used to split NUFs for the EDCM are as follows, the levels which represent transformation between two voltages are again highlighted in yellow:

**132kV circuits**

**132kV/EHV**

**EHV Circuits**

**EHV/HV**

**132kV/HV**

### Terminology used in SEPD's charging statement

SEPD's current charging statement further supports ■■■'s argument that "voltage" does not have to exclusively refer to the physical voltage of a supply in volts, see Page 59 where the following are listed as "metered voltages" (levels which represent transformation between two voltages are again highlighted in yellow):

#### **Low Voltage Network**

#### **Low Voltage Substation**

#### **High Voltage Network**

#### **High Voltage Substation**

#### **33 kV Generic**

#### **132/33 kV Generic**

#### **132 kV Generic**

(extract included below)

Generic demand and generation LLFs					
Metered voltage, respective periods and associated LLFCs					
Metered voltage	Period 1	Period 2	Period 3	Period 4	Associated LLFC
Low Voltage Network	1.087	1.081	1.074	1.070	100 - 131, 133 - 136, 138 - 145, 150 - 157, 160 - 164, 400 - 401, 453, 456, 457, 470, 473- 475, 479, 500 - 503, 520 / 001 - 002, 477, 909, 931, 993
Low Voltage Substation	1.050	1.049	1.047	1.049	405, 455 / 003 - 004, 932
High Voltage Network	1.034	1.032	1.027	1.025	476, 605 - 606, 658 / 005 - 006, 478, 910
High Voltage Substation	1.022	1.021	1.019	1.018	700 - 719, 729 - 732 / 733 - 749
33kV Generic	1.017	1.016	1.014	1.013	897 / 933
132/33kV Generic	1.009	1.009	1.008	1.008	898 / 934
132kV Generic	1.005	1.005	1.004	1.004	899 / 935

### Implications of the 'Incorrectly Allocated Charges' section of SEPD's charging statement

Further clarity of the intent of the "Incorrectly Allocated Charges" section of SEPD's charging statement and the definition of "voltage level" that SEPD are disputing can be inferred from the text of this section:

*"Any request must be supported by an explanation of why it is believed that the current charge is wrongly applied along with supporting information, including, where appropriate photographs of **metering positions or system diagrams**."* (pages 11 and 12 of attachment 1.8 as provided in our evidence, emphasis added)

If, as SEPD have argued, "voltage level" can only refer to a distinct physical voltage i.e. High or Low Voltage, then there would be no requirement to back up a request with evidence of "metering positions or system diagrams" as stated in the charging statement text.



■ understands that SEPD must hold accurate records of the physical voltage of every supply, otherwise then they would not be able to safely operate the network or provide that supply, and this information is also included on the connection agreement, within SEPD's own connection records, in the meter technical data and within SEPD's own network mapping system.

In addition to this, 'metering position' has no bearing on whether a supply is High or Low Voltage. However, **'metering position' is the main variable in deciding whether a supply is LV Substation.** From this we can deduce that an intent of the stated evidence requirement is to evidence that a site should be LV Substation, and therefore that LV Substation is considered to be a "voltage level" and is covered by the 'Incorrectly Allocated Charges' section of SEPD's charging statement.

#### Conclusion

SEPD works within the DCUSA, the CDCM, the EDCM and its own charging statements, and as such it can reasonably be concluded that without any formal clarification otherwise, the definitions of "voltage level" as indicated within these documents and policies should be adhered to when interpreting SEPD's charging statements and that "Low Voltage Substation" should in fact be interpreted as a distinct "Voltage Level".

As such, the "Incorrectly Allocated Charges" clause should apply and the difference between the "Low Voltage Network" and "Low Voltage Substation" tariffs should be backdated in line with the Statute of Limitations.

#### **SEPD Evidence 11:**

"We note that the Customer's statement makes multiple references to 'wrong' and 'incorrect' voltage levels and this is inaccurate and misleading."

#### **■ Comments 11:**

■ strongly contests the accusation that our representation in this determination is "inaccurate and misleading", all of the evidence and documentation we have provided is based on facts and the understanding of these facts that we believe any ordinary person would have of the evidence available.

Our interpretation of this evidence is that SEPD have applied the incorrect charges as they have applied the "Low Voltage Network" voltage level/DUoS tariff/LLFC when, based on the locations of the metering CTs at the sites in question, these sites clearly and unambiguously fall into the "Low Voltage Substation" category which attracts a different set of charges.

#### **SEPD Evidence 12:**

"ii. ■ experience with other DNOs: We recognise that other DNOs may have taken a different position with regard to backdating LVS tariffs. However, we are required to ensure our own compliance position and believe our interpretation of DCUSA as set out above is well justified."

#### **■ Comments 12:**

■ understands that in April 2010, the CDCM (Common Distribution Charging Methodology) was introduced to enforce some level of consistency across DNO charging methodologies.

Any ordinary person would assume that under the CDCM, the DNOs would have some interest in adopting a common approach, as a common charging methodology is not "common" if it is interpreted in fundamentally different ways by each party.

■ experiences with each DNO are detailed below:

<b>DNO</b>	<b># of LV Substation sites</b>	<b># of LV Substation sites (identified by the DNO proactively and backdated where relevant in line with the statute of limitations)</b>	<b># of LV Substation sites (identified by ■ advisors and backdated by the DNO in line with the statute of limitations)</b>
UK Power Networks	2	0	2
Northern Power Grid	4	1	3
Western Power Distribution	3	1	2
Electricity North West	0	N/A	N/A
Scottish Power Energy Networks	3	0	3
SSE Power Distribution	3	0	0

We have found SEPD's position on this matter to be completely different to all other DNOs and we find this surprising, given that SEPD participate in regular discussions with other DNOs in groups such as the MIG, DCMF and specific workgroups relating to this issue i.e. DCP 173 and DCP 174 and as such will likely be aware of the position of other DNOs. Common sense would dictate that the DNOs would seek to take a common approach wherever possible.

As a customer, divergent interpretations of the CDCM such as that adopted by SEPD have a negative impact, creating additional confusion in an already confusing industry, introduce unnecessary challenges when managing our energy costs and cause us to incur additional costs in the hiring of consultants to identify and rectify these issues.

### **SEPD Evidence 13:**

*"iii. SEPD participation in DCP173 consultations: Our consultation responses and company position with regards to this matter are consistent. Our consultation responses (and charging statements) reflect the fact that we do consider the Limitation Act 1980 to apply where voltage level / LLFC / DUoS charges have been incorrectly applied."*

**Comments 13:**

■ appreciates and notes SEPD's acknowledgement that they consider the statute of limitations to apply in cases where voltage level / LLFC / DUoS charges have been incorrectly applied.

**SEPD Evidence 14:**

*"As we have outlined above, application of the LVN tariff in this case was not historically incorrect and the LVS tariff can only apply on a forward-looking basis after we have received evidence and agreed that the LVS tariff criteria have been met. Therefore backdating is neither appropriate nor compliant."*

**Comments 14:**

■ would like to again emphasise our view that there is no evidence that has been provided by SEPD that indicates that the LVS tariff can "only" apply on a forward-looking basis. In addition to this there is no evidence that indicates that backdating of the LVS tariff is not "appropriate" or "compliant".

These interpretations represent tenuous false assumptions from the evidence SEPD have provided and ignore the wealth of evidence within the DCUSA, SEPD charging statements and minuted industry discussions within DCP 173 and DCP 174 workgroups that altogether clearly point towards the interpretation held by ■, our advisers, other energy users and all of the other UK DNOs.

## **APPENDIX TWO –Company's evidence (non confidential)**

### **Statement of facts**

#### **Question 1**

Please confirm your understanding of what is in dispute in this case, attaching any relevant paperwork to support your argument.

The customer has alleged that we have applied the wrong voltage level at three of its premises, and that we should backdate any monies due to him as a result to 1 April 2010. We dispute this allegation and set out our understanding of our obligations below. The customer's representative first approached us on 15 October 2014, seeking to move three MPANs from our Low Voltage Network (LVN) Distribution Use of System (DUoS) tariff to our Low Voltage Substation (LVS) DUoS tariff. As per the Distribution Connection Use of System Agreement (DCUSA) in place at the time, we reviewed the customer's application and, based upon sufficient evidence, took the decision on 16 December 2014 to move one of the three MPANs requested from our LVN tariff to our LVS tariff with effect from 1 October 2014. We notified the customer of our decision. The customer's representative responded immediately, asking that the LVS tariff be backdated to 1 April 2010. On 6 January 2015, we replied that we could not backdate the LVS tariff to 1 April 2010 as the customer did not qualify under the LVS tariff until the DCUSA Change Proposal (DCP) 174 was implemented in December 2013 (due to the location of the metering Current Transformers (CTs)). DCP 174 expanded Note 3 of the DCUSA to define "at the substation" for the purposes of the LVS tariff.

#### **Note 3:**

*LV Sub applies to customers connected to the DNO Party's network at a voltage of less than 1 kV at a substation with a primary voltage (the highest operating voltage present at the substation) of at least 1 kV and less than 22 kV, where the current transformer (CT) used for the customer's settlement metering is located at the substation. For these purposes, 'at the substation' means:*

- a) an HV/LV substation with the metering CT in the same chamber as the substation transformer; or*
- b) an HV/LV substation with the metering CT in a chamber immediately adjacent to the substation transformer chamber.*

DCP 174 also formalised the process around which customers that might be eligible for a DNO's LVS tariff can approach the DNO and the approach that the DNO will take.

Specifically, it added the following text to Note 5 of the DCUSA:

*Note 3 above for LV substation tariffs will be applied if a customer or its supplier provides evidence demonstrating to the DNO Party's reasonable satisfaction, that the requirements of note 3 are met. To determine whether such evidence is sufficient, the DNO Party will investigate and reach a decision based on the evidence supplied and any additional information that is available to it. Administration charges (to cover reasonable costs) may apply if a technical assessment or site visit is required. Where a DNO Party agrees that a customer should be moved to the LV substation tariff, the new tariff will be applied in the next calendar month following the DNO Party's*

*decision. Where a customer is already registered on an LV substation tariff they will remain so.*

In all instances where we find the customer eligible for the LVS tariff, we backdate the LVS tariff to the month in which they applied. This goes further than the requirements of the DCUSA, but is in the customer's favour and ensures any benefits are not delayed as a result of the time taken for us to make a decision.

At December 2014, the other two MPANs remained under review, but have since been moved to our LVS tariff with effect from the month of application. The arrangements set out in Note 5 are unique to the LVS tariff and intentionally set changes to this tariff apart from all other situations. This DCUSA text is clearly based on the principle that connections which may qualify for LVS can, quite properly, have an LVN tariff applied on a continuing basis, unless the customer or their electricity supplier demonstrates (and the DNO agrees) that the LVS tariff criteria are met. The two tariffs purposely co-exist alongside each other. In such circumstances, backdating is not applicable. In line with the above, the onus is on the customer to demonstrate that he is eligible for the LVS tariff. The fact that the customer was on the LVN tariff up until the point at which he provided such justification did not result in incorrect charges being applied. Instead, his successful application simply meant that he was able to migrate across to the LVS tariff and recognise the associated benefits from that point onwards of being located close to the substation. There is nothing to suggest that the LVS tariff should be backdated beyond the customer's application or that the customer should be eligible for any recompense as a result of any difference in costs between the two tariffs prior to him providing the requisite information for us to make our decision that the sites are eligible for the LVS tariff. We have enclosed the following documentation which is relevant to the case (and which has not previously been referenced by the Customer):

a. Extract from DCUSA version 5.13 (effective from 31 December 2013) Schedule 16, paragraph 141, which in Note 3 details the revised qualification criteria for the LVS tariff, which has applied from 31 December 2013 to the date of this submission and which in Note 5 specifies how potential changes to this tariff must be processed.

## Question 2

Please explain how you dealt with the Customer's complaint. What escalation process did the Customer's complaint go through? Please provide the complaint ID (if you have one) and details of any correspondence attaching any relevant documentation.

Complaint ID: None  
15 October 2014

Customer's representative emailed

[REDACTED] in accordance with the process specified by Schedule 16 of the DCUSA with regards to 3 MPANs. This was a routine matter for both parties: the customer's representative acts (or has acted) on behalf of a number of clients in regard to premises with similar connection and tariff arrangements.

16 December 2014

[REDACTED] from our DUoS Income Billing team confirmed through email that the LVS tariff had been applied to one of the 3 MPANs; the other two were still under review.

16 December 2014

Customer's representative responded asking that the LVS tariff at that MPAN be backdated to 1 April 2010 when the LVS tariff was first introduced.

6 January 2015

[REDACTED] responded stating that we cannot apply the LVS tariff back to 1 April 2010 as the criteria to qualify for the LVS tariff were only amended in December 2013.

5 March 2015

The customer wrote to [REDACTED], alleging that he had been significantly overcharged DUoS and losses costs and asking that we backdate the LVS tariff to 1 April 2010.

26 March 2015

Following legal advice, [REDACTED] responded confirming the requirement under the DCUSA in relation to the LVS tariff to apply the change in the next calendar month following the DNO Party's decision.

16 April 2015

The customer challenged our position and reiterated its request for the LVS tariff to be backdated to 1 April 2010.

23 April 2015

We reiterated our position to the customer in line with our legal advice.

28 May 2015

Customer wrote to Ofgem requesting a determination.

### Question 3

Please provide a breakdown of the LLFC tariff charges, attaching any relevant paperwork. How have you justified that the charges levied were reasonable/cost reflective?

We have attached tables, extracted for convenience from the relevant charging statements, which detail the DUoS tariff charges for the relevant LVN and LVS tariffs. In all cases, the tariff charges have been calculated in accordance with the approved Common Distribution Charging Methodology (CDCM), and applied in accordance with the DCUSA obligations and the terms of our charging statements.

### Question 4

Please provide the Company's justification as to why you do not consider it appropriate to backdate the change in the LLFC tariff. Please attach any relevant correspondence or documentation.

The LVS tariff was incorporated into the DCUSA as part of the contractual implementation of the CDCM. The LVS tariff is designed to recognise that a

site that is located and metered at a DNO HV/LV substation makes less use of the LV system than a typical LV network connection. As such, the DUoS charges and distribution losses are somewhat lower. In developing the CDCM, it was considered impractical for those DNOs that did not have an existing LVS tariff (SEPD being one of them) to assess every non-domestic LV connection in order to categorise them as either LVN or LVS tariff customers. Instead, it was decided that the LVN tariff would apply on an ongoing basis unless a customer, their adviser or a supplier identified the connection as meeting the LVS tariff criteria. This was only formally captured in the DCUSA text following the approval of DCP 174 in December 2013. However, as described herein, the situation prior to this date is not relevant given that the customer's claim was only made and evidence only provided in October 2014.

DCP 174 inserted the following text into the DCUSA:

*Note 3 above for LV substation tariffs will be applied if a customer or its supplier provides evidence demonstrating to the DNO Party's reasonable satisfaction, that the requirements of note 3 are met. To determine whether such evidence is sufficient, the DNO Party will investigate and reach a decision based on the evidence supplied and any additional information that is available to it. Administration charges (to cover reasonable costs) may apply if a technical assessment or site visit is required. Where a DNO Party agrees that a customer should be moved to the LV substation tariff, the new tariff will be applied in the next calendar month following the DNO Party's decision. Where a customer is already registered on an LV substation tariff they will remain so.* DCP 174 also introduced a definition of "at the substation":

*'at the substation' means:*

- a) an HV/LV substation with the metering CT in the same chamber as the substation transformer; or*
- b) an HV/LV substation with the metering CT in a chamber immediately adjacent to the substation transformer chamber.*

Prior to this, we applied the LVS tariff to customers whose metering was located within the substation. As such, prior to December 2013, the customer would not have been eligible for our LVS tariff as, for the relevant connections, the metering CTs are not located within the substation.

Based on the DCUSA text above, it is clear that backdating is not required in this case as it was correct to apply the LVN tariff to the sites concerned until the month following the DNO's decision that the customer should be moved to the LVS tariff. Our correspondence with the customer provided as appendices to his statement of facts also explains this position.

#### Question 5

Please include any other facts relevant to the case.

#### **Comments on Customer's statement of facts**

#### Question 6

Attached to the email along with this letter is a copy of the Customer's statement of facts. If you have any comments on this please make them here.

We use this section to respond to the specific points made by the customer in their statement of facts under question 6.

**i. Latest SSEPD charging statement:** The section quoted refers to our position regarding backdating of charges when an *incorrect* charge has been applied i.e. *"where we agree that an MPAN/MSID has been assigned to the wrong voltage level..."*. In this case, the alternative tariffs are at exactly the **same** voltage level, so this section is not relevant to this matter and this underlines the intentionally different arrangements which apply to LVS in comparison to other changes of tariff, etc. We are therefore acting consistently with our charging statement. We note that the Customer's statement makes multiple references to 'wrong' and 'incorrect' voltage levels and this is inaccurate and misleading.

**ii. ■ experience with other DNOs:** We recognise that other DNOs may have taken a different position with regard to backdating LVS tariffs. However, we are required to ensure our own compliance position and believe our interpretation of DCUSA as set out above is well justified.

**iii. SSEPD participation in DCP173 consultations:** Our consultation responses and company position with regards to this matter are consistent. Our consultation responses (and charging statements) reflect the fact that we do consider the Limitation Act 1980 to apply where voltage level / LLFC / DUoS charges have been incorrectly applied. As we have outlined above, application of the LVN tariff in this case was not historically incorrect and the LVS tariff can only apply on a forward-looking basis after we have received evidence and agreed that the LVS tariff criteria have been met. Therefore backdating is neither appropriate nor compliant.

### **Company's response to Customer's comments**

The document submitted by ■ continually asserts that Southern Electric Power Distribution (SEPD) have incorrectly applied the charges. SEPD strenuously rebuts this. It is SEPD's position, for the reasons previously provided in its Submission of Facts and Reasons, that it has not incorrectly applied the charges and that on the application by and after receipt of evidence from ■ that these sites be designated as Low Voltage Substation (LVS) sites, SEPD agreed that the LVS tariff criteria had been met and applied the LVS tariff, in compliance with the DCUSA.

In summary, our position remains that our application of the LV Network (LVN) tariff in this case was not historically incorrect; the LVS tariff can only apply on a forward-looking basis after we have received evidence and agreed that the LVS tariff criteria have been met. Accordingly, backdating the LVS tariff is neither appropriate nor compliant. The charges applied to these sites were not incorrect and indeed if ■ had applied for LVS tariff prior to December 31st 2013, these sites would not have been eligible at that time, since they did not meet our interpretation of the qualifying criteria in force prior to this date.

### **SEPD Comments 1:**

The sites in question were connected to SEPD low voltage networks well before development and implementation of CDCM. When they were connected, they were set up on LV Network (LVN) tariffs and this categorisation was maintained until changed to LV Substation (LVS). Whilst there is no dispute that the metering installations in question have been consistently positioned, it is important to recognize that the legal position set out by the DCUSA in relation to LV Substation tariffs has not been correspondingly consistent and the text that applied from 1



April 2010 and the text that has applied since 31 December 2013 has changed considerably in two key respects:

1. From 1 April 2010 until 31 December 2013, the legal text of the DCUSA which was approved through all of the relevant governance processes, including extensive consultations, legal review and Authority approval, stated that LV Substation tariffs were only applicable to new customers from 1 April 2010. The connections for the sites in question significantly pre-date 2010; and
2. Equally from 1 April 2010 until 31 December 2013, the legal definition of connections which qualify for the LV Substation tariff clearly stated that the relevant metering equipment had to be located 'at the substation'. In the cases, the metering equipment concerned may be 'near' or 'close by' the substation but it has never been located at the SEPD substation.

We reiterate therefore that the connections in question only met the legal criteria for LV Substation tariff eligibility from 31 December 2013 onwards, when DCP174 was implemented in the DCUSA. There is no valid evidence to suggest that the changes made by DCP174 have (or were intended to have) any retrospective legal effect for any period prior to 31 December 2013. We maintain our position therefore that we have satisfied our obligations, on receipt of valid requests, to transfer the connections to the LV Substation DUoS tariff on a forward basis, in line with the relevant DCUSA requirements and that at no time have we applied incorrect DUoS charges.

#### **SEPD Comments 2:**

Typically, DNOs' records of the location of metering CTs do not specify the precise proximity or otherwise of these to its substation assets. Given the very large numbers of LV Network supplies, the industry arrived at a reasonable basis for applying a DUoS tariff which was entirely new for most DNOs (including SEPD) which essentially split an established single tariff category into two. The DCUSA as it currently stands (as amended in open governance by DCP174) recognizes the intentionally unique nature of arrangements which apply to LVS tariffs and therefore has specific provisions and procedures for changes to this tariff. We have fully complied with these legal requirements and by doing so have applied the correct charges at all times.

The initial development of CDCM was undertaken on an 'open' basis and working groups were open to all stakeholders including customer representatives. This approach has continued through discussions within the Methodology Issues Group and DCUSA working groups, such as DCP174, as evidenced by the participation of [redacted] adviser in these groups. The Methodology Issues Group, which we understand [redacted] adviser participated in, acknowledged that the approach taken in relation to implementing LV Substation tariff was practical and reasonable in their discussions which led to DCUSA Change Proposal 174.

With respect to the assertion that communication to all LV network customers should have been undertaken when the LVS tariff was implemented in CDCM, this ignores the explicit wording of the DCUSA legal text which applied between 1 April 2010 and 31 December 2013:

*"Notes 3 and 4 above for LV and HV substation tariffs will be applied for new customers from 1 April 2010. Where a customer is already registered on either an LV or HV substation tariff they will remain so."*

Strict legal interpretation of this text is that DNOs, and clearly DNOs who did not have LV or HV substation tariffs prior to the introduction of CDCM, were only obliged to apply the new LV or HV substation tariffs to new customers connecting to their networks from 1 April 2010. The latter part of Note 5 allowed for customers of those DNOs who already had such tariffs to remain on those tariffs.

Accordingly there was no need or requirement, as intimated by ■■■, either at this time or any later date for SEPD to notify existing customers/suppliers of their ability to apply for and evidence that the requirements of Note 3 had been met. In any event, under the GB supplier hub arrangements this is a matter which suppliers (all of whom are DCUSA parties and were fully aware of the methodology changes) were best placed to undertake, given their commercial relationships and relatively frequent contacts with end customers and their decision makers/utility experts.

### **SEPD Comments 3:**

These comments again do not recognise that the legal criteria for potential application of LV Substation tariffs were not satisfied until 31 December 2013 for any of the sites in question. There is no reasonable requirement for any of the relevant documentation to explicitly state that the existing DUoS tariff, which has been correctly applied since the connections were established, will continue to apply unless and until certain criteria are satisfied which enable a change to an alternative tariff. This is simply a logical default position.

The current wording of Note 3 intentionally sets out a procedure and the notion that it can be interpreted as some form of 'appeals process' is incorrect. There is nothing to indicate that this is an appropriate interpretation of the DCUSA. This text was instead introduced as a means of providing the opportunity for existing customers or their suppliers to request a change of tariff. Indeed in terms of Ofgem's decision paper on DCP 174 (dated 9 December 2013) it was described as 'specifying the process a DNO party will follow to decide whether a customer should be moved to the LVS tariff'. If the intention had been that the new tariff, if agreed by the DNO, was to be applied with retrospective effect, there would have been no requirement to state the date from which the new tariff would be applied.

### **SEPD Comments 4:**

As previously advised in our Submission of Facts and Reasons, application of limitations legislation is only potentially relevant in cases where incorrect charges have been applied. We again reject the suggestion that the continuing application of LV Network charges was in any way 'incorrect' and proper examination of the legal context supports this.

### **SEPD Comments 5:**

The 'logical fallacy' comments made are in our view incorrect and only seek to further restate the core basis of the dispute, which is whether or not backdating of the LV Substation tariff charges is applicable. We maintain our views as previously submitted and see no benefit to the process in repeating these at length.

With respect to cost reflectivity, in our view we have fully complied with the relevant Charging Methodology and there is no contradiction with the Charging Objectives. The legal text of the DCUSA, which we have complied with at all times, was implemented on the basis that it met all the relevant Charging Objectives, following a lengthy process including stakeholder consultation, legal expert

examination and formal Authority approval. In relation to the comment made about the 'layout of charging statements', we have previously indicated that different charges and distribution network loss values are applied to LVS supplies in comparison to LVN. This is not in dispute. The tables extracted from our statement simply show the different values which apply to each tariff, as is necessary in this table, and merely use 'Low Voltage Network' and 'Low Voltage Substation' as plain English identifiers for ease of reference. The terms themselves in this context have no bearing on the unique nature of the arrangements to change from LV Network to LV Substation.

**SEPD Comment 6:**

The statements in Comments 6 appear to be restatement of comments made previously under 'Comments 2'. We refer to our response to those, to avoid unnecessary repetition.

**SEPD Comments 7:**

As previously advised, we do not agree that the continuing application of LV Network charges was in any way incorrect and therefore limitations legislation is not relevant.

**SEPD Comments 8:**

The DCUSA extracts were submitted by us to assist the process by providing relevant evidence that the:

- (a) qualification criteria for LVS tariff was not consistent from April 2010 to the date of the tariff change request by (or on behalf of) ■■■; and
- (b) that the DCUSA was also amended in relation to specifying procedures for processing of requests for changes to LVS tariffs.

The anecdotal information relating to discussions within DCUSA workgroups has no bearing on the actual DCUSA text which was implemented and to which our compliance obligations relate. As previously advised, we do not agree that the application of LV Network charges in the circumstances of this case is covered by the 'Incorrectly Allocated Charges' area of the DUoS statement and therefore references to the limitations legislation are not relevant.

**SEPD Comments 9:**

We have previously submitted our statement explaining the interpretation we applied to 'at the substation' up to 31 December 2013 and this disagrees with the interpretation chosen by ■■■. The Ofgem decision relating to DCP174 which approved the changes of definition noted that different interpretations of the original text were taken by different parties but did not suggest or otherwise indicate that any of these were incorrect. We stand by our interpretation of the original DCUSA text and our view that DCP174 extended the qualifying criteria for an LV Substation tariff with effect from 31 December 2013 to definitively include cases where the connection was not 'new' and for which the relevant metering equipment is located immediately adjacent to the substation, and which therefore did not previously qualify. We do not agree that if a site qualifies under the revised definition, it must have qualified under the previous definition.

**SEPD Comments 10:**

The comments relative to the LLF table and their lack of relevance to tariff change arrangements and backdating have been covered under 'SEPD Comments 5'.

While SEPD does hold accurate records as to the physical voltage of the supply or metering, as noted under SEPD Comments 2 above, this does not necessarily include the precise location of CTs. The charging statements are drafted with the intent of using plain English as far as possible, with encouragement from Ofgem, whereas DCUSA and the CDCM are not subject to the same standards. In the context of the charging statement, which is the critical test in this dispute, we do not agree that the term LV Substation is intended to indicate a distinct 'voltage level' (being at absolutely the same voltage as LV Network connections). This would clearly be at odds with the common understanding of the term 'voltage level'. We stand by our original submission.

**SEPD Comments 11:**

As previously advised, we do not agree that the application of LV Network charges was incorrect on a historic basis and contend that our application of the LV Substation tariff on a forward basis, from receipt of the change request from ■■■, was fully compliant with our obligations.

**SEPD Comments 12:**

We stand by our original statement relating to compliance and the validity of our interpretations of the prevailing legal text, as it applied in varying forms across the period in question.

**SEPD Comments 13:**

No comment required.

**SEPD Comments 14:**

We reiterate that the anecdotal information relating to discussions within workgroups and otherwise is not relevant to the actual DCUSA or charging statement text which is or was in effect and to which our compliance obligations relate.