

DCP 266 Working Group Meeting 23

24 May 2019 at 10:00am

Skype Meeting / Teleconference

Attendee	Company
Working Group Members	
Andrew Enzor [AE]	Northern Powergrid
Chris Barker [CB]	ENWL
David Begley [DB]	Energetics
Dave Wornell [DW]	WPD
George Moran [GM]	British Gas
Kara Burke [KB]	Northern Powergrid
Rebecca Cailles [RC]	BU-UK
Sebastian Eyre [SE]	ESP Electricity
Observer	
David McCrone [DM]	Ofgem
Code Administrator	
John Lawton [JL] (Chair)	ElectraLink
Dylan Townsend [DT] (Technical Secretariat)	ElectraLink

Apology	Company
Chris Ong [CO]	UKPN

1. Administration

- 1.1 The Secretariat noted the welcome and apologies for this meeting.
- 1.2 The Working Group reviewed the “Competition Law Guidance”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting.
- 1.3 The Working Group reviewed the minutes from the last meeting and agreed that the minutes were an accurate reflection of the discussions held.

- 1.4 The Working Group noted the items on the actions list from the last meeting. Updates on all actions are provided in Appendix A.

2. Discussion on letter received by Ofgem from the Competitive Networks Association related to DCP 266

- 2.1 DM explained that he had received a letter from the Competitive Networks Association (CNA) on behalf of the IDNOs saying that DCP266 should be suspended until completion of the Targeted Charging Review (TCR) and Access and Forward Looking Charges SCRs. The letter was circulated to the Working Group during the meeting.
- 2.2 DM noted that Point 9 in the Ofgem SCR Guidance Document, states:

“9. Once an SCR has been launched, new modification proposals, which cover similar ground to the SCR, may not proceed through the standard industry modification process. Only urgent proposals or those specifically exempted by us will be allowed to proceed through the code modification process”

- 2.3 It was also noted that DCP266 was raised long before the TCR and Access SCRs were launched and that both the guidance above and the DCUSA itself are silent on what happens to ‘in-flight’ Change Proposals (CPs) that have an interaction with a SCR this matter and that this is still being discussed internally within Ofgem.
- 2.4 The Chair explained that where an in-flight CP interacts with a newly introduced SCR it is ultimately up to the Proposer to make a decision as to whether the CP be withdrawn or suspended until the SCR has completed. It was noted that there have been instances of this scenario in the past with DCP 284 ‘The Application of Scaling to Generation Credits in the CDCM’ and DCP 287 ‘Generation credits in the EDCM’. For DCP 284, the Proposer identified the interaction and sighted this in their notification to the Secretariat with respect to their decision to withdraw the CP. For DCP 287, the Proposer wasn’t as convinced by the interaction and so had some independent conversations with Ofgem and the Secretariat and eventually agreed to withdraw the CP.
- 2.5 It was also noted that all charging methodology CPs were discussed with Ofgem’s presence at a meeting of the DCMDG earlier in the year and it was agreed that 266 was not directly impacted by the TCR and Access and Forward Looking Charges SCRs and this was captured in the minutes of that meeting. Further to this, the DCP 266 Working Group has previously discussed this matter and are aware of this view from the DCMDG.
- 2.6 The Working Group discussed various points around the broad intent of the SCR and the fact that this creates a great deal of regulatory uncertainty and challenges to provide meaningful input into the development of DCP 266. The main concerns are that the CP and SCRs make it almost impossible for IDNOs to safely understand the impact of or have certainty over what may eventually transpire and have to make decisions based on changes with or without DCP 266 as well as the SCRs.

- 2.7 The Chair questioned if any Working Group members believe that DCP 266 won't impact upon or be impacted by one or both of the SCRs and if so what reasonings could be provided.
- 2.8 The Proposer explained that his view is that there is no interaction with the TCR SCR, noting that it doesn't appear that there is anything in DCP 266 which would impact the calculation of residual charges. Further to this, the Proposer also suggested that it is still too early to tell if the Access and Forward Looking Charges SCR will or won't interact with DCP 266 as options are still being developed and accessed at this stage.
- 2.9 DM explained that in the document issued by Ofgem on their decision to launch a SCR for Access and Forward Looking Charges, Ofgem set out that this would include a review the distribution connection boundary, if DUoS charges can be made more cost reflective. DM noted that consideration of this aspect will form part of a second working paper which will cover off some elements of IDNO charging, however it will be after publication of the paper that Ofgem intend on setting up a dedicated sub-group to look at IDNO charging. It was noted that the working paper isn't expected to be completed until November and the sub-group following the, which would be after the point in time that a decision on DCP 266 would have been expected to be provided. Although, DM also noted that Ofgem may struggle to make a decision on DCP 266 in time for implementation of 2021 as the focus is on the work progressing under the SCRs.
- 2.10 Following the above discussion, the Proposer confirmed that as DCP 266 is so near completion, the intention is to continue to progress through the final stage, being the Change Report so that it can be issued to Ofgem following the Party vote.

3. Review of collated consultation responses

- 3.1 The Working Group reviewed the collated consultation responses and commented against each response throughout. The document that captures the Working Groups comments acts as Attachment 1 to the minutes.
- 3.2 Some key discussions and agreed actions were captured during the Working Groups review of the consultation responses, and these are detailed below:
- Working Group had an extensive discussion during their review of responses to Question 2 'Do you have any comments on the two interpretations set out under paragraph 4.37?' which was related to some views presented "*what revenues a party which is providing substitute services in place of a dominant party should be entitled*". The Working Group noted that their consideration of revenue entitlements was a conceptual aid used following its review of responses to the first consultation, where respondents' voiced concerns around the implications to competition as a result of DCP 266. The Working Group highlighted that it does not have any control over IDNO revenues as these are governed/controlled by Ofgem.
 - The Working Group agreed that it would be beneficial to seek legal opinion on if there are any implications of DCP 266 with respect to competition law. The Working Group agreed that prior to issuing the following questions to the DCUSA Ltd lawyers, that it should first be confirmed if the questions are suitable enough for them to be able to provide their legal opinion. The following proposed questions and background information was agreed to be included in the request:

- Q1 - What are the competition law implications of this CP?
 - The group has received the following responses to their second consultation that presents the following legal arguments and case law:
 - [Legal Arguments]
 - [Case Law Sighted]
- Q2 - Would this change proposal, if approved and implemented, put parties in breach of competition law???

ACTION: 23/01 – ElectraLink to create a document that sets out the questions and contains the background information including adding the legal arguments and case law sighted by respondents and circulate to Working Group for approval. Following this, a discussion with Peter Waymont should be had to seek approval to request such advice/opinion and a call to Gowling WLG to confirm they'd be comfortable with and able to provide such advice/opinion based on the questions proposed by the group

- 3.3 In reviewing responses to Question 4 'Do you consider that the proposal better facilitates the DCUSA Charging Objectives?', it was agreed that the DCUSA Objectives will be reviewed by the Working Group following the legal receipt of the legal advice and when drafting the Change Report the Working Groups views (for and against) will be added at this point.
- 3.4 The Working Group will highlight comments made by respondents with respect to the DCUSA Objectives in the section of the Change Report that provides an overview of responses received to each question.
- 3.5 In reviewing responses to Question 5 'If DCP 266 were to be approved are you supportive of the proposed implementation date of 01 April 2021?', the Working Group noted that a variety of responses were received, some in support and others suggesting to defer until the completion of the SCR and/or 01 April 2023. Given this, the Chair put the question of an agreed Working Group implementation date to a vote and four members supportive of 01 April 2023 and three members were supportive of 01 April 2021.

4. Next steps and Work Plan

- 4.1 The Working Group discussed the next steps and reviewed the Work Plan and the following items were captured:
- 4.2 As there were no suggestions to the solution or legal text the Chair confirmed that the Working Group can move to change report stage;
- 4.3 ElectraLink is to finalise the request for legal opinion document as per Action 23/01 and circulate to the group for review prior to sending it to the DCUSA legal advisors.
- 4.4 The meeting that had been scheduled to take place on 28 May 2019 can be cancelled, as all consultation responses were reviewed during this meeting.
- 4.5 The Working Group agreed that the next meeting should be scheduled for Tuesday, 18 June 2019, between 10am and 3pm for the purpose of reviewing the legal opinion, legal text and the draft Change Report document.

5. Any Other Business

5.1 There were no items of any other business and the Chair closed the meeting.

6. List of Attachments

- Attachment 1 – DCP 266 Collated Consultation Responses with Working Group Comments
- Attachment 2 – DCP 266 Work Plan (Updated)

Appendix A – Actions

New and Open Actions (Updates set out in blue)

Ref.	Action	Owner	Update
22/01	Create a document that sets out the questions and contains the background information including adding the legal arguments and case law sighted by respondents and circulate to Working Group for approval. Following this, a discussion with Peter Waymont should be had to seek approval to request such advice/opinion and a call to Gowling WLG to confirm they'd be comfortable with and able to provide such advice/opinion based on the questions proposed by the group.	ElectraLink	

Closed Actions (Updates set out in blue)

Ref.	Action	Owner	Update
22/01	Compile a modelling support specification pack in line with the previous requests and to seek approval from the relevant Panel members for it to be issued to the modelling consultant.	ElectraLink	Completed: 24 May 2019 – this was completed prior to issuing the consultation
22/02	Update the spreadsheets containing the backing data to a number of tables and graphs within the consultation document as well as the consultation document itself following receipt of the updated PCDM and impact assessments and then circulate to the group for review.	ElectraLink	Completed: 24 May 2019 – this was completed prior to issuing the consultation
22/03	Check with MH along with the IDNO community as to whether they believe that there is a need issue a separate request for the modelling consultant provide populated models so that they can be made available should any Party wish to undertake detailed analysis on the solution set out in the second consultation. MJ to also confirm if there are any views with respect to the length of time the consultation is issued for.	Matt Johnson	Completed: 24 May 2019 – feedback was sought but none was provided prior to issuing the consultation document and as such this item has been closed.