

**DCUSA DCP 181 Consultation Two Responses – Collated Comments**

<b>Company</b>	<b>Confidential/ Anonymous</b>	<u>Is it the entire agreement?</u>  <b>1. Are all terms within an existing bi-lateral connection agreement required to be enduring or is it only a subset of terms and if so what subject matters do they cover?</b>	<b>Working Group Response</b>
British Gas	Non-confidential	<p>We have concerns relating to the customer impact of enduring terms. It would be difficult to limit this to a subset of terms and subject matters as by nature each bespoke contract would vary greatly. However, if the modification is progressed It would be necessary to limit the number of possible variations to where an agreed set of possible variants could be incorporated into a connection agreement.</p>	<p>The Working Group agreed to request further clarification on the last sentence from the respondent.</p>
Electricity North West	Non-confidential	<p>It is difficult to understand what this question is alluding to. The 'existing' bi-lateral agreement will live on until something triggers a change be it by request from the new occupier/owner or the distributor contacting the customer as a consequence of a change of tenancy (identified directly or indirectly via the supplier) or by the distributor contacting the new occupier/owner believing they are contacting the previous owner/occupier to enact some of the terms within the agreement.</p> <p>These bi-lateral agreements are there where the terms differ from the NTC. Any suggestion that a subset of terms be enduring seems inappropriate. This means that some will not endure and as such contact with the new occupier will need to take place, and if this is the case we may as well deal with the agreement as a whole.</p>	<p>Noted.</p>

Northern Powergrid (Northeast and Yorkshire)	Non-confidential	<p>The specific terms that need to endure may be the general terms within the NTC or the specific technical details relating to the connection (or a combination of both). These are likely to change on a case by case basis so either all terms will need to endure or the NTC may need an overall statement which highlights the potential for enduring details recorded elsewhere, e.g. in a bilateral agreement between the distributor and owner/occupier.</p>	Noted.
Peel Ports Group Limited	Non-confidential	<p>No term additional to the NTC and binding on the customer should be enduring without the express consent of the customer.</p> <p>I presume that this proposed change has the ability to reverse the current obligation of the DNO to maintain a connection to the property. For example if the customer has not had sight of the bespoke contract terms prior to ownership and does not agree the only remedy is to terminate the connection agreement (would this carry a financial penalty)? Certainly the new connection could carry a financial penalty that would not have been assumed in the purchase price as an existing connection will be assumed providing there was power to the site.</p> <p>The consultation document makes an awful big presumption that the customer will have full disclosure of the 'bespoke agreement' via the CPSE. Having spoken to our Director of Estates he confirms that it is not uncommon for the seller to respond to the CPSE Q.10.1 "the Customer should make their own enquiries". In the case of connection agreements this information would obviously not be available via other means.</p> <p>So the customer could incur a double financial penalty – one for</p>	Noted.

		<p>termination of the agreement once they have inherited it and twice for a new connection and possibly feasibility studies.</p> <p>Why can it not be agreed that any 'custom' requirements on a connection are secondary to a standard connection offering. The default position on a change of ownership is that the standard connection which may be lower capacity automatically transfers but the new owner/occupant has the ability to take up the 'custom' option of the additional capacity accepting whatever constraints or obligations accompany this connection.</p> <p>Without being given examples or understanding what the working group have in mind it is difficult to make sensible responses to the consultation.</p>	
Reckon LLP	Non-confidential	<p>No term additional to the NTC and binding on the customer should be enduring without the express consent of the customer.</p> <p>Paragraphs 3.6 and 3.7 of the consultation do not explain which subset of terms the working group had in mind. Any use of an electricity connection is "physical". It is possible that the working group was trying to distinguish between terms imposed as a result of capacity constraints on the wider network and other terms, but that is not clear.</p> <p>When a customer moves into a property with a custom network arrangement, e.g. more capacity in exchange for specific load management provisions, then the customer should only be able to take advantage of the higher capacity if it complies with the specific load management provisions. That can only happen after the distributor has communicated these provisions to the</p>	Noted.

		<p>customer, at which point it is no hardship to record whether the customer chose to agree to these provisions, or if not what the (lower) capacity available on the network without such provisions is.</p> <p>Terms that are only binding on the distributor (e.g. a guarantee that the capacity that was agreed with the previous occupant would also be made available to the new occupant) could reasonably be enduring. However, the NTC might not be the right vehicle to achieve this, since a new occupant would find it difficult to enforce a NTC provision about enduring terms as it would not have access to evidence about any agreement between the distributor and the previous occupant.</p>	
Scottish Power Energy Retail	Non-confidential	Scottish Power Energy Retail Ltd are not party to bilateral connection agreements	Noted.
SP Distribution / SP Manweb	Non-confidential	We consider it appropriate that only a subset of the existing bilateral connection terms require to be enduring, i.e. those that have been identified by the DNO as relating to “technical constraints, characteristics and nature of the physical connection”.	Noted.
UK Power Networks	Non-confidential	<p>All terms.</p> <p>The bilateral connection agreement conveys terms that are statutory in nature and cannot be selectively voided or revoked due to the exchange of ownership or occupation.</p> <p>The “terms” have to be seen legally in their entirety and continued in their entirety unless varied or subsequently</p>	Noted.

		replaced by a new bilateral connection agreement.	
Utility Customer Service Management Ltd	Non-confidential	<p>I don't believe the entire agreement or any part of it needs to be enduring but I do believe there is a case for making it transferrable from one Customer to another at the <u>same premise only</u> and DNO's should work to enable this to happen.</p> <p>We have had instances where a site has been sold and DUOS charges have continued to apply even though the site became non-operational and was about to be dismantled – if agreements were enduring then the new owner could be bound by said DUOS charges.</p>	Noted.
Western Power Distribution	Non-confidential	All the terms should be enduring. The terms may include reference to characteristics of the connection, i.e. voltage of connection, import/export capacity and assets installed. They may also cover site specific operating constraints and technical interface protection data that must be maintained during the lifetime of the connection.	Noted.
<b>Company</b>	<b>Confidential/Anonymous</b>	<p><u>How could the prospective customer discover any existing terms?</u></p> <p>2. If a customer contacted a Distributor to request connection terms for a premises for which they are neither the owner or the occupier, are Distributors able to respond to those enquiries and how do they/should they do so?</p>	<b>Working Group Response</b>

British Gas	Non-confidential	There should be a clear and consistent approach to identify existing terms, with the new customer being able to discuss/negotiate the terms prior to adopting any enduring bespoke terms as part of change of tenancy/new ownership.	Noted.
Electricity North West	Non-confidential	We are able to respond to such enquiries and treat them in the same way as an enquiry from consultants i.e. we would expect to be provided with written authority from the current owner/occupier of the premises before providing the information.	Noted.
Northern Powergrid (Northeast and Yorkshire)	Non-confidential	<p>Under this scenario the concern may be whether the information requested is restricted under S105 of the Electricity Act (General restrictions on disclosure of information). It may depend on whether the information relates to the distribution system, and is owned by the distributor, or relates to the customers and is covered under S105. A legal opinion should be considered.</p> <p>If it is determined that information belongs to the individual or business then it can never be disclosed during the lifetime of the individual or so long as the business continues to be carried on (S105(1)).</p>	Noted.
Peel Ports Group Limited	Non-confidential	<p>Distributors should not provide information to third parties unless expressly authorised to do so by the occupier. Paragraph 3.9 of the consultation document recognises this.</p> <p>Many utility providers e.g. water companies have 'special agreements' outside of the published charging methodology or connection agreements. The fact that a special agreement exists is published but no details of the special agreement can be published without the express permission of the parties.</p>	Noted.

		There is no reason why this should not follow the same logic.	
Reckon LLP	Non-confidential	<p>Distributors should not provide information to third parties unless expressly authorised to do so by the occupier. Paragraph 3.9 of the consultation document recognises this.</p> <p>I could not make sense of paragraph 3.11 of the consultation document. I would hope that an attempt at circumventing section 105 by inserting terms into the National Terms of Connection would be rejected by Ofgem, and/or would prove legally ineffective.</p>	Noted.
Scottish Power Energy Retail	Non-confidential	N/A	
SP Distribution / SP Manweb	Non-confidential	<p>We agree with the Working Group's opinion that the DNO is preventing from sharing the full terms of any bi-lateral connection agreement with a prospective purchaser unless the current owner or occupier has given its express permission to do so.</p> <p>We consider it appropriate that consideration is given to the inclusion of legal text in to the NTC either authorising the DNO to share non-standard connection terms associated with physical connection characteristics/constraints or placing an obligation on the current owner/occupier to provide such details itself or to give permission upon request for the prospective purchaser to obtain such information via the DNO.</p>	Noted.

UK Power Networks	Non-confidential	<p>The Distributor can confirm the existence of a bilateral connection agreement as being applicable to the premises.</p> <p>Subject to the customer proving ownership or occupancy the Distributor can reissue almost exactly the same bilateral connection agreement, with exactly the same terms, but with all the preceding customer details removed and replaced with the new owning/occupying customer's details.</p> <p>s105 restrictions in respect of the previous customer's data is therefore preserved whilst the entirety of the terms of connection terms are applied to the new customer as if no change in ownership or occupation has occurred. This preserves the evergreen concept of maintaining the connection without alteration or amendment in physical and in terms of connection and use that would otherwise not be statutorily possible.</p> <p>The new customer can then propose variations as they wish.</p>	
Utility Customer Service Management Ltd	Non-confidential	<p>This is a problem especially if we adopt the approach suggested. There is however no reason why a DNO cannot enter discussions about the transfer of an agreement at this stage.</p> <p>Additionally, without any specified response times for DNO's to respond, we can see this leading to many delays again, to the detriment of the market.</p>	Noted.
Western Power Distribution	Non-confidential	<p>We don't believe the DNO would be at liberty to divulge specific information without the permission of the current owner and so the purchaser would either need to liaise with the current</p>	Noted.



		<p>owner or to request the current owner gives permission for the DNO to share the specific information with the purchaser.</p> <p>An alternative solution may be to insert legal text into the NTC's that may enable the DNO to share non-standard connection terms with a prospective purchaser.</p>	
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<b>Company</b>	<b>Confidential/Anonymous</b>	<p><u>Which customers should it apply to?</u></p> <p><b>3. Should the enduring connection terms apply to all customers or only to those say in Section 3 of the National Terms of Connection or other Sections?</b></p>	<b>Working Group Response</b>
British Gas	Non-confidential	Section 3 only.	Noted.
Electricity North West	Non-confidential	This particular clause is where the distributor believes there is a need to have terms in place that differs from the NTC. It therefore should be generic in nature rather than being focussed on any particular section of the NTC. That said it probably only applies to section 3 and 4.	Noted.
Northern Powergrid (Northeast and Yorkshire)	Non-confidential	Given section 3 deals with CT metered customer then it likely that terms that need to endure would be related to complex connections in this category, for example capacity constraints or an agreement to vary power factor. We would not have any objections to enduring connection terms applying to other sections if a justification was put forward.	Noted.

Peel Ports Group Limited	Non-confidential	<p>No term additional to the NTC and binding on the customer should be enduring without the express consent of the customer.</p> <p>As a customer with a large land ownership and tenanted properties it is common for leases to leave the responsibility for utility supplies to the tenant, but it may not be fair to impose obligations on a tenant that the landowner had previously agreed for their own use of the land but was not appropriate or physically possible for the tenant to comply.</p> <p>Again if there was a default position on maintaining a physical connection even at a lower rate than that which would incur additional obligations this is likely to be the preferred stance for the tenants.</p>	Noted.
Reckon LLP	Non-confidential	<p>No term additional to the NTC and binding on the customer should be enduring without the express consent of the customer.</p> <p>The text in paragraph 3.15 seems to bear little relation to the question asked.</p>	Noted.
Scottish Power Energy Retail	Non-confidential	N/A	
SP Distribution / SP Manweb	Non-confidential	We consider it appropriate that the enduring connection terms apply to all customers.	Noted.

UK Power Networks	Non-confidential	<p>All customers.</p> <p>The concept of evergreen should be applicable to all types of connection where a bilateral connection agreement exists.</p> <p>Although it is unlikely that any domestic premises would be bound by bilateral connection terms the concept of continuity of connection across changes of ownership or occupation for the benefit and the protection of the incoming owner or occupier requires that the concept extends to all customers, regardless of meter type or unmetered.</p>	Noted.
Utility Customer Service Management Ltd	Non-confidential	<p>If the general mass of Customers are forced to accept them then it should be a very narrow field of Customer who should be subject to such terms.</p>	Noted.
Western Power Distribution	Non-confidential	<p>The enduring terms should apply to all customers. Whilst the majority of connections with specific operational conditions will be those covered under section 3 of the NTC's there will be occasion where specific enduring terms will be agreed with customers who do not require CT metering.</p> <p>Applying enduring connection terms to all will ensure consistency of approach.</p>	Noted.

Company	Confidential/Anonym	4. Do you have any other comments on the DCP 181 change?	Working Group Response
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British Gas	Non-confidential	Clarity needs to be provided on (i) how bespoke terms are communicated and to whom and (ii) who is liable if this communication fails. This may also restrict choice for customers, e.g. not all suppliers may be able to comply with bespoke enduring terms.	The Working Group agreed to request further clarification in regards to the comment on restricted choice from the respondent.
Electricity North West	Non-confidential	It appears this will come down to the legality of imposing terms on a customer that was not involved in the original negotiations, although it has been highlighted that s21 of the Electricity Act 1989 allows for DNOs to impose terms and conditions. So overall there is a thought as to why we need to undertake any change to these terms apart from aiding clarity since both parties will be bound by it until the agreement is varied.	Noted.
Northern Powergrid (Northeast and Yorkshire)	Non-confidential	Some terms, such as clause 15 Limitation of Liability already survive termination of the connection agreement so the concept of enduring terms is not completely new.	Noted.
Peel Ports Group Limited	Non-confidential	The NTC is a comprehensive set of terms and conditions to extend this National Standard to cover what could be a handful of 'bespoke special agreements' would be unjust on the majority and inappropriate.  My concern would be related to the legal liabilities, penalties and remedies for a customer inheriting these bespoke obligations or restrictions after buying a piece	Noted.

		<p>of land that evidently has a power supply. If the customer has not had any opportunity to discover the terms of the contract prior to purchase of the land/ lease then this would not be correct.</p> <p>The customer must have the opportunity to sign up to and accept the 'custom' obligations.</p> <p>My recommendations would be two fold:</p> <ul style="list-style-type: none"> <li>a) Either establish two levels of connection an unencumbered default position and a bespoke position within the terms so that the terms could be inherited without the adoption of the bespoke terms.</li> <li>b) Set up something on the land registry as per the Green Deal solar panels on roof's where the contractual obligation stays with the property and as such is easily discoverable on the land register</li> </ul>	
Reckon LLP	Non-confidential	<p>Insofar as this change seeks to create a provision allowing the imposition of obligations on customers going beyond the NTC without gaining customer consent or establishing a public interest need in each individual case, it is a bad change.</p> <p>The process followed by the working group leaves a little to be desired. In particular:</p> <ul style="list-style-type: none"> <li>• The consultation document appears to have been circulated to only a few hundred people, and is not available to the public from dcusa.co.uk. This is wrong in the context of a proposed change which</li> </ul>	Noted.

		<p>could affect any electricity customer.</p> <ul style="list-style-type: none"> <li>• The cryptic text in paragraphs 3.6 and 3.7 of the consultation document means that consultees cannot make intelligent comments on the proposals.</li> <li>• Running a second consultation without sharing the results of the first consultation is regrettable, especially as some responses to the first consultation appear to have been ignored, such as: "We [E.ON] believe that the customer should at least be informed as to what the existing agreements are before they agree to them enduring." and "We [E.ON] do not believe any objectives are better facilitated."</li> </ul> <p>The Working Group has still not delivered any quantitative (or other) analysis establishing any material benefit of its proposal compared with either establishing proper land charges or making explicit arrangements with the new occupier.</p>	
Scottish Power Energy Retail	Non-confidential	No Further Comment	Noted.
SP Distribution / SP Manweb	Non-confidential	None	Noted.
UK Power Networks	Non-confidential	We remain of the view that capacity is maintained on change of customer and persists until varied. The process for a connection starts with a customer need, which he specifies to the distributor as a maximum	Noted.

		<p>power requirement and the distributor provides assets to meet that need. If a change of customer infers no ongoing need it is unclear what purpose the ongoing provision of the associated assets meets.</p> <p>s16(3) references the maintenance of a connection being subject to terms agreed under s16A which must include the capacity due to the process described under s16A.</p>	
Utility Customer Service Management Ltd	Non-confidential	<p>It should not be implemented and other more conventional approaches should be adopted e.g. transfers, re-newed terms for new Customers etc.</p> <p>The quest to create unique terms for this market will create even more confusion and given the relative power base of DNO's in this area will be to the detriment of Customers.</p> <p>Customer are quite accepting that when a new site is purchased there may be associated negotiations to be had and the automotive transfer of terms of an agreement being transferred tends to disregard current custom and practice.</p>	Noted.
Western Power Distribution	Non-confidential	No	Noted.