



DCUSA CONSULTATION

DCP 181 - Previous Connection Terms Enduring

DCP 181 was raised by Eastern Power Networks and seeks to ensure that where a distributor has agreed a bilateral connection agreement with an owner or occupier in respect of a connection point those terms should endure on change of ownership or occupation.

1 PURPOSE

- 1.1 The Distribution Connection and Use of System Agreement (DCUSA) is a multi-party contract between electricity Distributors and electricity Suppliers and large Generators. Parties to the DCUSA can raise Change Proposals (CPs) to amend the Agreement with the consent of other Parties and (where applicable) the Authority.
- 1.2 This document is a consultation issued to Distribution Network Operators (DNO), Independent Distribution Network Operators (IDNO), Suppliers, Consumer Futures, ELEXON, Gemserv, any other interested Parties and the Authority in accordance with Clause 11.14 of the DCUSA, seeking industry views on DCP 181 – Previous Connection Terms Enduring (Attachment 1).
- 1.3 Parties are invited to consider the questions set out in section 7 below and submit comments using the form attached as Attachment 2 to dcusa@electralink.co.uk by **Thursday, 12 September 2013**.

2 BACKGROUND OF DCP 181 – PREVIOUS CONNECTION TERMS ENDURING

- 2.1 DCP 181 was raised by UK Power Networks and seeks to ensure that where a Distributor has agreed a bilateral connection agreement with an owner or occupier in respect of a connection point those terms should bind on change of ownership or occupation to ensure that the connection terms reflect the technical constraints, characteristics and nature of the physical connection rather than reverting to the default National Terms of Connection (NTC).
- 2.2 The solution proposed to achieve this aim is as follows:
- to ensure the connection terms endure through the wording contained in the NTC.
- Without such a change to the NTC an alternative could be to ensure the connection terms endure by adding a restriction notice in the title of the proprietorship of the DNOs substation/easement which prohibits the Land registrar from adding any registered disposition without a certificate from the DNO.

3 WORKING GROUP ANALYSIS OF DCP 181 - PREVIOUS CONNECTION TERMS ENDURING

- 3.1 The DCUSA Panel has established a DCP 181 Working Group which consists of Supplier, DNO and Ofgem representatives to consider the Change Proposal.
- 3.2 The Working Group noted that at present, if the customer who has agreed to non-standard terms sells or moves out of the property, the incoming owner or occupier defaults to the NTC. This means the new owner or occupier is not bound by these non-standard terms for their usage. Consequently the new owner or occupier may behave in a way that the network is not designed to facilitate.
- 3.3 The Working Group established that there are various reasons for a non-standard connection agreement including unusual technical characteristics and restrictions (e.g. avoidance of use of electricity at peak times) due to the volume of electricity required. Use of electricity at peak hours without restriction poses challenges to balancing the network.
- 3.4 Under this consultation the Working Group seeks feedback from Parties on the following issues:

Change of Owner or Occupier

1. Under current conditions a change of owner or occupier of a property could end the bilateral connection agreement. Suppliers are obliged to send a D0302 on change of customer. The Working Group queries whether the Distributor is made aware each time there is a change of customer.
2. Suppliers have deemed contracts with new owners or occupiers of a property based on supplying the previous owner or occupier. This deemed contract endures until the new owner or occupier agrees a contract for their supply. The Working Group agreed that distributors can use the default National Terms of Connection but these are extremely general and do not take in to consideration the characteristics of the connection at the property. The Working Group queries whether bilateral connection agreements terms should endure.

Customer Impact

1. Under this change, the new owner or occupier will still have the opportunity to negotiate a variation on the terms and conditions of their connection agreement. In the case where the customer fails to renegotiate their terms and conditions, then the existing connection agreement would apply. The Working Group discussed where there is a change of owner or occupier to a property, how is this new Customer made aware that the connection terms of the previous owner's contract would apply to them as opposed to the standard NTC.
2. Two types of Customer were identified Commercial and Domestic who are either an owner or a tenant in the property in respect of the connection point.

Commercial Property Notification Of Enduring Connection Terms

- As the seller of a property you would have an obligation to provide the connection contract on sale of the property to the incoming occupant. The responsibility on the sale of the property would therefore fall to the seller.
- There are common questions that can be referred to on sale of a commercial property which are available under CPSE (Commercial Property Standard Enquiries) on Commercial Property Standard Transactions. The CPSE are prepared by the London Property Lawyers Support Group and endorsed by the British Property Federation. In particular CPSE 1 question 10.4 requests for the seller of the property to:

"10.4 Please provide details of any contracts for the supply of services carried out to the Property (e.g. security or cleaning)".

- The Distributor would be reliant on the outgoing occupier fully complying with this obligation and supplying the Section 16 agreement to the new occupier or owner of the property.

Domestic Property Notification Of Enduring Connection Terms

- The Working Group noted that there is a degree of standardisation for commercial properties but not for domestic properties. The Working Group is seeking statistics on the change of ownership or occupation of property annually to demonstrate the size of the issue and on the number of properties sold or changing tenancy within the year.

Certainty Of Terms

1. Certainty of terms is a fundamental requirement of any contract. The NTC are publicly available standard terms so before a customer agrees to be bound by the NTC, it can easily obtain a copy of the NTC and check the terms and gain certainty. The Working Group questions whether, by incorporating the previously-agreed bespoke terms by reference, that certainty is put at risk.
2. There is no publicly available record of the bespoke terms. Although the customer can ask the distributor for them, the distributor may not be willing to disclose them if the requesting person is not yet the owner or occupier of the premises, and even where the distributor is willing and able to provide them, it could be a relatively lengthy process at odds with the way in which the NTC are normally agreed.
3. This issue of certainty is further complicated by the fact that the bespoke terms do not necessarily apply in their entirety, as this change is drafted, but rather they apply to the extent of any inconsistency with the rest of the NTC.

4 Solutions

- 4.1 The Working Group is considering the following solution:

Enduring Connection agreement terms

- 4.2 This seeks to maintain the terms of the connection agreement during a change of owner or occupier of a property through a re-interpretation of the Electricity

Act.

- 4.3 S16 and S21 of the Electricity Act provide for the making of a new connection which allows the Distributor to require the person requesting the connection to accept certain restrictions and terms and conditions.
- 4.4 S16 (4) ensures that any reference in S16-23 to making a connection shall include a reference to maintaining the connection. In previous industry groups this has been interpreted as meaning that on change of ownership the rights to capacity are maintained. Thus the need to apply for capacity (a “new” connection) every time there is a change of ownership is removed.
- 4.5 However, if the capacity (the connection) is required to be maintained, then any restrictions or terms and conditions associated with it should also be maintained. S16(4) would appear to support this interpretation by referencing clauses that include s21 – hence the Distributor may require restrictions or terms and conditions in return for maintaining the connection.

Comparison with Land Registrar

- 4.6 An alternative method might be to maintain the terms of the connection agreement during a change of owner or occupier of a property by the Distributor taking an interest in the land upon which the connection¹ is provided. This would be outside of the NTC.
- 4.7 A restriction may be noted in the proprietorship of the title out of which the DNO’s substation/easement is carved which will prohibit the Land Registrar from registering any disposition without first having received a certificate from for example the DNO’s Company Solicitor or Secretary.
- 4.8 This certificate confirms that the disponee of the land has signed a connection agreement in a form which will bind it to the obligations undertaken by the first connectee in the bilateral connection agreement. This is a recognised method of ensuring that positive obligations run with land.
- 4.9 A marker would be placed at the land registry so that the customer has to

¹ This may entail the transfer or lease of sub-station or an easement that contains an obligation on the owner not to dispose of any interest in the land or part with or share occupation of the land without having procured a new connection agreement from the in-coming disponee of the relevant interest.

inform a distributor when they buy a property. The land registrar will notify the customer of the enduring connection terms and advise the DNO that the customer has agreed to the terms and conditions.

5 COST BENEFIT ANALYSIS

Options			
Connection Terms Enduring Summary	Advantages	Disadvantages	Cost
Where a distributor has agreed a bilateral connection agreement with an owner or occupier in respect of a connection point those terms should bind on change of ownership or occupation.	<ul style="list-style-type: none"> Maintains the technical characteristics of the Connection Interprets the Electricity Act so the solution requires no further funding High degree of property law standardisation for Commercial customers being notified on sale of the property 	<ul style="list-style-type: none"> Low degree of property law standardisation so domestic customers may not be notified on sale of the property. 	<ul style="list-style-type: none"> Low cost
Land Registry Summary	Advantages	Disadvantages	Cost
Add a restriction notice in the title of the proprietorship of the DNOs substation/easement which prohibits the Land registrar from adding any registered disposition without a certificate from the DNO.	<ul style="list-style-type: none"> Maintains the technical characteristics of the Connection The customer is made aware of the terms of connection by the land registrar issuing notification. 	<ul style="list-style-type: none"> Time consuming High level of administration Managing the process Potential process failure as the land registry could send the notification of the enduring connection terms to the wrong address. 	<ul style="list-style-type: none"> Expensive to implement High administrative cost
Maintaining the existing arrangements	Advantages	Disadvantages	Cost
At a change of owner or occupier the bilateral contract becomes void and defaults to the National Terms of Connection. The distributor must renegotiate the bilateral contract with the new customer.	<ul style="list-style-type: none"> The customer renegotiates the contract on first contact. The customer is fully aware of the connection terms they are signed up to. 	<ul style="list-style-type: none"> Distributor is unaware of a change of occupier or owner of the property in order to renegotiate the connection terms The connectee may behave in a way in which the network is not designed to facilitate Cost of re-negotiating bilateral contracts 	<ul style="list-style-type: none"> High cost

- 5.1 The Working Group agreed to undertake a cost benefit analysis on the Land registry option versus the connection terms enduring option.

6 ASSESSMENT AGAINST THE DCUSA OBJECTIVES

- 6.1 The Working Group considered that Objectives one and two of the General Objectives were best met by this CP.

General Objectives

Objective one - The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System.

Working Group view: The Working Group agreed that Objective one is better facilitated by DCP 181 as the risk of reinforcement due to a customer not being bound by previous terms is avoided.

Objective two – The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity.

Working Group view: The Working Group agreed that Objective two is better facilitated by DCP 181 as generators may require, and increasingly so for larger LV and higher voltage generators, the types of connection that have non-standard terms and the alternative of registering interests with the Land Registry would take time and greater expense as part of the connection process to achieve the same outcome. The proposed solution therefore leads to greater efficiency and hence promotes competition.

Objective three – The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences.

Working Group view: The Working Group agreed that the impact on Objective three is neutral.

Objective four – The promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it.

Working Group view: The Working Group agreed that the impact on Objective four is neutral.

Objective five – Compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

Working Group view: The Working Group agreed that the impact on Objective five is neutral.

7 DCP 181 – Summary and Consultation Questions

7.1 The following table provides a list of the consultation questions that the Working Group is seeking responses to.

Question Number	General Questions
1.	Do you understand the intent of DCP 181?
2.	Do you agree with the principles of DCP 181?
3.	<p>For Distributors:</p> <p>A. Do you receive D0302 flows from Suppliers on change of customer?</p> <p>B. If no, how are you made aware of a change of owner or occupier at a property?</p> <p>C. What action is taken on receipt of a D0302?</p> <p>For Suppliers:</p> <p>D. Under what scenarios do you send the D0302 to the Distributor?</p> <p>E. Do you always send a D0302 when customer details change due to ownership or tenancy?</p>

4.	Do you think the existing connection contract should endure or be renegotiated at the point the property is sold?
5.	How do customers know that the previous owner's or occupier's connection terms apply?
6.	For Distributors - How many non-standard connection agreements do you hold?
7.	How many changes of ownership or tenancy of properties do you record in a year?
8.	For Distributors - Do you receive enquiries on bilateral connection agreement terms from domestic customers? If so, how many?
9.	<p>A. Do you consider that this change proposal jeopardises the certainty of the NTC?</p> <p>B. If so, do you consider that only the application of the bespoke terms would be at risk or is the application of the NTC to premises generally at risk?</p> <p>C. How might such issues be overcome?</p>
10.	If you are a Distributor, what would your response be to a prospective purchaser of premises who asked you for a copy of the connection agreement?
11.	Do you believe there will be consequential changes to other industry codes as a result of each option or solution?
12.	DCP 181 is due to be implemented in the next DCUSA release following authority consent. Do you have a preference on the date that DCP 181 is implemented in to the DCUSA?

13.	<p>Which DCUSA General Objectives does the CP better facilitate? Please provide supporting comments.</p> <ol style="list-style-type: none"> 1. The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System. 2. The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity. 3. The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences. 4. The promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it. 5. compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.
14.	<p>Are there any alternative solutions or matters that should be considered by the Working Group?</p>

7.2 Responses should be submitted using Attachment 2 to dcusa@electralink.co.uk no later than **Thursday, 12 September 2013**.

7.3 Responses, or any part thereof, can be provided in confidence. Parties are asked to clearly indicate any parts of a response that are to be treated confidentially.

8 NEXT STEPS

8.1 Responses to the Consultation will be reviewed by the DCP 181 Working Group. The Working Group will then determine the progression route for the CP.

8.2 If you have any questions about this paper or the DCUSA Change Process please contact the DCUSA helpdesk by email to dcusa@electralink.co.uk or telephone 020 7432 3017.

ATTACHMENTS

- Attachment 1 – Change Proposal
- Attachment 2 – Response Form
- Attachment 3 – DCP 181 Proposed Legal text