



DCUSA CONSULTATION TWO

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 2).
- 1.3 Parties are invited to consider the questions set out in section 4 below and submit comments using the form attached as Attachment 1 to dcusa@electralink.co.uk by **Wednesday, 04 March 2015**.

2 INTENT OF DCP 181 – PREVIOUS CONNECTION TERMS ENDURING

- 2.1 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 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 to ensure the connection terms endure through the wording contained in the NTC.

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 those earlier 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) or permissions (e.g. allowing a non-standard power factor). Such terms have usually been agreed as a condition of making the connection.

3.4 Typically custom connection agreements are utilised in circumstances such as Demand Side Response, reactive power or where generators are requested to curtail their output at certain times. The Working Group considered that the enduring connection terms would be useful in scenarios such as the following:

1. Where a generator seeks a connection to a Distribution network then the Distributor may be in a position to offer a less costly connection in return for agreeing conditions associated with the use of the connection.
2. The ability to more efficiently manage the network through the constraining of certain connections, may allow more cost efficient connections to the network.

3.5 Following the consideration of the responses to consultation one, the solution to this change is being further developed in conjunction with legal advice received from Wragge & Co. However, the Working Group wishes to seek wider input on three key points.

A. Is it the entire agreement?

3.6 The Electricity Act Section 16 (4) (a) stipulates that *“any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant)”*. All members agreed that Section 16 referred to maintaining the physical connection. However the bi-lateral connection agreement may contain limitations as to the use of that connection.

3.7 The Working Group wishes to seek views on whether the entire bi-lateral connection agreement should be binding on any subsequent customer or whether only a subset of its

terms should bind. For example, one argument might be that it is only those terms regarding the physical use of the connection and any physical restrictions, benefits or responsibilities that should endure. However, it might be argued that the entire agreement should endure as commercial considerations such as limitations of liability may be different.

B. How could the prospective customer discover any existing terms?

- 3.8 The Working Group considered how an incoming customer to premises could determine the non-standard enduring connection terms that apply.

Commercial Customer

1. A seller of a property would have an obligation to provide the connection contract on sale of the property to the incoming occupant.
2. 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)”.

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

Domestic Customer

4. A domestic customer would rely on the searches carried out by his solicitor as part of the purchase process.

Customers Renting

5. The NTC refer to both owners and occupiers of premises being bound by them. The intent of DCP 181 is that bilateral connection terms should bind on change of occupancy. A customer seeking to rent premises will be dependent on the landlord

advising the non-standard connection terms prior to signing the lease. As now, the landlord is reliant on his terms with his tenant as to whether they may or may not agree bilateral connection terms and their obligation to inform him of any so agreed.

- 3.9 The Working Group considered whether commercial or domestic customers could enquire of the Distributor as to any existing terms. The Working Group concluded that section 105 of the Utilities Act prevented the Distributor from sharing the full terms of any bi-lateral connection agreement with a prospective purchaser unless the current owner or occupier had given express permission to the Distributor to do so.
- 3.10 The Working Group agreed however that the Distributor could give guidance as to the existence or not of a bi-lateral agreement and it would then be for the prospective customer to seek a copy from the current owner.
- 3.11 Alternatively, it may be possible, to insert legal text in to the NTC that allowed the Distributor to share non-standard connection terms. This might be limited to those which pertained to the physical connection at the premises and were not of a personal nature with the incumbent customer. Such non-standard connection terms could be a non-exclusive list of connection details such as the capacity and any operational constraints to the connection. A definition of operational constraints has been proposed as *'operational constraints agreed with the Distributor'*.
- 3.12 The NTC are publicly available standard terms which the customer can easily obtain a copy off and check the terms to gain certainty. The NTC website (<http://www.connectionterms.org.uk/contact-us.html>) contains a list of Distributors by area with their contact details which the customer can use to request information on any non-standard connection terms from the Distributor.

C. Which customers should it apply to?

- 3.13 The Working Group identified that it was usually large commercial customer that had bi-lateral connection agreements.
- 3.14 The Working Group considered whether domestic customers would be in a position to know that they should make enquiries regarding existing connection terms when

purchasing a property. In addition, the Working Group wondered whether any safeguards should be put in place regarding vulnerable customers.

3.15 The Working Group is also interested in views regarding rented properties and whether bilateral connection agreements should bind on change of occupancy.

3.16 The Working Group is therefore seeking views as to whether this DCP, and the enduring connection terms, should apply only to certain customer types. This could be achieved for example by inserting the relevant wording into given sections of the NTC rather than into Section 1.

4 DCP 181 – Consultation Two Questions

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

| Question Number | General Questions |
|-----------------|---|
| 1. | <p><u>Is it the entire agreement?</u></p> <p>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?</p> |
| 2. | <p><u>How could the prospective customer discover any existing terms?</u></p> <p>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> |
| 3. | <p><u>Which customers should it apply to?</u></p> <p>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?</p> |

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| 4. | <u>Do you have any other comments on the DCP 181 change?</u> |
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4.2 Responses should be submitted using Attachment 1 to dcusa@electralink.co.uk no later than **Wednesday, 04 March 2015**.

4.3 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.

5 NEXT STEPS

5.1 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.

5.2 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 – DCP 181 Response Form
- Attachment 2 – DCP 181 Change Proposal