

Minutes

Meeting Name	DCP 173 Working Group
Meeting Number	03
Date	19 November 2013
Time	15:00
Location	Teleconference

Attendee	Representing
Pat Wormald [PW] (Chair)	Northern Power Grid
Anika Brandt [AB]	SSE Distribution
Ben Tucker [BT]	EDF Energy
Rob Garner [RG]	ENWL
Chris Ong [CO]	UKPN
Daniel Connor [DC]	NPower
Julia Haughey [JH]	EDF Energy
Stephen Grant [SG]	Scottish Power
Martin Chitty [MC]	PCMG
Bethany Hanna [BH]	Ofgem
Michael Walls [MW] (Secretariat)	ElectraLink Limited

1 ADMINISTRATION

- 1.1 Apologies were received from Richard Ellis (WPD).

2 REVIEW OF THE PREVIOUS MINUTES

- 2.1 The Working Group then reviewed the minutes from the previous meeting, and they were agreed without amendment. The updated actions from the previous and current meeting are attached as Appendix A.

3 COMPETITION LAW

- 3.1 The Working Group then reviewed the “CDCM Competition Law Dos and Don’ts” and all Working Group members agreed to the terms set out in the document.

- 3.2 It was noted to the Working Group members that the guidance is published on the DCUSA website with the meeting papers.

4 REVIEW OF THE LEGAL TEXT

Email from DCUSA Legal Advisors

- 4.1 PW then explained that the Working Group had submitted some questions to the DCUSA legal advisors, and that there was also an email received from Ofgem regarding the legal advice.
- 4.2 It was highlighted to the group that both these documents, the legal advice from Wragges & Co and also the Ofgem email, were circulated with the meeting documents.

Email from Ofgem

- 4.3 The Working Group then reviewed the email that was received from the Ofgem legal advisors, it was noted by BH that this was done as Ofgem had some concerns with the advice received from DCUSA legal advisors. The main area of concern was around the relationships between the customer/supplier relationships within the supplier contracts.
- 4.4 BH noted that they are not privy to all the information within the supplier contracts and it is an area that will need to be considered by the Working Group.
- 4.5 MC noted that from his experience from working with suppliers, it has always been the common scenario that the 6 years statute of limitation has always been applied. BH then said this leads into another one of her questions that if the Working Group went with a 14 month time frame, how would it work for the Supplier if they are liable for 6 years under the statute of limitations.
- 4.6 BH noted that the idea of a “mistake” under the Statute of Limitations Act, and that with this concept it doesn’t limit the time going back, but how far it goes forward.
- 4.7 The Working Group then discussed the idea of whether these issues could be generalised as mistakes, and it was noted that it should not be done so as it could have occurred as a result of a methodology change, including definition changes.
- 4.8 BH noted that this issue is something that needs to be considered more fully by the Working Group, and potentially seek legal advice.
- 4.9 BH then also questioned about other areas outstanding, including whether customers may be liable for payment and also about the DNO system requirements of going back further than 14 months.
- 4.10 PW then asked how the Working Group would like to take the issue forward. CO then highlighted that it seemed that the two sets of legal advice were looking at the issue from different viewpoints. CO then asked whether it would be prudent to get DCUSA’s legal advisors view on the questions that have been raised by Ofgem.
- 4.11 MC noted that on the DCUSA advisor’s legal text, the wording is about the changing/revising of the tariff and queried whether this could be different from correcting it. PW noted that it is worded so that it takes into account both.

- 4.12 PW then noted that it should say ‘charge’, rather than ‘calculation’ of the tariff. JH noted that if they are on the wrong LLF then they will be in the incorrect pot, so the charges would be calculated wrong in that respect.
- 4.13 MC then raised the point within the legal text that says when a DNO agreed not to backdate the charge, and he queried under what conditions this would be allowed to take place. MC thought if the request is for a correction where the incorrect LLFC has been used, under what circumstances would this be allowed. It was thought that there needs to be some additional detail added into the text.
- 4.14 MC then noted that the legal text is written that when a customer requests a change, but asked about what happens if the DNOs find the issue, and would they have the obligation to back date these themselves.
- 4.15 PW thought that these are all questions that will likely need to go back to the legal advisors. CO thought that we should capture all these queries along with those from Ofgem and raise them with the DCUSA legal advisors.
- 4.16 PW concurred and the Working Group agreed the following:
- ElectraLink to forward Ofgem’s questions in entirety to get the DCUSA legal advisor’s view and compare it with the advice they have given
 - Whether the wording is correct regarding the requesting a tariff change; and to explain that this change is about the tariffs around LLFCs, and that it was assigned incorrectly which results in incorrect charges being applied
 - Query the DCUSA legal advisors as to why the drafting changed from what was submitted, as the Working Group think it may have changed the intent slightly
 - Ask them about the concept of a “mistake” which Ofgem has raised, and there was also discussion about the wording and whether it should be “appropriate tariff” instead of mistake.
- 4.17 PW noted that we cannot proceed with a consultation regarding the legal text until we have this information, along with the Ofgem’s legal views, back from the DCUSA legal advisors.

5 WORK PLAN AND NEXT STEPS

- 5.1 The Working Group agreed the following work plan:
- MW to circulate the questions regarding the legal text along with the Ofgem’s legal views to the DCUSA legal advisors for review
 - The Working Group to meet once the comments are received and draft a second consultation which includes the legal text for both Options 1 and 4
- 5.2 There were no other items of business raised at the meeting.

6 DATE/LOCATION OF NEXT MEETING

- 6.1 The Working Group agreed to meet w/c 9 December by webinar.

APPENDIX A: SUMMARY OF ACTIONS**NEW AND OPEN ACTIONS**

Action Ref.	Action	Owner	Update
03/01	ElectraLink to progress the CP through the Work Plan, and its associated actions, as agreed by the Working Group	ElectraLink	

ACTIONS AGREED CLOSED AT THE MEETING

Action Ref.	Action	Owner	Update
02/01	MW to prepare the legal text and circulate it to the Chair and the Proposer before issuing it to the DCUSA legal advisors for review	ElectraLink	