

# Minutes

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<b>Meeting Name</b>	DCP 173 Working Group
<b>Meeting Number</b>	04
<b>Date</b>	13 January 2014
<b>Time</b>	10:00
<b>Location</b>	Teleconference

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<b>Attendee</b>	<b>Representing</b>
Anika Brandt [AB]	SSE Distribution
Ben Tucker [BT]	EDF Energy
Gus Wood [GW] (part meeting)	Wragge & Co
Chris Ong [CO]	UKPN
Daniel Connor [DC]	NPower
Julia Haughey [JH]	EDF Energy
Stephen Grant [SG]	Scottish Power
Martin Chitty [MC]	PCMG
Richard Ellis [RE]	Western Power Distribution
Bethany Hanna [BH]	Ofgem
Dan Connor [DC]	NPower
Michael Walls [MW] (Secretariat)	ElectraLink Limited

## **1 ADMINISTRATION**

- 1.1 Apologies were received from Rob Garner (ENWL) and Pat Wormald (Northern PowerGrid).

## **2 ELECTION OF CHAIR**

- 2.1 It was explained to the group that the current Chair of the Working Group has sent apologies and will not be able to attend the meetings for an undetermined amount of time. Therefore, CO offered to act as Chair of the Working Group and all members agreed to this proposal.

### **3 REVIEW OF THE PREVIOUS MINUTES**

- 3.1 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.

### **4 COMPETITION LAW**

- 4.1 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.
- 4.2 It was noted to the Working Group members that the guidance is published on the DCUSA website with the meeting papers.

### **5 LEGAL TEXT DISCUSSION WITH THE DCUSA LEGAL ADVISOR**

#### **EMAIL FROM DCUSA LEGAL ADVISORS**

- 5.1 CO explained that at the last meeting, there were a few areas of concern that were highlighted by Ofgem in regard to the legal text. It was then noted that GW offered to attend the meeting to explain the legal advice and answer any questions that the group may have.
- 5.2 GW explained that from a legal standpoint, there is nothing that can catch the Working Group out as the legal text is currently drafted.
- 5.3 It was explained that the issues that Ofgem highlighted are about what is drafted in the DCUSA, and how that flows through to the Supplier contracts. GW explained that there is nothing to worry about when it comes to competition law, but whether we are creating a framework that works with Supplier contracts.
- 5.4 One view is that you can write what you want for DCUSA, and the Supplier contracts should be amended to follow suit, but that is only one view.
- 5.5 CO then explained that when the CP was originally drafted there were a number of options that were put forward, and as these were consulted upon, only two options remained – 5/6 years with Statute of Limitations and the 14 months option which is in line with settlements.
- 5.6 CO asked that from a DCUSA perspective would either would be feasible. GW confirmed this assumption and noted that for the Statute of Limitations period option there wouldn’t need to be anything written as that is a default point, but it may be needed to have a different start point agreed. GW further explained that the Working Group could pick any period they wanted.
- 5.7 CO then asked about the 14 months period which aligned with the settlement period and whether it could be overridden by the Statute of Limitations. GW explained that a Party could not make a claim against any time period written into DCUSA and cite the Statute of Limitation.
- 5.8 GW noted that the group should work out the correct time period for the industry, as long as it isn’t greater than the Statute of Limitations period.

- 5.9 CO then asked how the Statute of Limitations would apply for an area such as this. GW noted that in the case of a mistake, the time period won't start running until the time it is identified.
- 5.10 There was discussion about the differences between a 'mistake' and a 'breach of contract'. GW noted that it would depend upon how the Supply contract is drafted as to whether it is a breach or a mistake. CO highlighted that for this Working Group we are defining what is in DCUSA.
- 5.11 GW explained that the only difference between his advice and Ofgem's is in regard to the supply contract. BH explained that although it is out of scope for this Working Group, it is an important point to consider how it will leave the Supplier.
- 5.12 JH noted that this CP was not intended to sort out the suppliers' contract, but to have the DNOs employ a process on a consistent basis. GW explained that to align the DCUSA to the Statute of Limitation, nothing would need drafted as this would be a default position.
- 5.13 GW answered that DNOs may refuse to go back and apply different rates as there is nothing to obligate them.
- 5.14 CO said that their internal advice says that it is a grey area, and that is the reason for the CP. CO also raised concern about proposing legal drafting for HH and something different for NHH, as they would be different because of the settlement issue.
- 5.15 CO noted that either approach could be put forth in the DCUSA; GW agreed and explained again that the focus of the text should be on what is correct for the industry. GW highlighted that there is no difference between his advice and Ofgem's except how the Supplier recovers the money.
- 5.16 GW noted that a "mistake" is about the point of contracting, not in operational application – and these are more relevant to the Supply contract. If the DNO breaches the contract, and charges the wrong charge it starts at that time.
- 5.17 MC asked how that would work in practice, and GW then asked whether the Supplier is obliged to point out the mistake. JH noted that it would be the customer who points it out.
- 5.18 GW explained that the Supply contract is unlikely to contain an obligation on them, but only about passing through costs incurred; it would be likely that the supplier is not going to be in breach of contract. Therefore, there would be no applicability of the liability period.
- 5.19 MC read a paragraph from the previous minutes which was about the breach of contract or ongoing mistake – BH explained the view about the difference between mistake and breach. GW noted that it would be a breach in DCUSA, but in the supply contract it would be a mistake.
- 5.20 GW noted that if a limit is written into DCUSA, it would be likely that Suppliers may write the limit into the contracts in order to be on a consistent basis.
- 5.21 MC thought that from a "fairness" point of view, these issues with tariffs are mostly overcharges, and GW noted that customers would likely not say anything about being undercharged.

- 5.22 MC noted the point about the difference in correction times, and CO pointed out that this has been discussed previously and these things can be changed at any times. CO also highlighted again that for NHH that it cannot go back further than the 14 month settlement period.
- 5.23 CO explained that whatever is put forward in the DCUSA has to be able to be complied with in the Industry. MC thought that this is for HH Supplies, and he thought it would be odd to use a NHH technicality that this issue does not affect in order to limit the time frame to 14 months.

## **6 PLAN AND DRAFT CONSULTATION QUESTIONS**

- 6.1 CO then asked where this leaves the group as there is mixed support within the group for the two different options. CO then asked about the possibility of raising an alternative CP to put both options to a vote.
- 6.2 MW noted that there would need to be a consultation on the legal text regardless of which option is progressed, or whether both are progressed.
- 6.3 The group then came up with some potential consultation questions:
- Are there any areas of concerns with this (both for the document) approach?
  - Is it that we don't do anything since this is the default position, are any changes required? Simply revise the text to define the process
- 6.4 The Working Group members then agreed to take away this point and send through any potential questions to ElectraLink to be included within a draft consultation.

## **7 WORK PLAN AND NEXT STEPS**

- 7.1 The Working Group agreed the following work plan:
- The Working Group agreed to send through questions to ElectraLink by Friday, 24 January 2014.
  - ElectraLink to draft the consultation by 29 January 2014 for the Working Group to review
  - Issue the consultation early February for a period 4 weeks.
  - ElectraLink to add a note onto the DCMF agenda to bring this consultation to the industry's attention
  - The Working Group members to identify any other distribution lists that it would be beneficial to issue the consultation to

## **8 ANY OTHER BUSINESS**

- 8.1 There were no other items of business raised at the meeting.

## **9 DATE/LOCATION OF NEXT MEETING**

- 9.1 The Working Group agreed to meet after the consultation closes to review the responses.

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

<b>Action Ref.</b>	<b>Action</b>	<b>Owner</b>	<b>Update</b>
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**

<b>Action Ref.</b>	<b>Action</b>	<b>Owner</b>	<b>Update</b>
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	