



## **DCUSA CONSULTATION**

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### **DCP 173 – Retrospective Changes of Tariff (LLFC / Unique Identifier)**

## **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.
- 1.2 Parties to the DCUSA can raise a DCUSA Change Proposal (“DCP”) to amend the Agreement. DCPs should better facilitate the DCUSA General Objectives and/or Charging Objectives of the DCUSA document.
- 1.3 Amendments to DCUSA may only be made with the consent of a majority proportion of Parties to the DCUSA, through a voting process, or (where applicable) the Gas and Electricity Markets Authority.<sup>1</sup>
- 1.4 When a DCP is raised, a Working Group is established to assess and develop the proposal in consultation with industry parties and other interested parties.
- 1.5 This document is a consultation issued in accordance with Clause 11.14 of the DCUSA and seeks industry views on Change Proposal DCP 173 – Retrospective Changes of Tariff (LLFC / Unique Identifier).
- 1.6 The Consultation has been issued to DCUSA Parties, the Distribution Charging Methodologies Forum (DCMF) distribution list and Ofgem.
- 1.7 Parties are invited to consider the Change Proposal detailed in this consultation and submit comments using the form attached as Attachment C to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) by **21 March 2014**.

## **2 INTENT OF DCP 173 – RETROSPECTIVE CHANGES OF TARIFF (LLFC / UNIQUE IDENTIFIER)**

- 2.1 DCP 173 has been raised by UK Power Networks as a result of an issue being raised within the Distribution Charging Methodologies Forum (DCMF) Methodologies Issues Group (MIG). The intent of this proposal is to define within Clause 19 of DCUSA an absolute time period within which a change of Tariff (LLFC / Unique Identifier) is allowed to be retrospectively applied by a DNO party. This time period would overrule any previous retrospective periods whether laid out within previous Charging

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<sup>1</sup> For more information about GEMA visit the Ofgem website: <http://www.ofgem.gov.uk/TheAuthority>

Statements, the DCUSA, Use of System Agreements, any other such documents or not previously specified.

### **3 DCP 173 – WORKING GROUP CONSIDERATIONS**

- 3.1 The Working Group is comprised of Distributor and Supplier Parties, Interested Parties and Ofgem representation; it is noted that all DCUSA Parties were invited to attend the Working Group.
- 3.2 The CP form listed eight different options for consideration in order to progress DCP 173. The Working Group has reviewed and discussed all of the options and has refined these down to four viable options on which a consultation was issued in August 2013.
- 3.3 Following the first consultation, the Working Group further narrowed the viable options down to two:

**Option 1** - A maximum of 6 years in line with the Statute of Limitation Act 1980 (five years in Scotland)

#### Advantages

- Most examples of corrections taking place have been in relation to an overcharge rather than an undercharge, which could see large credits being paid back to Suppliers.
- Aligns with the legal precedents (except in Scotland) of the Limitations Act
- Aligns with general practice in the majority of Supplier billing for other dispute types
- Allows for previous methodologies to be taken into account and reconciliations over a significant time period

#### Disadvantages

- Although likely to be small in number, where the correction results in an increase in the Customers charge, then this could be for a significant amount. NHH cannot be refunded past 14 months due to restrictions within Settlements, so this will only apply to HH customers, which isn't the intent of the change proposal
- The timescale of retrospective charging would be different in Scotland (maximum of 5 years), whereas it is a maximum of 6 years in England and Wales
- Increases the possibility of having multiple parties (many suppliers) involved
- Could significantly impact the over / under recovery period of DNOs, which could have an unexpected impact on the volatility of charges.

**Option 2** - A maximum of 14 months (the settlement period) back from the date of a valid enquiry

#### Advantages

- A timescale that limits the liability of customers
- Aligns with NHH energy settlements timeframe
- Limits impact upon over/under recovery

#### Disadvantages

- Potential settlement dispute runs due to the limited timeframes
- A timescale that limits the opportunity of Customers to receive a retrospective credit
- Does not align with the timescales which are likely to be written into Supplier contracts.

3.4 Both of the options have differing advantages and disadvantages, and the Working Group recognises that customers are potentially looking for stability and do not like price shocks. It should therefore be noted that this change would also apply to changes of LLFC which may create a charge as well as a credit to customers.

3.5 All Working Group members are supportive of the general principles of DCP 173.

3.6 The Working Group reviewed the CP against the following DCUSA Objectives:

- General Objective 1<sup>2</sup> - Better facilitated
- General Objective 2<sup>3</sup> - Better facilitated
- Charging Objective 1<sup>4</sup> - Better facilitated
- Charging Objective 2<sup>5</sup> - Better facilitated
- Charging Objective 3<sup>6</sup> - Better facilitated

3.7 The Working Group agree that the changes brought about by DCP 173 will result in better compliance with the Act and the Licence by ensuring timely back dating of changes in tariffs, which will help to ensure that the correct charge is applied, while also ensuring that competition amongst Parties is not impacted.

## 4 PROPOSED LEGAL TEXT

4.1 The Working Group have finalised the legal drafting for both options, and have also been reviewed by the DCUSA legal advisors. The proposed legal text is included as Attachment B.

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<sup>2</sup> The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks

<sup>3</sup> 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

<sup>4</sup> that compliance by each DNO Party with the Charging Methodologies facilitates the discharge by the DNO Party of the obligations imposed on it under the Act and by its Distribution Licence

<sup>5</sup> that compliance by each DNO Party with the Charging Methodologies facilitates competition in the generation and supply of electricity and will not restrict, distort, or prevent competition in the transmission or distribution of electricity or in participation in the operation of an Interconnector (as defined in the Distribution Licences)

<sup>6</sup> that compliance by each DNO Party with the Charging Methodologies results in charges which, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the DNO Party in its Distribution Business

## 5 PROPOSED IMPLEMENTATION DATE

- 5.1 This change does not impact on either the methodology or the currently published tariffs, therefore the proposed implementation date for DCP 173 is the first release following Authority consent.

## 6 CONSULTATION

- 6.1 Parties are asked to consider the intent and impact of DCP 173 and answer the following consultation questions:

1. Do you agree with the approach as set out for Option 1? Provide supporting comments.
2. Do you agree with the approach as set out for Option 2? Provide supporting comments.
3. Do you have any specific concerns with either proposed approach which you believe the working group need to consider?
4. Following legal advice it has been confirmed that should a defined notice period NOT exist within DCUSA then the Statue of Limitations would apply. Considering this, do you believe that a change to DCUSA is necessary should option 1 be the preferred option?
5. Although the allocation of an incorrect LLFC is most likely to result in an over charge to the Supplier, in the instances where this is an under charge do you foresee any issues should the invoice be for a significant value? How could / should this be best managed?
6. Do you believe that any retrospective period should apply to both NHH and HH sites as was the intent of the change proposal?
7. Are there any alternative solutions or matters that should be considered by the Working Group?

- 6.2 The Consultation response form (Attachment C) should be submitted to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) no later than **21 March 2014**. Parties are asked to provide as much relevant detail as possible to enable the Working Group to understand the comments and the reasons behind them.

- 6.3 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.

## **7 NEXT STEPS**

- 7.1 Following the end of the consultation period the Working Group will meet to review and consider the responses. The Working Group will develop the legal text and further assess which option to progress and issue a subsequent consultation to Parties. Following this, the Working Group will submit its final report setting out the proposed variations to DCUSA Panel before the CP is issued to all DCUSA Parties for voting.
- 7.2 If you have any questions about this paper or the DCUSA Change Process or would like to participate in the Working Group please contact the DCUSA Help Desk by email to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) or telephone 020 7432 3014.

## **8 ATTACHMENTS**

- Attachment A – DCP 173 Retrospective Changes of Tariff (LLFC / Unique Identifier)
- Attachment B – DCP 173 Proposed Legal Drafting
- Attachment C – Response Form