

DCP170 – Draft Legal Text

1. Self-Governance

Delete clause 9.5, and replace with not used.

Amend clause 5.3.7:

5.3.7 periodically review this Agreement and operations under it, in order to: ~~-(A) evaluate whether this Agreement meets the DCUSA Objectives; and (B) consider whether any Part 2 Matters are inconsistent with any Part 1 Matters,~~ and report to the Parties on the outcome of each such review;

Amend clause 10.4.7:

~~where the proposed variation would entail the incorporation of wholly new provisions into this Agreement,~~ a statement of whether, in the opinion of the Proposer, the proposed variation relates to ~~those provisions are~~ Part 1 Matters or a Part 2 Matter;

Amend clause 11.8:

11.8 At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also determine whether in its opinion the proposal relates to a Part 1 Matter or a Part 2 Matter (taking into account the Proposer's opinion provided pursuant to Clause 10.4.7).

Amend clause 11.21:

11.21 At any time prior to the Change Report being approved for submission to the Voting Procedure in accordance with Clause 11.22 ~~before the completion of the Change Report~~, the Authority may decide, having regard to any determination made by the Panel under Clause 11.8, that in its opinion the Change Proposal relates to a Part 1 Matter or a Part 2 Matter, in which case:

...

Amend Clause 11.22:

- 11.22 ~~As soon as reasonably practicable following~~~~On~~ receipt of a Change Report ~~(but, unless otherwise exempted by the Authority, not earlier than 7 days after the Change Report was provided to the Authority)~~, the Panel shall, subject to Clause 11.23, ensure that the Change Proposal is submitted to the Voting Procedure in accordance with Clause 12.

2. Self-Governance Appeals

Amend clause 13.17 onwards:

- 13.17 Any ~~of the following persons who are~~~~Party which is~~ aggrieved by the acceptance or rejection of a Change Proposal by virtue of Clause 13.6 or Clause 13.7 may ~~appeal such acceptance or rejection to~~~~ask~~ the Authority ~~to determine that the proposal relates not to a Part 2 Matter but to a Part 1 Matter. Those persons are:~~

~~13.17.1 a Party;~~

~~13.17.2 the National Consumer Council;~~

~~13.17.3 the National Electricity Transmission System Operator; and~~

~~13.17.4 any person or body that is designated in writing by the Authority for the purposes of Clause 10.2.4.~~

- 13.18 Such ~~appeal~~~~a request~~ may only be made within 10 Working Days after the Secretariat notifies the aggrieved Party of the acceptance or rejection of the proposal in accordance with Clause 13.8. ~~13.19~~—Such ~~appeal~~~~a request~~ must:

~~13.18~~~~9~~.1 be made in writing;

~~13.18~~~~9~~.2 state why the Party believes (having regard to the criteria set out in Clause ~~13.20~~~~9.4~~) that the ~~acceptance or rejection of the~~ Change Proposal ~~by virtue of Clause 13.6 or 13.7 should be quashed~~~~relates~~

~~to a Part 1 Matter;~~ and

13.198.3 be copied to the Secretariat and to the Panel.

13.19 Where an appeal is validly made in accordance with Clauses 13.17 and 13.18, and such appeal is in respect of an accepted Change Proposal, then such acceptance shall be suspended pending the Authority's decision pursuant to Clause 13.20 and (if applicable) Clause 13.21.

13.20 If the Authority, ~~within 15 Working Days of receiving a request following receipt of valid appeal~~ under Clause 13.17 (and after having consulted with any persons and had regard to any information that it thinks fit), determines ~~that:~~

~~13.20.1 the person making the appeal is likely to be unfairly prejudiced by the acceptance or rejection of the Change Proposal; or~~

~~13.20.2 where the Change Proposal was accepted, such acceptance may not better facilitate the achievement of at least one of the DCUSA Objectives than if it was rejected; or~~

~~13.20.3 where the Change Proposal was rejected, acceptance of the Change Proposal may have better facilitated the achievement of at least one of the DCUSA Objectives.~~

~~and that the appeal is not brought for reasons that are trivial or vexatious, and nor does the appeal have no reasonable prospect of success, then Clause 13.21 shall apply. Where the Authority determines that the requirements of this Clause 13.20 are not met, then any suspension of an accepted Change Proposal pursuant to Clause 13.19 shall cease, and Clause 14 shall apply.~~

~~(having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter;~~

~~13.20.1 the acceptance or rejection of the proposal by virtue of Clause 13.6 shall be deemed to have no effect;~~

~~13.20.2 on being notified of the determination by the Authority, the~~

~~Secretariat shall treat the proposal as relating to a Part 1 Matter for the purposes of Clause 13.5 and shall make a declaration under that Clause as if no declaration had previously been made; and~~

~~13.20.3 the Change Proposal shall be subject to the process set out at Clauses 13.9 to 13.15 (inclusive).~~

13.21 Where this Clause 13.21 applies in respect of a Change Proposal in accordance with Clause 13.20 (but not otherwise), then:

13.21.1 the Panel shall give effect to any interim direction of the Authority pending the decision of the Authority for the purposes of Clause 13.21.2, which interim direction may include a direction to implement the Change Proposal pending such decision of the Authority; and

13.21.2 the Authority may (having regard to the matters at Clauses 13.9 and 13.10 as if the Change Proposal related to a Part 1 Matter) determine that:

(A) the appeal is dismissed, in which case the acceptance or rejection of the Change Proposal in accordance with Clause 13.6 or 13.7 shall stand (and any suspension of an accepted Change Proposal pursuant to Clause 13.19 shall cease); or

(B) the appeal is successful, in which case the Authority may determine that:

(i) the acceptance under Clause 13.6 shall be quashed (and the Change Proposal deemed rejected) or the rejection under Clause 13.7 shall be quashed (and the Change Proposal deemed accepted); or

(B) the Change Proposal shall be sent back to the Panel for reconsideration, and once the Panel is satisfied that the issues identified by the Authority have been addressed,

the Panel shall resubmit the Change Proposal to the Voting Procedure.

13.22 Where the Authority's decision for the purposes of Clause 13.21.2(B)(i) quashes the acceptance or rejection of a Change Proposal under Clause 13.6 or 13.7, then the Change Proposal shall be treated as if it related to a Part 1 Matter. Accordingly, the vote shall be reassessed in accordance with Clause 13.5 to determine the Parties recommendation to the Authority, and the decision for the purposes of Clause 13.21.2(B)(i) shall be treated as a direction under Clause 13.12.

~~13.21 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal does not relate to a Part 1 Matter, the acceptance or rejection of the proposal by virtue of Clause 13.6 or Clause 13.7 shall continue to have effect.~~

Consequential cross-reference changes:

In Clauses 11.9 and 11.21.4 – change “Clause 13.20” to “Clause 13.22”.

3. Significant Code Reviews

New definitions for clause 1:

Significant Code Review means a review of one or more matters which the Authority considers likely to:

- (a) relate to this Agreement (either on its own or in conjunction with one or more other industry codes); and
- (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under EU law,

and concerning which the Authority has issued a notice to the Parties (among others, as appropriate) stating: (i) that the review will constitute a significant code review; (ii)

the start date of the review; and (iii) the matters that will fall within the scope of the review.

Significant Code Review Phase means the period commencing on the start date of a Significant Code Review as stated by the Authority, and ending:

- (a) on the date on which the Authority issues a statement that no directions will be issued in relation to the Significant Code Review and this Agreement; or
- (b) if no statement is made, on the date on which a Change Proposal is submitted by a DNO/IDNO Party in accordance with directions issued by the Authority in relation to the Significant Code Review; or
- (c) 28 days after the Authority publishes its Significant Code Review conclusions if the Authority issues no such statement or directions within such period of 28 days.

Add new clauses 10.22 and 10.23:

10.22 In addition to the right of the Panel to refuse the referral of a Change Proposal under Clause 10.13 or 10.14, the Panel shall refuse the referral of a Change Proposal that it considers to fall within the scope of a Significant Code Review and that is submitted during the relevant Significant Code Review Phase, unless the Authority otherwise directs (including where the Authority determines that the referral of the Change Proposal may be accepted, having taken into account (among other things) the urgency of the subject matter of the proposal).

10.23 Where a Change Proposal is submitted during a Significant Code Review Phase, the Panel shall:

10.23.1 unless the Authority gives notice otherwise, notify the Authority as soon as practicable of:

- (A) any representations received in relation to the relevance of the Significant Code Review to the proposal; and
- (B) the Panel's assessment of whether the proposal falls within the

scope of the Significant Code Review and its reasons for that assessment; and

10.23.2 comply with any direction of the Authority stating that the Change Proposal should be treated as falling:

- (A) within the scope of the Significant Code Review, in which case the referral of the Change Proposal shall be rejected (or its progress suspended if its referral was previously accepted); or
- (B) outside the scope of the Significant Code Review, in which case the referral of the Change Proposal shall be accepted.

4. Achievement of Objectives

Amend clause 11.20:

...

11.20.5 state the proposed date for implementation; ~~and~~

11.20.5A in any case in which the proposal was not subject to the Definition Procedure prior to the Report Phase, include the Proposer's statements of: (A) the detailed reasons why the Proposer believes that this Agreement would, if the proposed variation was made, better facilitate the achievement of the DCUSA Objectives than if the variation was not made; and (B) whether the Proposer believes that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being made; and

11.20.6 in any case in which the proposal was subject to the Definition Procedure prior to the Report Phase, provide a detailed summary of:

- (A) the views of the Working Group as to whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation

were not made;

...

5. Send-back powers

Add a new clause 13.11A

13.11A Where the Authority determines that it cannot properly form an opinion on whether to accept or reject a Change Proposal, the Authority may direct the Panel to revise and resubmit the Change Report, in which case:

13.11A.1 the vote under Clause 12 in respect of such Change Proposal shall be null and void;

13.11A.2 the Panel shall give effect to any direction of the Authority as to how the Change Proposal should be treated, including where necessary sending the Change Proposal back to the relevant Working Group (or establishing a Working Group) to further consider the Change Proposal and any matters identified by the Authority in such direction;

13.11A.3 once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Change Proposal to the Voting Procedure.

6. Code Administrator

Add new definitions in clause 1:

Code Administration Code of Practice means the code of that name approved by the Authority as amended and/or re-published with the Authority's approval from time to time.

Small Participant means:

- (a) a generator, supplier, distributor, or new entrant to the electricity market in Great Britain that can demonstrate to the Secretariat that it is resource-constrained and, therefore, in particular need of assistance;

- (b) any other Party or class of Parties that the Secretariat considers to be in particular need of assistance; or
- (c) a Party or class of Parties that the Authority has identified to the Secretariat as being in particular need of assistance.

Add a new clause 7.36A:

7.36A The Secretariat shall perform the role of code administrator in respect of this Agreement. Accordingly, the Secretariat shall (in addition to any other roles allocated to it under this Agreement):

7.36A.1 from time to time, together with other code administrators, publish, review and (where appropriate) report to the Panel and the Authority on any proposed amendments to the Code Administration Code of Practice;

7.36A.2 where the Authority approves any proposed amendments to the Code Administration Code of Practice, working together with other code administrators, amend the Code Administration Code of Practice in accordance with such approval;

7.36A.3 periodically review and report to the Panel on whether the provisions of this Agreement are consistent with the Code Administration Code of Practice (to the extent relevant);

7.36A.4 have regard to, and (to the extent relevant) act in a manner consistent with, the principles contained in the Code Administration Code of Practice; and

7.36A.5 provide assistance (insofar as is reasonably practicable and on reasonable request) to Parties (including, in particular, Small Participants) and (to the extent relevant) consumer representatives that request the Secretariat's assistance in relation to this Agreement; such assistance to include assistance with:

(A) drafting Change Proposals;

- (B) understanding the operation of this Agreement;
- (C) their involvement in, and representation during, the Change Proposal processes (including in respect of Panel or Working Group meetings); and
- (D) accessing information relating to Change Proposals.

Wragge & Co LLP
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