



## **DCUSA Change Report**

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DCP 124 - THIRD PARTY NETWORK –  
NATIONAL CONNECTION TERMS AMENDMENT

## **1 PURPOSE**

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA and details DCP 124 – Third Party Network – National Connection Terms Amendment (Appendix A).
- 1.2 The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.
- 1.3 Parties are invited to consider the proposed amendments (Appendix B) and submit their votes using the form attached as Appendix D to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) no later than 15 May 2013.

## **2 BACKGROUND – THE NATIONAL TERMS OF CONNECTION**

- 2.1 There are a total of 19 Distribution Licence holders in Great Britain. Fourteen of these are the “ex-regional board” companies. The other five are independent distributors, who own and run smaller networks embedded in the fourteen larger networks.
- 2.2 Licensed Distributors require that the Customers of already constructed or newly constructed connections enter into an agreement (a “Connection Agreement”) with them to govern the terms and conditions for the use of the connection. This effectively means that an agreement is required between the Customer and the Licensed Distributor. Licensed Distributors enter into such an agreement in one of two ways: either by negotiating a bi-lateral agreement with the Customer; or through the National Terms of Connection (NTC).
- 2.3 Licensed Distributors enter into bi-lateral Connection Agreements with Customers according to their own policies but typically might require them at higher voltages, with large generators or where the use or nature of the connection is relatively unusual. The NTC are terms and conditions which govern the use of connections to distribution systems by Customers (which include generators for the purpose of this consultation) by default, where a bi-lateral contract between the Customer and the Distributor does not exist.

## 2.4 The NTC is split in to three main sections

- i. One set of terms in Section 2 for whole current metered Customers (Customers whose entire electrical current is put through the meter and measured – for example domestic or small business Customers).
- ii. One set of terms in Section 3 for Current Transformer (CT) metered Customers (Customers whose power requirement is larger than can be put through a meter and so a CT is used to put a proportion of the current through the meter and the resulting meter reading is then multiplied up to a true consumption figure based on the proportion – for example large factories or superstores).
- iii. One set of terms in Section 4 for unmetered Customers (Customers whose consumption does not have to be metered – for example local authority street lights).

2.5 Under the terms of the DCUSA, Suppliers entering into contracts with Customers, for the supply or purchase of electricity, are obliged to incorporate, by reference, the NTC into all such contracts. This way, all connections are covered by a form of Connection Agreement. The current NTC is available at [www.connectionterms.co.uk](http://www.connectionterms.co.uk).

## **3 INTENT OF DCP 124 – THIRD PARTY NETWORK – NATIONAL CONNECTION TERMS AMENDMENT**

3.1 DCP 124 has been raised by UK Power Networks as a Part 1 matter<sup>1</sup> to modify the National Connection Terms (NTC) to address contractual matters arising from the existence of licence exempt distributors (known within this document as Private Network Operators and PNOs).

3.2 There is a gap in industry arrangements as no standing set of terms can be affected upon the PNO where that operator did not have a Supplier relationship. Any Customers connected within such private networks are not governed by any Licensed Distributor terms as they are not directly connected to the Licensed Distributor's system.

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<sup>1</sup> DCP 124 has been classified as a Part 1 matter in accordance with Clause 9.5.5 as it is likely to amend the National Terms of Connection set out in Schedule 2B. Once progressed, the CP will require Authority consent.

- 3.3 The Electricity and Gas (Internal Markets) Regulations 2011 became effective on the 10th of November 2011 and this is likely to increase the number of private networks in existence over time. As a result, there is a need to modify the NTC for private networks on two counts, firstly, to deal with a lack of standing connection terms for existing private networks and secondly, to fully support the consequence of the Electricity and Gas (Internal Markets) Regulations 2011.
- 3.4 The Proposer of the CP is aware that there are private networks connected to licensed distribution networks in place at the moment. The outcome of the Citiworks AG European court case, through The Electricity and Gas (Internal Markets) Regulations 2011, now essentially requires the PNO to set out terms of connection and use to its Customers who require direct market access. This means the PNOs connections terms may need to account for the terms placed upon it by the Licensed Distributor to which it is connected. It has been noted above that in some cases, no standing terms of connection are effected upon PNOs where there is no Supplier relationship for their connection to the Licensed Distributor and therefore a means to effect the required connection terms is required.
- 3.5 The CP seeks to codify the obligations on PNOs to maintain the private network, so as not to affect other Parties' obligations that are in place for Customers connected, which are settlement metered.
- 3.6 The CP seeks to set out standard default terms for other requirements, stemming from the Licensed Distributor's licence obligations (such as full measurement of energy, losses, illegal abstraction) and the role of the PNO (itself or as a user). DCP 124 intends to define the rights of the Licensed Distributor over the private network and its connection; as with all other types of direct connection to the Licensed Distributor's system, connection terms must be applied as required by the Electricity Act.
- 3.7 DCP 124 seeks to ensure consistent network terms with PNOs. The existing arrangement of procuring bilateral agreements with each PNO is not considered desirable due to the ongoing maintenance of such agreements.
- 3.8 DCP 124 introduces the concepts of 'Licence Exempt System' and 'Embedded Metering Point' into section 1 and 5 of the NTC in order to apply equivalent terms to a PNO.

#### **4 DCP 124 – WORKING GROUP CONSIDERATIONS**

- 4.1 The Working Group issued an open invitation to all continually but comprised of Distributor Parties and Ofgem. Meetings were held in open session and the minutes and papers of each meeting are available on the DCUSA website – [www.dcusa.co.uk](http://www.dcusa.co.uk).
- 4.2 All Working Group members were supportive of the general principle of DCP 124.
- 4.3 The scope of this CP focuses on PNOs and their connection. The Working Group agreed that along with facilitating the DCUSA Objectives there are also additional requirements for this CP. Firstly there is a need to clearly codify standard terms of connection to provide default baseline terms for new private network connections. Secondly, to address a legacy issue, it is impractical to administer individual bilateral agreements with PNOs due to churn on ownership leading to inapplicable bilateral connection terms.
- 4.4 It should be noted that the vast majority of private networks are for buildings that house multiple non-half-hourly (NHH) metered domestic occupancies and where there is no settlement metering of the connection to the Licensed Distributor's system. In such cases there will be no relationship between a Supplier and the PNO, and therefore no commercial invocation of the NTC through a Supplier contract in respect of the private network's connection to the Licensed Distributor's system.
- 4.5 The proposal extends the NTC with a new section expressly applying to connections of private networks to the Licensed Distributor's system even where there is no settlement metering and no Supplier relationship in respect of the connection to the Licensed Distributor's system. The proposal will effectively apply the NTC, statutorily, for the first time to the subset of private network connections whose connection to the Licensed Distributor's system will never be subject to a Supplier relationship.
- 4.6 The proposed change will enable standard default connection terms to be applied to all connections of private networks to Licensed Distribution systems, whether or not that connection is settlement metered. The proposal will avoid the initiation or perpetuation of individual bilateral agreements with each PNO and ensure that such standard default terms survive change of ownership or occupation in the most efficient manner possible.

- 4.7 The intent, as with the current statutory application of the NTC to other types of connection, is that the terms applying to the connection of private networks to Licensed Distributor's systems, applies to existing connections as well as new connections; this being the only practicable manner through which workable terms of connection, in lieu of negotiated bilateral contracts, can be effected.
- 4.8 The Working Group has indicated that the CP may have an impact on Customers and also upon Suppliers in terms of their fulfilment of the Balancing and Settlement Code (BSC) obligations relating to settlement metering points within a private network. The CP clarifies that the NTC applies terms to Customers who are directly connected to the Licensed Distributor's system, and as an aside Suppliers may need to consider the contract terms that they have with settlement metered Customers who are indirectly connected via private networks.

## **5 DCP 124 CONSULTATIONS**

### **DCP 124 CONSULTATION ONE**

- 5.1 The Working Group carried out a Consultation to give DCUSA Parties and other interested organisations (Appendix E) an opportunity to review and comment on DCP 124. There were eight responses received to the consultation. The Working Group discussed each response and its comments are summarised alongside the collated Consultation responses in Appendix C. (note; any references to legal text and appendices mentioned within paragraphs 5.2 to 5.46 are references to legal text and appendices that form part of the documentation pack associated with consultation 1).
- 5.2 A summary of the responses received, and the Working Group's conclusions are set out below:

#### **Question 1 - Do you understand the intent of the CP?**

<b>Respondent Party Type</b>	<b>Yes</b>	<b>No</b>	<b>Undecided</b>
<b>DNOs</b>	3	0	0
<b>Suppliers</b>	3	0	0
<b>IDNO</b>	1	0	0
<b>Other</b>	0	0	1

- 5.3 The Working Group noted that seven out of eight of the respondents understood and were satisfied with the intent of the CP.
- 5.4 One respondent stated that on balance they failed to see the necessity for this change where there are private networks serving non-domestic premises.
- 5.5 The Working Group discussed this comment and agreed that the respondent may not be aware that most private networks do not have a bilateral agreement and do not have a settlement metered connection. Also under the existing section 3 of the NTC it does not cover off difference metering.

**Question 2: Are you supportive of its principles?**

<b>Respondent Party Type</b>	<b>Yes</b>	<b>No</b>
<b>DNOs</b>	3	0
<b>Suppliers</b>	3	0
<b>IDNO</b>	0	1
<b>Other</b>	0	1

- 5.6 Six out of eight of the respondents were supportive of the principles of the change. One of the six respondents stated that their main reservation was in relation to potential Licensed Distributor interactions with Customers who are connected to private networks.
- 5.7 Two of the respondents were not supportive of the principles of the change. One of the respondents commented that it did not believe that a rise in private networks would result from the 2011 Regulations. The respondent believed there would be "less private networks, as it is only where the network is of a substantial size that it will be worth the administrative burden of applying to Ofgem for approval of a methodology for charging etc... Therefore we do not see the compelling need for modification to the NTC."
- 5.8 The Working Group discussed the comment but considered that the network numbers would increase and the respondent was possibly not aware that most private networks do not have a bilateral agreement and do not have a settlement metered connection at the boundary. The Working Group agreed it was not in the scope of this CP to provide a methodology.
- 5.9 The second respondent did not provide a rationale for why they were not supportive of the principles. Any concerns they raised in relation to the CP in the separate document they provided have been addressed by the Working

Group and discussed in other questions of the Change Report and within Appendix C.

**Question 3: Does the CP facilitate DCUSA General Objectives? Please give supporting comments.**

<b>Respondent Party Type</b>	<b>Yes</b>	<b>No</b>
<b>DNOs</b>	3	0
<b>Suppliers</b>	3	0
<b>IDNO</b>	0	1
<b>Other</b>	0	0

5.10 The DCP 124 Consultation stated that DCP 124 facilitates all the general objectives. Six out of seven respondents agreed it better facilitated DCUSA objectives but respondents differed on which objectives they thought were better facilitated. The majority of respondents felt that specifically Objectives 1, 3 and 5 were better facilitated by this CP. See Section 8 of this report for a full list of the DCUSA Objectives and the Working Group's final evaluation when determining whether this better facilitates them.

5.11 The IDNO party who did not agree unfortunately did not provide any rationale for why the objectives were not best facilitated by this CP in the response documentation provided.

5.12 The Working Group agreed that Objective 2 may be facilitated, as the NTC are part of the resolution to ensure that there is competition in an area that is currently not open to Supplier competition. However, the Working Group also noted that Customer choice is already in place; this CP seeks to put a connection agreement in place. Therefore, the CP could also be considered to be neutral on Objective 2.

**Question 4: As discussed in paragraph 3.5 of this consultation, are the limitations of liability proposed in section 5 of Appendix B appropriate when considering for example a large single domestic residence compared to a similar residence converted into multiple domestic usage and now classed as a commercial private network?**

5.13 The six respondents did not reply with a definitive 'yes' or 'no' to the question but raised their concerns on certain paragraphs within the proposed legal text. Three of the respondents made it clear that they were unsatisfied with section

5. One respondent requested a paragraph in clause 5 be inserted that clarifies the rights of individual Customers embedded in private networks and how they could be affected if the PNO or another Customer in the same network conducts itself in a manner which would allow the Company to de-energise the supply to the private network.
- 5.14 The Working Group discussed the comment and noted that the question relates to Clause 15 of page 125, of the legal text submitted as part of the consultation Appendix B, which talks about liability values and where they apply to the PNO only. The Working Group agreed that the respondents' concern should be addressed as part of the connection agreement the Customer would have with the PNO.
- 5.15 One of the respondents indicated that they did not see a reason for the proposal in paragraph 3.5, which applied NTC statutorily to the Customers of private networks, despite there not being a relationship with Suppliers. This appears to be contrary to the Electricity and Gas (internal markets) Regulations 2011, which states that the network may have its own terms and conditions of access. Furthermore, whilst this may be deemed appropriate or necessary for domestic Customers, it appears completely irrelevant in an industrial setting.
- 5.16 The Working Group noted the comment but considered that the currently industrial scale networks with settlement metering are already covered under section 3 of the NTC. The same liability has been put in place in the proposed section 5 of the amended NTC. This liability requirement maintains consistency with the obligations set out in section 3 and at the same time sets out a liability limit in line with section 2 of the NTC for the far more numerous small private networks which would be capable of having its connection subject to being whole current metered. Section 5 benefits from being held separate so it can provide a clear and comprehensive set of terms for PNOs and clearly demarks it from terms intended for other Customer groups.

**Question 5: Because the National Terms of Connection are only intended at this time to apply to direct connections to a licenced distributor network operators system;**

- 1. Do Suppliers need to offer different contractual terms where they engage in supply provision to Customers embedded within private networks, and**

**2. The current requirement of DCUSA (Clause 17 and related Schedule 2A) is that the relevant electricity Supplier procures the commercial application of the NTC in its contracts with Customers or Generators and DCUSA does not specify if this obligation relates only to Customers or Generators connected directly to the licenced distributor network operators system. Does DCUSA need to be changed to expressly limit the commercial application of the NTC through electricity Supplier contracts to only those customers directly connected to a licensed Distribution system (a proposal to do so is set out in Appendix C)?**

<b>Respondent Party Type</b>	<b>Yes</b>	<b>No</b>	<b>Undecided</b>
<b>DNOs</b>	1	0	2
<b>Suppliers</b>	1	1	1
<b>IDNO</b>	0	1	1
<b>Other</b>	0	0	1

- 5.17 Two of the respondents agreed that it would be appropriate for Suppliers to offer different terms and for the DCUSA to be refined to apply to direct connection customers only. One disagreed and the remaining five did not answer yes or no but took a discursive approach to answering the question.
- 5.18 One of the respondents noted that if this proposal goes ahead and achieves its aims, then differences within the contractual terms will not be needed.
- 5.19 The Working Group discussed this comment and noted that the NTC is only applicable to Customers connected directly to the Licensed Distributor networks and as such different contractual terms would have to be put in place between a Supplier and a Customer connected to a private network. The Working Group agreed there should be connection terms between a PNO and their Customer.
- 5.20 One of the IDNO parties commented that it is implicit in some of the drafting that DNOs may offer Distribution Use of System (DUoS) billing services. This is not a licence obligation. Indeed we note that in respect of IDNOs, DNOs have been insistent that IDNOs not only operate DUoS billing in respect of their own systems but also have to bill, collect and bear the full liability in respect of DUoS for a Customer's use of the upstream system. Any development of terms or services for metering points on private networks must not unduly discriminate against IDNOs.

- 5.21 The Working Group agreed with the comment and noted that the NTC should not cover off any Use of System arrangements.
- 5.22 The IDNO party stated that they felt that the work to date has focused narrowly on drafting and has failed to recognise that significant parts of the Electricity Act (16 to 23, schedules 3, 4 and 6 for example) do not apply to private networks. Therefore, PNOs do not have the same statutory rights as Licensed Distributors.
- 5.23 The Working Group agreed that PNOs do not have the same statutory rights as Licensed Distributors. The Working Group noted that the NTC is only applicable to Customers directly connected to the Licensed Distributor's network. This CP is looking at PNOs connecting to a Licensed Distributor's network and to seek commercial rights of access to the private network to enable the discharge of the distribution licence and DCUSA obligations, such as dealing with illegal abstraction in the instance that the PNO connection to the Licensed Distributor's network is not settlement metered.

**Question 6: As discussed in paragraphs 3.8 and 3.9 of the consultation document, there are impacts on the ability of licence holders to discharge their obligations where the settlements boundary does not fully align with the connection to the Licensed Distributor's system. What modifications to the NTC might be necessary to create obligations directly between the private networks' embedded Customers and the upstream Licensed Distributor?**

- 5.24 The respondents treated this question as discursive. The Working Group agreed with the IDNO party's remark that it is wrong that the NTC should be used to establish contractual relationships between the PNO's end Customers and the Licensed Distributor whose network the private network connects to. The Party remarked that Section 5 of the proposed NTC should only apply to connection characteristics and use at the boundary to the Licensed Distributor's network.
- 5.25 The Working Group suggested an example for codifying a new form of connection. Where a connection takes place, which does not have a settlement meter at the boundary, it should be a condition of the NTC upon the PNO, that all connection points within the private network will be measured for settlement purposes. The Working Group agreed that the precise solution to the settlement metering was outside of the scope of this CP, the CP only setting

out at a high level the requirements where the connection of the private network to the Licensed Distributor's network was not settlements metered.

- 5.26 Consultation one raises a query on rights of access as a Licensed Distributor may have difficulty in meeting its obligations under its licence due to two areas, the introduction of difference metering which may require them to rely on a partially embedded metering position and full settlement metered which may require them to rely upon embedded metering positions. Licensed Distributors are concerned about access to the meters for safety reasons and for revenue protection reasons. One of the IDNO party's queried the introduction of rights of access advising that we do not think Licensed Distributors have any statutory rights of entry to the premises connected to private networks. The IDNO party thought that Licensed Distributors can only enter such premises where they are acting as an agent of the Supplier. The Working Group agreed that the comment was correct regarding the statutory rights, however the Licensed Distributor could enter the premises if it acts on behalf of the PNO, or had the invitation of the PNO.

**Question 7: Do you have any other comments or observations around the arrangements for connection, metering and settlement for private networks and embedded Customers that may impact on the pre-requisite terms of connection?**

- 5.27 The majority of the respondents were positive about the changes with requests for further tweaking to the arrangements being put in place. The IDNO party was negative on the application of the CP, stating that leaving aside the detail of this CP, it considered the CP to be outside the scope of the DCUSA. It was of the view that the purpose of the DCUSA is the governance of the contractual relationship between Licensed Distributors and users of Licensed Distributors' networks. It pointed out the Electricity Act is quite specific in that it defines a Licensed Distributor as a person who is authorised by licence to distribute electricity. Therefore, the IDNO concluded that as a consequence obligations under §9 of the Act "...to develop and maintain an efficient, co-ordinated and economic system of electricity distribution..." only apply to licensees.
- 5.28 The Working Group noted that the NTC is commercially referenced in the DCUSA. The NTC have in their own right been deemed to be statutory terms and therefore exist independent of DCUSA in any event. The Working Group

agreed that Section 16 does apply and the drafted amendments are appropriate. It also agreed that other sections of the Act equally apply.

5.29 The respondent advised that for IDNOs the upstream DNO distributor:

- Does not establish or manage the relationship between the Supplier and Customer.
- Does not carry out DUoS Billing of the Supplier for and on behalf of the IDNO (the IDNO bills the Supplier all the way charge and collects the upstream DNOs' DUoS for and on behalf of the DNO).
- Does not manage the settlement relationship for connections on the IDNO system.

5.30 The Working Group discussed the comment and advised that the CP will not cover any use of system obligations. The Working Group took an action to consider Schedule 6 when reviewing the legal text. The only condition within the NTC is to ensure the settlement arrangement can comprehensively continue when there is no boundary meter installed.

**Question 8: Do you have any comments on the proposed legal text?**

5.31 Five of the six respondents had additional comments on the legal text. One of the respondents considered the proposed drafting to be overly complex and makes references to BSC arrangements for metering on private networks when these arrangements have yet to be agreed under the BSC.

5.32 The Working Group noted that the BSC does currently have these obligations. The third party access group<sup>2</sup> is looking at improving the current arrangements. DCP 124 is not trying to address how settlement metering is done. The CP seeks to state what the alternative is, if it is not wholly done at the boundary that the alternative arrangement continues to fully measure the energy for settlement purposes

5.33 The IDNO party noted that there would be impacts on the Balancing and Settlement code (BSC) and Meter Registration Agreement (MRA). The IDNO party believes that the current arrangements and the proposed arrangements under this CP may be inconsistent with the provisions of Section K of the BSC in relation to the boundary point, total system and distribution system. The

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<sup>2</sup> A working Group established under the ENA looking at Use of System Charges

Working Group noted that under the BSC firm obligations apply where connected to Licensed Distribution systems. The Working Groups refer the respondents to the BSC which defines Associated Distribution System and to CP 1377 which amended BSCP514 which sought to clarify both settlement and difference metering within a private network.

- 5.34 The IDNO party noted that only Sections 16 to 23 of the NTC applies to connections to licensed distribution systems. The terms for connections for consumers connected to private networks are ultra vires these provisions in the Act. The Working Group noted that there are no obligations to apply terms to a Customer on a private network.
- 5.35 The IDNO party stated that the NTC can only apply in respect of the Electricity Distributor's network and to connections directly to that network. The Working Group agreed with this comment. The IDNO party emphasised that they *do not think these terms can (or should) apply in respect of managing metering point arrangements on downstream private networks*. The Working Group considered the point and noted that where a connection takes place, that does not have a settlement meter at the boundary; it will be a condition of the NTC upon the PNO, that all connection points within the private network will be measured for settlement purposes.

**Question 9: Are there any wider industry developments that could impact this CP?**

- 5.36 Three of the four respondents noted that this work was related to the Energy Networks Association (ENA) third party access change. It was noted that the ENA is in the process of determining the metering, settlement and use of system arrangements required to enable third party access. The changes to the NTC contemplated by this CP must be consistent and compatible with these market arrangements. The Working Group noted that the CP does try and set out the generic requirements for accommodation of future changes but does not make it contingent on changes in other codes.

**Question 10: Are there any other matters that should be considered by the Working Group?**

- 5.37 Three of the six respondents had no further comments. One of the respondents raised questions around the ENA's third party access and the

Working Group offered to provide the responding Party with contact details for the ENA's working group.

- 5.38 One of the respondents stated that the CP also seeks to codify the obligations on private networks to maintain the network, so as not to affect other Parties obligations that are in place for Customers connected, which are settlement metered. The respondent was concerned that this was contrary to the reassurances given by Department of Energy and Climate Change (DECC) to them as the Regulations were drafted and debated. The respondent noted they had specifically raised these issues with DECC (both in meetings (including a meeting chaired by Lord Berkley in the House of Lords) and in writing), they categorically stated (repeatedly) that there would be no increase in current liabilities to private network owners and the terms of connection to the network could govern these risks. The respondent had therefore been working on that basis, and was in the process of drafting connection agreements both for its Customers and their Suppliers.
- 5.39 The Working Group noted that there is an existing obligation on the Customer (Electricity At Work Regs, BS7671), or the owner of the private network (the Electricity Safety, Quality and Continuity Regulations 2002 as amended), to keep their installation maintained and safe. No area in the proposed part 5, is seeking to strengthen those obligations, further than already set out in part 3. Therefore the Working Group did not consider the CP was contrary to the Regulations.
- 5.40 The respondent stated that it did not understand the issue relating to 'churn of ownership' in paragraph 3.3 of (NTC). It confirmed its ports had existed for many decades, in most cases, pre-dating the invention of electricity. The respondent did not see the issue of change of ownership, as any agreements migrate with the company when it is taken over.
- 5.41 The Working Group recognised that private networks such as ports are in a different position of being highly visible and subject to very infrequent changes in ownership and in also having bilateral connection agreements most large private networks would see the new section 5 NTC terms as dormant, having been superseded by their bilateral connection agreement, and therefore on no direct concern or impact upon them. The Working Group noted that the vast majority of private networks don't have settlement metered boundaries or agreements and have high churn on ownership. Therefore it is necessary to

have terms of connection that apply to subsequent owners of the private networks without recourse to bilateral agreements which would then need novation but rarely would.

- 5.42 The IDNO party queried the use of the term licence exempt distribution system as specific circumstances permit licence exemption which is laid out in the Act. The Working Group agreed that they were using the term licence exempt distributor, because it relates to those Parties who are entitled to be in the role. The IDNO party pointed out that *where an unlicensed network operator of a private network does not satisfy the requirements of these regulations it will not qualify as a licence exempt distributor. Therefore, we think the use of the term licence exempt distribution system may be the wrong term to use.* The Working Group replied that additional drafting had been introduced to cover of instances where the third party is or is no longer able to operate as a license exempt distributor.
- 5.43 The IDNO party requested the deletion of 4.1.5 in the legal text on the basis that they did not agree that the terms of providing registration services are part of DCUSA and the offering of these services should be through a separate licence. At this stage of the change the deletion of the text was not agreed by the Working Group but at a later stage it was reviewed and removed from the legal text.
- 5.44 Furthermore, the IDNO party did not accept that a distributor should be entitled to impose its MPAS services on an unlicensed network through DCUSA. The IDNO party illustrated their point with an example of a private network connected to a licensee's network out of its distribution services area could have MPAS provided in by another distributor operating within its distribution services area. The Working Group felt that the wording did not seek to impose provision of MPAS services by any specific party. However, the Working Group noted that a particular arrangement of operation chosen by the operator of the private network, will necessarily but outside of this agreement, constrain what valid permutations of connection point MPANs and/or embedded metering point MPANs can exist in accordance with the BSC.
- 5.45 The IDNO party requested the deletion of clause 12.8 as the Use of system charging (and the provision of data to facilitate) is separate from connection and therefore separate from the connection terms. The IDNO party looked at the scenario of the Company acting as an agent for the licence exempt

distributor and therefore undertaking charging on behalf of the licence exempt distributor. The IDNO concluded that the Company would be managing the capacity of individual Customers which forms part of that agreement. The IDNO party did not believe it should form part of national terms which, by definition will apply to all licence exempt networks across GB. The Working Group agreed at this point that the text should remain as it is, pending changes to the use of system methodologies. In the case of Full Settlement metering with half hourly traded embedded metering points, the current Use of System methodology charge structure includes a capacity charge element. It would seem discriminatory to charge an embedded Customer using less than the required capacity purely on their maximum demand but for a directly connected Customer to charge on the higher required capacity. This was changed during later discussions by the Working Group as the matter of DNO UoS charging and the registration relationship to solely embedded Customers was complex and needed further industry discussion before further additions to the NTC could be considered.

- 5.46 The IDNO party suggested a number of changes to increase the clarity of the proposed legal text by deletion and insertion of text. The Working Group addressed each of the points and amended relevant areas of the legal text. Please see Appendix C for the consultation one responses with Working Group comments detailing the specific clauses adjusted and addressed.

### **DCP 124 CONSULTATION TWO**

- 5.47 Following further discussions resulting from the first consultation, the legal text was updated and the Working Group agreed to pose further questions to Parties to gain further insight into this CP and to gain feedback from the proposed legal text. Specifically, the legal text had been updated in regards to notices whereby if the PNO failed to notify the Company of changes of notice of address, the Company shall not be liable to any issues arising from this failure to provide notice. The Working Group sought party's views on the notice section, De-energisation, Re-energisation, safety reporting and whether indemnity clauses within the proposed legal text were appropriate. A second consultation was issued in October 2012 (note; any references to legal text and appendices mentioned within paragraphs 5.48 to 5.58 are references to legal text and appendices that form part of the documentation pack associated with consultation 2).

**Question 1: Have the Working Group addressed the previous responders comments in the Working Group responses to the first Consultation? (As set out in Appendix D.)**

5.48 Of the four respondents to the second consultation, three had also answered the first consultation. Two felt the Working Group had answered the first consultation responses. The third respondent advised that they had been answered to some extent but did not address the issue regarding statutory rights of access. The respondent remarked that it is not acceptable for a Licensed Distributor to have a right to alter a PNO's assets, much as a PNO does not have the right to alter a DNO's assets. The Working Group noted that this section is for a non metered connection point, in the case of the responding party their connection points are metered and therefore the particular clause referenced, would not apply. When a DNO enters another network it is in relation to the licence obligations under other codes. There are no rights contained within the drafting to amend PNOs equipment rather rights to inspect, test and detect illegal abstraction with the principle Licensed Distributors rights being only to de-energise the boundary connection in the last resort if the PNO is unable or unwilling to effect corrections to their own network.

**Question 2: How would Parties see any De-energisation, Re-energisation, Safety Reporting or any other MRA data flows work in relation to embedded metering points, for which the Licensed Distributor is not operationally responsible, noting that private network operators are not party to the MRA or party to industry data flow mechanisms?**

5.49 There were three respondents to this question. One suggested introducing a range of new Line Loss Factor Classes primarily for charging DUoS differently, but which would signify a connection which is not direct to the Licensed Distributor's network and for a code of conduct to be put in place possibly under the ENA. The second respondent noted that in regards to safety reporting they will have to rely upon the PNO as they have no relationship with the Customer in the private network. The third respondent appreciated the reason why the Working Group may ask this question but felt it was not a question for the Working Group to address. The Working Group agreed that this area was outside of the scope of this CP.

**Question 3: Is the current wording in Clause 5.2 of the legal drafting, around notices, sufficient?**

5.50 Two of the three respondents to this question agreed that the legal drafting was sufficient and the third respondent could see no reason to change the wording and queried the number reference on the clause. The Working Group reviewed the legal text and agreed that the current wording was sufficient and the number reference was correct.

**Question 4: There are a number of indemnity clauses set out in the drafting. Do these clauses cover off any issues and concerns in this area?**

5.51 One of the three respondents believed that the indemnity clauses set out in the drafting was sufficient. The second respondent advised that the De-energisation, Re-energisation and Disconnection clauses require an indemnity to cover the circumstances where the Company has had to De-energise or Disconnect the private network due to the failing of the PNO or its connected users, such that the connected users have no claim against the Company. The Working Group advised it is covered by the new clause 15.10.

5.52 The third respondent queried Clause 15.11 which is new and covers off when a PNO should actually be a Licensed Distributor. The respondent believed that since you have included under section 2 the fact that section 5 will still apply until such a situation is rectified there is no need to repeat such a situation here since they will be subject to the indemnities that apply to section 5 in any case. The Working Group considered the comment and noted that the new clause protects the Licensed Distributor from the cost of disestablishing a PNO arrangement where the PNO is unable to continue as a PNO, outside of the control of the Licensed Distributor.

5.53 The third respondent stated that they believed that Clause 19.6.1 was not necessary as it is new and covers off any claim resulting from a de-energisation or disconnection from users on the private network at the time where such an agreement has been terminated. The Working Group decided that the clause maybe necessary where the PNO fails in a way that does not lead to a continuance of the connection in its current commercial form, thereby generating costs of change and potentially the ending of the possibility of users connected to the private network remaining connected. It is not reasonable for a Licensed Distributor to bear the liability arising from the PNO being unable to persist.

**Question 5: Cognisant of existing limitations of liability set out in sections 2 and 3 of the National Connection Terms do you have any comments on the limitation of liability proposed for private networks?**

- 5.54 One of the respondents queried Clause 15.2.4 – “where such incident or series of related incidents entitles the PNO to claim compensation from the Company under this Agreement and any other agreement”. It queried whether this enabled a PNO to claim compensation from the Licensed Distributor, as the Licensed Distributor is only responsible to the Point of Connection; what happens after this boundary is not the Licensed Distributor’s responsibility and the Licensed Distributor should not be held accountable by the PNO.
- 5.55 The Working Group noted that Clause 15.2.4 applies to a claim that arises from an incident on the Licensed Distributor’s network. The clause does not apply to incidents on the private network and the Licensed Distributor would generally not be liable for situations where the triggering incident was not on its network. This is a similar clause to the one contained in Section 3 of the NTC and equally to Section 3 of the DCUSA where it covers Distributor to Distributor connection points.
- 5.56 One of the respondents noted that the limitation of liability reflected in Sections 2 and 3 of the NTC should be reflected in Section 5. The Working Group agreed that the liability set out in Sections 2 and 3 will apply. The same liability as for Section 2 would apply if the connection points could be or were whole current metered, and the same liability as for Section 3 if the connection points would have to be or were CT metered.

**Question 6 : Do you have any comments on the proposed legal text? (As set out in Appendix B.)**

- 5.57 The respondents provided a series of suggestions and alterations to the proposed text. One of the respondents provided a separate table to address specific areas of the legal text. The Working Group considered each response in turn and made appropriate changes to the text as set out in the consultation response under Appendix C.

**Question7: Are there any other matters that should be considered by the Working Group?**

- 5.58 Two of the three respondents to this question advised that there were no other matters to be considered. The third respondent advised that they were

awaiting the outcome of the ENA's paper to Ofgem on third party access arrangements, on the most appropriate charging mechanism and therefore the text may need to be revisited in light of this outcome to provide accuracy. The Working Group agreed the charging mechanism was outside the scope of this CP.

## **6 DCP 124 – WORKING GROUP CONCLUSIONS**

- 6.1 The Working Group reviewed each of the responses received to consultation 1 and 2 and concluded that the majority of the respondents understood the intent of DCP 124.
- 6.2 The Working Group agreed that the majority of Supplier and DNO respondents were supportive of the principle of the CP. An IDNO indicated that they did not wish to be mandated by the CP and were not supportive of its principles in the consultation responses. The Working Group believes that such concerns have been addressed but unfortunately the IDNO did not respond to the second consultation.
- 6.3 The Working Group noted that the majority of respondents felt that specifically DCUSA Objectives 1, 3 and 5 were better facilitated by this CP. The Working Group agreed that the CP was neutral on Objective 2. The reasoning for this view is explained in section 8 of this Change Report.
- 6.4 The Working Group concluded that the CP will provide the following benefits:
- The change will make the operation of the Distribution System more efficient;
  - There are clear benefits in having standard terms that are clear and understood by all Parties; and
  - It will remove the unworkable volume of bilateral connection agreements which would be required with an increase in the volume of private networks (mainly those with a connection point not subject to settlements trading). This allows for a more tenable form of administration when overseeing change of ownership or occupation.
- 6.5 The Working Group agreed that both the DNO parties and the IDNO parties are impacted by this CP. They also agreed that the Supplier parties and Generator parties were not impacted. However, in line with the DCUSA Panel decision

associated with DCP079 (Statutory Application of the NTC), it was agreed that they should be allowed to vote, and should they do so they submit comments on the voting slip to aid Ofgem in their determination process.

## **7 PROPOSED LEGAL TEXT**

- 7.1 The draft legal text has been reviewed by the DCUSA Legal Advisor and is attached as Appendix B.
- 7.2 The changes to the DCUSA legal text proposed under DCP 124 are, in the first instance, to address a gap in industry arrangements whereby no standing set of terms could be affected upon the PNO where that operator did not have a Supplier relationship, and secondly, it creates a new section specifically for PNOs. It must be noted that any Customers connected within these private networks are not currently governed directly by any Licensed Distributor terms as they are not directly connected to the Licensed Distributor's network. This will continue to be the case irrespective of this CP.
- 7.3 The DCP 124 legal drafting updates the NTC in Schedule 2B by amending Section 1 and creating a new Section 5 which is based primarily on Section 3 of the NTC. Section 5 is set up to govern where the connection is to a private network. The introduction of Section 5 has led to changes in Schedule 2B Section 1 to reference the relevant section of the NTC which is applicable for different types of connections. Definitions have been amended where necessary and 7 new definitions have been added Difference Metering, Embedded Connection Point, Embedded Metering Point, Financial Cap, Licence Exempt System, Settlement and Third Party Customers.
- 7.4 The legal text has been amended in order to place mandatory obligations on the PNO in relation to their connection points. This includes but is not exclusive of providing an MPAN for its settlement metering point, registering its settlement metering point and keeping an up to date list of all embedded metering points on the private network to be provided to the Company in a timely fashion.
- 7.5 New legal text has been added on the subject of the limitation of liability. This places a cap on the liability of either party for loss claims such as premises with whole current metered connections not exceeding £100,000 (in line with section 2) and premises with CT metered connections not exceeding £1,000,000 (in line with section 3), each in respect of an incident or series of

incidents. Further clauses have been added in regards to the PNO indemnifying the Company against any losses under specific circumstances laid out in the NTC.

## **8 EVALUATION AGAINST THE DCUSA OBJECTIVES**

8.1 The Working Group unanimously considers that DCUSA Objectives 1 and 3 and a majority view on the DCUSA Objective 4 are better facilitated by DCP 124. The reasoning against each objective is detailed below:

**Objective 1** – *The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks.* Better Facilitated.

- In approving DCP033 Ofgem concluded that general objective 1 was better facilitated because it ensured that all Customers have in place standard terms for connection to the Licensed Distributor's network. This currently is not the case for non metered connections in that it can only be covered by bi-lateral agreements. Similarly where owners change there will automatically be a contract in place. This was further enforced by DCP079 (statutory application of the NTC) which covered where no Supplier was involved by ensuring that there is a default position to protect Customers. This only picks up Customers that have a metered supply and have a Supplier so the non-metered situation is not covered off. Both these reasons are valid for this CP.
- Licensed Distributors also have obligations to agree the import or export capacity that the PNO has requested. This CP sets out the basis for maximum capacity usage. Also because the terms that codify operational arrangements and limitations of liability that will aid efficiency and the economics of the Licensed Distributor's networks, which are currently absent. The Working Group agreed that through clarifying the obligations placed on Licensed Distributors in regards to PNOs it would ensure a more efficient implementation of the NTC and would lead to a more efficient distribution system.

This CP overall better facilitates objective 1.

**Objective 2** – *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.* The

Working Group noted that Customer choice is already in place, this CP seeks to put a connection agreement in place.

Therefore, the CP is neutral on Objective 2.

**Objective 3** – *The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences.* Objective 3 must be facilitated as LC22A states DCUSA must contain the following;

- *“material terms, procedures, and arrangements of a commercial nature as relate to the use of the licensee’s Distribution System and (where appropriate) to connections to that system” and*
- *“Terms that provide (i) for the circumstances in which, in relation to the use of or connections to the licensee’s Distribution System, a party’s liability for any contravention of the provisions of the DCUSA may be restricted, and (ii) for the extent to which and the circumstances in which such liability will otherwise attach to that party in respect of any claims against it.”*

This CP caters for an entire class of Customer previously omitted.

The Working Group agreed that there were obligations set out in the Electricity Act to provide default connection terms where the connection to the private network was not settlements metered.

The Licensed Distributors also have obligations to agree the import or export capacity that the PNO has requested. This CP sets out the basis for maximum capacity usage and therefore it better facilitates DNO and IDNO Parties meeting the obligations of their licenses.

This CP better facilitates objective 3.

**Objective 4** – *The promotion of efficiency in the implementation and administration of this Agreement.* It marginally better facilitates the implementation or application of the NTC by clarifying the obligations placed on DNOs and IDNOs in relation to PNOs.

**Objective 5**–*Compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.* Neutral. The Working Group agreed that the CP has no impact in relation to the Electricity and Gas (Internal Markets) Regulations 2011.

## **9 Impact on Greenhouse Gas Omissions**

9.1 In accordance with DCUSA clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if DCP 124 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this Change Proposal.

## **10 IMPLEMENTATION**

10.1 Subject to Party approval, DCP 124 will be implemented in the next DCUSA release following Authority Consent.

## **11 PANEL RECOMMENDATION**

11.1 The DCUSA Panel approved the DCP 124 Change Report on 30 April 2013. The timetable for the progression of the CP is set out below:

<b>Activity</b>	<b>Target Date</b>
Change Report Agreed	30 April 2013
Party Voting Ends	15 May 2013
Change Declaration Issued	16 May 2013
Implementation	Next DCUSA Release following Authority Consent

## **12 APPENDICES:**

- Appendix A – DCP 124 Change Proposal
- Appendix B – Proposed Legal Drafting
- Appendix C – DCP 124 Consultation Documents
- Appendix D – DCP 124 Voting Form
- Appendix E – List of interested Parties