



## **DCUSA CONSULTATION**

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### **DCP 124- THIRD PARTY NETWORK – NATIONAL CONNECTION TERMS AMENDMENT**



## 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 Objectives of the DCUSA document which are:
1. the development, maintenance and operation by each of the Distribution Network Operator ("DNO") Parties and Independent Distribution Network Operator ("IDNO") Parties of an efficient, co-ordinated, and economical Distribution System;
  2. the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity;
  3. the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences;
  4. the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it; and
  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.
- 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 second consultation issued by the Working Group in accordance with Clause 11.14 of the DCUSA and seeks industry views on

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



the development of Change Proposal DCP 124 – Third Party Network – National Connection Terms Amendment.

- 1.6 The Consultation has been issued to Customers, DCUSA Parties, Ofgem and Consumer Focus and other identified impacted Parties.
- 1.7 Parties are invited to consider the Change Proposal detailed in this consultation and submit comments using the form attached as Appendix A to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) by **16 November 2012**.

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

- 2.1 There are a total of 19 Distribution Licence holders in Great Britain. 14 of these are the “ex-regional board” companies. The other 5 are independent distributors, who own and run smaller networks embedded on the 14 larger networks.
- 2.2 Each Distributor has a legal obligation under the Electricity Act 1989 to offer to make a connection to their network if requested to do so by the owner or occupier of premises, amongst others. In making such an offer, an agreement is entered into between the Distributor and the requesting party; this agreement usually requires physical works. This consultation is not concerned with those agreements.
- 2.3 Distributors require that the users of already constructed or newly constructed connections enter into an agreement (a “Connection Agreement”) with them to govern the terms and conditions of use of the connection. This effectively means that an agreement is required between the “end-Customer” and the Distributor. 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).
- 2.4 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.



## 2.5 The NTC is split into 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 CT metered Customers (Customers whose power requirement is larger than can be put through a meter and so a current transformer 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).

2.6 Under the terms of the DCUSA, electricity Suppliers entering into contracts with end 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. The CP seeks to update the NTC to address contractual matters arising from changes in Supplier choice available to the customers who are connected to networks of private network operators i.e. Licence Exempt Distributors.
- 3.2 There is an existing gap in the industry arrangements, whereby no standing set of terms could be affected upon the private network owner where that owner does not have an electricity supplier relationship. Any customers connected within such private networks are not currently governed directly by any licensed Distributor terms as they are not directly connected to the licensed distributor's system.
- 3.3 The group noted that 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. On both



counts, dealing with a lack of standing connection terms for existing private networks and fully supporting the consequence of the Electricity and Gas (Internal Markets) Regulations 2011, there is a compelling need to modify the NTC for a Licence Exempt Third Party Distribution Network.

- 3.4 DCP 124 introduces the concepts of Licence Exempt Distribution Network Operator's Distribution System and Embedded Metering Point into section 1 and 5 of the NTC in order to apply equivalent terms to a private network operator.
- 3.5 The Proposer of the change proposal 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 private network owner to set out terms of connection and use to its customers who require direct market access. This means the private network owner's connections terms 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 private network owners 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.
- 3.6 Where the private network owner's connection does have a supplier relationship in place and therefore the NTC applying it is apparent that some aspects of settlements usages being devolved into a private network are not currently treated in the existing NTC. 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.
- 3.7 Other requirements, stemming from the licensed distributor's licence obligations (full measurement of energy, losses, illegal abstraction) and the role of the private network operator (itself or as a user) require the setting out of appropriate standing default terms. 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 are required to be applied as required by the Electricity Act.



- 3.8 DCP 124 seeks to ensure consistent network terms with third parties connections. There is a need for a clear obligation in the NTC, to state which rules apply to which network operator. The alternative (and the existing arrangement) of procuring bilateral agreements with each private network operator is not considered desirable due to the ongoing maintenance of such agreements. There is no Supplier process for all permutations of metering arrangements for private network operators and their private network.

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

- 4.1 The Working Group comprises of Distributor Parties and Ofgem. Private network operators and Suppliers have been invited to attend, and this Working Group as an open invitation to all interested parties should they wish to be a member.
- 4.2 All Working Group members are supportive of the general principles of DCP 124.
- 4.3 The scope of this CP focuses on private network operators and their connection. The Working Group agreed that along with facilitating the DCUSA Objectives there are also additional reasons for the need of this CP. Firstly there is a need to clearly codify standard terms of connection to at least provide default baseline terms for new private network connections. Secondly, to address a legacy issue, it is impractical to administer individual bilateral agreements with private network operators 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 an electricity supplier and the private network operator, 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 private network operator 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 electricity 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 may also have an impact on Suppliers with regard to their contract terms they have with settlement metered customers who are connected to private networks.
- 4.9 The new private network arrangements will make it clearer that the private network is a commercial undertaking and as such this change proposal uses section 3 as a baseline in developing section 5. Currently, NTC section 2 differs from sections 3 and 4 in terms of liabilities. Section 2 deals with whole current metered premises, broadly equating to domestic and small business premises, while sections 3 and 4 deal with CT metered and unmetered connections which are commercially oriented connections and have a different liability treatment. Under this change proposal the following changes to the liability will occur should the use of the premises change to a private network. Instances of such include, but are not limited to, a house being turned into flats, a small business unit being turned into multiple business units, and the impact on an existing private network operator with a boundary meter currently covered under section 3



NTC Section	Premises	Liability	Change of use to a private network covered under NTC section 5
2	Domestic	unlimited	£1m
2	Business (whole current metering)	£100k	£1m
3	Business with CT metering	£1m	£1m

This consultation also seeks feedback on whether the liabilities included within section 5 of the proposed NTC are appropriate.

4.10 The group agreed to outline a number of scenarios, around multi-occupancy dwellings in order to identify any impacts this may have on customers. This group will be looking at connection agreements, and not Use of System agreements.

4.11 The Working Group have outlined the following scenarios and highlighted the current obligations at each boundary:

	Settlement Meter Installed	Connection terms	Supplier Contract
LDNO/PNO Boundary	Yes	NTC S3 <sup>2</sup> via Supplier Contract or Bi-lateral or NTC S3 via Statute, between LDNO and PNO	Yes
	No	Bi-lateral between LDNO and PNO	No
PNO/Customer Boundary	Yes	Bi-lateral between PNO and Customer	Yes However, the customer is not directly connected to the licensed distributor's system and any reference to the NTC in a supplier agreement would be incorrect and not valid <sup>3</sup>
	No	Bi-lateral between PNO and Customer	No

<sup>2</sup> The proposer is suggesting that these terms be replaced by a new section 5 of the NTC with modifications to Section 1 to accommodate its inclusion.

<sup>3</sup> See Schedule 2A of the DCUSA which contains text that Suppliers put into their Supplier contracts which is only relevant to customers directly connected to LDNO networks.



**Key:**

LDNO - Licensed Distribution Network Operator

PNO - Private Network Operator

- 4.12 A number of issues arise from the use of system boundary and the settlement metering boundary being moved from the point of connection to the licensed distributors system. The principle change is that the obligation to comply with its distribution licence will no longer relate to metering wholly and fully at the point of connection, but may be reliant partially on embedded metering positions (when difference metering implemented) or completely reliant on embedded metering positions (when full settlement solution to licence exempt settlements metering is implemented).
- 4.13 From a licence obligation perspective the licence distributor will therefore be reliant on the combination of both the private network owner and the embedded tenants not making use of electricity which is not passing through an embedded settlements metering system. Additionally, where the private network owner does not reside on site and is unable or unwilling to take actions required in the circumstances for safety reasons, a need exists for the licensed distributor to put in place arrangements to permit it to selectively deal with safety issues whilst avoiding disconnecting the whole of a private network.
- 4.14 Some licensed distributors are concerned that in order to meet the obligations in these two areas, that they might need to have a right of access to the private network or the embedded Customers' premises, as well as a right to conduct certain actions upon the private network equipment, for revenue protection reasons or to de-energise a customer on safety reasons without having to de-energise all customers on that network by working at the boundary.

## **5 WORKING GROUP DEVELOPMENTS**

- 5.1 This is the second consultation sought by the DCP 124 Working Group. Following a review of the comments from the first consultation the legal text has been amended and, in some instances, in line with legal advice provided by the DCUSA lawyers. The legal advice document is set out in Appendix C.



- 5.2 The Working Group now seeks to ask the responders to consider if their responses to the first consultation have been addressed. Responses to the first consultation, as well as the Working Group comments to those responses are set out in Appendix D.
- 5.3 Following the legal advice, the Working Group have update the notices section of the drafting. Where a user fails to notify the company of changes of notice address, the Company shall not be liable to the issues arising. This consultation asks parties to confirm if the current wording of the notices clause in the proposed section 5 is sufficient.
- 5.4 The Working Group are also seeking Parties views on how 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.
- 5.5 The Working Group is also seeking comments on whether the indemnities clauses within the legal drafting are appropriate.

## **6 PROPOSED LEGAL TEXT**

- 6.1 The DCP 124 proposed legal text is set out in Appendix B, as tracked changes to the NTC.
- 6.2 Following a review of the proposed legal text by the Working Group after feedback gained from the consultation, it will be issued to the DCUSA legal representative for review.

## **7 CONSULTATION**

- 7.1 Parties are asked to consider the following consultation questions:
- Have the Working Group addressed the previous responders comments in the Working Group responses to the first Consultation?
  - 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 License Distributor is not operationally responsible, noting that private network operators are not party to the MRA or party to industry data flow mechanisms?
  - Is the current wording in Clause 5.2 of the legal drafting, around notices,



sufficient?

- There are a number of indemnity clauses set out in the drafting. Do these clauses cover off any issues and concerns in this area?
- 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?
- Do you have any comments on the proposed legal text?
- Are there any other matters that should be considered by the Working Group?

7.2 Consultation responses should be submitted to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) no later than **16 November 2012**. 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.

7.3 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.

## **8 NEXT STEPS**

8.1 Following the end of the consultation period the Working Group will meet to consider the responses. The DCP 124 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.

8.2 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 by email [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) or telephone 020 7432 3011.



## **9 APPENDICES**

- Appendix A – Consultation response form
- Appendix B – Proposed legal text
- Appendix C – DCP 124 Legal Advice Document
- Appendix D – Collated consultation comments from first Consultation