

DCP110 – Legal Drafting

EU 3rd Package Amendments

**Clause 1 – Definitions and Interpretation**

**Agency for the Cooperation of Energy Regulators** means the agency of that name established under Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

**Regulation on Cross-Border Exchange in Electricity** means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchange in electricity and repealing Regulation 2003/1228/EC.

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**Clause 3 – DCUSA Objectives**

- 3.1 The objectives of this Agreement (such objectives being the **General Objectives**), except in respect of the Charging Methodologies, shall be:
- 3.1.1 the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System;
  - 3.1.2 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;
  - 3.1.3 the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences; ~~and~~
  - 3.1.4 the promotion of efficiency in the implementation and administration of this

Agreement and the arrangements under it; and

3.1.5 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.

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3.2 The objectives of this Agreement in respect of the Charging Methodologies only (such objectives being the **Charging Objectives**) shall be:

3.2.1 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;

3.2.2 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);

3.2.3 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; and

3.2.4 that, so far as is consistent with Clauses 3.2.1 to 3.2.3, the Charging Methodologies, so far as is reasonably practicable, properly take account of developments in each DNO Party's Distribution Business; and

3.2.5 that compliance by each DNO Party with the Charging Methodologies facilitates 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.

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#### **Clause 9.4 – Part 1 Matters**

9.4 Any actual or potential provision of this Agreement shall be deemed to have the status

of a **Part 1 Matter** to the extent that it satisfies one or more of the following criteria:

- 9.4.1 it is likely to have a significant impact on the interests of electricity consumers;
- 9.4.2 it is likely to have a significant impact on competition in one or more of:
  - (A) the generation of electricity;
  - (B) the distribution of electricity;
  - (C) the supply of electricity; and
  - (D) any commercial activities connected with the generation, distribution or supply of electricity;
- 9.4.3 it is likely to discriminate in its effects between one Party (or class of Parties) and another Party (or class of Parties);
- 9.4.4 it is directly related to the safety or security of the Distribution Network; ~~and~~
- 9.4.5 it concerns the governance or the change control arrangements applying to this Agreement; ~~and~~
- 9.4.59.4.6 ~~it has been raised by the Authority or a DNO/IDNO Party pursuant to Clause 10.2.5, and/or the Authority has made one or more directions in relation to it in accordance with Clause 11.9A.~~

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### **Clause 10.2 – Persons Entitled to Propose Changes**

- 10.2 A Change Proposal may be made by any of the following:
  - 10.2.1 a Party;
  - 10.2.2 the National Consumer Council;
  - 10.2.3 the National Electricity Transmission System Operator;
  - 10.2.4 any person or body that may from time to time be designated in writing by the

Authority for the purpose of this Clause 10.2 (which may include, in respect of a Charging Methodology, any person whose interests are materially affected by that Charging Methodology); and

10.2.5 the Authority or a DNO/IDNO Party acting at the direction of the Authority (in each case only in relation to amendments which the Authority reasonably considers are necessary to comply with or implement the Regulation on Cross-Border Exchange in Electricity and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators).

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#### **Clause 10.4 – Content of Proposal**

10.4 A Change Proposal must contain the following information:

10.4.1 the name of the Proposer;

10.4.2 the name and contact details of an employee or representative of the Proposer who will act as a principal point of contact in relation to the proposal;

10.4.3 the date on which the proposal is submitted;

10.4.4 a description in sufficient detail of the nature of the proposed variation to the Agreement and of its intended purpose and effect;

10.4.5 a statement of the reasons why the Proposer believes that this Agreement would, if the proposed variation were made, better facilitate the achievement of the DCUSA Objectives than if that variation were not made;

10.4.5A a statement of whether the Proposer believes that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being made;

10.4.6 a statement as to which parts of the Agreement the Proposer considers would require to be changed in order to give effect to the proposed variation or as a

consequence of that variation;

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, those provisions are Part 1 Matters;

10.4.8 a statement of whether the Proposer considers, in the light of the criteria set out in Clause 10.7, that the Change Proposal should be treated as urgent and, if so, its reasons for so considering; ~~and~~

10.4.9 the date from which the Proposer recommends that the proposed variation should have effect; and

10.4.10 in the case of variations proposed by DNO/IDNO Parties, confirmation as to whether it is raising the proposal in compliance with a direction of the Authority as envisaged by Clause 10.2.5.

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### **Clause 11.10 to 11.13 - Timetable**

#### **Timetable**

11.9A Where the Authority reasonably considers that the Change Proposal is necessary to comply with or implement the Regulation on Cross-Border Exchange in Electricity and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators, the Authority may by direction specify and/or amend:

11.9A.1 the timetable to apply to each stage of the Assessment Process for the Change Proposal; and/or

11.9A.2 the date from which the variation envisaged by the Change Proposal is to take effect.

11.10 Unless a timetable has already been established by the Authority in accordance with Clause 11.9A, aAt the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also, having regard to the

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complexity, significance and urgency of that proposal, determine a timetable for the completion of each stage of the Assessment Process. For the avoidance of doubt, the Panel shall not make any determinations regarding the proposed implementation date at this stage.

- 11.11 The overall timetable originally established for an Assessment Process in accordance with Clause 11.10 may not exceed 60 Working Days. Where a Change Proposal is an Urgent Change Proposal, the Authority may, either on the application of a Party or of its own volition, direct that an alternative timetable applies in place of that set by the Panel.
- 11.12 Save in the case of a timetable established by the Authority in accordance with Clause 11.9A, ~~the~~ Panel may agree to vary the timetable at any subsequent meeting, having regard to any information about the complexity and significance of the Change Proposal that has been revealed by the Assessment Process prior to the date of that meeting. The overall timetable for an Assessment Process may, where the Panel so determines, be extended beyond the original limit of 60 Working Days by successive periods of up to 40 Working Days. The Authority may, either on the application of a Party or of its own volition, veto any such extension, in which case the timetable will remain as it was immediately before the extension in question.
- 11.13 The Panel, the Secretariat and any Working Group shall use their best endeavours to complete tasks assigned to them under the Assessment Process within the timetable determined in accordance with Clauses 11.9A to 11.12 (inclusive) ~~by the Panel.~~

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#### **Clause 11.14 – Definition Procedure**

- 11.14 The Panel may establish, in respect of a Change Proposal, a Working Group for the purpose of undertaking the activities (the **Definition Procedure**) of:
- 11.14.1 consulting with the Parties, and (where appropriate) with any interested third parties, on the proposal, which third parties shall include, in respect of proposals to vary one or more of the Charging Methodologies, any person whose interests the Working Group identifies as being materially affected by

a Charging Methodology (which consultation shall, where appropriate, be by way of consultation with bodies who represent the interests of such third parties);

11.14.2 considering and clarifying the likely effects of the proposed variation to the Agreement, and indicating which Party Categories it considers will be affected by the proposed variation;

11.14.3 evaluating, developing and refining the proposed variation to the Agreement (and, in undertaking such evaluation in respect of a Change Proposal to vary one or more of the Charging Methodologies, the Working Group shall have regard to the ability of the Authority to veto any Change Proposal that appears to the Authority to have as its purpose or effect the full or substantial substitution of one Charging Methodology for another);

11.14.4 evaluating the likely impact of the proposed date for implementation of the variation, and where it considers appropriate amending this date, subject to the following:

(A) an implementation date specified by the Authority in accordance with Clause 11.9A.2 may not be amended;

(B) ~~otherwise, the implementation date should be the date that enables the proposed variation to take effect as soon as practicable after the decision to implement has been reached, taking into account the complexity, importance and urgency of the variation;~~ and

(C) ~~;~~—in undertaking such evaluation in respect of a Change Proposal to vary one or more of the Charging Methodologies, the Working Group shall have regard to the obligations of DNO Parties under this Agreement, and under their Distribution Licences, regarding the frequency of changes to Use of System Charges, and regarding the notice to be given in advance of such changes);

~~11.14.4~~11.14.5 considering whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA

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Objectives than if that variation were not made; and

~~11.14.5~~11.14.6 considering whether it is likely that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being made, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the treatment of carbon costs and evaluation of greenhouse gas emissions issued by the Authority from time to time).

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#### **Clause 11.23 – Change Report**

11.23 The Panel may, prior to submitting a Change Report to the Voting Procedure, and having had regard to the consultation responses received, direct the Secretariat to amend the Change Report in one or more of the following ways:

11.23.1 to alter the Party Categories who will be eligible to vote on the proposal;

11.23.2 to alter the proposed date for the implementation of the proposal (provided that the Panel may not amend an implementation date specified by the Authority in accordance with Clause 11.9A.2); and

11.23.3 to add (in addition to the variation proposed) up to two of the alternative variations referred to in Clause 11.20.6(C),

but where one of the alternative variations referred to in Clause 11.20.6(C) is a variation that was submitted by the Proposer, the Panel must use its power under Clause 11.23.3 to direct the Secretariat to add that variation to the Change Report, whether or not it also directs that a second alternative variation shall be added.

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#### **Clause 11.29 – Withdrawal by Proposer**

11.29 The Proposer may withdraw his support for a Change Proposal on notice to the Secretariat at any time; provided that, where the Proposer raised the Change Proposal

pursuant to Clause 10.2.5, the Proposer may not withdraw such support unless it also provides evidence that the Authority has given its consent to such withdrawal.

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#### **New Clause 14.9**

14.9 Without prejudice to Clause 14.8, where the Authority reasonably considers that the Change Proposal is necessary to comply with or implement the Regulation on Cross-Border Exchange in Electricity and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators, then:

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(a) the Authority may direct that a new implementation date be substituted for the first such date; and

(b) where the Authority makes such a direction, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to the date so directed.

**Wragge & Co**  
**5 December 2011**

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