



## **DCUSA Consultation**

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### DCP 079 - Statutory Application of National Terms of Connection

## 1 PURPOSE

- 1.1 The Distribution Connection and Use of System Agreement (DCUSA) is a multi-party contract between electricity distributors ("**Distributors**") and electricity suppliers ("**Suppliers**") and large generators. Parties to the DCUSA can raise DCUSA Change Proposals (DCPs) to amend the Agreement with the consent of other Parties and (where applicable) the Authority.
- 1.2 This document is a consultation issued to all DCUSA Parties, consumers and their representatives and the Authority in accordance with Clause 11.14 of the DCUSA seeking industry views on DCP 079 'Statutory Application of National Terms of Connection'.
- 1.3 Parties are invited to consider the proposed drafting set out as Appendix A and submit comments using the form attached as Appendix B to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) by **06 May 2011**.

## 2 CONNECTION AGREEMENTS AND 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 within the 14 legacy networks.
- 2.2 Under the Electricity Act 1989 (the "**Electricity Act**"), each Distributor is obliged to offer to connect a premises to its network if requested to do so by the owner or occupier of the premises. If such an offer is accepted, an agreement is created between the Distributor and the requesting party. These agreements provide for any physical works necessary to effect the connection. This consultation is not concerned with these works or construction agreements.
- 2.3 Distributors require the users of already constructed, or newly constructed, connections to enter into agreements to govern the use of the connection ("**Connection Agreements**"). Connection Agreements need to be between the Distributor and the user of the connection (the "**Customer**", which expression includes generators for the purpose of this consultation).

- 2.4 Distributors enter into Connection Agreements in one of two ways, either: by negotiating a bespoke agreement with the Customer; or through an agency relationship with the Customer's Supplier.
- 2.5 Distributors enter into bespoke 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.
- 2.6 The National Terms of Connection are terms and conditions which are intended by default to govern the use of connections to distribution systems by Customers, where a bespoke contract between the Customer and the Distributor does not exist.
- 2.7 Under the terms of the DCUSA, Suppliers entering into contracts with Customers (whether for the supply or purchase of electricity) are obliged to act as agent for the relevant Distributor, and to agree with the Customer that the National Terms of Connection apply in respect of the Customer's connection (unless a bespoke Connection Agreement applies). The current National Terms of Connection are available at [www.connectionterms.co.uk](http://www.connectionterms.co.uk).
- 2.8 In November 2010 a new version of the National Terms of Connection was published. This was the result of more than 18 months work by a DCUSA Working Group in response to a previous DCUSA Change Proposal (DCP 033) which added new sections into the National Terms of Connection. These new sections provide for different terms to apply to different types of connection.

### **3 DCP 079 – STATUTORY APPLICATION OF THE NATIONAL TERMS OF CONNECTION**

- 3.1 In the course of consulting on revisions to the National Terms of Connection for the purposes of DCP 033, UK Power Networks (then EDF Energy Networks) proposed the view that section 21 of the Electricity Act enables Distributors to specify terms that will have automatic (statutory) effect, and proposed that the National Terms of Connection be stated to comprise such statutory terms. In order not to delay the revision of the National Terms of Connection, it was agreed that this issue would not be resolved as part of DCP 033, and would be

considered again in the future.

- 3.2 UK Power Networks has now raised DCP 079, the effect of which, if approved, would be to inform readers that the National Terms of Connection set out Statutory terms pursuant to section 21 of the Electricity Act. UK Power Networks has again expressed the view that section 21 of the Electricity Act allows Distributors to specify statutory connection terms, and has again proposed changes to the National Terms of Connection so that they are stated to comprise such statutory terms.
- 3.3 Section 21 provides that a Distributor “may require any person who requires a connection ... to accept in respect of the making of the connection ... any terms which it is reasonable in all the circumstances for that person to be required to accept ...”. In this context the making of a connection includes the continued provision of a connection, as a result of wording in section 16(4) of the Electricity Act. The full text of Sections 16 & 21 are set out in Appendix C.
- 3.4 It is in reliance of this section 21 that Distributors require those persons seeking a new connection, or seeking to continue using an existing connection, to enter into Connection Agreements. Distributors do not need to make, or continue providing, a connection if the Customer refuses to accept a Connection Agreement (whether a bespoke agreement or on National Terms of Connection).
- 3.5 However, the reference to “terms” in section 21 is not expressly limited to contractual terms. It is therefore possible to argue that section 21 allows Distributors to impose terms that will have force by virtue of section 21 without the need for any contractual agreement – i.e. statutory terms.

#### **4 DOES SECTION 21 ALLOW FOR STATUTORY TERMS?**

- 4.1 In the absence of Parliament modifying section 21 to clarify its application, only the courts can determine whether or not section 21 does allow Distributors to impose statutory terms. The courts have never given a definitive view on this question.
- 4.2 The amendment proposed to the National Terms of Connection by UK Power Networks will not of itself determine whether or not section 21 allows for the

imposition of statutory terms. The amendment proposed merely states that the National Terms of Connection set out statutory terms under section 21. If, therefore, section 21 does allow for statutory terms, the National Terms of Connection will (as a result of DCP 079) comprise those statutory terms.

- 4.3 Given the above, one could take the view that the amendment to the National Terms of Connection is capable of being considered separately from the question of what section 21 does and does not allow. The amendment to the National Terms of Connection could even be worded so as to apply only if and to the extent section 21 does allow for statutory terms.
- 4.4 Nevertheless, the decision has been taken to seek the views of all concerned (including Customers) as to whether or not (in their opinions) section 21 does allow for statutory terms.
- 4.5 This is a difficult question of statutory interpretation, on which not all respondents may have an opinion. In addition to reviewing the text of section 21 itself, respondents may also wish to compare the language used in section 21 with that used in the Supplier deemed contract scheme at paragraph 3 of Schedule 6 to the Electricity Act, the text of which is set out in Appendix D.

## **5 WHAT DIFFERENCE DOES STATUTORY APPLICATION MAKE?**

- 5.1 In considering whether or not the National Terms of Connection should be stated to comprise statutory terms for the purpose of section 21, it is obviously pertinent to consider the consequences of doing so.
- 5.2 As explained in section 2 above, Connection Agreements take one of two forms:
  - bespoke agreements between the Distributor and the Customer; or
  - an agreement that the National Terms of Connection are to apply, which is agreed between the Customer and its Supplier (acting as the Distributor's agent) as part of the Supplier's contract with the Customer.
- 5.3 So whenever a Customer has a contract with a supplier in respect of a connection, then a Connection Agreement applies between the Customer and

the Distributor in respect of that connection.

5.4 Furthermore, because of an express statutory scheme under the Electricity Act, a contract is deemed to exist between a Customer and a Supplier whenever a Customer takes a supply of electricity. These deemed contracts also apply the National Terms of Connection.

5.5 As a result, most connections are already governed by the National Terms of Connection.

5.6 However, there are limitations to this contractual application of the National Terms of Connection. These limitations can generally be categorised as follows:

- the Supplier will only have a contract with one person for each connection – whereas there might (in the case of a landlord, tenant and even sub-tenant(s), for example) be more than one person who benefits from the connection;
- the person that contracts with the Supplier may not be the appropriate person for the Distributor to contract with in respect of the connection – for example, it may be an affiliate of the occupier or a facilities management company that contracts for the supply of electricity; or
- there might not always be a contract with a Supplier – for example, a new property may be connected prior to a Supplier being appointed.

5.7 If section 21 does allow for the imposition of statutory terms, and if the National Terms of Connection were stated to comprise such statutory terms, then all owners and occupiers of premises in Great Britain would automatically be subject to the National Terms of Connection, without the need to rely upon contractual application via contracts with Suppliers.

5.8 As section 21 recognises, it is sensible that Distributors are able to require owners and occupiers of connected premises to accept reasonable connection terms. The National Terms of Connection have been approved by Ofgem as appropriate terms to govern connections. Furthermore, the National terms of Connection are capable of amendment by interested parties (subject to Ofgem's approval). On this basis, one might reasonably argue that their

extended application can only have a positive overall affect.

5.9 In respect of individual owners or occupiers of premises who do not currently have Connection Agreements (either bespoke agreements, or via a contract with a Supplier), the automatic application of the National Terms of Connection may have a positive or a negative impact (depending on particular circumstances). For example:

- the National Terms of Connection would give the owner/occupier the right to have their premises connected, and would prevent the Distributor reallocating their capacity to another connectee;
- the National Terms of Connection limit the potential liability of some owner/occupiers in the event that the owner/occupier damages the Distributor's network; and
- the National Terms of Connection limit the potential liability of Distributors to certain owners/occupiers in the event that the Distributor damages the owner's/occupier's property.

## 6 PROPOSED AMENDMENTS

6.1 The intent of the change proposed by UK Power Networks is to state clearly in the National Terms of Connection that they have statutory effect which derives from section 21 of the Electricity Act.

6.2 The Working Group established to consider DCP 079 has developed the terms set out below and repeated in full as Appendix A.

6.3 The proposed change to the National Terms of Connection is as follows, where additions are shown in blue and deletions are shown in red strikethrough:

**B *Application to you and the premises:*** These terms may apply to you in one of two ways:

- If you have entered ~~When you enter~~ into a contract with your electricity supplier for the supply of electricity to, or the export of electricity from, a particular premises, you will also have agreed with the network operator to accept these terms in respect of those premises. This is

because your electricity supplier has been appointed as the agent of the network operator to make such an agreement.

- If you have not entered into any contract with your network operator in respect of a particular premises, but you are either the owner or occupier (or both the owner and occupier) of those premises, you are required to accept these terms pursuant to section 21 of the Electricity Act 1989 (and you will be taken to have accepted these terms unless and until your premises are permanently disconnected from the network or you agree different terms with your network operator).

## **7 IMPACT ON CONSUMERS**

7.1 Members of the Working Group have identified in section 5 above how they consider this change (and the wider application of the National Terms of Connection) will affect customers.

7.2 The Working Group is seeking views from customers on the likely impact of this change.

## **8 LEGAL DRAFTING**

The proposed legal drafting in full within section 1 of the National Terms of Connection is attached as Appendix A.

## **9 WORKSHOP**

The Working Group is considering holding a workshop to discuss this Change Proposal. This is likely to be half-day workshop in London. In order to gauge the level of interest and attendance at such a workshop the consultation asks whether you would be interested in attending.

## **10 IMPLEMENTATION**

The proposed implementation date for DCP 079 is the first release of the DCUSA after Ofgem gives it approval (if approved). New versions of the DCUSA are generally released every three months.

## **11 CONSULTATION QUESTIONS**

11.1 The Working Group would welcome respondents views on the following questions:

- Do you understand the intent of the proposed amendment?
- Are you supportive of the principles of the proposed amendment?
- Do you agree that section 21 allows Distributors to impose terms that will have force by virtue of section 21 without the need for any contractual agreement?
- Do you agree with the analysis in this consultation document regarding the impact on Customers of amending the National Terms and Conditions as proposed?
- Do you have any other comments regarding the potential impact on Customers of amending the National Terms and Conditions as proposed?
- Do you have any comments on the proposed drafting of the amendment?
- Are there any alternative solutions or matters that should be considered?
- Would you be interested in participating in a workshop to discuss the nature of this proposal in more detail?
- May we contact you if we would like to clarify any part of your response?

11.2 Responses should be submitted using Appendix B to [DCUSA@ElectraLink.co.uk](mailto:DCUSA@ElectraLink.co.uk) no later than **06 May 2011**.

11.3 Responses, or any part thereof, can be provided in confidence. Respondents are asked to clearly indicate any parts of a response that are to be treated confidentially.

## **12 NEXT STEPS**

12.1 Following the end of the consultation period the responses will be considered by the Working Group and a workshop may be held. Thereafter the Working Group will consider whether any changes are required to the drafting. The Change Proposal will then be issued to all DCUSA Parties for voting and

following the vote will be issued to Ofgem for final determination.

12.2 If you have any questions about this paper or the DCUSA Change Proposal process, please contact the DCUSA Help Desk by telephone (020 7432 3011) or by email [DCUSA@ElectraLink.co.uk](mailto:DCUSA@ElectraLink.co.uk).

### **13 APPENDICES**

13.1 Appendix A – Proposed legal text of amendment to section 1 of the National Terms of Connection

13.2 Appendix B – Response Form

13.3 Appendix C – Full text of sections 16 & 21 of the Electricity Act

13.4 Appendix D – Text of paragraph 3 of Schedule 6 to the Electricity Act

## Appendix A - Proposed legal text of amendment to section 1 of the National Terms of Connection

Note: Additions are shown in blue and deletions are shown in red strikethrough.

### "SCHEDULE 2B – NATIONAL TERMS OF CONNECTION

#### SECTION 1

A. **Introduction:** The electricity that is supplied to, or exported from, the premises is conveyed using the network of the network operator. In order that electricity can be supplied to, or exported from, the premises, there must be both:

- a connection agreement with the network operator to maintain the connection to its network; and
- arrangements for the supply, or export, of electricity (usually with an electricity supplier).

The National Terms of Connection set out the terms and conditions that the network operator requires you to accept in return for maintaining the connection of the premises to its network.

B. **Application to you and the premises:** These terms may apply to you in one of two ways:

- If you have entered ~~When you enter~~ into a contract with your electricity supplier for the supply of electricity to, or the export of electricity from, a particular premises, you will also have agreed with the network operator to accept these terms in respect of those premises. This is because your electricity supplier has been appointed as the agent of the network operator to make such an agreement.
- If you have not entered into any contract with your network operator in respect of a particular premises, but you are either the owner or occupier (or both the owner and occupier) of those premises, you are required to

accept these terms pursuant to section 21 of the Electricity Act 1989 (and you will be taken to have accepted these terms unless and until your premises are permanently disconnected from the network or you agree different terms with your network operator).

- C. **Application to other premises:** If the National Terms of Connection apply to you and a particular premises in accordance with paragraph B above, you also agree that the National Terms of Connection apply to any other connection of any other premises of which you are the owner or the occupier (or both the owner and the occupier).
- D. **Application of sections 2, 3 & 4:** The National Terms of Connection contain 4 sections. This section 1 will always apply to you and the premises. In addition, one of section 2, 3 or 4 will also apply to you and the premises, depending on the physical nature of the connection at the premises:
- if the connection is metered directly by putting the full electrical current through the meter (known as 'whole current metering'), section 2 will apply (this is usually the case with domestic properties and small industrial and commercial properties);
  - if the connection is metered indirectly by using current transformers to induce a reference current which is then put through the meter (known as 'C/T metering'), section 3 will apply (this is usually the case with large industrial and commercial properties); or
  - if the network operator has agreed that the connection need not be metered (known as 'unmetered supply'), section 4 will apply (this is usually the case with street lighting).

If you are not sure which of sections 2, 3, or 4 applies to the premises, or have any other questions about the National Terms of Connection, you should contact the network operator. Contact details are available from the Energy Networks Association (telephone 0207 706 5137) or at [www.connectionterms.co.uk](http://www.connectionterms.co.uk).

- E. **Duration and replacement terms:** The National Terms of Connection take effect in respect of the premises from the time that the contract with your

electricity supplier takes effect, and will continue (even if that contract ends) until either:

- another connection agreement takes effect in respect of the premises pursuant to another contract with an electricity supplier for the supply of electricity to, or the export of electricity from, the premises (as applicable); or
  - the application of the National Terms of Connection is terminated, or otherwise ends, in accordance with section 2, 3 or 4 (as applicable), including where you agree a replacement agreement with the network operator.
- F. **Existing connection terms:** Any existing terms and conditions applying to you and the connection of the premises to the network (except for standard terms which have effect by virtue of statute or pursuant to a contract with an electricity supplier, or which an electricity supplier procured your acceptance of) will apply instead of the National Terms of Connection to the extent that the two are inconsistent.
- G. **Interpretation:** In this section, the term “premises” includes any land, building, structure or electrical installation, and is a reference to the premises to which these terms apply; the term “network” means, for each connection at the premises, the licensed electricity distribution network through which electricity is conveyed to, and from, that connection; and the term “network operator” means the licensed electricity distributor for the network.”

## Appendix B – Response Form

See separate document submitted with this consultation.

## Appendix C – Full text of sections 16 & 21 of the Electricity Act

### **“16 Duty to connect on request.**

- (1) An electricity distributor is under a duty—
  - (a) to make a connection between a distribution system of his and any premises, when required to do so by—
    - (i) the owner or occupier of the premises; or
    - (ii) an authorised supplier acting with the consent of the owner or occupier of the premises,for the purpose of enabling electricity to be conveyed to or from the premises;
  - (b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.
- (2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.
- (3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.
- (4) In this section and sections 16A to 23—
  - (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
  - (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical

plant either by the installation of a new one or by the modification of an existing one.

- (5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions”

**“21 Additional terms of connection.**

An electricity distributor may require any person who requires a connection in pursuance of section 16(1) above to accept in respect of the making of the connection—

- (a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under section 29;
- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.”

## Appendix D – Text of paragraph 3 of Schedule 6 to the Electricity Act

- “3 (1) Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time (“the relevant time”) when he began so to supply electricity.
- (2) Where—
- (a) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;
  - (b) that supply is not made by an authorised supplier; and
  - (c) a supply of electricity so conveyed has been previously made by an electricity supplier,
- the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time (“the relevant time”) when he began to take such a supply.
- (3) Nothing in sub-paragraph (2) shall be taken to afford a defence in any criminal proceedings.
- (4) The Authority shall publish a document containing provision for determining the “appropriate supplier” for the purposes of sub-paragraph (2).
- (5) The Authority may revise the current document published under sub-paragraph (4); and where it does so it shall publish the revised document.
- (6) The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.
- (7) Each electricity supplier shall make (and may from time to time revise), a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1) or (2), are to be deemed to have been made.

- (8) The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—
- (a) the time when the meter is first read after the relevant time; or
  - (b) the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,
- whichever is the earlier.
- (9) A scheme under this paragraph may (subject to section 7B) make different provision for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.
- (10) As soon as practicable after an electricity supplier makes a scheme under this paragraph, or a revision of such a scheme, he shall—
- (a) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;
  - (b) send a copy of the scheme or revision to the Authority and to the Council; and
  - (c) if so requested by any other person, send such a copy to that person without charge to him.”